

Making the Official Court Record

2021 Eighth Circuit Judicial Conference

Meeting of U.S. District Court Clerks

October 27, 2021



Session Overview

- Framing the Issue: A Long-Range Planning Perspective
- 8th Circuit Survey Results
- Recent Trends and Best Practices
- Arizona Case Study
- Discussion: Policy and Planning Considerations



Framing the Issue: Purposes of Courts

1. Do justice in individual cases
2. Appear to do justice in individual cases
3. Provide a final resolution of legal disputes
4. Protect individuals from the arbitrary use of government power
5. Make a formal record of legal status
6. Deter criminal behavior
7. Rehabilitate persons convicted of crimes
8. Separate persons convicted of crimes from society

Prof. Ernie Friesen

Framing the Issue: Purposes of Courts

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8th Circuit Survey Results

Timeframe: October, 2021

Reponses from District Court Clerks, N= 10

Scope:

- Court reporter staffing trends
- Electronic recording systems: assessment and usage
- Comments



Q6



What percentage of your court reporters fall in these age groups?

Answered: 10 Skipped: 0

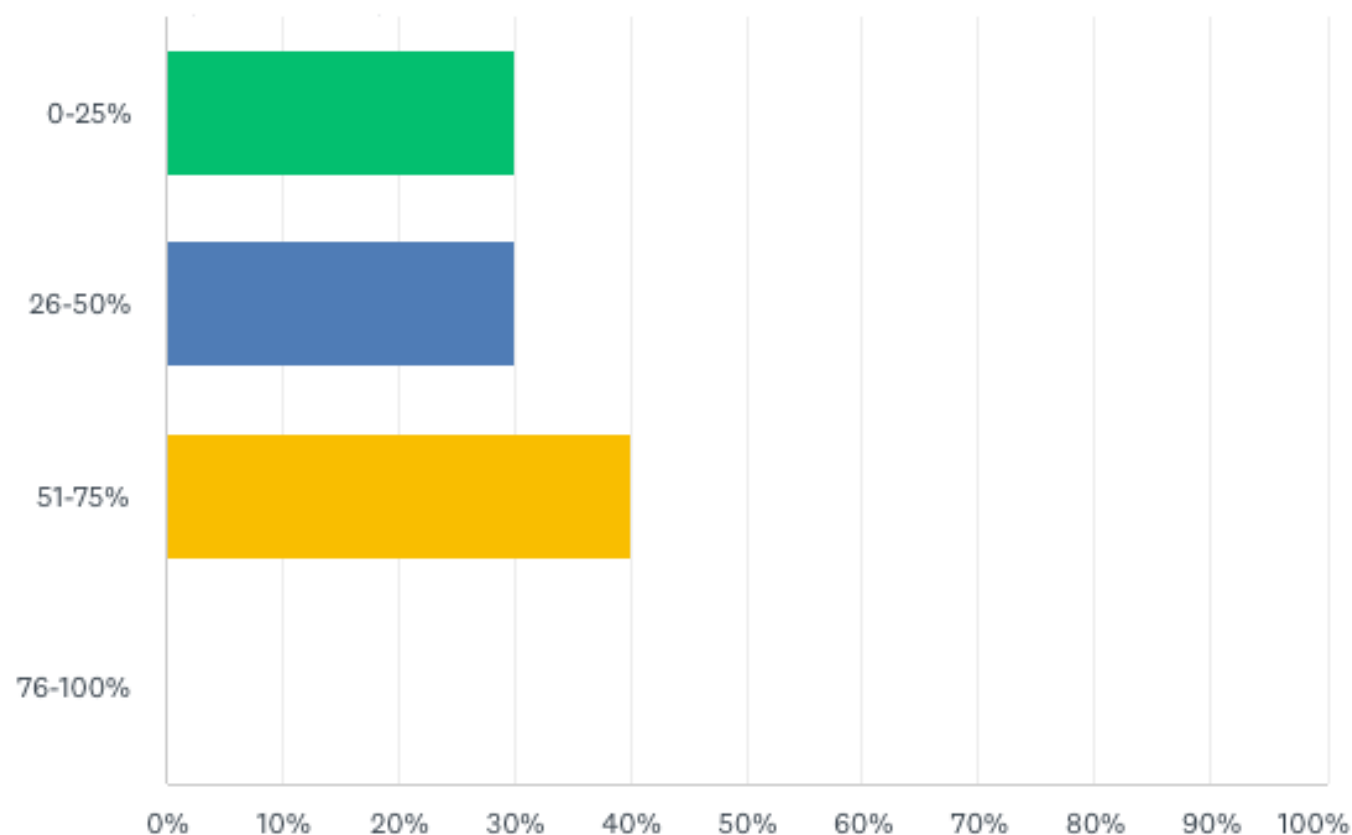
	0-25%	26-50%	51-75%	76-100%	TOTAL	WEIGHTED AVERAGE
30-40	100.00% 2	0.00% 0	0.00% 0	0.00% 0	2	1.00
41-50	50.00% 3	33.33% 2	0.00% 0	16.67% 1	6	1.83
51-60	0.00% 0	22.22% 2	66.67% 6	11.11% 1	9	2.89
61+	33.33% 1	66.67% 2	0.00% 0	0.00% 0	3	1.67

Q7



In your estimation, what percent of your court reporter staff will retire within the next five years?

Answered: 10 Skipped: 0

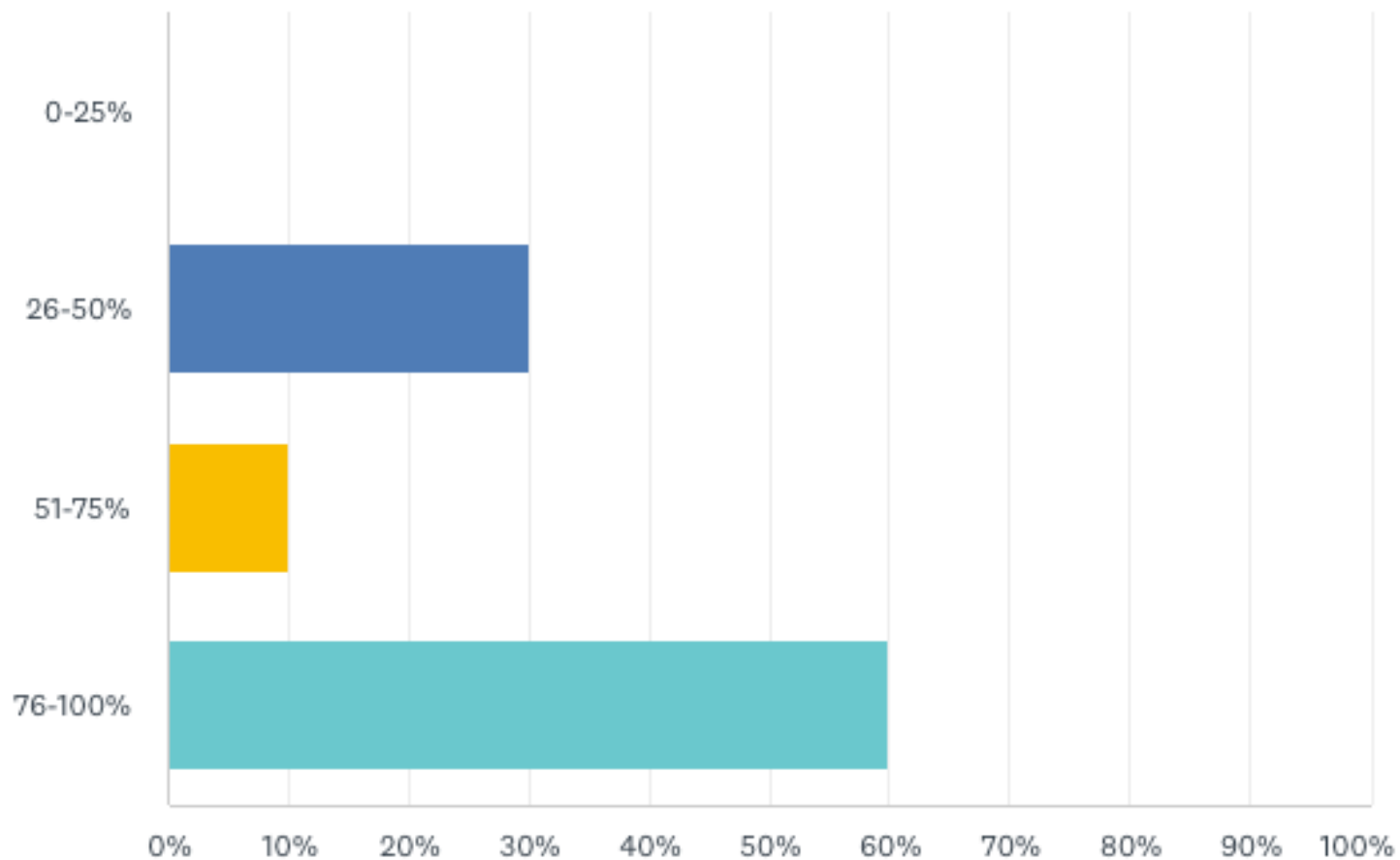


Q8



Within the next ten years?

Answered: 10 Skipped: 0

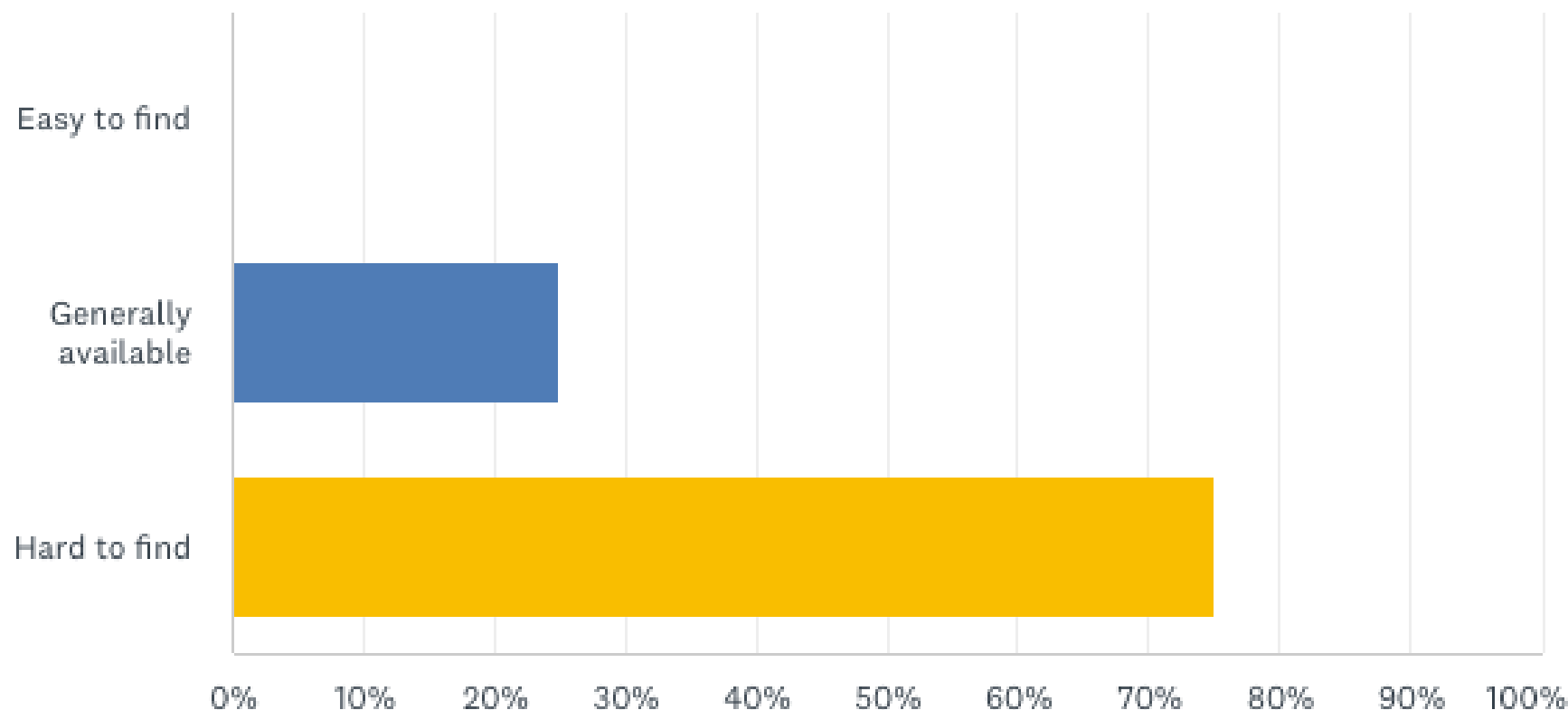


Q9



How would you describe the availability of contract court reporters?

Answered: 8 Skipped: 2

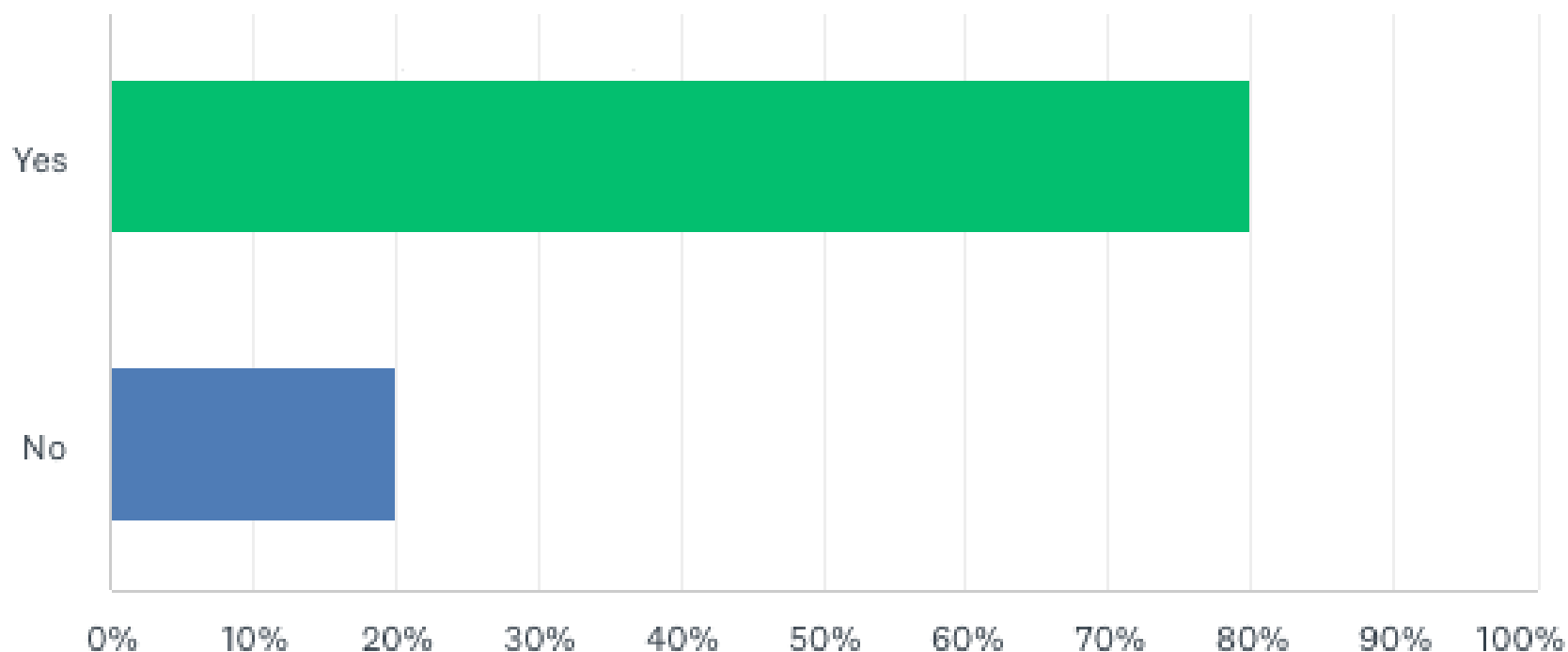


Q10



Do you utilize video conferencing for court reporter coverage?

Answered: 10 Skipped: 0

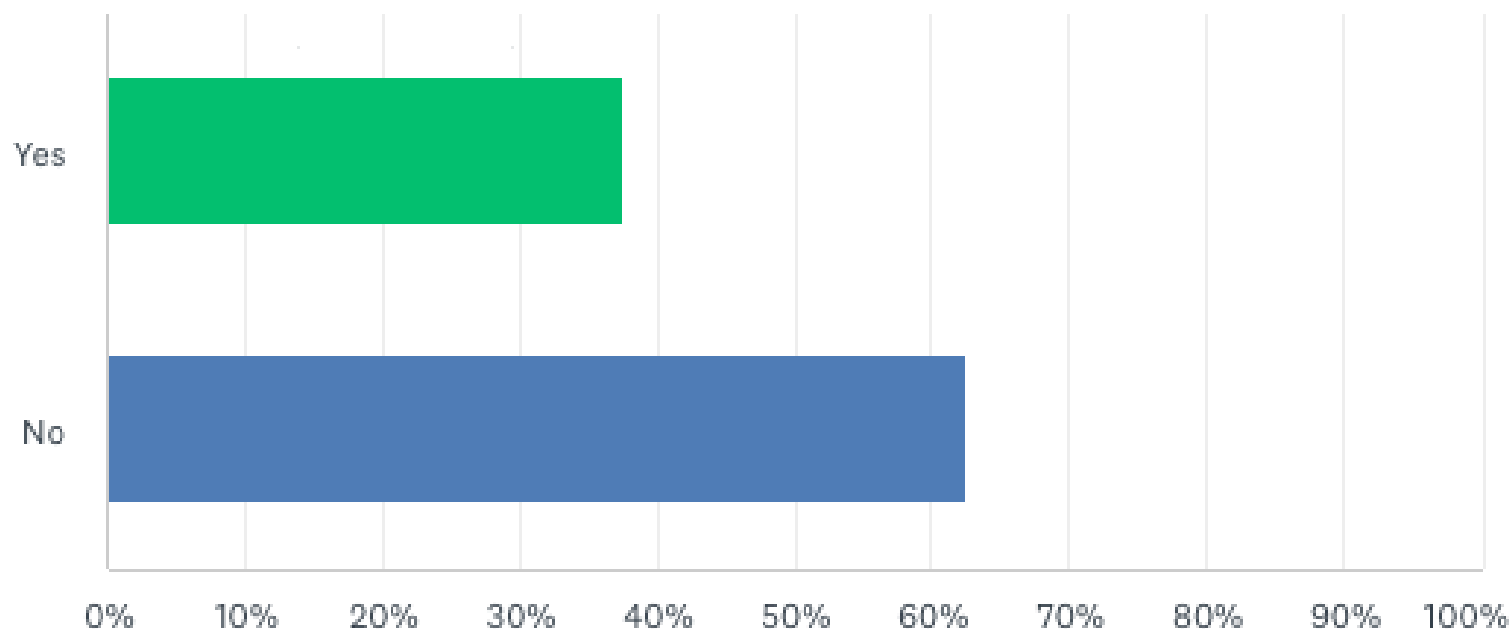


Q12



If you answered YES to question 10, do your court reporters appear by video from somewhere other than court facilities?

Answered: 8 Skipped: 2

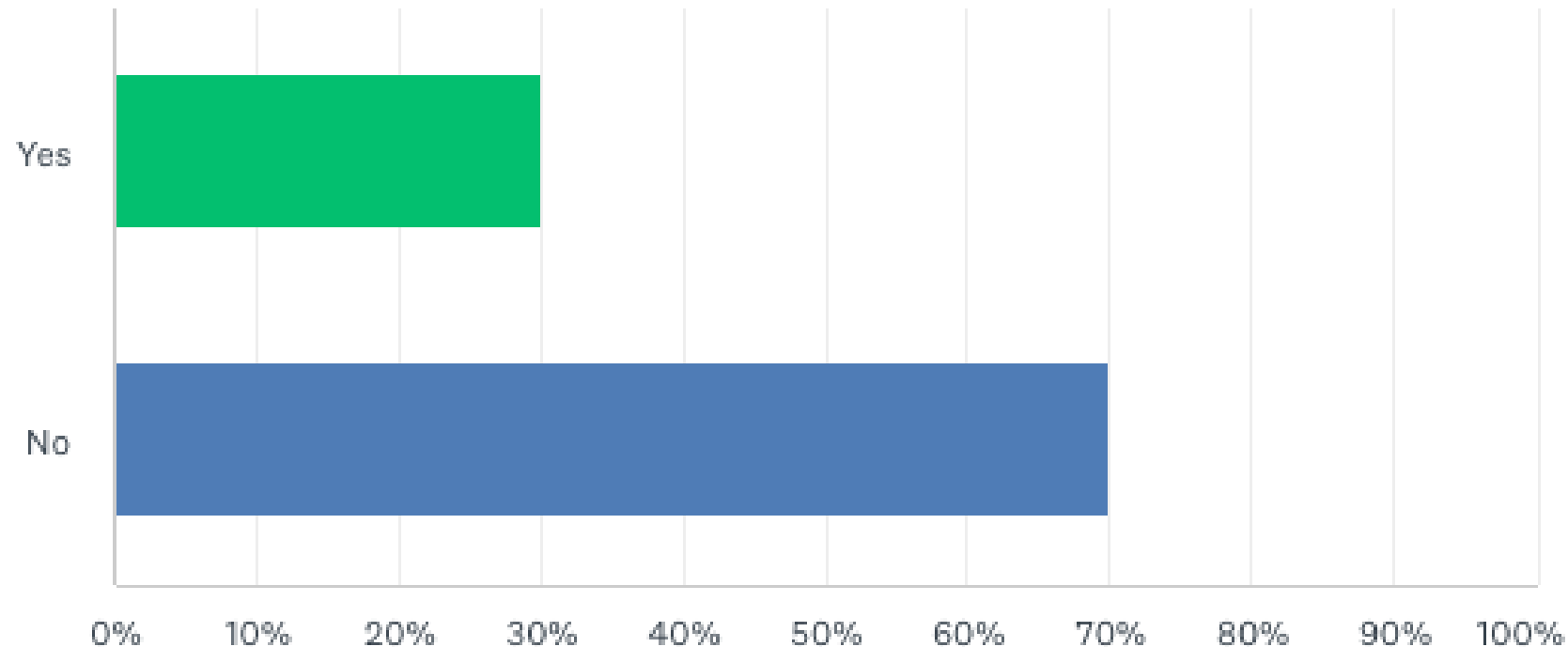


Q15



Do you utilize electronic sound recordings (ESRs) for District Judge hearings in lieu of a court reporter?

Answered: 10 Skipped: 0

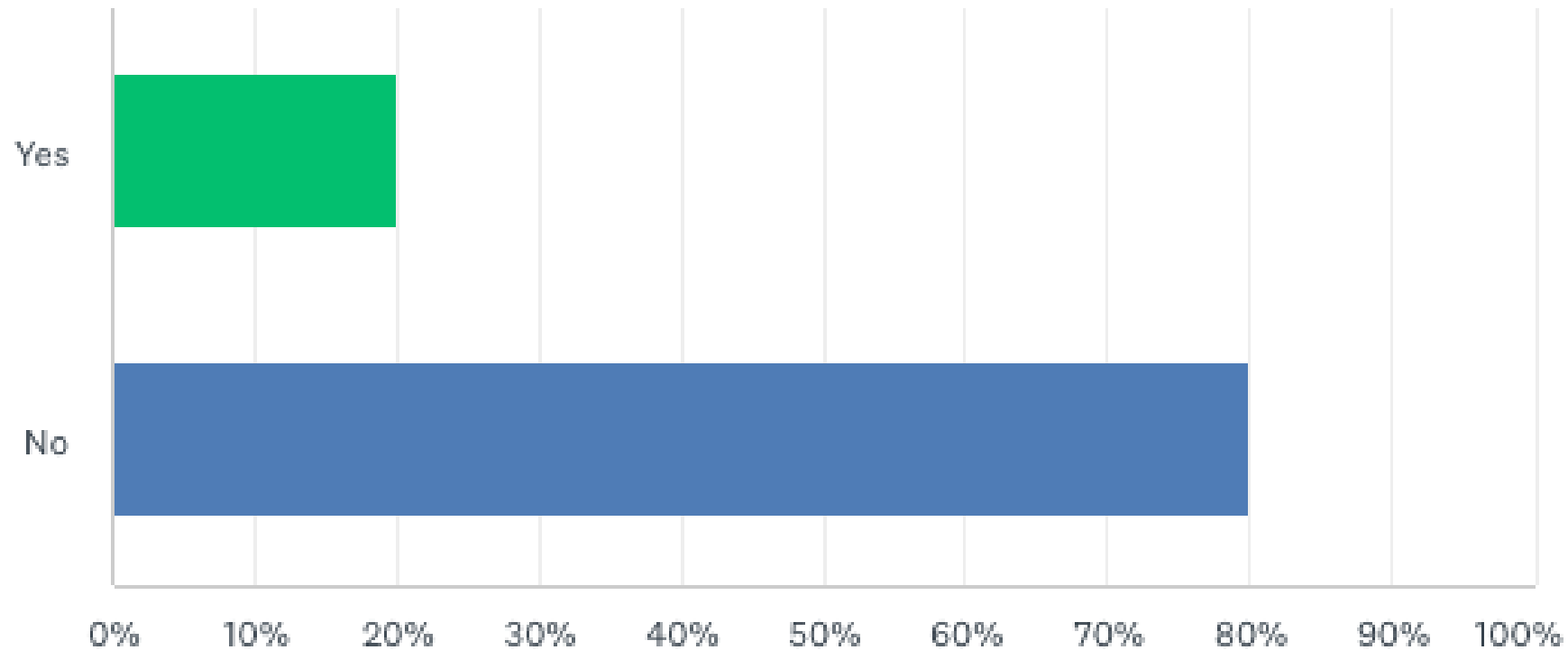


Q17



Do you provide electronic sound recordings to the public?

Answered: 10 Skipped: 0



Q18



On a scale of 1 to 5, (with 1 being unsatisfactory and 5 being very satisfactory) how would you rate the quality of your court's electronic sound recordings in terms of:

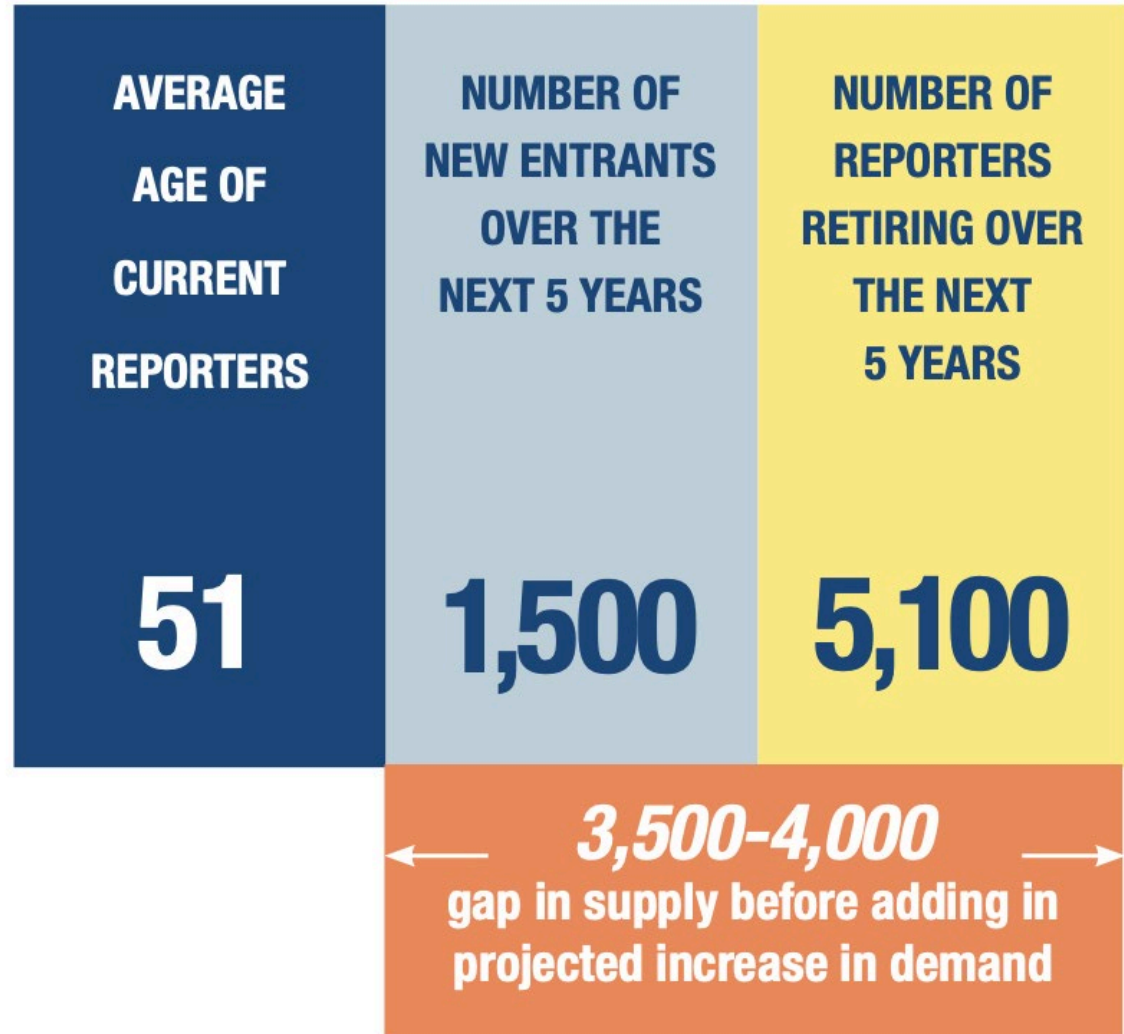
Answered: 8 Skipped: 2

	1	2	3	4	5	TOTAL
Operations in the courtroom	0.00% 0	0.00% 0	12.50% 1	50.00% 4	37.50% 3	8
Recording quality	0.00% 0	25.00% 2	0.00% 0	37.50% 3	37.50% 3	8
Recording retrieval	0.00% 0	0.00% 0	25.00% 2	50.00% 4	25.00% 2	8
Transcript production as needed	12.50% 1	0.00% 0	25.00% 2	25.00% 2	37.50% 3	8
Long-term records storage	0.00% 0	0.00% 0	12.50% 1	50.00% 4	37.50% 3	8
System maintenance	0.00% 0	0.00% 0	12.50% 1	62.50% 5	25.00% 2	8
Integration with other visual hearing systems, if any	0.00% 0	16.67% 1	33.33% 2	16.67% 1	33.33% 2	6

Recent Trends
and Best
Practices

Court Reporter Retirements

"Court Reporting Industry Outlook, 2013-2014," Drucker Worldwide, sponsored by NCRA.



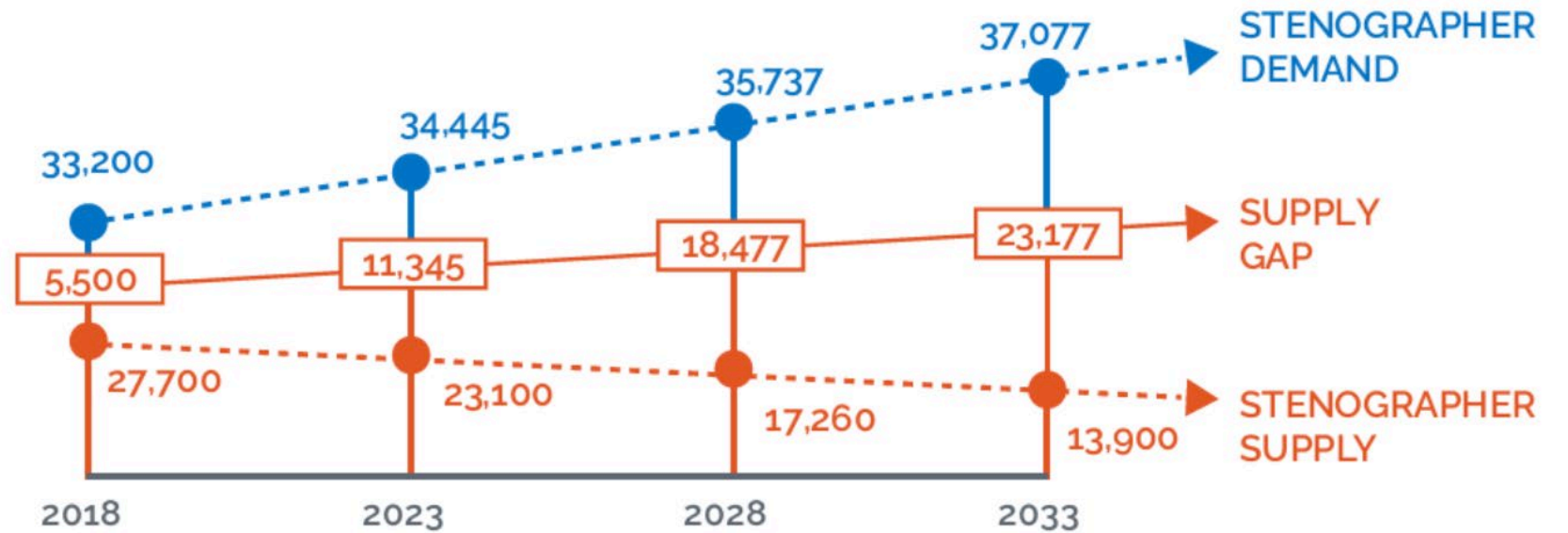
Projected Court Reporter Shortage

"Understanding the National Court Reporter Shortage," U.S. Legal Support, February 2021.



Court Reporter Demand

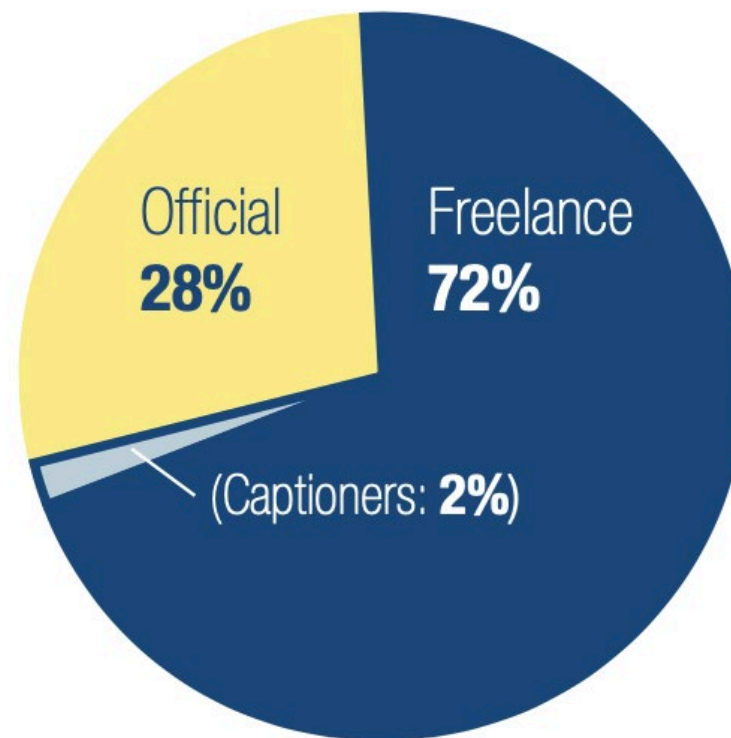
"Understanding the National Court Reporter Shortage," U.S. Legal Support, February 2021.



Free-lance vs. Official Reporters

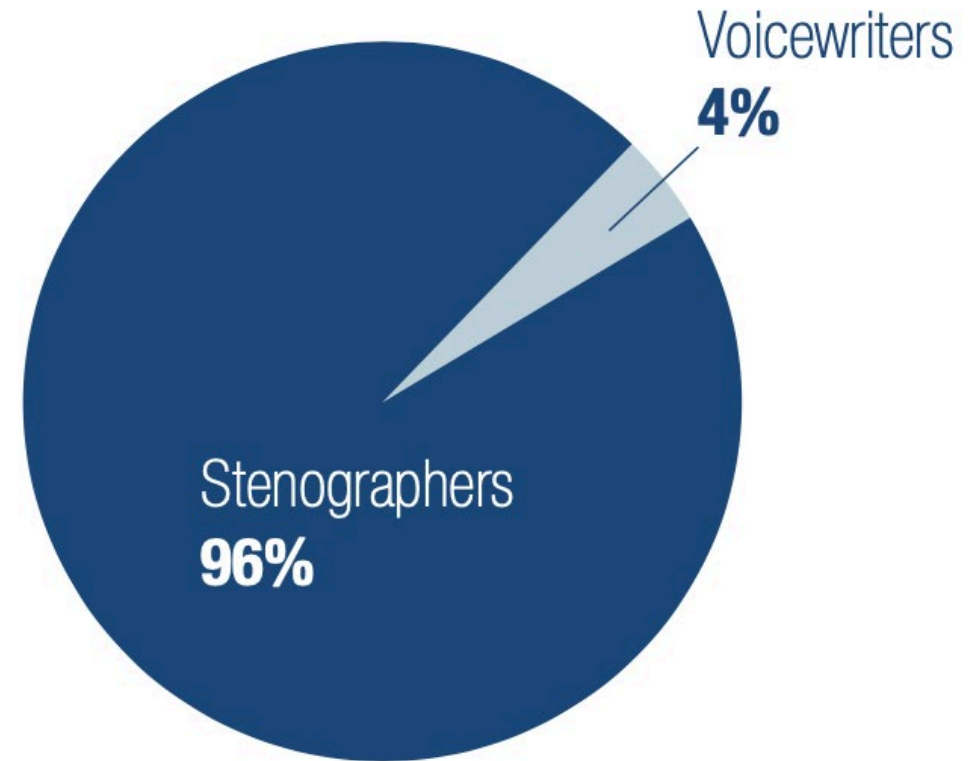
"Court Reporting Industry Outlook,
2013-2014," Drucker Worldwide,
sponsored by NCRA.

EXHIBIT 5 - 2013 estimated court reporter segmentation - freelance vs. official



Stenographers vs. Voicewriters

"Court Reporting Industry Outlook,
2013-2014," Drucker Worldwide,
sponsored by NCRA.





Making the Record Utilizing Digital Electronic Recording

September, 2013

Lee Suskin, Of Counsel, NCSC, Project Director
James McMillan, Principal Court Management Consultant

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Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202



Making the Record Utilizing Digital Electronic Recording (NCSC)

- Current usage of digital recording in GJ courts
- Governance, organization, and structure
- Procedures and best practices
- Transcription and delivery of the record
- Equipment and technology standards

Conference of
State Court
Administrators
Court
Administrators
(COSCA):

Determinations

- Digital Recording
 - Enhances accuracy and completeness of record
 - Cost-effective
 - Opportunity to establish that all judicial proceeding records belong to the court
 - Allows court to integrate recording system with other digital applications
 - Will require shift in courtroom staff responsibilities and judges' courtroom responsibilities



Current Use in General Jurisdiction Courts

A number of states have transitioned to digital recording:

- Alaska
- Colorado
- Connecticut
- Delaware
- Kentucky
- Maine
- Indiana
- Maryland
- Massachusetts
- New Hampshire
- New Jersey
- Oregon
- Pennsylvania
- Tennessee
- Vermont





Alaska State Courts

- Electronic recording of all proceedings since 1990's or earlier
- 142 courtrooms; all court levels
- 12 Grand jury court rooms
 - Clerk staff
 - Confidential and sealed records
 - Security: no on-line streaming
 - Centralized service for request of recordings and/or transcripts

Transcript Management in Utah

Web-based system provides online access to recorded hearings

Transcripts for cases on appeal completed within 22 days of request, a decrease from 138 days in 2009

Transcripts for cases not on appeal completed within 12 days

Electronic Recordings and Transcripts Available to the Public



The Judicial Branch of Arizona Maricopa County

DEPARTMENTS ▾

SERVICES ▾

RESOURCES ▾

LOCATIONS

ABOUT

I AM A ... ▾

Audio and Video Copies

Superior Court proceedings are preserved using digital audio/video recording. To order a copy of the digital recording please email Electronic Records Services at ERS@jbazmc.maricopa.gov or call 602-506-7100.

To obtain a copy of a hearing on the day it is conducted, you must first fill out a "Request for Daily Copy" form and pay the fee at the Court's Law Library Resource Center. Forms are available at the Law Library Resource Center.

Ordering Transcripts

To order transcripts of digitally recorded court proceedings call Electronic Records Services (602-506-7100) for instructions.

Emerging Technologies: Voice Recognition for Real-Time Transcription?



Vendor claims:

- Automated speech recognition
- Artificial intelligence (AI) model, akin to Alexa, Siri, Google Home
- Results “on par with traditional rough drafts”
- Specialized dictionaries of legal terminology, as used in medical sector
- Search capacity
- Integrations with other courtroom systems

Many open issues, including:

- Accuracy
- Identification of persons speaking



2019 - 2024

Justice for the Future

PLANNING FOR EXCELLENCE

GOAL 3

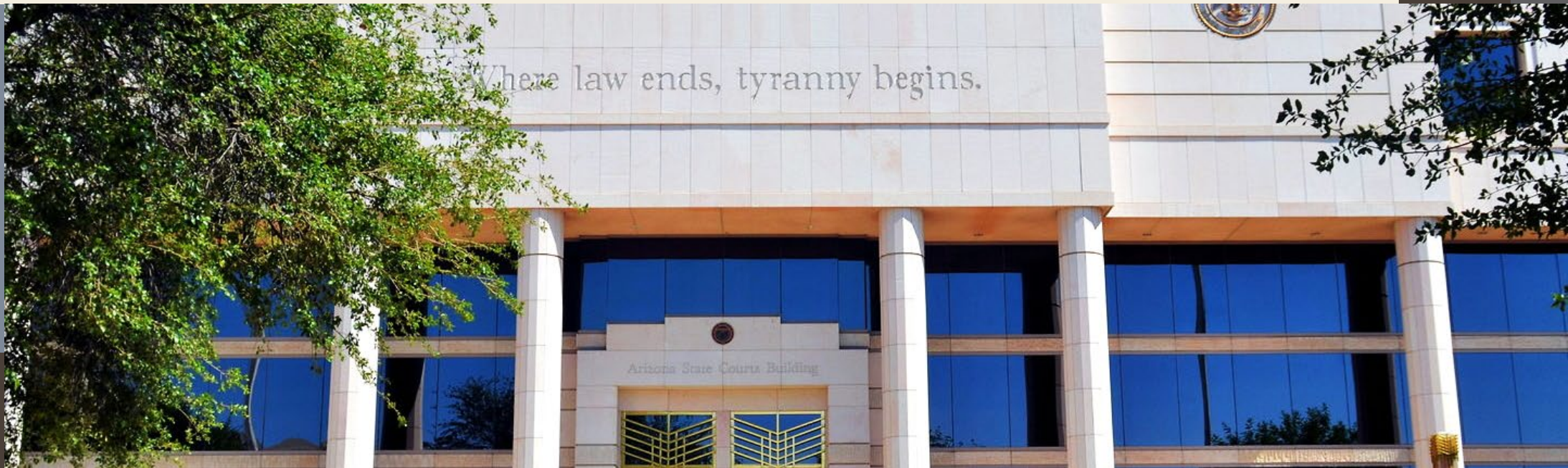
**Promoting Judicial Branch
Excellence and Innovation**

Arizona: Making the Record - A Strategic Initiative

Keeping the Record

With a growing shortage of qualified court reporters at both the state and national level, courts are faced with the ever-increasing challenge of keeping an accurate record of court proceedings. Through emerging innovations, including digital recording and remote court reporting, we will take necessary steps to ensure courts continue to create a complete and accurate record for each and every case.

- › Modernize statutes, rules, and the administrative code permitting courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to reduce the time needed to produce a record and transcript for cases on appeal.



Purpose. The Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.

Administrative Order 2019-49

Task Force Membership

Honorable Samuel A. Thumma, Chair

Judge, Arizona Court of Appeals, Division One

Honorable Pamela Gates

Superior Court of Arizona in
Maricopa

Mr. Rolf Eckel

Court Administrator
Superior Court of Arizona in
Yavapai County

Mr. Bob James

Deputy Court Administrator
Superior Court of Arizona in
Maricopa County

Ms. Sheila Polk

County Attorney
Yavapai County

Mr. Dean Brault

Director of Public Defense
Services Pima County

Mr. Ed Gilligan

Cochise County
County Administrator

Ms. Kate Roundy

President
Arizona Court Reporters
Association

Ms. Tracy Johnston

President Elect Arizona Court
Reporters Association

Jacob Jones

Attorney Snell & Wilmer, LLP



Work of Arizona Task Force

Reviewed and developed possible changes to relevant statutes, rules and portions of the ACJA

Reviewed information on current efforts to recruit and retain court reporters

Gathered information on best practices and what other jurisdictions are doing

Considered the issues from a national, court reporter and court management standpoint

Arizona Court Reporter Staffing Survey

Authorized Court Reporter Positions in Superior Court			
20-Jun-19			
County	Authorized Positions	Vacant Positions	Vacancy Duration
Apache	0	0	Eliminated Position
Cochise	6	4	5 years
Coconino	5	1	6 Months
Gila	2	0	N/A
Graham	0	0	Eliminated Position
Greenlee	0	0	No Reps Available
La Paz	0	0	Eliminated Position
Maricopa	49	4	Continuous
Mohave	6	1	1 Month
Navajo	4	2	10 Years
Pima	36	10	Continuous
Pima JV	6	2	N/A
Pinal	10	0	N/A
Santa Cruz	0	0	Eliminated Position
Yavapai	8	2.5	2 Months
Yuma	6	1	2 Months
Total	138	27.5	

Arizona Task Force Report & Recommendations

- Changes to Statutes, Rules and the Arizona Code of Judicial Administration
- Efforts to Attract, Retain and Further Enhance the Capacity of Court Reporters
- Suggested Best Practices When Electronic Recording is Used



Efforts to Attract, Retain and Further Enhance the Capacity of Court Reporters

- Encourage local community colleges to provide and expand court reporter programs.
- Courts and Certified Reporters are encouraged to work together to cover courtroom calendars via workforce exchange, remote reporting from a dedicated location, and utilizing the Request a Reporter program.
- Ensure that licensing reciprocity information is included in job announcements and advertising.
- Certified Reporters are encouraged to continue their community outreach and recruiting efforts.

Recommended Best Practices When Electronic Recording is Used


- Operation of a credible, reliable, and accurate electronic recording program requires adoption of governing policies, procedures, and a clear delineation of job responsibilities, both for court staff and transcription services.
 - Expand Arizona Supreme Court policy on Digital Recording of Court Proceedings in ACJA § 1-602.
 - Implement policies and procedures, including checklists, designated court staff to serve as courtroom monitors, training, certification of systems, and potential revocation of local court's discretion on ER.
 - Develop codes of conduct for providers.

Recommended Changes to Statutes, Rules and the Arizona Code of Judicial Administration

- A.R.S. § 21-411 (Grand Jury): PJ or designee may appoint CR or direct use of ER to record proceedings before GJ (except deliberations). Transcripts are still required.
- A.R.S. § 38-424 (Use of CR): Clarifies that the official record is established by Rule.
- Rule 30 (Use of Ct Reporting Services): JO may grant timely request for a CR. In the absence of a CR, the record will be made using an ER system as established by local rule. A party can bring its own CR, but the party pays and it is not the official record unless JO orders it. Also eliminates the list of mandatory proceedings for a CR to record the verbatim record.

**Legislative
Changes –
SB 1267:
Record of
Proceeding;
Electronic
Recording**

- Signed by the governor on May 7, 2021
- Amends ARS § 38-424 and allows courts to use electronic recording devices in lieu of a court reporter or stenographer, with exceptions
- Regular effective date, i.e., 90 days after *sine die*



SB 1267: Record of Proceeding; Electronic Recording - Exceptions

- Except as provided in title 21, chapter 4 (Grand Jury) and title 36, chapter 5 (Mental Health)
- On written request from either party at least five days before a trial or hearing, a court reporter or stenographer must be used if a court reporter or stenographer is available on the day of the trial or hearing and the matter:
 - Arises out of an indictment or information (unless the court finds a trial is required to start within the five days in order to comply with a victim's or defendant's right to a speedy trial); or
 - Is a trial or hearing held pursuant to title 36, chapter 37 (Sexually Violent Persons)

SB 1267: Record of Proceeding; Electronic Recording

- Either party may provide a court reporter or stenographer in addition to the electronic recording device used by the court
- The record prepared by the court reporter is the official record
- Bill also provides a provision for determining, upon the request of a party, whether a deficiency exists in the electronic record that may have prejudiced a party



Rule Petition

R-20-0013

- Proposed changes to comport with SB 1267
 - Removes “court reporter” from criminal rule 5.1 related to whose attendance must be secured for preliminary hearings
 - Amends criminal rule 5.2 to add electronic recording as means for capturing record of preliminary hearings
 - Amends supreme court rule 30 to mirror SB 1267
- Non-substantive changes
 - Changes “court reporter” to “certified reporter” throughout, and adds and defines “authorized transcriber” where appropriate

Discussion: Next Steps and Future Plans

- Strategic planning time frames: 3 - 5 years and beyond?
- Extent of court reporter shortages and strategies to maintain workforce
- ER system assessments and upgrades
 - Opportunities to leverage economies of scale?
- Staffing requirements for ER operations, records management and transcript production
- Need for new governing rules, policies and/or procedures?

For Further Information

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