

STATE OF WISCONSIN

IN THE SUPREME COURT

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

**PETITION
18-**

For the reasons set forth in the accompanying supporting memorandum, the Director of State Courts respectfully petitions the court to amend Supreme Court Rules 68.10, 68.12, 70.01, 70.245, 71.01, 71.02, 71.03, 71.04, 71.05, and Wis. Stats. §§ 751.02, 751.025, 757.46, and 757.57 regarding the means of making the record and the appointment and assignment of court reporters. This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

TEXT OF PROPOSED CHANGES

SECTION 1. SCR 68.10 (5) (h) is amended to read:

68.10 (5) (h) A court reporter's work place located to provide an unobstructed view of all participants and to permit the court reporter to clearly hear all statements of the judge, attorneys and witnesses.

SECTION 2. SCR 68.12 (3) is amended to read:

68.12 (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.

SECTION 3. Comment to SCR 68.12 (3) is amended to read:

COMMENT

Current law provides for each circuit judge to appoint a court reporter for his or her court or branch of court, s. 751.02, stats. Additionally, where "floating" court reporter positions have

been created and assigned to specific judicial administrative districts, the chief judge or district court administrator assigns the court reporter to fill in where needed because of illness, vacations, leaves of absence, or backlog problems.

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

SECTION 4. SCR 70.01 (4) is amended to read:

70.01 (4) The director of state courts may require each judge to verify and certify vouchers for the judge, his or her court reporter and any assistant court reporters and, in certifying such salaries and expenses to the department of administration, may rely on the certifications received by the judges.

SECTION 5. SCR 70.245 (1) is amended to read:

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

SECTION 6. SCR 71.01(1) is repealed.

SECTION 7. SCR 71.01(2) is amended to read:

71.01(2) ~~All A verbatim record of all~~ proceedings in the circuit court shall be ~~reported made~~, except for the following:

SECTION 8. SCR 71.01(3) is amended to read:

71.01 (3) ~~The director of state courts shall develop rules for the use of alternative means of making a verbatim record. The verbatim record may be made by stenographic reporting, voice reporting, monitored digital audio recording, or other means approved by the director of state courts.~~

SECTION 9. SCR 71.02 (title) is amended to read:

SCR 71.02 Recording Minute record.

SECTION 10. SCR 71.02 (1) is amended to read:

71.02 (1) In this ~~rule~~, “recording” section, “minute record” means ~~the making of~~ a record comprised of notes or minutes prepared by the clerk or other person directed by the court.

SECTION 11. SCR 71.02 (2) is amended to read:

71.02 (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.~~

SECTION 12. SCR 71.03 (title) is amended to read:

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

SECTION 13. SCR 71.03 is renumbered SCR 71.03 (1) and amended to read:

71.03 (1) The original ~~stenographic notes of all court reporters, voice recordings, digital audio recordings~~, or other verbatim record required under SCR 71.01 (2), made ~~in open court on~~

the record or pursuant to an order of the court, constitute part of the records of the court in which made and are not the property of the court reporter.

SECTION 14. SCR 71.03 (2) is created to read:

71.03 (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.

SECTION 15. SCR 71.03 (3) is created to read:

71.03 (3) Unless restricted by statute or court rule, the verbatim record is subject to public inspection upon request. The verbatim record includes all of the following:

- (a) The original notes of a stenographic court reporter.
- (b) The original voice recording of a voice writer.
- (c) An audio recording of any part of a proceeding that is on the record and made as the primary means of taking the verbatim record.

SECTION 16. SCR 71.03 (4) is created to read:

71.03 (4) Except by order of the court, supplemental material made in support of the verbatim record is not subject to public inspection. Supplemental material includes an audio recording made as a backup to stenographic reporting or a video recording made in support of a digital audio recording.

SECTION 17. SCR 71.03 (5) is created to read:

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

SECTION 18. SCR 71.03 (6) is created to read:

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

SECTION 19. SCR 71.04 (1) is amended to read:

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

SECTION 20. SCR 71.04 (2) is amended to read:

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

SECTION 21. SCR 71.04 (3) is amended to read:

71.04 (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.

SECTION 22. SCR 71.04 (3m) is created to read:

71.04 (3m) A court reporter may transcribe any proceeding as needed when the verbatim record was made by another court reporter or other person.

SECTION 23. SCR 71.04 (4) is amended to read:

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

SECTION 24. SCR 71.04 (6) is amended to read:

71.04 (6) Except as provided in sub. (4), every court reporter, upon the request of any party to an action or proceeding, shall make a typewritten transcript, and as many duplicates thereof as

the party requests, of the ~~testimony and proceedings reported by him or her~~ verbatim record in the action or proceeding, or any part thereof specified by the party, the transcript and duplicate thereof to be duly certified by him or her to be a correct transcript thereof. Any unedited, uncertified transcript furnished pursuant to SCR 71.04 (9) (b) is not the official record.

SECTION 25. SCR 71.04 (7) is amended to read:

71.04 (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.

SECTION 26. SCR 71.04 (9) is amended to read

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

SECTION 27. SCR 71.04 (10) (a) is amended to read:

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

SECTION 28. SCR 71.04 (10) (b) is amended to read:

71.04 (10) (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.

SECTION 29. SCR 71.04 (10m) (a) is amended to read:

71.04 (10m) (a) If before trial the court approves a stipulation by all parties, an independent, freelance court reporter may take the official record, or a portion of the official records, upon taking the official oath of office.

SECTION 30. SCR 71.04 (10m) (b) is amended to read:

71.04 (10m) (b) If after trial the court approves a stipulation by all parties, an independent, freelance court reporter's record of proceedings may be the official record or a portion of the official record.

SECTION 31. SCR 71.04 (10m) (c) is amended to read:

71.04 (10m) (c) Before approving a stipulation under par. (a) or (b), the court shall consider the availability of an official court reporter, including the ability of the official court reporter to meet requests for providing daily transcripts.

SECTION 32. SCR 71.04 (10m) (d) is amended to read:

71.04 (10m) (d) An independent, freelance court reporter authorized under par. (a) or (b) shall comply with all of the requirements under this chapter relating to the production of an official record and transcripts and charges for transcripts.

SECTION 33. SCR 71.04 (12) is amended to read:

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

SECTION 34. SCR 71.05 (1) is amended to read:

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

SECTION 35. SCR 71.05 (1) (a) is repealed.

SECTION 36. SCR 71.05 (1) (c) is amended as follows:

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

SECTION 37. SCR 71.05 (2) is amended to read:

71.05 (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.

SECTION 38. SCR 71.05 (3) is amended to read:

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

SECTION 39. SCR 71.05 (4) is repealed.

SECTION 40. 751.02 of the statutes is amended to read:

751.02 Employees. The supreme court may authorize the employees it considers necessary
for the execution of the functions of the supreme court and the court of appeals and the court
reporting functions of the circuit courts and may designate titles, prescribe duties and fix

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

SECTION 41. 751.025 of the statutes is amended to read:

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

SECTION 42. 757.46 of the statutes is amended to read:

757.46 Reporter Court reporter not to take statements of injured persons. No ~~phonographic~~ court reporter for any court of record in the state of Wisconsin or any of his or her assistants may be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any court reporter or assistant violating this section shall be removed and shall not be permitted to testify in any court concerning any such statement taken in

violation of this section. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

SECTION 43. 757.57 (2) of the statutes is amended to read:

757.57 (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.

SECTION 44. 757.57 (5) of the statutes is amended to read:

757.57 (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 court reporter is entitled to receive the fees prescribed in s. 814.69 (1) (b) and (bm).

Respectfully submitted this ____ day of January, 2019.

Judge Randy Koschnick
Director of State Courts