

# Report of the Making the Record Committee

Approved August 3, 2018



Executive summary	2
Work of the committee	3
Increasing shortage of stenographic court reporters	4
Growing use of digital audio recording	5
Experience of other courts	6
Options for making the record	7
Installation of digital audio recording equipment	8
Guidelines for blended stenographic and digital reporting systems	9
Proposed changes to statutes and court rules	10
Work plan for implementation of this report	11
Conclusion	11
Attachments	12
A. 2017-18 Making the Record committee members	12
B. Observations and reports from other courts	13
C. Map of digital audio installations	17
D. Guidelines for use of digital audio court reporting	18
E. Proposed changes to statutes and court rules	21
F. Work plan for implementation of recommendations	28

## **Posted on committee website:**

Work of previous Wisconsin court reporting committees  
Communications of Director of State Courts Office  
National Center for State Courts consultant report  
National Center for State Courts survey of court reporting practices  
Diagram of DAR equipment needed for single courtrooms and remote monitoring

**REPORT OF THE MAKING THE RECORD COMMITTEE**  
**August 3, 2018**

**Executive summary**

The ability to create an accurate verbatim record of trial court proceedings is a basic necessity of the court system. 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. The Director emphasized that the court system values the skills of the current stenographic court reporters and has a critical interest in maintaining the continuity of its workforce. 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.

Faced with this issue, other state and federal courts have turned to strategic use of technology to supplement their resources. Many courts use digital audio recording (DAR) equipment to capture the record in some or all types of cases. Digital audio recording has become a well-tested technology, making it possible to produce accurate verbatim transcripts in all kinds of proceedings. It is most commonly used where a transcript is unlikely to be requested or where a stenographic reporter is not available.

The committee recommends that the Wisconsin circuit courts pursue a blended system using both stenographic and digital court reporters, based on where they are available and where their skills are best suited. The committee has developed guidelines for taking the verbatim record under a variety of conditions. To support increased use of digital court reporters, the Director's Office will be reviewing court reporter job classifications, training, and recruitment efforts.

Using a combination of stenographic and digital court reporters requires the ability to move court reporters where their skills are most suited. The committee recommends changes to court statutes, rules and policies to clarify the authority of the chief judges and district court administrators in making court reporter assignments.

The Director's Office has begun gradually introducing DAR systems county by county based on need and each judge's willingness to use the technology. To assure coverage in emergencies, the Director's Office hopes to have at least one DAR system in every courthouse by the end of 2019. The eventual goal is to have DAR systems in all courts that want them within five years. The Director's Office may also consider pilot programs allowing counties and judicial districts to explore new technologies on a voluntary basis, such as remote monitoring of multiple DAR courtrooms.

Because pursuit of these options may be enough to address the current coverage issues, there were two issues that the committee did not address: changing the statute that makes court reporters personal appointees of individual judges, and changing the statutes that allow court reporters to keep the income from transcripts they produce. The Director's Office does not intend to propose changes in these areas at this time. The Director's Office will continue to recruit and employ stenographic court reporters and is committed to maintaining the stability of its current court reporter pool.

## Work of the committee

Members of the Making the Record committee were selected to represent a cross-section of interests and geography. They included four circuit court judges, one chief judge, one court of appeals judge, three court reporters (two stenographic and one digital), two clerks of circuit court, two district court administrators, and four senior managers from the Director's Office.<sup>1</sup>

The committee met seven times from September 2017 through August 2018. It reviewed the work of prior court reporting committees going back to 1994.<sup>2</sup> It reviewed current workforce recruitment and retirement projections and discussed coverage and scheduling challenges. The committee looked at the methods used in other state courts, the quality and speed of transcript production, the impact of changes on current personnel, and the advantages and disadvantages of various systems. It also reviewed studies and news articles about the experiences of other courts and the prospects for new technologies.<sup>3</sup>

The committee visited a federal district court to learn how it uses a blend of stenographic and digital reporting techniques. Senior managers reported on their observation of an Illinois circuit court that uses digital audio recording to monitor several courtrooms at once from a central location. The committee also heard reports on how DAR has been used in the Wisconsin circuit courts. CCAP provided information on costs and configurations for installation of digital audio systems and remote monitoring options.

The committee created a chart of options summarizing the various systems it studied, with advantages and disadvantages, and made recommendations for when each type of system should be used. The committee considered changes to statutes and court rules to clarify the ability of the chief judge to assure court coverage in light of the shortage.

During the course of the committee's work, the Director's Office sent a bulletin describing the court reporter shortage and a follow-up email to update judges and court reporters on the issues that the committee was considering. A number of court reporters and a few judges responded with comments and suggestions, which were reviewed by the committee.<sup>4</sup> The Wisconsin Court Reporters Association submitted comments on a draft of changes to court statutes and rules.

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<sup>1</sup> A list of committee members is attached as Attachment A.

<sup>2</sup> A summary of the work of prior court committees is posted on the [Making the Record](#) committee page on the court's internal website.

<sup>3</sup> It is sometimes suggested that voice recognition technology may some day automate the process of making a verbatim transcript, but that day does not appear to be on the immediate horizon. See, e.g. [The Future of Speech Recognition](#), Journal of Court Reporting (2016).

<sup>4</sup> 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, and one suggested that other states have tried digital reporting and failed. 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 reporters wrote to invite other court reporters and judges to visit their courtrooms and observe how they operate. These communications are posted on the committee website.

## Increasing shortage of stenographic court reporters

The growing shortage of well-qualified stenographic court reporters has been documented for the last 25 years. This shortage has now reached the point where the courts have difficulty recruiting and retaining enough stenographic court reporters to consistently staff all proceedings. Significant effort is devoted to moving court reporters between courtrooms and courthouses to keep up with the demand.

One part of the problem is that many experienced court reporters are nearing retirement age. The circuit courts currently employ 290 official and district court reporters. Of these, 180 (62%) are 50 years of age and older, and 45 (15%) are 60 years of age and older. Consistent with their years of experience, they are also eligible to retire soon: 118 (41%) of court reporters are eligible to retire now, and 180 (62%) will become eligible in next 5 years. To keep pace with these retirements, the circuit courts may need to hire an average of 36 new reporters per year.

The other part of the problem is that very few new stenographic court reporters are coming along to take their place. Enrollment at court reporting schools is dropping, both nationally and in Wisconsin. Few students enroll and fewer graduate. Stenographic reporting is a highly specialized skill requiring two years of study, followed by a difficult speed test with a low pass rate. There are often only a handful of graduates from Wisconsin court reporting schools who become available for work each year, and each graduate is likely to receive multiple job offers. The Wisconsin Court Reporters Association has been working for years to encourage enrollment and job placement, but the number of new graduates comes nowhere close to meeting the need.<sup>5</sup>

As a result of these two trends, there are a limited number of applicants, court postings stay open much longer, and desired qualifications are sometimes loosened. When this committee began work, the court system had 11 vacancies for permanent court reporters and 6 vacancies for LTE positions. There are also fewer district court reporters and freelance reporters available to work on-call. This shortage creates pressure on the current reporters: increased out-of-county assignments, difficulty scheduling vacations, and scrambling to cover family and medical leave. In each judicial district, the district administrative assistant spends hours every week trying to make sure all proceedings are covered. Court may even be cancelled, an event that will inevitably become more frequent unless changes are made. The shortage in Wisconsin is becoming critical.

Wisconsin is not alone; these same shortages are being felt across the country. The National Center for State Courts (NCSC) offered Wisconsin the services of a consultant, the former administrative director for the state of Vermont, who looked at how court reporting services are handled in several states similar in size and court structure. He reported that most of these states are experiencing court reporter shortages. The Iowa and Minnesota courts have committees working on the problem, and the Nebraska courts expressed interest in seeing what Wisconsin decides to do.<sup>6</sup>

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<sup>5</sup> See [2013-14 Court Reporting Industry Outlook Report](#) by Ducker Worldwide, for explanation of these trends nationally and in Wisconsin.

<sup>6</sup> The NCSC report is posted on the committee website.

## Growing use of digital audio recording

Faced with this issue, other courts have turned to digital audio reporting to supplement stenographic reporting. A 50-state survey taken by NCSC in 2017 found that most state courts use a mixture of stenographic and digital reporting to take the trial court record. Three states use stenography exclusively and four states use digital audio or video recording exclusively.<sup>7</sup>

Over the last ten years, digital audio recording has become a well-tested technology, making it possible to produce high-quality, accurate verbatim transcripts in all kinds of proceedings. It is most commonly deployed in proceedings where a transcript is unlikely to be requested or in situations where a stenographic reporter is not available. Transcripts may be produced using stenography, voice writing, transcription, or other means. The equipment may be operated by court reporters, dedicated monitors, or by clerk staff.<sup>8</sup>

In Wisconsin, there have been a number of studies on the growing shortage of stenographic court reporters and the availability of new court reporting technologies. The most recent Making the Record Committee (2007-08) recommended incremental installation of DAR equipment in judicial courtrooms and creation of a job classification for digital court reporters. Due to budget constraints and a lack of interest on the part of the judges, those installations did not take place. There were also fewer court reporter retirements than anticipated.

As of 2018, digital reporters serve as the official court reporter for seven Wisconsin circuit court judges. High-quality compatible digital audio recording systems are also used in 39 court commissioner hearing rooms, where they record initial appearances, traffic, small claims, and family proceedings. The Director's Office has developed standards for equipment purchase and maintenance, audio file storage, courtroom procedures, notes storage, and transcript requests, along with job descriptions and a salary structure for digital court reporters.

The committee heard from stenographic reporters and judges expressing doubts about the ability of digital court reporters to create an accurate verbatim record. The committee also heard from judges who had worked successfully for years with digital court reporting for all kinds of proceedings. In Dodge, St. Croix, and Grant Counties, digital court reporters have been working as official court reporters for over 10 years without significant problems. The misdemeanor courts in Milwaukee also make daily use of the technology. Even complex medical malpractice trials have been transcribed and appealed. Ultimately, the committee concluded that when good equipment is used by a skilled digital court reporter, the record should be just as complete and accurate as the record taken by a skilled stenographic reporter, and the transcripts indistinguishable.

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<sup>7</sup> This survey data was taken from the [2017 Survey of State Court Organization](#). A summary of the survey is provided on the committee website.

<sup>8</sup> For discussion of digital audio recording practices in the state courts, see [Making the Verbatim Record: A Window of Opportunity for Systemic Change](#), Council of State Governments (2014); [Making the Record Using Digital Electronic Recording](#), NCSC (2013); [An Analysis of Court Reporting and Digital Recording in the Nevada Courts](#), study commissioned by the Nevada Court Reporters Association (2011).

## Experience of other courts

To learn how digital court reporting works in practice, committee members visited the federal district court for the Western District of Wisconsin, where members met with the magistrate judge, clerk of court, court reporters, and technical staff to learn about their court reporting practices. The court uses a blended system of stenographic and digital court reporting. Two realtime court reporters take the record for four court officials. The reporters decide each day which proceedings are likely to require a transcript and cover those with realtime reporting. For other proceedings, the clerk of court monitors the DAR system and takes minutes; if a transcript is ever needed, the court reporters create it from the recording.<sup>9</sup>

A management team from the Director's Office visited the circuit courts in Rockford, Illinois, to observe how they use DAR to monitor multiple courtrooms from a central location. They also use a blended system where certified stenographic reporters go to the courtrooms where transcripts are likely to be requested. For other proceedings, a team of court reporters monitors the courtrooms from a central location, taking log notes and monitoring up to four courts at the same time. The same team prepares the transcripts. The court reporters who work in the monitoring room all have some stenographic training. Some are new and not yet up to speed, and some are experienced reporters who prefer the pace of the monitoring room. A video of the visit was shared with the committee.

The committee heard a report about the experience of Dodge County, where digital audio recording systems were installed in all four judicial courtrooms and used by the three stenographic reporters and one digital reporter as needed. The system worked well and they experienced no problems. During this time, they were able to provide coverage for all proceedings without asking the district office for assistance, even when a reporter was on extended leave. The anticipated problems turned out to be straightforward to deal with.

Several additional experiments occurred during the time the committee was working.

- When a digital reporter was about to go on leave in Grant County, she spent a week training a limited term employee to replace her. The LTE had some experience in the legal field, was comfortable with technology, and was a fast typist. The LTE held the job successfully for six weeks and was able to produce all the transcripts required.
- In Sheboygan County, a stenographic reporter went on leave and a digital reporter was able to cover for her. DAR equipment was installed in the second courtroom and the digital reporter monitored both courtrooms from his office. Once he got used to it, he was able to effectively monitor hearings and trials in both courtrooms without problems.
- In Eau Claire and Barron Counties, judges hired stenographic students before they finished school. The students took the record primarily by stenography, but had the comfort of being backed up by the DAR recording if they fell behind. One of the students has come up to speed and is now an official stenographic reporter.
- Several counties were able to use backup DAR systems when an April snowstorm kept several court reporters from coming to work.

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<sup>9</sup> A longer description of these visits is found at Attachment B.

## Options for making the record

	Recommended Applications	Advantages	Disadvantages
<b>Stenographic official court reporter</b>	All	<ul style="list-style-type: none"> <li>*Live in-court presence</li> <li>*Realtime capability</li> <li>*ADA accommodation</li> <li>*Ready transcription</li> <li>*Court reporters bear equipment cost &amp; maintenance</li> </ul>	<ul style="list-style-type: none"> <li>*Undersupply</li> <li>*Extensive training &amp; practice</li> <li>*Susceptible to illness, etc.</li> <li>*Travel may be required</li> <li>*Transcript may never be needed</li> <li>*Frequent re-assignment required</li> </ul>
<b>Monitored DAR w/ official DAR court reporter</b>	All	<ul style="list-style-type: none"> <li>*Live in-court presence</li> <li>*Recording quality monitored</li> <li>*Less training &amp; practice</li> <li>*Some ability to perform other tasks</li> <li>*If necessary, can be used without court reporter</li> </ul>	<ul style="list-style-type: none"> <li>*State bears equipment cost &amp; maintenance</li> <li>*Immobile</li> <li>*Time-consuming transcription process</li> <li>*Susceptible to illness, etc.</li> <li>*Travel may be required</li> <li>*Transcript may never be needed</li> <li>*No current pool of trained DAR reporters</li> </ul>
<b>Clerk-monitored DAR</b>	Low transcript, less complex proceedings, court commissioner hearings, emergency use	<ul style="list-style-type: none"> <li>*Efficient use of human resources</li> <li>*Recording quality monitored</li> <li>*Little effort expended unless transcript required</li> <li>*Lessens travel and employee stress</li> <li>*Provides flexibility for stenographic reporter</li> </ul>	<ul style="list-style-type: none"> <li>*State bears equipment cost &amp; maintenance</li> <li>*Monitoring less rigorous, may burden clerk</li> <li>*Minutes need to work as log notes</li> <li>*No dedicated transcriptionist</li> <li>*Training required for judges, clerks, attorneys</li> </ul>
<b>County DAR systems, analog recordings, unmonitored DAR</b>	Not appropriate for circuit court use	<ul style="list-style-type: none"> <li>*Already in place</li> <li>* Cheap</li> </ul>	<ul style="list-style-type: none"> <li>*Undetected failure of equipment or persons</li> <li>*Low quality recordings</li> <li>*Risk of recording being lost</li> <li>*Out-of-date software and hardware</li> <li>*No automatic storage on CCAP network</li> </ul>
<b>Remote DAR monitoring of multiple courtrooms –pilot programs</b>	Low transcript, less complex proceedings, emergency use – within county or across counties	<ul style="list-style-type: none"> <li>*Efficient use of human resources</li> <li>*Recording quality monitored</li> <li>*Less training and practice</li> <li>*Some ability to perform other tasks</li> <li>*Provide flexibility for stenographic reporter</li> </ul>	<ul style="list-style-type: none"> <li>*Significant equipment cost &amp; maintenance</li> <li>*Time-consuming transcription process</li> <li>*No in-court presence</li> <li>*Training required for judges, clerks, attorneys</li> <li>* Needs development &amp; testing</li> </ul>

## Installation of digital audio recording equipment

Even before the committee completed its work, the Director's Office realized there was a serious and immediate shortage that needed to be addressed. The district court administrators assessed where court reporter coverage needs were most acute and surveyed their judges to see who might be interested in installing machines for backup coverage. As of June 2018, 37 counties had DAR systems in at least one judicial courtroom and 39 counties had compatible DAR systems available in court commissioner hearing rooms. More systems will be installed as the need arises and funding allows.<sup>10</sup> At the present rate, the Director's Office is on track to install at least one system in every courthouse by the end of 2019, to make sure that the record can always be taken even if no court reporter is available.

CCAP provided the committee with cost estimates for different DAR configurations.

- (1) The typical installation for an official DAR court reporter includes two work stations, one in the courtroom and one for transcripts. The equipment consists of two computers, mixer, 6 microphones, headset and foot pedal, FTR Gold software and Dragon Naturally Speaking, maintenance, storage, and CCAP support, at a total cost of \$9,140. This is the setup in the seven counties where there is an official DAR reporter.<sup>11</sup>
- (2) CCAP has also installed backup DAR units in counties where there might be a visiting DAR court reporter or where the machines are primarily intended for emergency use. These setups do not include the second computer in the court reporter's office for making transcripts, which reduces the cost to \$6,940.
- (3) CCAP provided a cost estimate for creation of a monitoring room similar to what the courts in Rockford use, allowing a court reporter to monitor multiple DAR units from a central location. It includes a single high-end camera that can pan the whole courtroom, but without an FTR player and PC in the courtroom, for a total cost of \$7,323 per courtroom. This system could potentially monitor courtrooms in more than one county.<sup>12</sup>

Any time the system is running, an individual needs to be responsible for confidence monitoring, which is the process of listening to the audio, visually monitoring the recording dials, noting the time at which cases are called, reminding attorneys to mute and unmute the microphones, and checking storage. It is essential that several people in each courthouse be trained to use the system and take responsibility for the regular upkeep of the hardware and software: checking microphones, replacing batteries, downloading software updates.

Reliability of the recording system is a concern that is often raised about DAR technology. The new systems used by CCAP use multiple high-quality microphones located throughout the courtroom, recording on four channels for good voice separation. The recordings and log notes are automatically backed up on CCAP servers both locally and in Madison. Users report that the sound quality and reliability of the recordings has been excellent.

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<sup>10</sup> A map of DAR installations is attached as Attachment C.

<sup>11</sup> A diagram showing what DAR equipment is needed for single courtrooms and for remote monitoring of multiple courtrooms is posted on the committee website.

<sup>12</sup> All three estimates include \$1,000 to cover the cost of storage and the four additional CCAP staff needed to install and maintain the systems.

## Guidelines for blended stenographic and digital reporting systems

The committee heard concern from stenographic reporters that the court system no longer values their skills and that they might be summarily replaced by machines. The committee learned about a few states where the state legislature abolished the court reporter job description and replaced court reporters with digital monitors and transcribers. The committee believes this is not an appropriate model for Wisconsin to follow, and the court system should continue to use stenographic court reporters for as long as they are available.

Computer-aided stenographic court reporters and voice writers offer some advantages that digital reporters are not able to provide. They can produce a transcript in fewer hours than a digital reporter working from a recording, so stenographic reporters are more efficient in situations where transcript requests are expected. Court reporters with realtime skills can produce a readable written version of a proceeding as it is happening, which is essential where ADA accommodation is required for participants with hearing loss, and many judges find it helpful to use on a daily basis. Read-backs of testimony can be quicker with stenographic reporting.

DAR can be used successfully for any type of proceeding, but it is especially efficient for proceedings where transcript requests are uncommon. DAR also offers a number of advantages: the rate of speech is not an issue, talk-overs can be handled with multi-channel recording, someone who wasn't in the courtroom can still make the transcript, and court reporter fatigue is more easily avoided. The record can be taken even in situations where no court reporter is available. Because it does not require two years of intensive specialized training, DAR offers a less challenging entry point to the court reporting profession and broadens the number of potential candidates, which is especially helpful in smaller counties. However, there are not many people who know that such a job even exists, so the court system will need to develop ways to recruit, train, and evaluate appropriate candidates.

Other courts have moved to a blended system of stenographic and digital reporting that offers the courts the best of both techniques. These courts have been able to add to their dwindling court reporter pool and offer a greater range of options for court reporters throughout their careers. Stenographic reporters can also benefit by using digital audio recordings to gain speed at the beginning, avoid repetitive stress injuries, and provide flexibility in scheduling. Rather than view stenographic and DAR reporting as a rivalry, these courts cultivate a sense of teamwork around making the record.

With these goals in mind, the committee has updated the existing guidelines for using digital audio reporting.<sup>13</sup> The new guidelines are intended to provide the circuit courts with a general outline or starting point for how DAR may be used, identify best practices, and balance flexibility with adequate guidance. The guidelines address the importance of equipment, training and procedures. Courts are encouraged to adapt DAR to their own needs after using it for a while. The guidelines will be incorporated into the revised DAR Policy & Procedures Manual and the Court Reporter Manual. A list of high-transcript and low-transcript proceedings is included with the guidelines.

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<sup>13</sup> These guidelines are attached as Attachment D.

## Proposed changes to statutes and court rules

Based on the retirement projections discussed above, the committee concluded that there will soon be significant changes to the court reporter landscape. Within five years there will not be enough stenographic reporters to have one for every judge, so Wisconsin circuit courts will need to use a mix of stenographic and digital court reporters. And because it makes sense to deploy stenographic reporters where a transcript is most likely to be requested, judicial districts are likely to move reporters more than they do today. Although most judges are generally accepting of court reporter assignments to another court, such cooperation is not assured. The need to assign court reporters away from their appointing judges is likely to increase as the number of stenographic reporters decreases, so objections may increase as well.

The committee talked about possible changes to the statutory power of judges to appoint their own court reporters, under Wis. Stat. 751.02. It also discussed the current method of court reporter compensation that allows court reporters to retain per-page income from the transcripts they produce, under Wis. Stat. 814.69. Both the changes would represent a significant change to the way courts handle court reporter assignment and compensation. The committee does not recommend fundamental changes to the way court reporters serve as personal appointees of individual judges. It does however conclude that judicial districts need the flexibility to use both types of court reporters efficiently and assign them as needed for coverage.

For example, in a 5-judge county with a rotation system, there might be two digital and three stenographic court reporters. The district could assign the digital court reporters to small claims, traffic and family, while using the stenographic reporters in the criminal and civil courtrooms. Or the district could use remote monitoring to cover multiple types of routine proceedings, freeing up enough court reporter time to cover vacancies, vacations, and workload relief.

In some situations, clerks may provide monitoring of the digital audio recording, the way they currently do for court commissioner proceedings. This may include emergency use of DAR at times when no court reporter is available, or in high-volume, low-transcript proceedings. It does not appear that any changes to the statutes or court rules are necessary for this to happen.

This report proposes changes to several statutes and Supreme Court Rules.<sup>14</sup> These changes establish DAR as an accepted court reporting method, clarify the ability of the chief judge and DCA to assign coverage, clarify the status of DAR recordings as a public record, and provide which court reporter should produce the transcript if the proceedings were monitored by the clerk. It is anticipated that these changes will be presented by petition to the Supreme Court.<sup>15</sup>

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<sup>14</sup> The text of the proposed changes is found at Attachment E.

<sup>15</sup> The changes to statutes and Supreme Court Rules fit within the court's rulemaking authority under Wis. Stat. 751.12 and its administrative authority over all courts conferred by Wis. Const. article VII, sec. 3. Changes to the Rules of Trial Court Administration are adopted by the Director of State Courts under SCR 70.34, based on approval by the Committee of Chief Judges.

The chief judges expressed support for the proposed changes to the assignment provisions at their meeting on June 7, 2018. The Wisconsin Court Reporters Association commented that the proposed changes to SCR 71.01 might negatively impact court reporter job security and transcript income. The WCRA letter can be found under Director of State Courts communications on the committee website.

## **Work plan for implementation of this report**

This advisory committee was convened to review the work of prior court reporting committees in light of current needs, technologies, and national trends, and to make recommendations to the Director of State Courts. The committee looked at the methods used in other courts and concluded that integrating digital audio reporting into the circuit courts is the most viable option for making sure that courts are able to continue taking the record and providing high-quality transcripts as needed. The committee has developed a suggested plan for implementation of its recommendations over time.<sup>16</sup>

Under these recommendations, if adopted, the Office of Management Services will review personnel policies and recruitment, including job descriptions, preferred qualifications, salaries, and certification. It will also talk with the technical schools to explore how new career skills might be introduced. The court reporter manual will be revised to integrate digital audio reporting.

Training will be a critical component of successful implementation. The Office of Court Operations, CCAP, and the district court administrators will work to create training materials for new DAR court reporters, stenographic reporters, and clerk staff, as well as courtroom procedures and signage for judges & attorneys. Court Operations will take the lead on outreach to court personnel through conferences and publications. The Director's Office will work on a video to demonstrate digital audio reporting in operation.

The committee has proposed changes to several statutes and Supreme Court Rules which fall within the power of the Supreme Court to order by petition. Court Operations staff will draft the petition, to be presented to the court by the Director's Office and committee members.

CCAP will continue to work on installation of DAR equipment and technical training. It will also work on any pilot project proposals, such as remote monitoring of multiple courtrooms.

## **Conclusion**

The Director of State Courts is responsible for insuring that the judicial branch has the infrastructure in place to carry out the administration of justice, both today and in the future. While it is still a priority for the Wisconsin court system to attract and retain well-qualified stenographic court reporters, there are simply not enough qualified candidates to meet the need. Digital audio reporting has been successfully employed by other courts in a way that is compatible with existing stenographic court reporter services. The committee recommends that the Wisconsin court system broaden its vision of how court reporting can be accomplished and work to incorporate digital audio recording into its court reporting practices, to insure that this vital need can always be met.

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<sup>16</sup> The work plan for implementation is attached as Attachment F.

## Attachments

### A. 2017-18 Making the Record committee members

#### **Circuit Court Judges:**

Hon. Craig Day, Grant County Circuit Court(Using DAR))  
Hon. Daniel Borowski, Sheboygan County Circuit Court(Using DAR)  
Hon. Robert Russell – Lincoln County Circuit Court (Using steno reporter)  
Hon. Michael Waterman – St. Croix County Circuit Court (Using steno reporter)  
Hon. James Morrison, Marinette County Circuit Court (Chief Judge)

#### **Court of Appeals Judge:**

Hon. Brian Blanchard, District IV Court of Appeals

#### **Court Reporters:**

Patrick Weishan, Official Court Reporter, Dane County (Steno)  
Nichole Wiest, Official Court Reporter, Grant County (DAR)  
Sheri Piontek, Official Court Reporter, Brown County (Steno)  
Past President of WI Court Reporters Assn (WCRA)

#### **Clerks:**

Sheila Reiff, Clerk of the Supreme Court and Court of Appeals  
Formerly Walworth County Clerk of Circuit Court  
Lynn Hron, Dodge County Clerk of Circuit Court

#### **District Court Administrators:**

Pat Brummond, District Court Administrator, 7<sup>th</sup> Judicial District  
Tom Schappa, District Court Administrator, 8<sup>th</sup> Judicial District

#### **Director of State Courts Office:**

Hon. Randy Koschnick, Director of State Courts  
Diane Fremgen, Deputy Director, Office of Court Operations  
Dean Stensberg, Deputy Director, Office of Management Services  
Jean Bousquet, Chief Information Officer

#### **Staff:**

Marcia Vandercook, Circuit Court Legal Advisor, Office of Court Operations  
Sara Foster, Executive Assistant, Director of State Courts Office

## B. Observations and reports from other courts

### Visit to Federal Court for the Western District of Wisconsin

Taken from the minutes of January 26, 2018

The committee members visited the federal district court in Madison to observe their court reporting system. The federal district court has three Article III judges, a magistrate judge, two realtime stenographic reporters, and the occasional assistance of a stenographic floater. They use the digital audio recording (DAR) system “For The Record”.

U.S. Magistrate Judge Stephen Crocker said that the court reporters are physically present in the courtroom for situations where the reporters think they will need a transcript. He said that he keeps his own notes of hearings and doesn't use the audio to refresh his memory of proceedings. He also doesn't ask for playbacks during a proceeding; he simply instructs the attorneys to ask the question again. Judge Crocker said that they only use the recording when the court reporters are not available. He said they have fewer jury trials than state courts, about 40 to 50 a year.

Court Reporter Jennifer Dobbratz said she and the other court reporter prepare all the transcripts. If she is transcribing from a recording, she listens to the audio and uses her stenography machine as the recording is playing, just as if she were in the courtroom. The court reporters prefer to be in the room for hearings if they think a transcript will be requested and believe they make a better record when they are in the courtroom and in control of the situation. But the digital system is a good back-up, and they try to use it in the high-volume, low-transcript courtrooms. They also use it when they don't have coverage, and they are always able to make a transcript.

Clerk of Court/Magistrate Judge Peter Oppeneer said both the court reporters and the floater are realtime reporters. The judges and lawyers like having realtime capabilities in the courtroom, and often the quality of realtime is so good it can act as a rough transcript. They began using DAR because Judge Shabazz requested it, and for a time they moved away from stenographic court reporters to digital recording. During that time there was a designated employee who was responsible for the recordings, and Mr. Oppeneer had never heard of any problems or issues. However, once realtime became available, the court began moving back to court reporters. Since Judge Shabazz retired, the DAR is used for situations where there is no court reporter available.

Mr. Schappa noted that the Eastern District in Green Bay makes regular use of DAR. They have a courtroom deputy who creates a combination of minutes and log notes, and that person also monitors the digital recordings. The transcript requests are completed by court reporters. He said that some Minnesota federal courts use a similar system. Judge Crocker said that they used to take log notes, but decided they were not that useful.

Mr. Oppeneer said the clerk is the responsible official for ensuring the recording is made. Someone from the clerk's office will monitor the DAR recordings during hearings, and the minutes they create are more of a summary of the entire proceedings. On an average day where there are no trials, there might be 5-8 hours of proceedings between the 4 courtrooms. Ms. Dobbratz said that although the state courts have a higher volume, she has a higher percentage of transcript requests now than she did when she was a state court reporter.

Ms. Bousquet asked for examples of issues with their FTR system, and the federal court staff agreed there have been very few. Judge Koschnick asked if they had a maintenance contract for the system.

Automation Specialist Bill Bogenhagen said they may have initially had a contract, but it has not been renewed and they handle issues in-house.

Courtroom assignments and clerk staffing are decided by what type of proceedings the judge will be hearing that day. Ms. Dobbratz said the two court reporters decide who will cover which courtroom and where the DAR will be used. They are able to cover more branches with fewer people, and they do not feel threatened by the recording system. She believes using a digital recording system could help alleviate burnout among state court reporters, particularly in the high volume, low transcript courtrooms. After this discussion, the committee members were invited into the courtroom for a hands-on examination of the recording system.

### **Visit to Rockford, Illinois circuit courts**

Taken from the minutes of January 26, 2018

Judge Koschnick, Ms. Ward-Cassady, Ms. Fremgen, Mr. Stensberg, Ms. Bousquet and Ms. Vandercook visited the 27-judge circuit court in Rockford, Illinois, to see how they handled remote monitoring of courtrooms. They have two rooms set aside for a group of monitors to work, one for civil and one for criminal. In each room, several people are monitoring the video and audio feeds from four courtrooms at once. They can listen, watch the activity in each courtroom, view the volume dials, and see the clerk's minutes for each case as they are entered.

Although all of the court reporters have stenography background, some have not completed school and some do not have the speed necessary for in-court work. The Rockford courts are not concerned about shortages of stenographic reporters as they have enough people coming out of stenography school who can build up their speed in the monitoring room.

The court reporters in the monitoring room make sure the equipment is recording and make log notes about who is speaking. They use walkie-talkies and instant messages to communicate with the bailiff and clerk in court room if the microphones are muted or the speaker is talking too softly. They sometimes have time to work on transcripts even while watching several courtrooms. Mr. Stensberg commented that the court reporters in the monitoring rooms seemed relaxed and comfortable, and they were able to multitask.

Ms. Fremgen noted that the DAR is running all day in all of the courtrooms, but court rules are clear that anything recorded before the clerk calls the case is not on the record. In one courtroom the DAR system stays on all weekend so the record can be created without court reporters having to work on the weekends. The log notes include a time stamp on the audio of who is speaking and what the proceeding is about, and they are tied into the minutes taken by the clerk.

Judge Russell asked how well this works for the judges. Ms. Fremgen said they spoke to the chief judge and another judge they just happened to encounter in the hall. Both spoke highly of the system from the judges' point of view. The chief judge said there had been training for the judges and attorneys to get everyone on the same page. They have not had any major glitches or delays in the 15 years they have been using the system. They have not had any issues with delays in transcripts because they can move them around to distribute the workload. The criminal courts do not place any court reporters in the courtrooms; they are stationed in the monitoring room. In the civil courtrooms, they assign steno reporters to be present, but the DAR still records so the reporters can go back and listen if needed. Mr. Weishan noted that most modern stenographic machines have the ability to record, so the ability to listen to playback is not unique to DAR. Judge Day commented that there are people with an interest in court reporting and legal proceedings who do not have stenographic skills, and this is a potential labor pool to access.

## **Report on the Dodge County blended pilot project**

Taken from the minutes of January 26, 2018

Reserve Judge John Storck reported on the Dodge County DAR pilot program, which ran from 2005-2015. He said he had great respect for court reporters, and worked with a stenographic reporters longer than he did with a DAR reporter. He said Dodge County began using DAR in 2001 for the court commissioners. In 2005 they started a pilot project to see if the DAR system could be used in a circuit court courtroom. His stenographer agreed to be a DAR court reporter for a year. They used DAR even during jury trials and hearings requiring transcripts. The recording were automatically backed up to CCAP servers in Madison. Time stamps were placed on the recordings to make it easy to go back and listen for things such as objections, names, or when someone starts speaking. If necessary, Judge Storck was able to run the system by himself without a court reporter in the courtroom. They were able to make accurate transcripts, though it did take longer on the back end.

The pilot project was intended to determine if they could eliminate the need for floater or freelance coverage by having a system in every courtroom. During the pilot project, the judicial district office did not need to provide back up coverage to Dodge County. At one point, they had a court reporter out for two months and were able to work entirely from the DAR system. Although the original idea was that the transcripts would be distributed among the court reporters, eventually the DAR reporter ended up doing them all. In 2015-16 when he was preparing to retire, Judge Storck sent a memo to the presiding judge with suggested changes, but the other judges decided to end the pilot and go back to the old system.

Judge Storck said some people think the DAR system is inferior and the transcripts are not as good, but he believes that there are more advantages than disadvantages. The advantages include: the rate of speech is not an issue; talk-overs can be handled with multi-channel recording; the accuracy of the transcript can be meaningfully challenged; the entire testimony of a witness can be played back for the jury to hear inflections and tone; someone who wasn't in the courtroom can still make the transcript; it increases the value of the court reporters to free up their time for proceedings where a transcript will be requested; it provides court reporters with relief to take breaks from the courtroom and not have to work lunch hours or after hours; it provides the option of disks versus transcripts; the workload can be evenly divided; and court reporter fatigue is not an issue. The disadvantages include: no realtime court reporting; longer time to arrange playbacks; and longer time to create a final transcript from a recording than from stenographic notes.

Judge Storck also identified some perceived issues that were not actually problems in his experience. For confidential communications, the presiding officer needs to take precautions, like having signs at the attorney tables and verbal reminders to mute microphones if they do not want to be recorded. Another perceived issue is that the microphones will not pick up voices adequately unless the speaker stays put at the table, but his experience was that the microphones are very good and capture all the speakers. The audio of a child or soft-spoken witness can be turned up on the microphones with no feedback, either at time of recording or later.

Ms. Hron said one of the keys to this system working is having a good court reporter manager with the authority to make decisions on who will go where, and who knows which cases will need a transcript or not. Another key is having a DAR system in every courtroom, since judges do not like to move to different courtrooms. The clerks in Dodge County handle the recordings and the log notes in the intake courtrooms. On a busy day, they may add two clerks to the courtroom. Running the system has become second nature for the clerks, and they are so used to it that it takes up virtually no time.

Mr. Stensberg asked what happened after Judge Storck left. Judge Storck said the other judges never gave a reason, but he did hear later it was related to concerns by their court reporters. The court reporters association does not look kindly on DAR court reporters; the stenographic court reporter who became the DA reporter in Dodge County was not allowed to continue her membership in the association. There was also concern that if a court reporter was using DAR they would not be paid as a stenographer.

### **Grant County LTE DAR experience**

Taken from the minutes of January 26, 2018

Judge Day said that when his court reporter needed to take a six-week leave, it gave him and the district court administrator the opportunity to experiment with training a new DAR court reporter. They hired a limited term employee (LTE) with 10 years of experience as a legal assistant. They defined the basic skill set of a DAR reporter as basic computer skills, some understanding of the legal system, and fast typing. The LTE spent one week training with the DAR court reporter, and the experiment worked well. She came in during a busy week and left after seven weeks with all transcript requests done. Her only responsibilities were that of a DAR court reporter.

Mr. Brummond said it was truly on the job training. The LTE received some initial training on creating log notes, examples of transcript formats, and the court reporter resource manual. She was able to produce a transcript on the first day and they had no problems during the seven weeks. The district now has a trained LTE court reporter who can be moved to counties with DAR systems, but they need more installations to make it more effective. Ms. Wiest said she proofed the LTE's transcripts during the week of training, but no one looked at them after that, and Mr. Brummond said they had no complaints about them. Mr. Brummond said that Judge Gabler just hired a DAR court reporter who is a court reporter student at the testing stage with the idea that she will build up her speed as she goes, and Ms. Fremgen noted this is what Rockford is doing.

### **Sheboygan County remote monitoring experience**

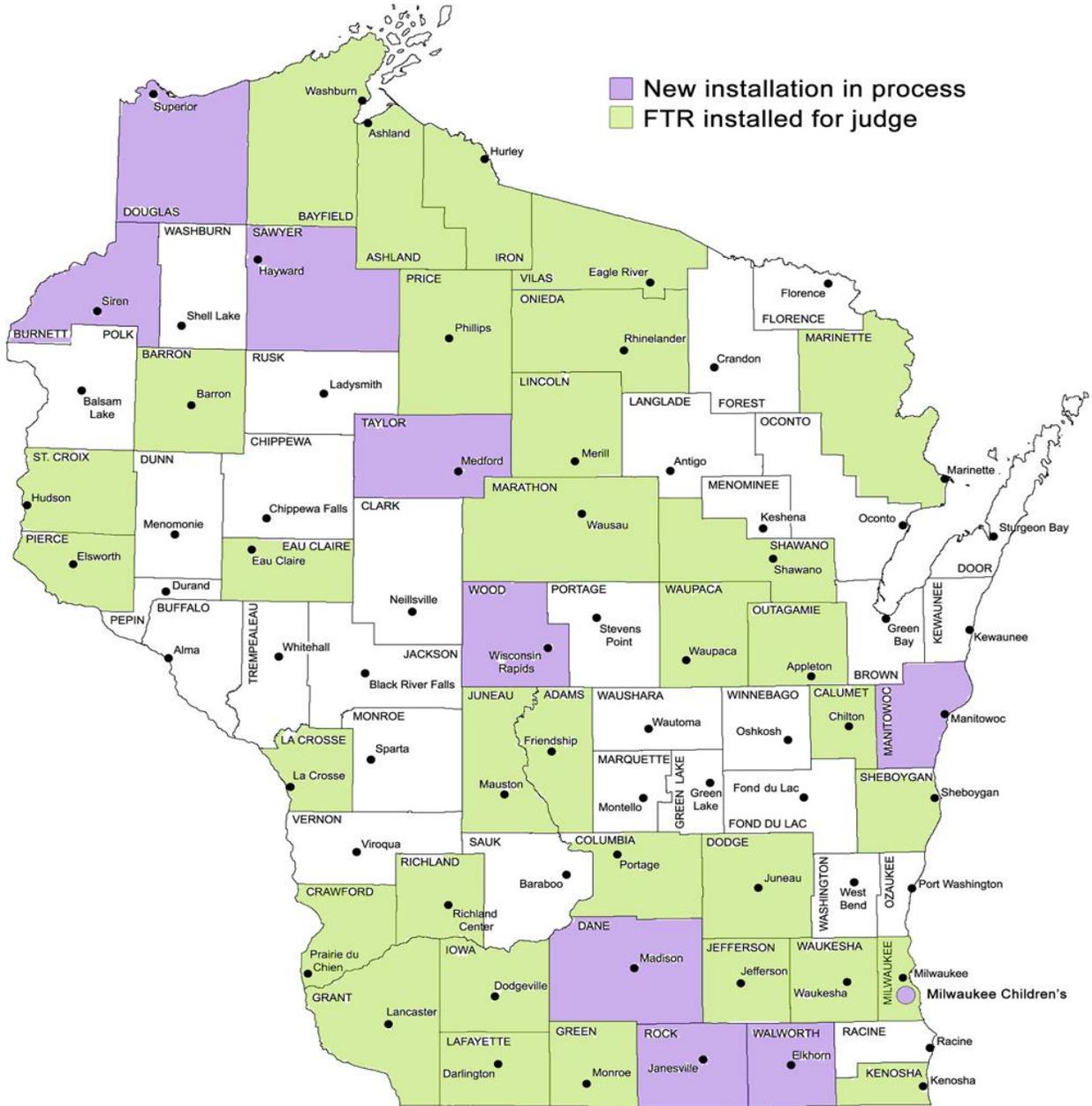
Taken from the minutes of May 11, 2018

Judge Borowski said that Sheboygan County recently completed a remote monitoring trial, where Mr. Monarrez ran the DAR systems in two courtrooms and monitored them from his office. He listened to the audio for both courtrooms and used instant messaging to communicate with the courtroom clerk as needed. Judge Borowski told the litigants at the start of proceedings that they were using DAR and the court reporter was monitoring from his office. They tested it with plea hearings and status updates, then a bench trial. Mr. Monarrez said the experience was successful. It was a challenge at first juggling two sets of audio, and it took a couple of proceedings to get the hang of it and determine where his attention needed to be. He created log notes during the trial which included start times and witness names, and marked when exhibits were admitted, but the notes are not detailed. Ms. Fremgen commented that log notes and minutes are stored in two different places: log notes are an integrated piece of DAR and mark the audio file, while the clerks enter their minutes into the CCAP court record.

Judge Day asked what types of proceedings Mr. Monarrez would recommend for remote monitoring of multiple courtrooms. Mr. Monarrez suggested low-impact scenarios such as status conferences, plea hearings, traffic, small claims, and evidentiary hearings. A jury trial would be difficult. He said since he knew the juvenile proceeding would be more in depth, he shifted his attention to the plea hearing for log notes. Mr. Weishan questioned why he would listen less to the more complicated hearing. Mr. Monarrez explained that he knew the hearing would go on longer and would not need as many log notes. Judge Day said that the more transitions, the more intense the log notes need to be, and if a witness is on stand for a while there will be fewer transitions. Judge Borowski noted that the court reporter can always go back and listen again to make more log notes, so the most important thing is the confidence monitoring.

## C. Map of digital audio installations

Judicial courtrooms, August 2018



## D. Guidelines for use of digital audio court reporting

These guidelines are meant to be a framework or starting point for using DAR in the circuit court, to help courts use DAR effectively and avoid problems. They are intended to provide the circuit courts with a general outline of how DAR may be used, identify best practices, and balance flexibility with necessary limitations. The optimum procedures may vary from county to county, so courts have the flexibility to adapt DAR to their own needs after using it for a while. They also reflect on how DAR can be effectively integrated with existing stenographic court reporting practices.

If adopted by the Director's Office, the guidelines will be incorporated into the revised DAR Policy & Procedures Manual and the Court Reporter Manual.

### **2018 guidelines**

#### In-court stenographic reporting

1. Computer-assisted stenographic court reporters and voice writers using computer-assisted stenography can produce a transcript in fewer hours than a DAR reporter working from a recording. For this reason, it can be advantageous to use a stenographic reporter for proceedings where a transcript request is expected.
2. Stenographic court reporters and voice writers with realtime skills offer an advantage that DAR reporters are not able to provide. Realtime stenographic reporters are able to produce a readable written version of a proceeding as it is happening, so participants can read a rough version of the proceedings in the courtroom. Many judges and lawyers find this to be helpful, and it is essential where ADA accommodation is required for judges and some litigants with hearing loss. Where possible, realtime reporters should continue to be assigned to these situations.

#### In-court digital audio reporting

3. Digital audio recording is a recognized method of taking the circuit court record, and DAR court reporters may serve as official court reporters. DAR court reporters who are present in the courtroom are able to report any type of proceeding with the same accuracy as stenographic reporters. There is no reason to place any restriction on the use of qualified DAR reporters to take the court record when the reporter is present in the courtroom and actively monitoring a single case. DAR court reporting should be considered a standard method of taking the record in circuit court.
4. Successful implementation of digital audio recording depends on user training, high-quality equipment, and courtroom procedures. The Director's Office should develop training for new DAR reporters, stenographic court reporters, and clerks. Stenographic court reporters should be trained to operate DAR systems and to make transcripts from DAR recordings.
5. Successful implementation also depends on high-quality equipment. Only CCAP-approved hardware and software may be used, and adherence to CCAP technical standards is necessary. CCAP should work with court reporters to determine the best configuration for microphones, number of audio channels, and video capabilities for each courtroom. CCAP should provide the equipment needed to play the audio back for transcription. A dedicated microphone setup generally works better than running the audio through the county sound system. Use of non-standard equipment should be discontinued.

6. The Director's Office should develop courtroom procedures to facilitate use of DAR systems. The Director's office should provide guidance to address various situations where DAR systems potentially might be used: where not enough reporters are available to cover every proceeding, where workload relief is requested, where a new reporter is working to build up stenographic speed, and where needed to extend the working life of an experienced reporter beginning to suffer fatigue. Approval of the judicial district may be required in these situations.

#### In-court monitoring by a clerk

7. In a number of counties, courtroom clerks successfully monitor the DAR system in court commissioner proceedings. Under certain conditions, clerks may also monitor the DAR system for judges. Only CCAP-provided DAR systems may be used.
8. When determining whether to use a courtroom clerk as a monitor, considerations include the availability of a court reporter (emergency use), the complexity of the proceeding, the likelihood of a transcript request, and the skill and training of the court clerk. DAR recording can be advantageous for "high-volume, low-transcript" court proceedings such as intake, small claims, and traffic.
9. When serving as an in-court monitor, the clerk must provide adequate confidence monitoring. The Director's Office should provide training in using the equipment.
10. Where clerks do the monitoring, the court reporter assigned to the branch should be responsible for producing the transcript or making copies of the audio recording upon request. The judicial district may provide additional direction on transcript production where needed.

#### Log notes

11. Courts that use digital audio recording often use "log notes" to identify speakers, phases of the proceeding, and times. Log notes are added to the audio file by a court reporter using the DAR software. Court reporters vary in the level of detail they provide and the reliance they place on the log notes when producing a transcript. As a general rule, the level of detail will vary depending on the type of proceeding and its complexity (number of parties, witnesses, length).
12. In many courts, the courtroom clerk uses the in-court processing feature of the CCAP software and follows the court minute-taking standards, which provide a basic outline of what minutes should contain for various case types. Conforming minutes may serve the same function as court reporter log notes as long as start and stop times are noted for segments of each proceeding. The Director's Office should work with the clerks to promote use of the court minute-taking standards.<sup>17</sup>

#### Confidence monitoring

13. "Confidence monitoring" is the process of listening to the audio, visually monitoring the recording dials, noting the time at which cases are called, and checking storage. Local staff must also be responsible for the regular upkeep of the hardware and software: checking microphones, replacing batteries, and downloading software updates. Several people in each courthouse should be trained to use the system.

#### Remote monitoring – in development

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<sup>17</sup> The court minute-taking standards are found at <http://courtnet.wicourts.gov/policies/minutesstandards.htm>.

14. Courts in Illinois and Minnesota have successfully used remote monitoring equipment (audio and video) that allows a single court reporter to monitor one to four courtrooms at a time. Wisconsin courts should consider the use of pilot programs to develop this concept in appropriate situations.
15. With training, both DAR and stenographic court reporters should be allowed to use the remote monitoring systems. The number of courtrooms monitored should be keyed to the complexity of the proceedings and the level of log notes necessary. The court reporter assigned to the branch should have primary responsibility for producing transcripts and making copies of the audio upon request. The judicial district may provide additional direction on transcript production where needed.
16. The judge and/or clerk must be in touch with the court reporter monitoring the proceeding through instant messaging, phone, or other immediate form of communication.
17. CCAP should work with court reporters to determine the best configuration for microphones, number of audio channels, and video capabilities for the remote monitoring station and for each courtroom. A dedicated microphone setup generally works better than running the audio through the county sound system.

**Judicial officers**

18. When a DAR system is in use, the judge should provide an opening colloquy on courtroom procedures. If no court reporter is present, the judge should assume responsibility for reminding participants to stay near microphones, speak up, spell names, and note when court is on and off the record. The Director’s Office should provide guidance for the colloquy, courtroom signage, and procedures.

**Coordination**

19. Judges, clerks, court reporters and DCA should work as a team to develop procedures that work for each county. The Director’s Office should provide adequate training and written guidance for all persons using the DAR system.

**Likelihood of transcript requests**

*(may be adjusted based on local experience)*

Transcripts are most often requested:

1. Felony trials
2. Felony sentencings
3. OWI trials
4. Motion hearings
5. Contested family proceedings
6. Preliminary hearings
7. Civil trials
8. Evidentiary hearings
9. TPR proceedings
10. John Doe proceedings

Transcripts are occasionally requested:

1. Family general proceedings
2. Misdemeanors & criminal traffic
3. TROs & injunctions
4. Guardianship & mental commitment

Transcripts are rarely requested:

1. Small claims
2. Juvenile (except TPR)
3. Forfeitures & traffic
4. Probate
5. Intake
6. Treatment court

## E. Proposed changes to statutes and court rules

*Explanations in italics are not intended to be part of the rule or comment.*

### A. APPROVED MEANS OF MAKING THE RECORD

*The revisions in section A:*

- (1) authorize the director to adopt multiple methods of reporting and transcription;*
- (2) 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*
- (3) address public access to court reporter notes and audio recordings.*

### SCR Chapter 71: Required Court Reporting

#### SCR 71.01 Court rReporting.

- (1) "Reporting" means making a verbatim record.
- (2) The circuit court shall make a verbatim record of all proceedings, 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. ...
- (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.~~  
*Establishes monitored-DAR as a regular method of taking the record, not an alternative method. Allows the director to approve methods for how the verbatim record is taken, including pilot programs.*

#### SCR 71.02 ~~Recording~~Minute record.

- (1) ~~In this rule, "recording"~~ "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~~.  
*Wording change for clarity. The term "minute record" is used in describing the duties of the clerk of circuit court (Wis. Stat. 59.40(2)(d)) and in the records retention rule (SCR 72.01, describing various facets of the court record). This change is proposed because the word "recording" is confusing in a context where there are also audio recordings.*

#### SCR 71.03 Court rReporters' notes, digital audio recordings, or other verbatim record.

- (1) The original stenographic notes, voice recordings, digital audio recordings, ~~of all court reporters~~ or other verbatim record, 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.  
*The "verbatim record" is the raw material from which the transcript will be made. "In open court" is changed to "on the record" so it is clear that this section applies to both confidential and non-confidential proceedings.*

- (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.

*This is added for clarity. It is taken from Minnesota Rules of Public Access to Court Records, Rule 4, sub. 3(a), Access to Recordings.*

- (3) Where not otherwise restricted by statute or court rule, public inspection of the verbatim record is available as follows:

(a) The original notes of a stenographic court reporter are subject to public inspection upon request.

(b) The original voice recording of a voice writer is subject to public inspection upon request.

(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 is subject to public inspection upon request. The director of state courts shall develop policies for copying and charging for an audio recording.

(d) An audio recording made as a backup to stenographic reporting is not subject to public inspection.

*Sec. (a) - (d)) reflect the public records law as it is currently interpreted by the director's office and Attorney General. These sections are added for clarification because it comes up fairly often. It should be noted that stenographic notes are usually useless to the people who request them.*

(e) A video recording made in support of a digital audio recording is not subject to inspection except by order of the court.

*With remote monitoring of courtrooms, the DAR audio recording may be 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 committee recommends that the video not be a public record.*

- (4) Off the record remarks. Any spoken words in the courtroom that are not part of a proceeding, hearing or trial of a specific case are not public record and are not part of the official record of the case.

*Adapted from Minnesota Record Access Rule (4)(b). Minnesota courts do not make DAR recordings available for sale, so they also prohibit the parties and public from even listening to the off-the-record remarks.*

#### **SCR 71.04 Transcripts.**

- (1) ~~Reporters' notes or other verbatim record~~ The verbatim record 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. 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.~~ *[Deleted because the sentence is repeated in sub. (6)]*

- (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) Consistent with SCR 70.245, any A court reporter may be directed to transcribe proceedings as needed where the verbatim record was made by another court reporter or other person.

*(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.*

- (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 under ch. 48, 767, and 938 of the statutes shall be transcribed only upon order of the court. *[covers both stenography and DAR]*

- (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.

- (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 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 71.04 (9) (b) is not the official record.

*Delete “of the testimony and proceedings reported by him or her in the action or proceeding” because reporters might be transcribing someone else’s notes or recording.*

- (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 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....
- The DCA and chief judge are referenced to be consistent with the actual practice. The adjective “court” is added before “reporter” for consistency.*
- (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 section 801.18(15) of the statutes.

*Deleted as outdated. Court reporters are already filing electronic copies of transcripts in most case types.*

### **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-are met:
  - (a) ~~The chief judge of that district gives prior approval in high volume court proceedings where transcripts are requested infrequently.;~~
  - (a**b**) After a reasonable effort to locate a court reporter is made, a court reporter is not available.;
  - (e**b**) 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 proceedingverbatim 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.~~  
*Once digital audio recording becomes an approved means of making the record, this section will govern emergency use of unapproved means such as analog recordings and county DAR equipment.*

### **B. APPOINTMENT AND ASSIGNMENT OF COURT REPORTERS**

*The revisions in section B:*

- (1) *maintain the power of personal appointment;*
- (2) *allow the judicial district to assign court reporters as necessary for coverage and transcription;*  
*and*
- (3) *set policies for determining who will transcribe a recording not taken by a court reporter.*

**Wis. Stat. 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 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 as needed 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.  
*Judges maintain the power to appoint court reporters, but language is added to make it clear that this appointment does not prevent assignment to another branch if needed for coverage.*  
*Note: the Supreme Court has the power to change statutes governing court administration and procedure.*

**Wis. Stat. 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 t~~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.

*The introductory language is deleted to reflect that before a freelance reporter is hired there must be no reporter available, not just the reporter appointed by that judge. Hiring of freelance reporters is done by the judicial district and not the judge.*

### **SCR 68.12 Staffing.**

- (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 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 court reporter shall be available to assist in other circuit court branches as assigned by the chief judge or district court administrator as needed to assure adequate coverage of all proceedings.

*The appointing judge's schedule should not prevent district re-assignment of the court reporter if needed to cover another court. The judicial district may assign another court reporter or determine other methods for coverage of the proceeding. Wis. Stat. 751.02, SCR 70.245 and TCA Rule 6 are similarly revised.*

**SCR 70.21 Additional authority of the chief judge.** The statutory responsibility and authority of the chief judge includes, but is not limited to, that specified in the following sections of the statutes:

- (11) Section 751.025: court reporting management involvement.

### **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.
- (2) The director of state courts, with the advice and consent of the chief judges, may assign any official court reporter, as needed, to any court within the adjoining districts.
- (3) The director of state courts, with the advice and consent of the chief judges, may reassign any realtime, certified, official court reporter, as needed, to any court within the district or the adjoining districts to provide reasonable accommodations under the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

*The chief judge of each judicial district, acting through the DCA, has the power and responsibility to assure courtroom coverage.*

### **Trial Court Administration (TCA) Rule 6: COURT REPORTERS**

- (a) Each judicial administrative district shall develop a policy governing the following procedures:
- (1) determining when official court reporters are available for assignment to other courts ~~because a court will not be in session by reason of a cancellation, change of schedule or absence of the judge~~ as needed to assure adequate coverage of all reported proceedings;
  - (2) recording instances of substitute court reporter assignments, whether official or freelance; and
  - (3) advising the district court administrator of arrangements reporters make between themselves for short-term, urgent assistance, obtaining prior approval if required by district policy.

These procedures shall be approved by the chief judge and implemented by the district court administrator.

*The appointing judge's schedule is not sufficient to prevent a court reporter's re-assignment.*

- (b) When a court commissioner acts in the absence of the circuit judge, the official court reporter in that branch or any other reporter assigned by the chief judge or district court administrator shall be responsible for making the court record. When a record is required for any other court commissioner hearing, it is the responsibility of the county to provide a means of making a record. A county may request assistance in the form of an official state court reporter if unanticipated absences, emergencies, unexpected equipment failure or other extraordinary circumstances would result in the cancellation of the court commissioner proceeding. Such requests shall be granted and coordinated by the district court administrator as court reporter availability permits. Equally, county court reporters are expected to assist in circuit court under the same criteria.

- (c) Whenever it appears necessary to provide assistance to a realtime reporter so that reasonable accommodations may be made under the Americans with Disabilities Act, the chief judge or district court administrator shall assign additional reporters. Assistance may take the form of one reporter making the record and the other providing realtime, or by having the reporters spell each other while providing realtime and making the record simultaneously. The chief judge or district court administrator shall take into consideration the overall circumstances, the experience of the reporters, and the preferences of the trial judge in determining the appropriate assistance.

*Reference to the DCA is added to be consistent with actual practice.*

- (d) If the verbatim record was captured by a digital audio recording not monitored by an official court reporter, the transcript should be prepared by the court reporter assigned to the responsible court official. The chief judge or district court administrator may re-assign the transcript as needed.]

*The court reporter assigned to a judge should be primarily responsible for any transcripts arising from a proceeding in front of that judge, to make sure the work of making transcripts does not fall too heavily on a limited number of court reporters. Judicial districts may work out other options as needed.*

### **C. OTHER RULES RELATING TO TRANSCRIPTS**

#### **757.57 Transcripts.**

- (2) In any criminal action or proceeding the court may order, and when required by s. 973.08 the court shall order, a transcript of the testimony and proceedings to be made and certified by ~~the~~ a court reporter and filed with the clerk of court. Certified duplicates of transcripts prepared in compliance with s. 973.08 shall be filed with the warden or superintendent of the institution to which sentenced persons have been committed. The cost of the transcript is prescribed in s. 814.69 (1). In case of application for a pardon or commutation of sentence the duplicate transcript shall accompany the application.

- (5) Except as provided in SCR 71.04 (4), every court reporter, upon the request of any party to an action or proceeding, shall make a typewritten transcript, and as many copies 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 each copy thereof to be duly certified by him or her to be a correct transcript thereof. For the transcripts the reporter is entitled to receive the fees prescribed in s. 814.69 (1) (b) and (bm).

*Wording changed because the reporter who makes the transcript might not be the same person who made the verbatim record.*

#### **809.11 Rule (Items to be filed and transmitted).**

- (7) Reporter's obligations....

- (c) Extensions. A court reporter may obtain an extension for filing the transcript only by motion, showing good cause, that is filed in the court of appeals and served on all parties to the appeal, the clerk of the circuit court and the district court administrator.
- (d) Sanctions. If a reporter fails to timely file a transcript, the court of appeals may declare the reporter ineligible to act as an official court reporter in any court proceeding and may prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

#### **TCA 9: WORKLOAD ASSISTANCE FOR OFFICIAL COURT REPORTERS**

- (a) Workload assistance requests from official court reporters shall be made to the district court administrator or ~~managing court reporter~~ their designee when seeking assistance to prepare a transcript in a timely manner where an expedited transcript request or Notice of Appeal has been filed with the clerk of court or register in probate. For the purpose of appeal, such assistance should not be provided for more than ten days prior to the due date for the specifically requested transcript. The official court reporter must coordinate the request for assistance with their appointing judge.
- (b) Requests for assistance will be reviewed, granted or denied utilizing the following criteria:
  - (1) the amount of time the court reporter is scheduled in court;
  - (2) the length of time required to complete an expedited copy request;
  - (3) daily copy requests;
  - (4) court caseload;
  - (5) vacations requested in close proximity of the transcript due date;
  - (6) the estimated number of pages due; and
  - (7) the number of other appeals and requests for extensions.
- (c) Daily copy: If workload assistance is requested to accommodate a daily copy request, assistance may be provided as long as there is no cost to the state.  
*“Designee” is used instead of “managing court reporter” to make it clear that the primary responsibility for managing workload assistance belongs to the district court administrator. In the 1<sup>st</sup> Judicial District, the managing court reporter reports to the DCA and chief judge.*

## F. Work plan for implementation of recommendations

The role of the Making the Record Committee is to make recommendations to the Director of State Courts Office on court reporting practices in the circuit courts. The Director's Office will be responsible for implementation of the recommendations over time.

1. guidelines for DAR use / included in recommendations of MTR committee
  - a. when to use dedicated DAR reporter
  - b. when to use remote monitoring
  - c. operation by stenographic reporter – what circumstances
  - d. operation by clerk – what circumstances
2. changes to personnel policies and recruitment / implementation by Management Services
  - a. review stenographic and digital reporter job descriptions, preferred qualifications, salaries
  - b. consider possible digital reporter certification & testing
  - c. review recruitment process
  - d. work with technical schools on recruitment, training, integration of steno & DAR reporting
3. training materials / implementation by CCAP, Court Operations
  - a. update training for new DAR court reporters
  - b. develop training for stenographic reporters, clerk staff
  - c. update training for judges & attorneys, add to new judge orientation
  - d. update DAR instructions for monitoring, recording & storage
  - e. training on minute-taking standards and in-court processing
4. court reporter manual revisions / implementation by Management Services/DCAs/court reporters
  - a. omit ch. 12 alternative means of taking record
  - b. update appendix 14 – incorporate DAR guidelines & training materials above
  - c. general updating, incorporate eFiling, paperless notes storage
5. changes to supreme court rules / implementation by Court Operations, MTR committee members
  - a. establish DAR as an accepted court reporting method
  - b. provide more flexibility for chief judge/DCA to assign coverage
  - c. petition to supreme court for statute and rule changes
  - d. request to chief judges for change to TCA rule
6. communications plan / implementation by Court Operations
  - a. discussion at judicial district meetings
  - b. conferences: November judicial, June clerks, September registers, October WCRA
  - c. create video showing DAR operation, remote monitoring
  - d. articles in *Wisconsin Lawyer, Third Branch*
7. DAR equipment installations / implementation by CCAP
  - a. publicize pre-site visits, set schedule for continued DAR installation
  - b. training materials and hands-on training
  - c. consider proposals for remote monitoring pilot program
  - d. create remote monitoring instructions
  - e. add time stamp to in-court processing