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February 1, 2014

Co-Chairs, Joint Legislative Oversight Committee on Justice and Public Safety

North Carolina General Assembly  
State Legislative Building  
Raleigh, North Carolina 27601

Dear Senators and Representatives:

Pursuant to Section 18B.21 of Session Law 2013-360, please find the enclosed report from the North Carolina Administrative Office of the Courts (NCAOC) on the use and compensation of court reporters.

Please do not hesitate to contact me if we can provide you with any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to be "John W. Smith", with a long horizontal flourish extending to the right.

John W. Smith,  
Director

Enclosure (1)

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NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **Report on Use and Compensation of Court Reporters in North Carolina**

[S.L. 2013-360, §18B.21]

February 1, 2014

Research and Planning Division, in Consultation with the National Center for State Courts



## Introduction

Section 18B.21 of Session Law 2013-360 provides as follows:

### **STUDY USE AND COMPENSATION OF COURT REPORTERS**

**SECTION 18B.21.** The Administrative Office of the Courts, in consultation with the National Center for State Courts, shall study the most effective and efficient deployment of court reporters to produce timely records of court proceedings and the most appropriate and effective compensation for court reporters. The Administrative Office of the Courts shall report its findings and recommendations to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2014.

The North Carolina Administrative Office of the Courts (NCAOC) respectfully submits this report pursuant to the legislative mandate.

## Consultation with the National Center for State Courts

Upon passage of S.L. 2013-360, NCAOC contracted with the National Center for State Courts (NCSC) to conduct a study of court reporters in North Carolina. NCSC produced the attached report, *Assessing Effective Strategies for Making the Court Record in North Carolina* (the NCSC Report), pursuant to the contract.

The NCSC Report details the NCSC's methodology, its findings, and its recommendations. In the report, NCSC makes the following specific recommendations:

**Recommendation No. 1:** Uniform, best practices should be established and implemented by designated courtroom clerks who are charged with monitoring and supervising the creation of the digital record in District Court.

**Recommendation No. 2:** District Courts should consider using court reporters for creating the record in Termination of Parental Rights hearings.

**Recommendation No. 3:** The Court Reporting Manager should collect, assemble, and analyze monthly court reporter operational data in order to make empirically based resource allocation decisions.

**Recommendation No. 4:** The NCAOC should establish standard rates and a centralized system for private parties to pay court reporters for transcript production.

**Recommendation No. 5:** The Superior Courts of North Carolina should adopt digital recording technology.

NCAOC is in the process of analyzing fully the NCSC Report and its recommendations, and has established a preliminary action plan to address the NCSC recommendations and to improve the



quality and efficiency of court reporting overall. The preliminary action plan has the following three main objectives to ensure the preservation of an accurate, reliable official record: (1) to provide an adequate assessment of the appropriate and best use of digital recording technology in North Carolina state courts; (2) to identify a viable strategy for the redeployment of current personnel resources to provide an appropriate and reliable level of service based on that assessment; and (3) to secure appropriate funding for the purchase, installation, and maintenance of digital reporting equipment and the timely production of transcripts. NCAOC expects that the action plan detailed in this document will identify the most appropriate balance of human resources and digital technology to ensure the preservation of an accurate reliable record and the timely production of transcripts.

## **NCAOC Strategy to Address NCSC Recommendations**

**Recommendation No. 1:** Uniform, best practices should be established and implemented by designated courtroom clerks who are charged with monitoring and supervising the creation of the digital record in District Court.

***NCAOC Response and Strategy to Recommendation No. 1:*** NCAOC agrees with Recommendation No. 1 and will work to create uniform best practices for clerks who are charged with monitoring and supervising the creation of the digital record in district court. As part of Recommendation No. 1, NCSC also specifically suggests that NCAOC “should review the existing technological infrastructure to ensure that current recording equipment meets standards for best practices.”

NCAOC agrees with both recommendations and will take the following actions in line with Recommendation No. 1:

- NCAOC will conduct an inventory of all current recording equipment deployed in North Carolina courtrooms, including the type of equipment, the age of the equipment, and the condition of the equipment.
- NCAOC will determine the most promising practices and technology through consultation with the National Center for State Courts, the Conference of State Court Administrators and other states who successfully utilize digital recording technology.
- NCAOC will assess the costs of purchasing digital recording technology necessary to create the most accurate and reliable digital records in North Carolina state courts, including the costs of replacing the digital equipment currently being used in district courts, if warranted.
- NCAOC will provide training to all courtroom clerks and other appropriate personnel on how to set up, operate, and monitor the equipment used in district and superior courts.
- NCAOC will identify the best methods for storing, archiving and retrieving digital records to facilitate the efficient use and preservation of such records.
- NCAOC will establish a clear set of policies and procedures for courtroom clerks serving as monitors of recording equipment; those policies and proceedings will provide, inter alia, that monitors follow the following protocols:

- Ensure that the recording equipment is turned on and properly functioning prior to a court session
  - Actively monitor the recording of court sessions
  - Notify the judicial official if the equipment malfunctions or if parties need to speak more clearly for purposes of an accurate recording
  - Input a set of standard log notes (tabs) in the record (e.g., start and stop time, case number)
  - Follow established protocols for storing, archiving, and retrieving recordings
- NCAOC will evaluate the personnel resources needed to provide monitoring of digital recording equipment, including
    - The additional duties imposed on the clerks related to monitoring the digital recording equipment, and whether the clerks can assume those duties given current workload requirements; and
    - The need for additional personnel charged solely with monitoring digital recording equipment.

**Recommendation No. 2:** District Courts should consider using court reporters for creating the record in Termination of Parental Rights hearings.

**NCAOC Response and Strategy to Recommendation 2:** NCAOC will evaluate the feasibility of deploying court reporters in termination of parental rights (TPR) hearings in district court in North Carolina. Toward that end, NCAOC will take the following actions:

- NCAOC will convene a workgroup consisting of judges, advocates, attorneys, court reporters, and other stakeholders to evaluate the following:
  - Current issues or problems associated with the use of digital recording equipment in TPR hearings in district courts
  - Resources needed to provide court reporter coverage for the TPR caseload
  - Whether requiring a court reporter will result in the delay of TPR hearings based on the availability of a court reporter
  - The overall feasibility and necessity of providing court reporters in TPR hearings
- NCAOC will examine best practices in other states related to preserving the record in TPR hearings.
- NCAOC will conduct an analysis of the costs associated with providing court reporters instead of digital recording technology in TPR hearings.

**Recommendation No. 3:** The Court Reporting Manager should collect, assemble, and analyze monthly court reporter operational data in order to make empirically based resource allocation decisions.

**NCAOC Response and Strategy to Recommendation 3:** NCAOC currently collects limited information regarding court reporter workload and data. NCAOC agrees that it should enhance its ability to collect, assemble, and analyze monthly court reporter operational data and will take the following steps toward that end:

- NCAOC will require each court reporter to submit monthly data regarding the number of hours spent in court, the number of hours spent working on transcripts, and the status of each assigned transcript.
- NCAOC will develop an electronic system that allows court reporters to input data electronically so that NCAOC can easily extract the data to make scheduling decisions and to determine workload needs.

**Recommendation No. 4:** The NCAOC should establish standard rates and a centralized system for private parties to pay court reporters for transcript production.

***NCAOC Response and Strategy to Recommendation 4:*** NCAOC recognizes the need for a comprehensive review of the current compensation structure for court reporters in North Carolina, and will include an evaluation of Recommendation No. 4 as one component of that review. Specifically, NCAOC will take the following steps:

- NCAOC will examine the current compensation structure for court reporters, including salary and the payment for production of transcripts, to determine the optimal compensation structure for court reporters; the review shall include a comparison with other states.
- NCAOC will convene a committee of judges, court reporters, clerks, attorneys, and other stakeholders to make recommendations to the NCAOC director regarding the establishment of standard rates and a centralized system for private parties to pay court reporters for transcript production.

**Recommendation No. 5:** The Superior Courts of North Carolina should adopt digital recording technology.

***NCAOC Response and Strategy to Recommendation 5:*** NCAOC agrees with NCSC's recommendation to adopt digital recording technology in superior court, provided that the technology is appropriate, reliable and cost-effective. The NCSC report states that digital recording is not appropriate for all cases in superior court, and NCAOC will take the following steps to determine the most effective and efficient use of digital recording in North Carolina superior courts:

- NCAOC will convene a committee to identify which types of cases and proceedings in superior court should continue to require court reporters and which types of cases and proceedings may be appropriate for the use of digital recording technology. The committee shall include judges, clerks, district attorneys, court reporters, trial court administrators, and private attorneys.
- NCAOC shall evaluate the cost of installing state-of-the-art digital recording equipment in each superior court courtroom in North Carolina and seek appropriate funding through the General Assembly.
- NCAOC will work with the Conference of District Attorneys to consider any changes to current calendaring practices necessary to ensure the efficient use of court reporters in those cases identified by the committee mentioned above.



- Contingent upon funding, NCAOC shall install digital recording equipment in each superior court courtroom.
- NCAOC will provide training to all courtroom clerks and other appropriate personnel on how to set up, operate, and monitor the equipment used in district and superior courts.
- As with district court, NCAOC will evaluate the best methods for storing, archiving and retrieving digital records to facilitate the efficient use and preservation of such records.
- NCAOC will establish a clear set of policies and procedures for courtroom clerks and other personnel serving as monitors of recording equipment; those policies and proceedings will provide, inter alia, that monitors follow the following protocols:
  - Ensure that the recording equipment is turned on and properly functioning prior to a court session
  - Actively monitor the recording of court sessions
  - Notify the judicial official if the equipment malfunctions or if parties need to speak more clearly for purposes of an accurate recording
  - Input a set of standard log notes (tabs) in the record (e.g., start and stop time, case number)
  - Follow established protocols for storing, archiving, and retrieving recordings
- NCAOC will evaluate the personnel resources needed to provide monitoring of digital recording equipment, including
  - The additional duties imposed on the clerks related to monitoring the digital recording equipment, and whether the clerks can assume those duties given current workload requirements
  - The need for additional personnel charged solely with monitoring digital recording equipment

## Conclusion

Moving toward increased use of digital recording technology in superior and district courts will be a paradigm shift for many judicial stakeholders in North Carolina. NCAOC consequently supports a measured approach to the increased use of such technology – an approach that meets the three objectives previously stated: (1) to provide an adequate assessment of the appropriate and best use of digital recording technology in North Carolina state courts; (2) to identify a viable strategy for the redeployment of current personnel resources to provide an appropriate and reliable level of service based on that assessment; and (3) to secure appropriate funding for the purchase, installation, and maintenance of digital reporting equipment and the timely production of transcripts.

NCAOC expects to accomplish NCSC’s recommendation to adjust the balance of court reporters and digital recording equipment primarily through attrition of existing court reporters. This approach will ensure the preservation of an accurate, reliable record in a way that maximizes the highest and best use of available resources and provides the least disruption to court personnel and the citizens they serve.

# **APPENDIX**

## **Assessing Effective Strategies for Making the Court Record in North Carolina**

Submitted by the National Center for State Courts (January 29, 2014)

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# Assessing Effective Strategies for Making the Court Record in North Carolina



Research Division  
National Center for State Courts

**Assessing Effective Strategies  
for Making the Court Record in North Carolina**

A Report to the  
North Carolina Administrative Office of the Courts

**Submitted by:**  
National Center for State Courts

January 29, 2014

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## Introduction

In Section 18B.21 of the Appropriations Act of 2013, the North Carolina General Assembly directed the “*Administrative Office of the Courts, in consultation with the National Center for State Courts, [to] study the most effective and efficient deployment of court reporters to produce timely records of court proceedings and the most appropriate and effective compensation for court reporters.*” To assist the Administrative Office of the Courts (NCAOC) in fulfilling this directive, the National Center for State Courts (NCSC) conducted an in-depth assessment of the methods used for making the court record in the courts of North Carolina.

The primary focus of this study is the work of the Superior Courts and the employment and assignment of court reporters in those courts. Superior Court hears all felony criminal cases and civil cases involving more than \$10,000.<sup>1</sup> If requested by a party, these cases can be appealed to the Court of Appeals and these appeals require a verbatim record of courtroom proceedings.<sup>2</sup> North Carolina General Statute (N.C.G.S) § 7A-95 provides that “[c]ourt reporting personnel shall be utilized if available, for the reporting of trials in the superior court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon the request of the senior regular resident superior court judge.” Further, the statute states that the “Administrative Office of the Courts shall from time to time investigate the state of the art and techniques of recording testimony, and shall provide such electronic or mechanical devices as are found to be most efficient for this purpose.” Currently, digital recording is used in certain District Court proceedings to make the record. The use of digital recording technology to create the record for cases directly appealable from the District Court to the Court of Appeals provides a natural reference point for comparison.

The Superior Court of North Carolina disposed of about 147,000 non-traffic Criminal cases, 24,000 Civil cases, 69,000 Estates cases, and 65,000 Special Proceedings in FY 2012-13.<sup>3</sup> For of each of these cases court reporters play an essential role in creating the record and preserving due process. John Carver and Barry Mahoney of the Justice Management Institute assert that the “[t]he official record is not only the basis for appeals but also a means for reviewing all that transpires in the courtroom for any number of purposes. It is a pillar of our system of justice. How that record is made—how quickly it is produced, how accurate it is, and how usable the format—all have a significant impact on the flow of cases through the system and the fairness of the process.”<sup>4</sup>

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<sup>1</sup> Superior Court also hears misdemeanor and infraction appeals from District Court.

<sup>2</sup> N.C.G.S. § 15A-1241 provides that the “trial judge must require that the reporter make a true, complete, and accurate record of all statements from the bench and all other proceedings except: (1) Selection of the jury in noncapital cases; (2) Opening statements and final arguments of counsel to the jury; and (3) Arguments of counsel on questions of law.”

<sup>3</sup> North Carolina Judicial Branch: Annual Report 2012/13.

<sup>4</sup> JMI, vol. 1 at 8.

To assess the process of making the court record this study examines the completeness, accuracy, and timeliness of alternative means of that record. In North Carolina, this means comparing the use of court reporters in Superior Court to the use of digital recording in the District Courts and to established practices in other states. The current assessment is based upon a series of complementary steps:

1. *Documenting current practice in the North Carolina Superior and District Courts.* NCSC staff conducted a series of phone interviews with key system actors to document the way that the court record is created and preserved in Superior and District Courts. Interviews were conducted with the Chief Judge of the North Carolina Court of Appeals, a senior resident Superior Court judge, Assistant Clerks of the Superior Court, and a Deputy Clerk and a trial court administrator. Additionally, interviews were held with AOC staff, including the Court Reporting Manager, the Human Resources Director, the Human Resources Compensation Manager, the Chief Information Officer, the Purchasing Officer, and the Internal Auditing Manager. Questions investigated included: How are court reporters scheduled and compensated? How experienced is the current complement of reporters? What levels of certification do reporters hold? How are court reporters managed? What data is available for the management of court reporters? How are transcripts for appeal requested and created? How is the record created and preserved in District Court?
2. *Conducting focus groups of key stakeholders.* NCSC staff facilitated four separate focus groups: Superior Court judges who previously served as District Court judges; attorneys (including district attorneys, a juvenile defender, a criminal defense attorney, an appellate attorney, and a civil attorney); Clerks of Superior Court; and court reporters. Individuals from across the state were selected to participate in each focus group to ensure that perspectives from small, medium, and large jurisdictions were included. During the focus groups, participants were asked to discuss perceived strengths and weaknesses (e.g., accuracy, reliability, timeliness) associated with the use of court reporters and the use of digital recording technology. Additionally, focus group members were asked to provide their views on how to improve the method of creating the record in the Superior and District Courts, including the feasibility of adopting and implementing digital recording in Superior Court.<sup>5</sup>
3. *Reviewing published reports and practices in other states.* NCSC staff reviewed recent state reports, policy papers, and practitioner guides focused on creating the record. In addition, staff conducted a review of staffing, compensation, and practices in other states with a particular focus on three states: South Carolina, Virginia, and Utah. These

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<sup>5</sup> Appendix A includes a copy of the interview protocol used during the focus groups.

comparisons highlight the various ways that the record is created and the diverse types of personnel and technologies used in different jurisdictions.

This report begins with an overview of the general purposes of creating and preserving the court record in Part I. Then, Part II compares practices in the Superior and District Courts of North Carolina to practices in South Carolina, Virginia, and Utah state courts. In Part III, the report highlights competing perspectives on the pros and cons of using court reporters and digital recording to create the record. Next, in-depth profiles of the current method of making the record in the Superior Court and the District Court of North Carolina are provided in Parts IV and V. The profiles highlight the roles and responsibilities of court reporters in the Superior Court, the different ways that court reporters are compensated, the scheduling and management of court reporters, and the use of digital recording technology in District Court. In addition to descriptive accounts of current practice the views and perspectives of key stakeholders—judges, clerks, attorneys, and court reporters—are documented. The report concludes with a series of recommendations for improving the efficiency and the effectiveness of creating the record in North Carolina's Superior and District Courts.

## **I. The Purpose of the Record**

Court records serve two primary functions: to provide a certified account of legal proceedings and to legitimize the judicial process. Ultimately, both functions import verity to the judicial process, ensure government accountability, and guarantee fair administration of justice.

The principal purpose of court records is to provide a formal account of what transpired during legal proceedings. In the event of a trial, the record contains the evidence, the oral arguments, briefs and motions, witness testimony, and the judge's orders and opinions and statements at trial. Preserving the history of the trial facilitates and improves decision making by all parties involved – trial counsel, trial judges, appellate counsel, and appellate judges. The record is also a neutral tool that allows parties to seek to remedy any injustices through appellate review.

The second function of court records allows for public scrutiny of the judicial process. Based on our English common law heritage, a general guarantee of public access to trials exists in America, including access through court records.<sup>6</sup> As such, the Supreme Court has declared, “[a] trial is a public event. What transpires in the court room is public property.”<sup>7</sup> Court records make court proceedings transparent to the public, which encourages fair proceedings and just outcomes.<sup>8</sup> Such transparency “discourages perjury and the misconduct of the trial participants

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<sup>6</sup> *Nixon v. Warner Communications, Inc.* 435 U.S. 589, 597(1978); *In re Oliver*, 333 U.S. 257, 266 (1948).

<sup>7</sup> *Craig v. Harney*, 331 U.S. 367, 373 (1947).

<sup>8</sup> *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492 (1975) (holding that trial publicity “serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice”); *Sheppard v. Maxwell*, 384 U.S.

and assures that decisions are not made as a result of secret bias or partiality.”<sup>9</sup> Court records thus provide “confidence that standards of fairness are being observed ... [and] assurance that established procedures are being followed and that deviations will become known.”<sup>10</sup> Therefore, records legitimize the judicial system by inspiring trust and respect for the process.<sup>11</sup> A report to the Justices of the Supreme Judicial Court of Massachusetts concluded that “where the transcript is incomplete, inaccurate, or unavailable, the interests of justice, and the people's faith in a fair and efficient court system are harmed.”<sup>12</sup>

## II. A Comparison of Four States

North Carolina relies on court reporters to create the record in Superior Courts and to transcribe digital recordings from District Court cases that are appealed to the Court of Appeals. A review of practices in other states from across the country reveals that there is no uniform way to create the record. For example, some states rely on court reporters (e.g., Virginia and South Carolina), whereas other states rely on digital (e.g., Utah)<sup>13</sup> or video (e.g., Kentucky) recording technology.<sup>14</sup> Further, court reporters in North Carolina are primarily state employees, but other states (e.g., Virginia) make use of private contract court reporters. The different configurations and means of creating the record are not necessarily indicative of the most efficient or effective best practice, but instead reflect the complex funding strategies, statutory requirements, and political histories of each state. An Arizona judicial branch committee report commented, “there are as many variations in reporting practices as there are jurisdictions.”<sup>15</sup>

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333, 350 (1966) (stating that open access to the judiciary “guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism”).

<sup>9</sup> *Gannett Co. v. DePasquale*, 443 U.S. 368, 412 (1979) (J. Blackmun dissenting) (stating “[t]he public-trial guarantee, moreover, ensures that not only judges but all participants in the criminal justice system are subjected to public scrutiny as they conduct the public's business of prosecuting crime”); Arminda Bradford Bepko, *Public Availability or Practical Obscurity: The Debate of Public Access to Court Records on the Internet*, 49 N.Y. L. Rev. 967, 970 (2005); see also Lynn M. LoPucki, *Court-system Transparency*, 94 Iowa L. Rev. 481 (2009).

<sup>10</sup> *Press-Enterprise v. Superior Ct.*, 464 U.S. 501, 508.

<sup>11</sup> *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984) (stating that policies of open access to courts and documents “relate to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system” (internal citations omitted)); *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884) (Justice Oliver Wendell Holmes wrote that public access to court proceedings is important “because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.”); see also Gregory M. Silverman, *Rise of the Machines: Justice Information Systems and the Question of Public Access to Court Records over the Internet*, 79 Wash. L. Rev. 175, 208-09 (2004) (arguing that access to court records “promotes public trust and confidence in the judiciary”).

<sup>12</sup> Mass. Report at 3.

<sup>13</sup> Alaska, Indiana, New Hampshire, Oregon, and Vermont also use digital recording to make the record in all or most of their general jurisdiction court sessions (Suskin and McMillan at 7).

<sup>14</sup> The use of video recording is not a common practice among the states. This report primarily focuses on the more widely used digital recording and in-person court reporting approaches.

<sup>15</sup> Arizona Supreme Court Committee on Keeping the Record at 2.

In order to put the current practices in North Carolina into context, a comparison is made between North Carolina and states with similar judicial funding structures (South Carolina, Virginia, and Utah), geographic proximity (SC and VA), similar characteristics (e.g., rural, suburban, and urban jurisdictions; coastal and mountain regions), and to a state that currently utilizes digital recording (UT). The figure below provides a direct comparison between the four states and highlights the similarities and differences in the systems used to make the verbatim record. For example, North Carolina requires all Superior Court cases (criminal and civil) and all family/ domestic relations and juvenile cases in District Court to be on the record. In contrast, civil and family/domestic cases in the Circuit Court of Virginia are on the record only if directed by the judge. Further, there is variation in the methods used to create the record (digital vs. court reporter), employment status, requirements of certification, and compensation. A more complete discussion of how courts in South Carolina, Virginia, and Utah create court records is provided in Appendices B - D.

**Figure 1: Methods for Making the Record in Four States**

State and Court	Case Types Required to Be on the Record				Methods for Making the Record		No. of Court Reporters	State or Contract Employee?	Certification Required?	Average Annual Salary	Page Rate for Transcriptions
	Criminal	Civil	Family/ Domestic Relations	Juvenile	Digital Recording	Court Reporter					
NC Superior Court	●	●				●	99	State	Yes	\$53,693	\$1.25
NC District Court			●	●	●		NA	NA			\$1.25
SC Circuit Court	●	●			○	●	63	State	Yes <sup>3</sup>	\$39,316	\$3.25
SC Family Court			○	○	○	●	51	State	Yes <sup>3</sup>	\$33,447	\$3.25
VA Circuit Court	●	○	○		○	●	250 <sup>1</sup>	Contract	No	\$44,310	Negotiated
UT District Court	●	●	●		●		25 <sup>2</sup>	Contract	Yes	Unknown	\$3.50
UT Juvenile Court				●	●		NA	Contract	Yes	Unknown	\$3.50

● Required for all cases  
 ○ As directed by the judge  
 ● Used in practice  
 ○ Allowed by statute

<sup>1</sup> Estimate of Virginia Court Reporter Association members  
<sup>2</sup> Official Transcribers  
<sup>3</sup> Certification or graduation from an accredited program

### III. Making the Record: Court Reporters v. Digital Recording

Court reporters and digital recording technology are competing alternatives for making the record. Proponents of each method argue the merit and value of their approach while highlighting the limitations of the alternative. The following sections lay out many of these competing claims, which will be evaluated in the context of North Carolina later in this report.

#### A. Court Reporters

##### *i. Advantages*

The primary benefit of utilizing court reporters is their ability to actively monitor and safeguard the record, as a neutral third party in the courtroom, to ensure the quality and accuracy of court

records.<sup>16</sup> By serving as a courtroom monitor, court reporters bring a human element to the process. Court reporters are able to intervene in courtroom discussion when attorneys and/or witnesses are speaking over one another or are difficult to hear and see.<sup>17</sup> Further, court reporters can seek confirmation of the spelling and accuracy of names and technical terms (e.g., medical terms).<sup>18</sup> The ability to interrupt a court session helps ensure a complete and accurate record and eliminates portions of the record that may read “inaudible.”<sup>19</sup>

Court reporters also have the ability to provide transcripts in real-time through the services of real-time certified reporters. They promote increased accessibility to the record with the ability to have a live feed of the transcript of proceedings provided to judges, counsel, parties, and/or other interested persons in real time. Copies of the rough draft transcript can be provided on disc or by email at the end of a hearing, and trial attorneys can review witness testimony from the previous day or even as it is occurring.

This capability also makes possible the provision of communication access services for the hearing impaired in compliance with the Americans with Disabilities Act. Those having such a need, including parties, witnesses, or jurors, can be provided with a live feed transcript of a hearing in the same manner as closed caption is provided on television.

Additionally, court reporters have the capability to complete all record-associated tasks—making the record, providing transcript services, and delivering the transcript. Having one person responsible for all of these tasks ensures consistency as well as allows the court reporter to prepare a more thorough and accurate transcript based on personal knowledge, evidenced by trial logs and notes, to supplement the record.<sup>20</sup> Unlike digital or video recordings alone, court reporters’ notes help guide and bolster the record.<sup>21</sup>

## *ii. Disadvantages*

A primary concern with the utilization of court reporters is that their use undermines the courts’ administrative control over its proceedings and results in a suboptimal use of court resources.<sup>22</sup> Court proceedings are dependent upon the court reporter: if the court reporter is not available for court, the court cannot hold an on-the-record proceeding.<sup>23</sup> As a result, many states have experienced significant delays and cancellations of court proceedings due to insufficient court reporter coverage for the courts. Moreover, many states endow court reporters with a substantial

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<sup>16</sup> COCRA Report at 7.

<sup>17</sup> Mass. Report at 31; COCRA Report at 22-25.

<sup>18</sup> COCRA Report at 22-23; AZ Report at 7.

<sup>19</sup> COCRA Report at 2.

<sup>20</sup> Iowa Report at 13.

<sup>21</sup> COCRA Report at 22; Crawford at 7.

<sup>22</sup> COSCA Report at 4.

<sup>23</sup> COSCA Report at 7.

degree of autonomy by allowing them to decide which technology is used to make the verbatim record and/or the transcript and to own record-related notes, and personal dictionaries, as well as the transcripts they produce.<sup>24</sup> Such autonomy not only undermines courts' control over their proceedings but also results in inconsistencies. For example, if the court requires a substitute court reporter in the midst of ongoing proceedings or to assist with transcript services, it can be extremely difficult for those substitute court reporters to interpret another court reporter's notes, especially if they do not have access to that court reporter's personal dictionary.<sup>25</sup> As a result, the court reporter who made the record and the notes effectively controls the record, and the record is essentially unavailable to parties without the court reporter's permission or assistance.<sup>26</sup> Court reporters also derive a degree of autonomy from the fact that judges personally appoint court reporters in many states, which limits the ability of court administrators to manage their assignments efficiently.<sup>27</sup>

An additional concern relates to the continued decline in the number of qualified court reporters, making it difficult to recruit and retain employees.<sup>28</sup> This decline can be attributed to several factors. First, most states impose strict certification requirements for court reporters, which automatically create barriers to entry based on the cost of court reporter programs and the two- to three-year commitment required for those programs.<sup>29</sup> Second, the number of court reporter programs and the number of graduating qualified court reporters has steadily decreased.<sup>30</sup> Third, other industries and sectors demanding similar skill sets (e.g., real time broadcast captioning and translating services) are successfully attracting qualified court reporters away from the court.<sup>31</sup> The combination of a diminishing pool of qualified court reporters and the aging of the current court reporter population calls into question the sustainability of this method.<sup>32</sup>

Finally, the cost efficiency of court reporters, compared to digital records, is often questioned.<sup>33</sup> Proponents of digital recording systems argue that court reporters are more expensive because of significant personnel costs, including benefits, and administrative overhead.<sup>34</sup> Janet Lewis states that "[d]igital recording can offer significant cost savings, offer greater control of the court record, and make staff usage efficient."<sup>35</sup>

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<sup>24</sup> COSCA Report at 2, 4.

<sup>25</sup> COSCA Report at 4.

<sup>26</sup> COSCA Report at 4.

<sup>27</sup> COSCA Report at 9.

<sup>28</sup> COSCA Report at 1-2.

<sup>29</sup> COSCA Report at 2-3.

<sup>30</sup> COSCA Report at 2.

<sup>31</sup> COSCA Report at 3.

<sup>32</sup> COSCA Report at 3-4.

<sup>33</sup> Doering at 11-14.

<sup>34</sup> A formal cost analysis is beyond the scope of this report.

<sup>35</sup> Lewis at 3.

## B. Digital Recording

As an alternative to court reporters, courts may rely on digital recording to capture the record. Using electronic equipment to record court proceedings provides a comprehensive record that covers every event within the proceeding. These benefits, however, are directly related to the quality, and inevitably the cost, of the equipment and whether the system is effectively monitored.

### *i. Advantages*

One of the distinct advantages of using digital recordings is that they promote increased accessibility to the record in a timely manner.<sup>36</sup> In some states, the record can be readily accessed through an online database, especially if it is integrated with the court's online case management system; directly emailed; or provided on a CD to the requesting parties.<sup>37</sup> This technology allows multiple users to simultaneously access the record.<sup>38</sup> Generally, digital recording enhances real-time reporting capabilities by making the record or portions thereof available as quickly as the same day of the proceeding. These benefits enable judges, lawyers, and parties to make better decisions because they have immediate access to reliable and complete records, which is especially helpful for determining whether parties should appeal, prior to incurring the cost of transcript production.<sup>39</sup> Additionally, trial attorneys can review witness' testimony from a previous day of trial to prepare for the subsequent day and use the digital recording to assist in preparation of post-hearing motions or briefs, and judges can utilize the technology to prepare orders and opinions following hearings or trials.<sup>40</sup>

Digital recording has also been proven to improve turn-around times for transcript services and to reduce unnecessary delays in the filing of an appeal.<sup>41</sup> For example, Utah, which discontinued the use of all court reporters in 2009, reduced the number of days from a transcript request to production from 138 days to 12 days by implementing digital recording and an automated transcription management system.<sup>42</sup>

Digital recording also allows for more complete and thus potentially more accurate records.<sup>43</sup> Digital records can be extremely precise with unparalleled detail because they contain and preserve every occurrence in the proceeding. Unlike written transcripts that contain only the text of the speech, audio recordings preserve speakers' voices and the tones with which they deliver

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<sup>36</sup> COSCA Report at 7-8.

<sup>37</sup> AZ Study at 6-7.

<sup>38</sup> COSCA Report at 6.

<sup>39</sup> COSCA Report at 7.

<sup>40</sup> COSCA Report at 7.

<sup>41</sup> COSCA Report at 6-7.

<sup>42</sup> COSCA Report at 3-4.

<sup>43</sup> Iowa Report at ii, 7-13, 16-19.

their speech. Digital recordings also capture language translations that are not otherwise included in the record. Moreover, digital records can allow for better identification of speakers by isolating the speaker's voice and reducing background noise. Furthermore, digital recordings can be played back to ensure accurate transcripts.<sup>44</sup>

Perhaps most importantly, digital recording systems can be more cost effective than court reporters because they enable courts to more efficiently manage their resources.<sup>45</sup> An AOC, instead of court reporters, decides which type of recording system is best suited for courts' needs and budgets. In addition, digital recording may save money by virtue of requiring fewer or less highly compensated staff.<sup>46</sup> For example, centralized digital recording systems can make records of proceedings in numerous courtrooms in various locations. Although digital recording systems still require staff to oversee the proper functioning of equipment, they may not require an individual for every proceeding like the court reporter system.<sup>47</sup> A 2003 report to the Supreme Judicial Court of Massachusetts concluded that "[b]ased on the experience of other states, including Connecticut in particular, we believe that digital recording technology, annotated and monitored by a trained person, offers a cost-effective means to make a court record for later transcription, in circumstances where a real-time court reporter is not available or needed."<sup>48</sup> This experience was replicated in Utah where a shift to digital recording and the use of a centralized and automated transcript management system saved more than \$1.3 million.<sup>49</sup>

## *ii. Disadvantages*

Critics of digital recording highlight the potential for incomplete and inaccurate transcripts.<sup>50</sup> They claim that the quality of the record may suffer from equipment failures or malfunctions. Serious errors may result if the recording equipment is not properly functioning: inaudible, indiscernible, or inaccurate records; the inability to identify speakers; lost records; or even no records.<sup>51</sup> Such errors can be extremely costly, resulting in retrials, reversals, or the perceived loss of court's legitimacy and fairness. Without the human element in the courtroom to clarify or correct any ambiguities in the record, the production of transcripts may be more difficult and less accurate. Carver and Mahoney assert that "[t]oo many inaudibles can make a meaningful review impossible and undermine the quality of justice."<sup>52</sup> Moreover, there is concern that the digital recording equipment will unintentional pick up privileged oral communication, such as attorney client communications.

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<sup>44</sup> COSCA Report at 5.

<sup>45</sup> COSCA Report at 6; AZ Report at 7; Iowa Report at 17.

<sup>46</sup> COSCA Report at 6; AZ Report at 6; Iowa Report at 28-29.

<sup>47</sup> COSCA Report at 9-11.

<sup>48</sup> MASS Report at 58.

<sup>49</sup> Becker at 96.

<sup>50</sup> COCRA Report at 20-26; NC Reporter Survey.

<sup>51</sup> COCRA Report at 20-26.

<sup>52</sup> JMI, vol. 1 at 12.

Digital recording systems can be very expensive to ensure quality record making. These systems require significant investments in equipment and staff. States face onetime, upfront costs of purchasing the necessary equipment: microphones, cameras, AV mixer, computers, monitors, sound/video cards, recording storage media, management software, and central hardware.<sup>53</sup> States must also invest in staff training, routine maintenance, and updates for the equipment. Additionally, digital recording systems require technical support to perform these services.<sup>54</sup>

#### **IV. Creating the Record in the North Carolina Superior Court**

Court reporters are responsible for creating a verbatim record of all proceedings and statements from the bench in the Superior Courts of North Carolina. By North Carolina statute, “a true, complete, and accurate record” must be made of all courtroom proceedings, including testimony of witnesses, orders, and judgments, with the exception of jury selection in noncapital cases; opening statements and final arguments of the counsel to the jury; and arguments from the counsel on questions of law.<sup>55</sup> Further, a verbatim record of the proceedings during which a defendant enters a guilty plea or no contest must be made and preserved.<sup>56</sup> The primary reason for making a record of these proceedings is to ensure that an official, certified transcript can be provided to the North Carolina Court of Appeals in the event a case is appealed.

##### **A. Court Reporters in Superior Court**

As of August of 2013, there were 99 court reporters in North Carolina,<sup>57</sup> plus the court reporting manager and 5 vacancies.<sup>58</sup> Court reporters are officers of the North Carolina courts and responsible for:

- recording Superior Court proceedings by either stenograph or voice-writing method;
- transcribing proceedings into verbatim transcripts for purposes of appeal or order of the court;
- delivering certified transcripts to parties within established time frames;
- reading aloud portions of the record during court;
- assuring that evidence is properly introduced and marked as exhibits;
- taking dictation of orders and findings of fact;
- maintaining records and indexes for easy reference; and
- responding to attorney, court personnel, and prisoner requests.<sup>59</sup>

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<sup>53</sup> Iowa Report at 20-26.

<sup>54</sup> Justice Served Report at 3, 6.

<sup>55</sup> North Carolina statute § 15A-1241. Record of proceedings.

<sup>56</sup> North Carolina statute § 15A-1026. Record of proceedings.

<sup>57</sup> There are currently 112 Superior Court judges.

<sup>58</sup> Appendix E includes a listing of the number of court reporters by position, division, and district.

In North Carolina, either the Administrative Office of the Courts (NCAOC) or a senior resident superior court judge can hire court reporters. Each hiring authority is responsible for administratively supervising the court reporters it hires. Therefore, North Carolina court reporters can be classified into three different types of court reporter positions based upon hiring authority and job responsibility: resident court reporter, AOC resident court reporter, or AOC rover.

In North Carolina Superior Courts, senior resident judges in each court district are permitted to hire court reporters for their own district.<sup>60</sup> When such judges hire a court reporter, they are known as a resident court reporter. The appointing judge sets compensation within limits fixed by the AOC. In instances in which a senior resident judge waives her right to hire a court reporter, the AOC will hire one for the district. Court reporters falling under the hiring authority of the AOC are referred to as AOC resident court reporters. Resident and AOC resident court reporters are assigned to a specific court district and can be assigned to any of the courts within their district. Although the majority of their time is spent in their home district, residents may be reassigned to a session outside of their district to ensure adequate reporter coverage. There are currently 75 resident court reporters and 7 AOC resident court reporters.

The third type of court reporter is a rover. Rovers fall under the hiring authority of the AOC's Assistant Director's office. Rovers are not assigned to any one district, but instead are assigned on a weekly basis to cover court sessions as court coverage needs dictate.<sup>61</sup> As of August 2013, there are currently 17 rovers, and the AOC court reporting manager supervises them. Due to the high travel demands, rovers receive higher salaries than the residents.

Court reporters record court sessions by using stenograph machines or a steno mask. About 60 percent of court reporters make use of stenograph machines.<sup>62</sup> Court reporters in North Carolina are responsible for purchasing and maintaining their own equipment. The state does not provide compensation for the equipment nor cover any costs associated with keeping the equipment in working order.

## **B. Court Reporter Certification**

To become an official court reporter for the state of North Carolina, all court reporters are required to possess a current certification from the National Court Reporters Association, the National Verbatim Reporters Association, or the State of North Carolina Board of Examiners for

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<sup>59</sup> NC Court Reporting Handbook at 3.

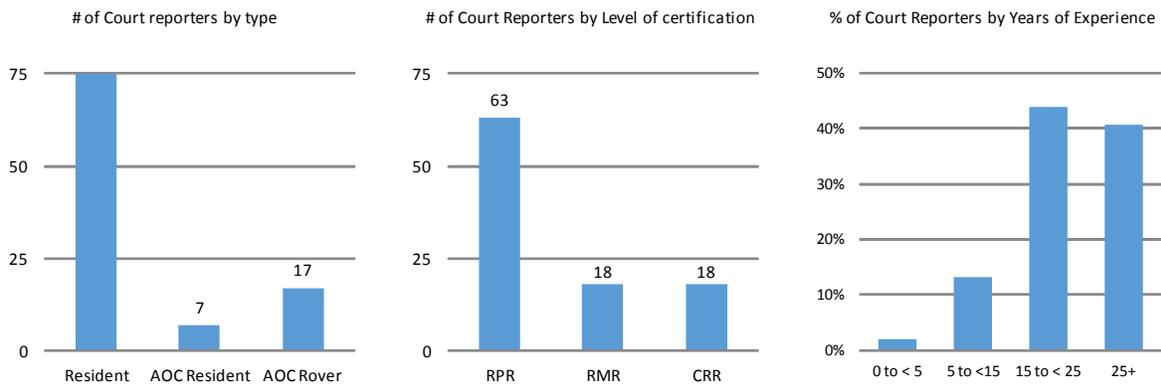
<sup>60</sup> § 7A-95. Reporting of trials.

<sup>61</sup> NC Court Reporting Handbook at 8.

<sup>62</sup> N.C.G.S. § 7A-95(c) provides that "[i]f stenograph, shorthand, or voice writing equipment is used [to record court proceedings in superior court], the original tapes, notes, discs or other records are the property of the State, and the clerk shall keep them in his custody."

Court Reporting Standards and Testing. Court reporters can obtain three levels of certification. There are currently 63 Registered Professional Reporters (RPR), which is the minimum level of certification for court reporters in the Superior Court. At the higher levels of certification there are 18 Registered Merit Reporters (RMR) and 18 Certified Realtime Reporters (CRR).<sup>63</sup> Reporters with a RMR certification are eligible to receive a salary supplement of 5 percent and reporters with a CRR certification are eligible to receive a salary supplement of 25 percent. In addition, state court reporters must maintain sufficient continuing education credits to maintain the national certification.<sup>64</sup> Court reporters in North Carolina are very seasoned, with an average of 22 years of experience, including an average of 11.3 years of employment with the state, and over 40 percent of reporters having more than 25 years of experience, with 14 percent having been employed by the state for more than 20 years.

**Figure 2: Descriptive Profile of Court Reporters in North Carolina Superior Courts**



### C. Court Reporter Compensation

Court reporters are compensated in three distinct ways. First, reporters are employed to work a 40-hour workweek and receive a salary for their in-court time according to their experience and certification level. The average annual salary for a court reporter is approximately \$53,000. Only 5 court reporters receive a salary over \$70,000.

Second, court reporters are compensated as contractors at a rate of \$1.25 per page<sup>65</sup> for the production of transcripts for cases paid for by the state, whether appealed to the Court of Appeals

<sup>63</sup> The Court Reporting Manager estimates that roughly 60 percent of current court reporters are capable of realtime reporting, but only 18 are certified.

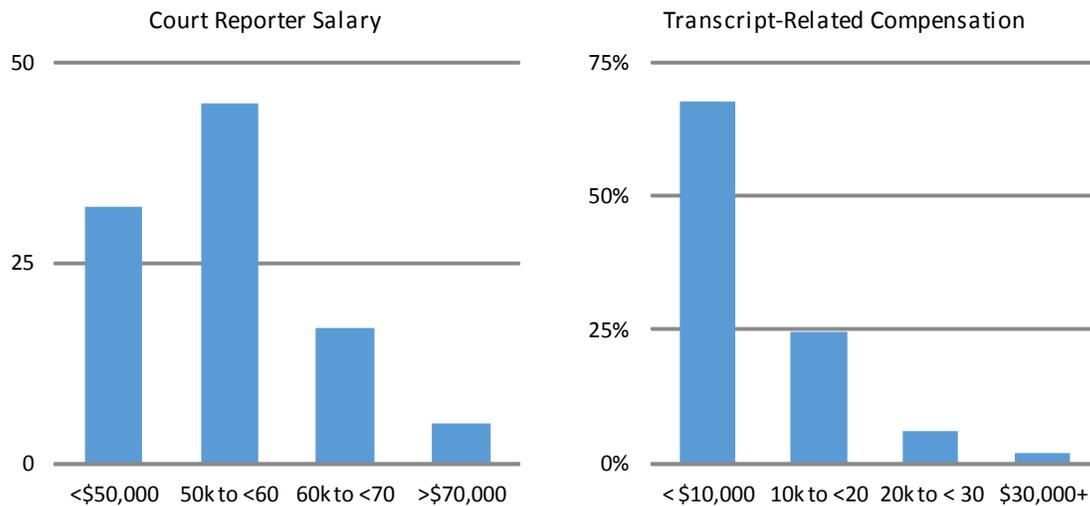
<sup>64</sup> Court Reporter Handbook, p. 5. Currently, North Carolina does not offer state certification or a licensure board for court reporters. Court reporters are required to receive their certifications from independent firms at their own expense.

<sup>65</sup> The rate was recently cut from \$2.50 per page.

(for either cases coming from the Superior or District Courts) or not.<sup>66</sup> The number of transcripts that are requested varies among districts and depends on the caseload. The average compensation for transcript production is less than \$10,000 per court reporter, with many court reporters making less than \$5,000.<sup>67</sup>

Finally, court reporters are also compensated for producing transcripts that are paid for by private parties. When a transcript is requested and paid for by a private party, the conditions (payment, timeline, ownership) are negotiated between the court reporter and the private party, independently of the court. Neither the Court Reporting Manager nor the AOC have any information about the volume of work or the total compensation received by court reporters for this independent function.

**Figure 3: Court Reporter Compensation**



#### D. Scheduling of Court Reporters

The Court Reporting Manager and the Executive Assistant to the Assistant Director assign court reporters to cover the scheduled court sessions of Superior Court. Scheduling Superior Court sessions is based upon a master calendar that involves judges rotating every six months among

<sup>66</sup> In an interview with NCSC staff the Internal Auditing Manager of the Financial Services Division of the North Carolina AOC highlighted the similarity between that compensation scheme for court reporters in NC and federal court reporters. They both receive a W2 form for their salary and 1099 from for transcript production (contract work).

<sup>67</sup> Court reporters often work outside of the regular 40-hour workweek on the preparation of transcripts. Because court reporters are compensated as contractors for these extra hours, these hours do not count towards overtime as specified in the Fair Labor Standards Act.

the judicial districts within their division. Currently, the number of court reporters is based up on the complement needed to cover court sessions at the beginning of the week. As the week progresses, calendars break down and fewer court sessions are held in Superior Court. A February 2013 report by the NC Administrative Office of the Courts revealed that only 75 percent of Superior Court judges with on-bench time on an average Monday had sessions on Wednesday, and by Friday this number declines further to 36 percent. Therefore, the demand for court reporters to cover in-court sessions also wanes at the end of each week. The NCAOC study also reported that the average on-bench time for Superior Court judges is roughly 4.5 hours per day, when sessions are held, suggesting that, on average, court reporters do not spend their entire day in court.<sup>68</sup>

Because of judicial rotation, court reporters are not assigned to an individual judge or courtroom. Instead, court reporters are electronically scheduled to cover court sessions in Superior Court by way of the AOC's judge commissioning system. For each session listing, notes are contained within the commissioning system indicating the type of case (e.g., civil or criminal), how long the session/trial is scheduled to last, and if the parties have waived the need for a court reporter. This information is used by the Court Reporting Manager and the Executive Assistant to the Assistant Director to determine the level of court reporter demand and to ensure court reporter coverage for the scheduled sessions.

The automated commissioning system assigns AOC resident and resident reporters each week to a session within their specific district. When an AOC resident or resident reporter is not needed in court by their district, they are manually assigned to uncovered sessions in another, proximate district. Similarly, rovers are scheduled manually to cover any unassigned sessions in the calendar and to cover court reporter vacation and sick leave, and any extra sessions of court. Rovers are assigned divisionally and can be scheduled to work in districts as far as two-and-a-half hours away from their home. A rover's schedule changes weekly depending on judges' need and how the sessions are scheduled.

Scheduling is typically done on a weekly basis, with planning for the following week beginning in the latter part of the current week. This week-to-week method is used to accommodate for last minute changes in sessions (e.g., cases that are held over, cancelled sessions) and allows for scheduling flexibility. For example, court schedules can be adjusted to balance workload among court reporters. Residents in "busier" districts (e.g., Raleigh) typically have more in-court time and more transcript requests than in "slower" districts (e.g., Hyde and Chatham). To equalize the workload and prevent transcript backlog, the Court Reporting Manager will occasionally assign a resident reporter outside of their district.

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<sup>68</sup> NCAOC, February 15, 2013.

## E. Transcription Process

Transcripts for appeal can be requested from either the Superior or District Courts. For cases coming out of Superior Court, the court reporter is typically contacted directly by the appellate attorney. In non-capital criminal cases, the court reporter has 65 days to prepare and electronically deliver the transcript from the date the clerk delivers to them a copy of the appeal entries. In civil proceedings, the court reporter has 60 days to prepare and electronically deliver the transcript from the date the party serves them with written documentation of the transcript contract.<sup>69</sup> It is the responsibility of the attorney to monitor that deadlines are met and to request extensions. The first 30-day extension comes from the trial court; a second 30-day extension must be requested by a motion to the Court of Appeals. In 2013, the Court of Appeals received approximately 2,270 motions. Of these, 345 were motions for extensions of time, an undetermined subset of which are transcript related. Court reporters work on producing transcripts during the 40-hour workweek when court is not in session as well as on nights and weekends. As a result, court reporters will often hire a sub-contractor to help in the timely production of transcripts.<sup>70</sup> Reporters estimated that they transcribe 10 to 15 pages per hour, including the need to print, proof and bind the transcript.

In Fiscal Year 2012-2013, 2,564 appeals and petitions were filed with the Court of Appeals.<sup>71</sup> This represents a small fraction of the total cases eligible for appeal that are disposed in the Superior and District Courts. Figure 4 illustrates that Superior Courts disposed of roughly 105,000 sentencing grid cases in FY 2012/13.<sup>72</sup> Of these cases, 0.5 percent (5 out of 1,000) are appealed.<sup>73</sup> As the severity of the charge becomes greater, the likelihood of appeal increases. For example, Classes E and F Felonies are appealed at a rate of 6 per 1,000 cases disposed, while Classes B1 and B2 are appealed at a rate of 4.3 per 100 and Class A Felonies at 9.3 per 100 cases disposed.<sup>74</sup>

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<sup>69</sup> Rule 7(b)(1), NC Rules of Appellate Procedure

<sup>70</sup> Court reporters also assist in the production of transcripts from digital recordings in District Court.

<sup>71</sup> North Carolina Judicial Branch: Annual Report 2012/13.

<sup>72</sup> Data for Figure 4 were directly provided to the authors by the NCAOC on 1/8/2014. Criminal cases disposed represent counts of defendants, not charges and cases not included in the sentencing grid (e.g., DWI) are not included in the counts.

<sup>73</sup> Cases counted are counted as appealed when the appealed date field in ACIS is populated.

<sup>74</sup> Very few civil cases are appealed from the District or Superior Courts to the Court of Appeals. Of the roughly 345,000 disposed civil cases in District and Superior Courts in FY 2012/13, 781, or 0.2 percent, were appealed to the Court of Appeals. In data provided to the authors by the NCAOC a civil case is counted as appealed when the appeal date field in VCAP is populated.

**Figure 4: Superior Court Criminal Cases Disposed and Appealed by Charge Type, FY 2012/13**

Charge Level	Cases Disposed	Cases Appealed	% of cases Appealed
A	375	35	9.3%
B1+B2	1,868	80	4.3%
C	2,987	65	2.2%
D	5,072	67	1.3%
E	5,563	31	0.6%
F	8,227	49	0.6%
G	11,333	45	0.4%
H+I	69,531	135	0.2%
Total	104,956	507	0.5%

The Court Reporting Manager informally monitors the production of transcripts and uses this information to coordinate the schedules of court reporters to minimize delinquent transcripts or production backlogs. The Court Reporting Manager relies on personal communication with court reporters, appellate lawyers, and hiring authorities to manage court reporters scheduling. The Manager does receive orders of extension from the Court of Appeals, but does not calculate or monitor the age of unfiled transcripts or the average time to produce a transcript. A more data-oriented process is available, but is not currently used.

Court reporters are asked to complete and submit a *Court Reporter's Monthly Report* to the Court Reporting Manager. The monthly report asks court reporters to account for the number of days that they worked in court, their time out of court, and information about current transcripts. For each transcript worked on during the month, reporters are asked to provide information regarding:

- Name
- County
- Case Number
- Appeal (Y/N)
- Date of Appeal/Request
- Date Due
- Estimated Page Count
- Appellate/Requesting Attorney
- Date of Last Partial Delivery
- Total Pages Delivered

- Estimated Completion Date
- Date Completed and Delivered
- Extensions
- Final Page Count
- Delivery Time

In addition, the form includes a space to record information regarding transcript production: total estimated pages, estimated pages remaining, cases with extensions, average extensions, total completed pages, average completed pages, pending cases, and average delivery time.

Currently, the Court Reporting Manager receives monthly reports from fewer than 50 percent of court reporters. Furthermore, the information that is received is not entered into a database and is unavailable for review.<sup>75</sup> This leads the manager to make reactive, rather than proactive management decisions that are typically based on anecdotes instead of systematic data. Failing to accurately monitor the transcript production threatens the timeliness of appeals and potentially erodes public trust and confidence in the judiciary. At the trial court level, the time from filing to disposition is tracked. In the Court of Appeals, the time from docketing to opinion is published. Nevertheless, a lack of data surrounding the production of transcripts creates a void between the time the notice of appeal is given and when the Court of Appeals receives the record.

## **F. Commentary on the Use of Court Reporters in Superior Court**

There was a strong consensus among the diverse stakeholders that participated in the focus groups, that court reporters are the most effective and efficient way to produce timely records of court proceedings. Both the judge and attorney focus groups emphasized the invaluable “human element” or “human touch” in the courtroom when court reporters create the record. As the “eyes and ears” of the courtroom, court reporters are given significant latitude to interrupt and stop proceedings when there is cross talking or when terminology or names are unclear. This practice ensures quality in the record of proceedings and accurate certified accounts of the judicial process. Judges and attorneys therefore have full confidence in court reporters as the “makers and protectors” of the court record.

Judges and attorneys also commented on court reporters' high level of dedication to their craft and the high quality of their transcripts. None of the focus group participants raised concerns about the timely production of transcripts, and they viewed requests for extensions as reasonable. Judges and attorneys also highlighted the fact that court reporters often work on evenings, weekends, and holidays to meet deadlines and to ensure a certified transcript is delivered when requested.

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<sup>75</sup> The Court Reporting Manager was unable to provide information for this report about how many transcripts are pending, how many transcripts are overdue, the average number of pages per transcript, or where court reporters were scheduled last month.

Overall, the focus groups agreed that the current method of creating the record in the Superior Court should not be altered. Focus group members cited many concerns with the current effectiveness of digital recording in the District Court and were opposed to the idea of adopting digital recording as a replacement for court reporters in Superior Court. Concerns with digital recording primarily focused on the potential for malfunctions, human operator error, and an overall reduced quality and accuracy of the record.<sup>76</sup> Additionally, judges and attorneys believed that court reporters were fairly compensated for their hard work and dedication. They did express some concern that the recent cut in transcript fees per page (from \$2.50 to \$1.25) may impact the quality and timely production of transcripts.

The opinions and views of the focus groups are echoed by recent letters of support for court reporters from the North Carolina Bar Association, the North Carolina Association of Defense Attorneys, and the North Carolina Superior Court judges. For example, the North Carolina Bar Association asserts that "[f]or ensuring an accurate record, there is no substitute for the live court reporter who observes a witness and asks for a response to be repeated when necessary."<sup>77</sup> The North Carolina Association of Defense Attorneys stated that "[w]e believe that these alternatives [contract court reporters and automated recording technologies] are inferior to a reliable system of experienced, loyal personnel who are available when and where needed and who will reliably produce a complete and accurate record of what transpires in our courts."<sup>78</sup> Finally, the Conference of North Carolina Superior Court Judges, at a 2013 judicial conference, adopted a resolution that proclaims that "neither audio/visual systems nor privatization can serve as an acceptable substitute or satisfactory method to assure that same high degree of integrity of recordation presently provided by Official Court Reporters; and that elimination of any of our Official Court Reporters will surely result in a distinct drop-off of quality of recordation, and that accountability regarding the integrity of the record will be obliterated; and that under present practice, disputes seldom arise about the accuracy of a transcript recorded and transcribed by an Official Court Reporter...BE IT THEREFORE RESOLVED that the North Carolina Superior Court Judges in conference assembled in Chapel Hill, North Carolina, declare their unqualified support for the Official Court Reporters of the State of North Carolina, our unrelenting opposition to elimination of their positions, and our solemn call for the preservation of all Official Court Reporter positions."<sup>79</sup>

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<sup>76</sup> A full discussion of the use of digital recording is provided later in this report.

<sup>77</sup> NC Bar Association.

<sup>78</sup> NC Association of Defense Attorneys.

<sup>79</sup> Conference of North Carolina Superior Court Judges.

## V. Creating the Record in the North Carolina District Court

In the North Carolina District Courts cases that are directly appealable to the Court of Appeals (family and juvenile cases,<sup>80</sup> as well as H- and I-class felonies that are pled in District Court<sup>81</sup>) are required to be on the record.<sup>82</sup> In District Courts, the record is created through the use of digital audio recording technology.<sup>83</sup> The use of digital recording was implemented in the mid-1990s in all North Carolina District Courts and a number of Superior Court courtrooms that also hold District Court. The use of digital recording in District Courts provides an opportunity to examine the efficacy of this alternative method of creating the record within the same court system. Although lessons and implications from other jurisdiction are certainly germane, their generalizability to the North Carolina context is potentially less reliable.

The North Carolina AOC is responsible for providing computers, software and maintenance licensing and recording equipment (e.g., mixers) to the District Courts.<sup>84</sup> The State uses Liberty recording software and eight-channel mixers that allow for multi-channel recording of microphones, whereas the counties are responsible for installing all necessary wiring in the courtrooms.<sup>85</sup> Training for the system was designed by the vendor who offered "train the trainer" sessions to AOC staff, who subsequently provided direct training to the District Courts.

The courtroom clerk is responsible for all aspects of courtroom recording. Specifically, clerks are charged with turning on the computer and the recording program and checking the functionality of the microphones at the plaintiff table, the defendant table, the witness stand, the judge's bench, and in the jury box. The clerk is also responsible for saving and storing recordings of hearings on the network and on CDs.

Interviews with clerks and judges reveal that there is great variation across the state in the amount of monitoring and annotation that takes place during in-court sessions. At one extreme, the clerk will simply start and stop the recording at the beginning and end of a session. At the other extreme, the clerk follows a series of deliberative steps and best practices to ensure a quality recording. First, the clerk will monitor the volume of the recording by watching indicators that represent the recording levels of the different microphones. The clerk will also

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<sup>80</sup> North Carolina statute § 7B-806. Record of proceedings. [JUVENILE]

<sup>81</sup> North Carolina statute § 7A-191.1. Recording of proceeding in which defendant pleads guilty or no contest to felony in district court.

<sup>82</sup> North Carolina statute § 7A-198 states that "[c]ourt-reporting personnel shall be utilized, if available, for the reporting of civil trials in the district court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon request of the chief district judge." In addition, many criminal sessions are recorded in their entirety. The recordings are used by clerks in the District Court to prepare judgments and ensure accurate findings.

<sup>83</sup> The district court in Raleigh is the only court that makes use of both audio and video recording technology.

<sup>84</sup> The AOC Chief Information Officer estimates that the installation costs per courtroom is roughly \$3,500.

<sup>85</sup> Coordinating efforts between the AOC and the county proved to be an implementation challenge. The challenge was made even more difficult when installing wiring and equipment in historic courtrooms.

wear a headset to listen to and evaluate the level of audibility. If levels are too low (e.g., a soft-spoken witness or the microphone is covered), the clerk will hand the judge a note requesting that the judge ask the individual to speak up. The clerk will also remind the judge to request witnesses provide audible responses rather than shaking of the head. Unlike court reporters in Superior Courts, very few, if any, clerks have the latitude interrupt the court proceedings. Second, clerks will often create tabs, referred to as bookmarks or notes, in the recording. The clerks ensure that each hearing is contained in a separate recording and will note the case name, names and spellings of the parties and attorneys, start and end times, each exhibit that is offered and admitted, and judgments in the program. The tabs improve efficiency by allowing clerks to more easily locate hearings when a request is made to provide the digital recording for transcription. The tabs also allow judges to more efficiently navigate within the recording to go back and listen to some part of the hearing when they have a matter under advisement or when they seek clarification on testimony.

### **A. Commentary on Digital Recording in District Court**

Focus group participants expressed a lack of confidence in the use of digital recording technology. Superior Court judges, who previously served as District Court judges, attorneys, and court reporters stressed that the digital recordings are often indecipherable and incomplete, preventing transcriptionists (i.e., court reporters) from being able to produce complete and accurate transcripts from the digital recordings. Such difficulties may lead to inefficient and costly transcription work, the need for judges and attorneys to reconstruct incomplete records from notes, or, potentially, the need for a retrial. Further, equipment failures may result in canceled court hearings or unnecessary delays associated with waiting to find a functioning courtroom.

Deficiencies in the quality of the recordings result in court reporters' inability to discern speakers' identities, static and interference, and inaudible or missing sections. For example, a court reporter in one focus group described a recent completed juvenile transcript that was 100 pages long with 147 inaudible sections. The court reporter explained the inefficient process of creating the transcript based on digital recordings—in the juvenile case, cross-talking speakers required her to listen to the hearing multiple times, and on different channels, in an effort to determine what was being said. Another focus group participant told the story of a lawyer who forgot to turn the microphone back on after consulting with their client. Because no one was monitoring the recording equipment, the record in this case was incomplete.

Focus groups identified juvenile cases involving the termination of parental rights (TPR) as a type of hearing in which the current digital recording system falls short of creating an accurate record. The recordings of these extremely serious cases, often referred to as “the death penalty in family law,” are often inaudible and indecipherable due to the presence of a large number of

individuals in the courtroom. In addition to the judge and witnesses, individuals from the county social service department, the Division of Social Services (DSS), the county attorney, the guardian ad litem, and parents and attorneys are present in the courtroom. Attorneys at the focus group meeting suggested that incomplete transcripts represent a “degradation of justice” and the incomplete transcripts often have to be recreated.

Focus group participants shared numerous personal experiences and anecdotes about the limitations and failures of the use of digital recording in District Court. These experiences have contributed to a feeling of skepticism by members of the bench and the bar about the efficacy and utility of digital recording and concerns about the potential deprivation of due process. However, focus group participants agreed that most of the perceived problems with digital recordings are associated with how the technology is implemented and administered, rather than the technology itself. Most of the perceived defects could be mitigated if judges and clerks followed standard procedures that ensured proper implementation (e.g., actively monitor audio levels).

## VI. Recommendations

In a 2009 white paper, The Conference of State Court Administrators advocated that "[s]tate courts should move to digital recording as the method for making the verbatim record, with the possible exception for complex civil and capital criminal cases where real-time or stenographic reporting are specifically designated."<sup>86</sup> More importantly, COSCA stated that, "[t]he technology is an economic alternative to traditional court reporting that provides savings to both litigants and courts."<sup>87</sup> Taking into consideration issues of effectiveness and efficiency, North Carolina should improve digital recording processes in District Courts and adopt digital recording technology for a subset of cases in the Superior Court.

### A. District Court

Recommendation No. 1: Uniform, best practices should be established and implemented by designated courtroom clerks who are charged with monitoring and supervising the creation of the digital record in District Court.

The current inability of digital recording to consistently produce an accurate and reliable record of District Court proceedings can be directly attributed to issues of implementation. A recent national assessment of making the record utilizing electronic recording concluded that "[d]igital recording can be an effective means of capturing, preserving, and producing the court record."<sup>88</sup> However, the accuracy and reliability of the recordings is highly dependent upon the active monitoring of recordings by dedicated courtroom personnel to ensure that the equipment is functioning properly. A series of complementary steps will help ensure high quality digital recordings in the District Courts.

First, the AOC should review the existing technological infrastructure to ensure that current recording equipment meets standards for best practices. Second, the AOC should provide training to all courtroom clerks on how to set up, operate, and monitor the equipment. Third, a clear set of expectations—in the form of tasks, functions, and standards—needs to be established for courtroom clerks serving as monitors. These protocols should require monitors to: ensure that the recording equipment is turned on and properly functioning prior to a court session; actively monitor the recording of court sessions; input a set of standard log notes (tabs) in the record (e.g., start and stop time, case number); and follow established protocols for storing, archiving, and retrieving recordings. Finally, District Court judges and designated courtroom monitors need to enforce audio discipline. Courtroom monitors need to be given the latitude to interrupt court proceedings or have established procedures in place for alerting the judge to recording-related

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<sup>86</sup> COSCA Report at 16.

<sup>87</sup> COSCA Report at 10.

<sup>88</sup> Suskin & McMillan at 2.

concerns, so that they can quickly rectify situations in which the quality of the recording is being jeopardized.

Developing and adopting a clear set of implementation standards will lead to more accurate and reliable digital records. In addition, these improvements will decrease the amount of time needed for transcription services as well as reduce the need to recreate missing or inaudible parts of the record. Over time, these improvements will gradually reduce levels of skepticism among members of the North Carolina bench and bar about the utility and effectiveness of digital recording. John Carver and Barry Mahoney, of the Justice Management Institute, have noted that despite advancements in technology "things continue to be done as they always have been done."<sup>89</sup> Currently, judges and attorneys are reluctant to accept and embrace digital recording as a viable substitute for creating the record in Superior Court. Documenting and disseminating measurable improvements that illustrate the effectiveness of digital recording in District Courts will assuage such resistance and increase stakeholder support for the use of digital recording in the Superior Courts.

Recommendation No. 2: District Courts should consider using court reporters for creating the record in Termination of Parental Rights hearings.

Due to the high stakes of TPR cases and the large number of individuals in the courtroom, court reporters are best suited for creating the record in District Courts for these cases. Last year, over 1,000 TPR cases were disposed of and roughly 4,000 TPR hearings involving a guardian ad litem were scheduled.<sup>90</sup> Coordinating the use of court reporters for these cases can be accomplished through advance notification of upcoming TPR cases to the Court Reporting Manager.

## **B. Superior Court**

Court reporters are currently used to create and finalize the record in Superior Courts. Although improvements can be made to the way that court reporters are currently managed, digital recording represents an efficient and effective alternative for creating the record. Below, a set of interrelated recommendations is provided to improve the way that the record is currently made in the Superior Courts of North Carolina.

Recommendation No. 3: The Court Reporting Manager should collect, assemble, and analyze monthly court reporter operational data in order to make empirically based resource allocation decisions.

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<sup>89</sup> JMI, vol. 1 at 8.

<sup>90</sup> Data provided through email correspondence with the NCAOC Planning and Organizational Development Officer.

Utilization of systematic, empirical data, as opposed to informal communication, will allow the Court Reporting Manager to better understand day-to-day variations in demand for court reporters and more efficiently staff court sessions throughout the state. Additionally, timely data about pending transcripts and transcript workload can be used to schedule court reporters. This way, the AOC can proactively decrease the time needed for transcription production, and thus decrease the number of transcript extensions and improve appellate processing times. For these purposes, the AOC should collect data on the number of hours court reporters are actually in court, the number of hours spent working on transcripts, the number of days from request until transcription production, and information about pending transcripts.

Recommendation No. 4: The NCAOC should establish standard rates and a centralized system for private parties to pay court reporters for transcript production.

A standard rate and a centralized system for billing and receiving payments from private parties will create uniform practices across the state and improve the transparency of the billing process. Currently, any additional court reporter workload and compensation from private party transcript production is undocumented and unknown by the AOC, limiting the ability of the Court Reporting Manager to manage and balance workload among court reporters. Current billing practices also create an incentive for court reporters to work on this private work in lieu of transcripts for appeals in cases that are paid by the state, which are compensated at a lower rate. As a result, the appellate process is potentially delayed.

Recommendation No. 5: The Superior Courts of North Carolina should adopt digital recording technology.

First, the AOC should install digital recording equipment in all courtrooms holding Superior Court in North Carolina. The recording equipment should be designed, installed, and tested independently in each courtroom taking into account any unique physical configurations and acoustical properties.

Second, digital recording technology should be used to create the record for all civil cases in Superior Court, except for a subset of complex cases. A committee should be established to identify complex types of cases (e.g., medical malpractice, serious auto accident, product liability) that would benefit from the continued use of court reporters. Cases that have a higher probability of being appealed, having lengthy transcripts, and/or involving technical terms should be considered as uniquely benefiting from the presence of a court reporter for purposes of making the record. For the remainder of the civil caseload, the likelihood of appeal or a transcript request is extremely low and the use of court reporters for these cases is inefficient. For example, an interviewed court reporter stated, “I did a motor vehicle negligence case that went on for eight days. We knew every minute of every day we were there that no one was going to appeal and

that a recording would have been good enough.” The NCAOC should consider pilot testing the use of digital recording for civil cases in jurisdictions that already have digital recording equipment. The use of digital recording in civil cases in Superior Court is not unprecedented. Many Superior Courts currently make use of digital recording technology to record pretrial motions for civil cases when the parties requested that the motions be recorded. The pilot should be expanded as new courtrooms are fitted with digital recording equipment.

Third, the NCAOC should consider adopting digital technology to record all criminal proceedings in Superior Courts, except for a subset of serious cases (e.g., Classes A, B1, and B2 Felonies). The implementation of digital recording of criminal cases in Superior Courts will be more challenging than civil cases. Under the current calendaring system, district attorneys control the criminal docket, and the criminal calendars typically comprise a mix of cases. For digital recording to be effective and efficient, cases would have to be scheduled in blocks that account for the way that the record is made (digital recording vs. court reporter). Therefore, the NCAOC should work with a comprehensive group of stakeholders (including the Conference of District Attorneys) to assess the feasibility of implementation.

Finally, Superior Courts should adopt processes similar to those developed for digital recording in the District Courts to ensure that the digital recordings are accurate and reliable.<sup>91</sup> Successful implementation of digital recording in the Superior Courts will require the hiring of courtroom clerks to serve as digital recording monitors, in place of the court reporter. The Conference of State Court Administrators underscored how “[a] proceeding annotated and monitored by a trained person is a cost-effective means to obtain the record.”<sup>92</sup> Currently, existing Superior Court clerks would be unable to effectively monitor digital recording equipment because of their in-court responsibilities (e.g., impaneling the jury; swearing in witnesses; labeling exhibits; entering judgments; maintaining court minutes on calendar). Developing a new clerk position can help offset impacts resulting from recent layoffs and existing vacancies. When court is not in session, the new clerk can assist with other clerk duties and functions that improve service delivery to court customers.

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<sup>91</sup> See Recommendation No. 1.

<sup>92</sup> COSCA Report at 6.

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## Appendices

## **Appendix A: North Carolina Court Reporter Study, Focus Group Protocols**

### **Attorneys**

- Intro/Background (Who are you? What office? Type of law?)
- When do you request/make use of transcripts (not only for appeals)? What do you do with them?
- How quickly (timely) do you receive a transcript? How is timeliness monitored?
- Have you handled cases in District Court? How has your experience been with digital recording? Are you able to get copies of the court record when requested?
- What are your feelings about digital recording (accuracy, reliability, efficiency)?
- In many states that use digital recording, live court reporters are still required for capital cases and complex civil cases. Why would you want a live court reporter for these types of cases?
- What other types of cases do you think require a court reporter?
- What aspects of a case make it more likely to be appealed?
- Would you be able to decide, in advance, whether or not a hearing would require a court reporter? Based on what characteristics? Who would pay?

### **Court Reporters**

- Intro/Background (Level of certification? Years experience? Rover/AOC resident/Resident? What county?)
- Describe how court reporters are scheduled and what a typical day is like?
- Do you have any ideas on how the scheduling of court reporters could be improved?
- What sort of 'private' work do you do? (e.g., depositions) How often?
- Other than appeals, for what other types of hearings are transcripts requested?
- How long is a typical transcript? How much time would that take you to transcribe? How many do you do in a year?
- Is it difficult to meet the established guidelines for appellate transcript production?
- What are the biggest barriers in completing your transcripts?
- Are you able to do all of your work at the court?
- What happens when a calendar collapses during the week?
- What are the pros and cons of court reporting vs. digital recording?
- Who do you report to? Who monitors your productivity and work? Do you fill out the court reporter's monthly report?
- Are there some types of activities better suited for digital recording (e.g., civil administration)?
- What types of cases do you think require a court reporter?
- What are the benefits of real-time certification? Is the required level of certification sufficient?

### **Clerks of Superior Court**

- Intro/Background (Which court? How long have been a Superior Court clerk? Your role with respect to court reporters? Number you interact with?)
- What are your current duties in the courtroom for civil and criminal dockets?
- Do you currently have any involvement with court reporters?
- How familiar are you with digital recording? How do you currently use digital recording?
- Would you have time to monitor digital recording equipment?
- What do you think are the biggest barriers to implementing digital recording in Superior Court?

### **Superior Court Judges (previously District Court Judges)**

- Intro/Background (Which court? How long have been on the Superior Court bench? How long in District Court? Have you been involved with hiring a court reporter?)
- What are your views on the use of digital recording in District Court? How effective? Any problems?
- Can you describe the master calendar system?
- What type of court reporter do you typically work with (Real time? Resident?)?
- Do you supervise the court reporter in your court? If no, who does?
- What role do you play in making sure the record is complete? What role does the court reporter play? What was the role of the courtroom clerk in District Court?
- What types of cases do you think require a court reporter?
- In what ways can digital recording be used in Superior Court?
- What would be the biggest barriers to implementation?
- Would a new clerk be needed in the courtroom? Or, could the courtroom clerk work the equipment?
- In what ways do you make use of the record when you were in District Court? Superior Court?

## **Appendix B: Profile: Making the Record in South Carolina**

South Carolina uses state employee court reporters to create and transcribe the verbatim record. The method used to create the record varies by reporter. Although digital recording is allowed for all case types, if this method is used the court reporter is also responsible for creating a log that documents the chronology of the events, speakers, and other clarifying information. Verbatim records are required for criminal and civil cases in the Circuit Court and as ordered by the judge for domestic relations and juvenile cases heard in the Family Court. Court reporters are estimated to earn \$37,460 a year with original transcription fees of \$3.25 per page.

### **Preparing the Record**

#### *Case Types*

In South Carolina, both the general jurisdiction Circuit Court and the limited jurisdiction Family Court are required to have a verbatim record of proceedings. In Circuit Court, every criminal proceeding must be on the verbatim record including every aspect of the jury selection process. All phases of civil proceedings must be recorded verbatim, including opening statements and closing arguments. In Family court, court reporters must record all court proceedings and hearings for domestic and juvenile cases as directed by the judge.

#### *Equipment/requirements*

Although court reporters may use a variety of methods to create the record, the presence of a court reporter is required. Specifically, the court reporter may record the proceedings on discs, belts, or by direct electronic recordings. Regardless of what recording system is used, the State is responsible for purchasing the necessary equipment after the reporter has requested and received approval from the clerk of the Supreme Court.

Court reporters, when using electronic recording, are also required keep trial logs to supplement the record with clear bookmarks to the appropriate tape or CD. Trial logs include a description of all essential events, identification of speakers and any clarifying information, case number, case title, nature of the proceedings, name of the judge, name of the court reporter, counsel of record, names of witnesses, date and time, and a listing of exhibits identified and received.

#### *Time to Produce*

Transcripts must be provided no later than 60 days after the date of request was received by the court reporter pursuant to Supreme Court Rule 607. Extensions may be granted by Court Administration. According to South Carolina Code, proceedings challenging a death sentence

and proceedings challenging decisions concerning a minor's right to obtain an abortion must be given priority. Court Administration may require a court reporter to enlist assistance in transcript production if there is reason to believe the court reporter cannot meet transcript deadlines based on data from the Court Reporter Transcript Tracking System.

## **Employee Information**

### *Classification*

South Carolina's court reporters are full-time employees of the Department of Justice, and the state does not contract court reporters. Circuit judges appoint official court reporters that serve for no longer than the appointing judge's term. Each of the sixteen judicial circuits has at least one court reporter. Currently, South Carolina's court reporter roster lists 63 Circuit Court Reporters and 51 Family Court Reporters assigned to various judicial circuits.

Private court reporters may be used by private parties for transcription services, however the record produced is not the official transcript. The U.S. Department of Labor reported that 230 court reporters were employed in South Carolina as of May 2012, which also accounts for private as well as Department-employed court reporters.

### *Compensation*

According to the Bureau of Labor Statistics, court reporters mean salary was \$37,460 in 2012. South Carolina court reporters are expected to work 40 hour weeks which includes both time in the courthouse as well as time working on transcripts when unassigned. Currently South Carolina has official court reporter vacancies for both Family and Circuit Courts. The job postings offer a full-time Official Court Reporter for the Circuit Court a salary of \$39,316. The salary is increased to \$42,456 after six months courtroom experience. The same position for the family court is offered a salary of \$33,447.00 that will increase to \$36,532 after six months courtroom experience.

Reporters may also charge fees for transcription services outlined in South Carolina's Appellate Court Rule 607(h). The fee for an original transcript is \$3.25 with copy fees at \$.75. If expedited, fees begin at \$4.25.

### *Certification*

Court reporters must either have an associated degree or certificate in court reporting from an accredited program, or have certification as a Registered Professional Reporter (RPR) or a Certified Verbatim Reporter (CVR).

References:

1. South Carolina Court Reporter Manual
2. Code 1976 § 14-13-30, § 14-15-15, § 14-15-10
3. Supreme Court Rule 607
4. South Carolina Judicial Department website (<http://www.judicial.state.sc.us>)
5. South Carolina Government Jobs website (<http://www.jobs.sc.gov>)

## **Appendix C: Profile: Making the Record in Virginia**

Virginia uses primarily contract court reporters to create and transcribe the verbatim record. Although statute allows for deputy clerks or electronic equipment to record proceedings for any case type, these practices are seldom used and estimated to be taking place in small, rural jurisdictions in the western part of the state. The general jurisdiction Circuit Court is the court of record, and all felony proceedings are required to be recorded. Recording of civil proceedings may be ordered by the judge. Private contractors have shielded compensation information; however, the Bureau of Labor Statistics lists court reporters in Virginia making an average of \$44,310 per year. There is no statutory limit on fees or payment of court reporters and a competitive bidding process is not required when hiring reporters. Daily rates and transcript costs are negotiated between the court and court reporter/agency.

### **Preparing the Record**

#### *Case Types*

In Virginia, general jurisdiction Circuit Courts are the only trial courts of record as appeals from the limited jurisdiction District Court are heard de novo at the circuit level. In the Circuit Courts the evidence and incidents of trial for all felony cases and habeas corpus cases are required to be part of the verbatim record. In addition, oral testimony for special grand juries and multi-jurisdictional grand juries must also be recorded for use in jury deliberation only.

In civil cases, including domestic relations, the judge may, and often will, enter an order to have evidence and incidents of trial recorded at the expense of the litigants. However, the failure to secure recorder services may not affect the proceeding or trial. If this occurs, a certified written statement of facts may be used in substitution of the record.

In juvenile cases (heard at the District Court), any party has the right to have a court reporter present unless the hearing is not open to the public. In these cases the judge has discretion as to whether a court reporter may take down the record for a person.

#### *Equipment/requirements*

All case types may be recorded by a court reporter or by mechanical or electronic devices approved by the court according to Virginia statute. Although data are not available to suggest how many cases/ trials are recorded using electronic equipment, it is believed that few locations rely on digital recording and court reporters are still the preferred method for taking the record. According to the Virginia Court Reporters Association (VCRA) steno machine is the most common equipment used by their members.

### *Time to Produce*

In accordance with Supreme Court Rule 5A: 8(a), if an appeal is sought transcripts must be filed with the Circuit Court no later than 60 days after the entry of final judgment for all case types. Extensions may be granted by the court of appeals.

## **Employee Information**

### *Classification*

The work of creating the verbatim record in Virginia is generally accomplished by private court reporters under contract. These reporters are hired and authorized by the Circuit Court judge to report proceedings and to transcribe proceedings when needed. In some jurisdictions the court reporter may be the deputy clerk, or proceedings may be recording electronically and a court reporter is only needed to provide written transcriptions. Because court reporters are a private industry in Virginia, the exact amount of court reporters is unknown. The Virginia Court Reporters Association estimates a membership of approximately 250 reporters.

### *Compensation*

For felony and habeas corpus proceedings required to be recorded, the Commonwealth pays reporters per diem or on a work basis out of the appropriation for criminal charges. According to the Bureau of Labor Statistics, court reporters in Virginia made an average salary of approximately \$44,310 a year in 2012. Court reporters also charge a per page fee for transcriptions that in felony cases are also paid by the state. Rates are negotiated between the court and the private reporter or reporter agency, and criminal proceeding costs are exempt from a competitive process requirement. Due to the wide variation in rates based on geography and certification, no sources were comfortable providing a range for per diem and transcription rates. Based on blog sites and surveys, it is estimated that court reporters can make \$175 for half day, \$375 for a full day, and charge \$5 for an original and two copies of a transcript.

When electronic equipment is used in lieu of a court reporter, fees of no more than \$20 a day may be transferred into a local fund to maintain and update electronic equipment.

### *Certification*

Certification is not required in Virginia. However, the VCRA has a certification designation that is valued by courts when choosing court reporters. To be VCRA certified (CCR) a reporter must:

- Be a member of VCRA
- Be a Virginia notary (unless waived)
- Be a Certified Verbatim Reporter (CVR) or Registered Professional Reporter (RPR).

### References:

1. Supreme Court Rule 5A: 8(a) and Rule 8:11
2. Virginia Circuit Court Clerk's Manual
3. Virginia Codes § 17.1-128, § 19.2-165, § 19.2-166

## **Appendix D: Profile: Making the Record in Utah**

Utah recently (2009) converted from the decentralized use of court reporters to the use of digital recording and centralized, automated management of transcript production. This change was made in response to budget reduction, and once the policy decision was made by the Judicial Council, the Administrative Office of the Courts designed, built, tested, and implemented this new system in six months. The new system has reduced the time for transcript production from an average of 138 days to 12 days for cases not on appeal, and 22 days for cases on appeal. Savings in staff time amount to \$1.35M per year.

The Rules of Judicial Administration allow for a judge in a capital case to request a court reporter, although few such requests have been made. Upon request in any civil case or non-capital criminal case, the court may permit a party to schedule a certified court reporter licensed in Utah to report the proceedings. The court reporter must agree to certain terms and conditions. The requesting party will pay the appearance fee to attend the proceedings and write verbatim notes. The party requesting a transcript must pay the transcript fee.

### **Preparing the Record**

#### *Case Types*

In Utah, a verbatim record of proceedings is created for all case types heard by the Juvenile Court (juvenile delinquency, juvenile dependency, and status offenses) and the District Court (all civil case types, all domestic relations cases, felony and misdemeanor cases).

#### *Equipment/requirements*

All Utah courtrooms in courts of record are equipped by the Administrative Office of the Courts with digital audio and/or video systems that are compatible, allowing the Transcript Coordinator to have immediate access to all audio or video records.

Transcripts are produced on demand, and when a transcript is requested, the Transcript Coordinator acquires the audio or video file, attaches it to the request, and assigns the work to a transcriber via email. The transcriber downloads the audio or video file, transcribes the record, and eFiles the transcript with the court.

Thus, the transcriber must have email, Internet access, and a connection able to facilitate the downloading and uploading of audio and video files, which can be large.

### *Time to Produce*

Pursuant to Rule 12(a) of the Utah Rules of Appellate Procedure, for cases not on appeal, upon request and receipt of payment, a transcription shall be completed within 30 days. A transcriber may request an extension according to the provisions of Rule 5-201 of the Rules of Judicial Administration. For cases on appeal, the transcript shall be produced and sent to the Court of Appeal within 20 days.

### **Employee Information**

#### *Classification*

The work of creating the verbatim record in Utah is accomplished by the Transcript Manager and Transcript Coordinator and multiple transcribers. The former are employees of the clerk's office of the Utah Court of Appeals, while the latter are private, individual contractors who are certified and licensed by the state and are listed on an official transcriber roster maintained by the Transcript Coordinator.

#### *Compensation*

Transcribers are compensated at a rate set by the Legislature in statute (Title 78A Chapter 2 Section 408), currently at \$3.50 per page. The parameters of a page are set by Rule 5-203 of the Utah Rules of Judicial Administration, including size of paper, weight of paper, line spacing, page numbering, line length, font size, indentation, and other details. The web site through which the Transcript Manager and Transcript Coordinator (1.5 FTE) manage the process serves as the vehicle for requestors to pay transcribers directly. The judiciary is not involved in collecting or disbursing these funds. As of this writing, transcribers are lobbying to increase the rate to \$5.00 per page.

#### *Certification*

To work as an "official court transcriber" a person must be authorized by the Appellate Court Administrator after a review and approval of qualifications. According to the Utah Rules of Judicial Administration, Appellate Court Operations, Rule 5-202, a transcriber must:

- Be licensed in Utah as a certified court reporter or work under the direction of one
- Have experience in transcription of audio and video records
- Have equipment and support staff sufficient to provide transcripts in an accurate and timely manner
- Attend training required by the appellate court administrator.

References:

1. Utah Rules of Judicial Administration
2. Utah Rules of Appellate Procedure
3. Daniel Becker, "Reengineering: Utah's Experience in Centralizing Transcript Management," Future Trends in State Courts 2012 (National Center for State Courts: Williamsburg, VA)

## Appendix E: North Carolina: Number of Court Reporters by Type and by Division and District

### Division 1

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
1	2			2
2	2			2
3A	2			2
6A	1			1
6B	1			1
7A	1		1	2
7B	2			2
<b>Division Total</b>	<b>11</b>		<b>1</b>	<b>12</b>

### Division 2

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
3B	1		1	2
4A	1			1
4B	1			1
5	3		3	6
8A	1			1
8B	1		1	2
<b>Division Total</b>	<b>8</b>		<b>5</b>	<b>13</b>

### Division 3

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
9	2			2
9A	1			1
10	6		1	7
14	3			3
15A	2			2
15B	1		1	2
<b>Division Total</b>	<b>15</b>		<b>2</b>	<b>17</b>

### Division 4

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
11A		1		1
11B	1			1
12	3			3
13		1		1
13A	1			1
16A		1		1
16B	2		1	3
<b>Division Total</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>11</b>

### Division 5

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
17A				
17B	1			1
18	5			5
19B	1			1
19D	1			1
21	2		1	3
23		1		1
<b>Division Total</b>	<b>10</b>	<b>1</b>	<b>1</b>	<b>12</b>

### Division 6

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
19A	1		1	2
19C		1		1
20A	2			2
20B	1			1
22A			1	1
22B	2			2
<b>Division Total</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>9</b>

### Division 7

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
25A	2			2
25B	2			2
26	7		2	9
27A	2		1	3
27B				
<b>Division Total</b>	<b>13</b>		<b>3</b>	<b>16</b>

### Division 8

<i>District</i>	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
24	1		1	2
28		2	1	3
29A	1			1
29B	1			1
30A	1			1
30B	1			1
<b>Division Total</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>9</b>

	<i>resident</i>	<i>AOC resident</i>	<i>AOC rover</i>	<i>Total</i>
<b>Statewide</b>	<b>75</b>	<b>7</b>	<b>17</b>	<b>99</b>