Court Reporter Working Group
Report and Recommendations
June 29, 2022

I. Introduction and Objectives

In December 2019, the Administrative Director's Office formed the Court Reporter Working Group to address the Judiciary's court reporter shortage. The Working Group is charged with comprehensively describing the statewide landscape of court reporter staffing and defining the issues involved and the challenges presented with potential solutions. Critical to this report is to anticipate challenges in the coming years without making any change. The Working Group has worked collaboratively to offer potential options based on the Hawai'i experience, incorporating existing technology and seeing what other jurisdictions are doing to make workable solutions so that we may help improve circumstances for Hawaii's courts.

This report is based on a compilation of the Working Group's meeting notes, input reports and survey letter feedback from the stakeholders we are servicing. It includes an overall assessment of the issues, a study of the facts, a look at the expectations of our end-users, and an investigation on new trends in court services to assist committee members on best placed resources to continue to serve the courts and the public, now and into the future

Working Group members include Michelle Acosta, Deputy Chief Court Administrator, First Circuit (co-chair); Randy Pinal, Intermediate Court of Appeals Staff Attorney (co-chair); Honorable Shellie Park-Hoapili, District Court Judge, First Circuit; Calvin Ching, Deputy Chief Court Administrator, First Circuit (ret.);[1] Sandy Kozaki, Chief Court Administrator, Second Circuit; Lester Oshiro, Chief Court Administrator, Third Circuit (ret.);[2] Dawn West, Chief Court Administrator, Third Circuit; David Lam, Chief Court Administrator, Fifth Circuit; Mark Santoki, Court Operations Specialist, First Circuit;[3] and Melissa Noble Brown, Supervising Court Reporter, Second Circuit. Honorable Paula Nakayama, Associate Justice of the Hawaii Supreme Court, and Eric Tanigawa, Human Resources Director, provided additional guidance and assistance.

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[1] Calvin Ching retired from the Judiciary in 2021.
[2] Lester Oshiro resigned from the Working Group effective March 4, 2021.
[3] Mark Santoki served on the working group in 2021.

II. Hawaii's Current Landscape

A. Statewide Court Reporter Status (statutes, rules, staffing, contract court reporters, salary, benefits)

"The examination, certification and regulation of the practice of court reporting are matters that are integrally related to the effective, impartial and prompt operation of the judicial system of the State of Hawai'i." Rules Governing Court Reporting (RGCR) Rule 1. A court reporter preserves the spoken word and creates a written record of every word said during a legal proceeding. These formal transcripts are an invaluable tool for lawyers, judges, and the Judiciary.

Hawai'i court reporters are governed by HRS §§ 606-12 through 606-13.7 and the RGCR. Other relevant rules governing the work of court reporters are set forth in Hawai'i Rules of Appellate Procedure (HRAP) Rule 10 and Rules Expediting Child Protective Appeals (RECPA) Rule 7.

In Hawai'i, a court reporter must be certified by the Hawai'i Supreme Court through the Hawai'i Board of Certified Shorthand Reporters:

> No person shall engage in the verbatim reporting of trials or judicial proceedings in any of the courts of the State of Hawai'i, nor shall any person engage in the taking of oral depositions, for use in the courts of this state, unless such person shall possess a certificate as a Hawai'i certified shorthand reporter issued by the supreme court through the Hawai'i Board of Certified Shorthand Reporters.

RGCR Rule 2(a). To apply for certification, a prospective applicant must complete an "Application for Certification" (Form 1 of the RGCR). To qualify for certification, the applicant must meet the following minimum qualifications:

- Be of good moral character;
- Possess a certificate or diploma evidencing graduation from high school, GED certificate or equivalent;
- Demonstrate reasonable proficiency in making verbatim records of judicial or related proceedings by either (1) passing an examination for certification given by the board or (2) proving that the reporter earned the designation "Tested RPR" from the National Court Reporters' Association;
- Be in compliance with the Hawai'i Rules Governing Court Reporting; and
- Pay the appropriate application fee.

See RGCR Rule 9.1. A court reporter's certification must be renewed prior to its expiration if the court reporter desires to continue to engage in court reporting in the State. See RGCR Rule 9.1(e).

The Hawai‘i Certified Shorthand Reporter Examination is a nationally standardized exam comprised of the following: the National Court Reporters Association (NCRA) Written Knowledge Test covering English grammar, spelling, technology, and medical and legal terminologies; the NCRA RPR Skills Test comprised of fifteen minutes of dictation, five minutes each of literary material at 180 words per minute, jury charge material at 200 words per minute, and testimony material at 225 words per minute; and the Hawai‘i Written Knowledge Test covering regional terminology (e.g., Hawaiian history, geography, Hawaiian words, “pidgin” language). A passing score is an accuracy rate of 95 percent for the skills test and 70 percent for the written knowledge test.

Currently, there are **thirteen** Judiciary-employed court reporters filling eighteen authorized positions: The **First Circuit** has **eight court reporters** filling twelve authorized positions (four unfunded vacancies); the **Second Circuit** has **three court reporters** filling three authorized positions (zero vacancies); the **Third Circuit** has **one court reporter** in the Hilo section (none in the Kona/Kamuela section) filling three authorized positions (two vacancies); and the **Fifth Circuit** has **zero** authorized court reporter positions.[4] The Second Circuit also has a contract with an outside court reporter who bills at the statutory rate and primarily transcribes recorded proceedings. Second Circuit court reporters fulfill all transcript requests originating in the Fifth Circuit, mostly for transcripts on appeal.

Like most Judiciary employees, eligibility for retirement and benefits is based on years of service and age. Many court reporters are nearing or soon-to-be nearing retirement age. Six of the eight First Circuit court reporters are eligible for retirement. Of the six, two are scheduled to retire in June 2022, which would leave the First Circuit with six court reporters, two funded vacancies, and four unfunded vacancies. The remaining Third Circuit court reporter is eligible to retire at any time, which could leave the Third Circuit with no court reporters.

Court reporters are salaried Judiciary employees, with civil service status and benefits. The starting salary for a court reporter is about $56,000 (comparable to about $72,000 on the mainland, which is in the low range). There may not have been an increase to this starting salary since the 1990s. Court reporters often work more than eight hours a day and may have to work on weekends depending on the nature of the transcript request.

The salary ranges for Judiciary court reporters are as follows:

* <u>District Court</u>:

  Court Reporter I, SR 22

[4] By comparison, in 2008, the Judiciary had twenty-two court reporters filling twenty-six positions in the First Circuit (four vacancies), four court reporters filling six positions in the Second Circuit (two vacancies), eight court reporters filling eight positions in the Third Circuit (zero vacancies), and no authorized court reporter positions in the Fifth Circuit.

$4,358/month; $52,296/annual - $6,712/month; $80,544/annual

Supervising Court Reporter I, SR 24

$4,711/month; $56,532/annual - $7,263/month; $87,156/annual

* Circuit Court:

Court Reporter II, SR 25

$4,902/month; $58,824/annual - $7,550/month; $90,600 annual

Supervising Court Reporter II, SR 27

$5,301/month; $63,612/annual - $8,164/month; $97,968/annual

The above salary ranges do not include fringe benefits or income derived from preparing transcripts. Ordinarly, court reporters do not disclose the latter, which could cause a court reporter's annual income to exceed $100,000.

Nationally, the average annual salary for a court reporter is between $58,494-$64,990. Salaries appear to be fairly consistent state-to-state, with bigger variations often depending on the city worked and the nature of the job market. According to the United States Department of Labor's Bureau of Labor Statistics (compiled as of May 2021), the median annual wage for court reporters and simultaneous captioners was $60,380. The median wage is the wage at which half the workers in an occupation earned more than that amount and half earned less. The lowest 10 percent earned less than $34,340, and the highest 10 percent earned more than $103,270. The top paying (annual mean wage) states for court reporters and simultaneous captioners are: (1) New York ($100,270); (2) California ($83,720); (3) Texas ($81,460); (4) Iowa ($77,090); and (5) Colorado ($76,410).

In federal court, Hawai‘i court reporters hired on or after October 11, 2009, receive an annual salary between $84,364 to $97,018. The salary difference is based on classification level – advancement in levels require merit certification,[5] realtime certification,[6] or both.

Judiciary court reporters receive additional per page compensation for the transcripts they prepare. See HRS § 606-13 ("Each official court reporter may charge and collect fees for transcripts requested by the parties, including state courts, pursuant to rules promulgated by the supreme court through its rulemaking authority."). RGCR Rule 19 establishes the official transcript rate for Judiciary court reporters:

[5] Merit certification requires a registered merit reporter certificate from the NCRA.
[6] Realtime certification requires successful completion of a certified Realtime examination by the NCRA or an equivalent exam.

(a) Government Rates. An official court reporter may charge the following rates for the court reporter's service in preparing transcripts for which the State of Hawai'i or a political subdivision of the State of Hawai'i or the United States bears the responsibility of payment:

	Original per 25 line page	Copies produced by any medium per 25 line page
1. Daily transcripts	$5.25	$1.00
2. Expedited	$3.75	$1.00
3. Within 7 (seven) calendar days	$3.00	$1.00
4. Within 14 (fourteen) calendar days	$2.65	$1.00
5. Within 60 (sixty) calendar days of for appeal	$2.50	$1.00

If the total amount to be charged for a transcript, excluding copies, is less than $25.00, the official reporter may charge $25.00.

(b) Non-Government Rates. An official court reporter may charge the following rates for the court reporter's service in preparing transcripts for which a non-government entity or person is responsible for payment:

	Original per 25 line page	Copies produced by any medium per 25 line page
1. Daily transcripts	$7.00	$1.50
2. Expedited	$5.00	$1.50
3. Within 7 (seven) calendar days	$4.00	$1.50
4. Within 14 (fourteen) calendar days	$3.50	$1.50
5. Within 60 (sixty) calendar days of for appeal	$3.25	$1.50

If the total amount to be charged for a transcript, excluding copies, is less than $25.00, the official reporter may charge $25.00.

(c) Definitions. For purposes of this Rule 19,

(1) "daily" means any transcript prepared before the commencement of proceeding the following court day;

(2) "expedited" means any transcript to be delivered within 3 (three) calendar days from the date the written request is filed in the Office of the Clerk;

(3) "within 7 (seven) calendar days" means any transcript to be delivered within 7 (seven) calendar days from the date the written request is filed in the Office of the Clerk;
(4) "within 14 (fourteen) calendar days" means any transcript to be delivered within 14 (fourteen) calendar days from the date the written request is filed in the Office of the Clerk;
(5) "within 60 (sixty) calendar days" means any transcript to be delivered within 60 (sixty) calendar days from the date the written request is filed in the Office of the Clerk.

(d) Payment. Parties must pay for all transcripts ordered. A court may order such payment from a party or the party's attorney.

(e) Sanctions. Any judge or justice may, after order to show cause and failure to show good cause, sanction any reporter for the reporter's failure to timely complete transcripts and for violations of court rules or orders. Sanctions may include, but are not limited to, monetary sanctions.

Court reporters do not receive a different compensation or charge a different rate for transcribing a live court proceeding as opposed to a recorded court proceeding; although preparing a transcript of a recorded proceeding reportedly takes twice as long. Judiciary court reporters also spend time to comply with the rules regarding personal and confidential information by redacting as required. Court reporters are required to provide, at their own expense, all supplies directly related to the preparation of the transcripts. See HRS § 606-13(c).

Often, Judiciary court reporters provide a courtesy copy of the prepared transcript to the trial judge and real-time transcription for the judge and court staff. This allows the judge and court staff to verify the accuracy of certain statements or rulings, particularly when parties prepare orders for the court's approval.

The Judiciary does not bear the per page cost of the transcript, except in cases where there is court-appointed counsel. The attorneys or requesting party pay the court reporter directly for the transcript based on the set rate. It appears that the only cost to the Judiciary is a result of the court reporter's status as an employee -- payment of salary and benefits.

The Judiciary is able to contract with freelance court reporters as an overflow when existing Judiciary court reporters are unable to meet the demand for written transcripts. For contract court reporters, the Judiciary enters into an "Agreement for Services Contract for Goods and Services (Exempt)" with the court reporter. The contract sets forth, among other things, the time period for the contracted services, compensation, and standards of conduct, and is governed by the "General Conditions Governing Agreements with the Judiciary, State of Hawai‘i, for Goods and Services." The general conditions address the "contractor's" responsibilities for taxes and employee-related insurance coverage. Id. at § 2 ("Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities").

Any perceived attempt to privatize public services must be consistent with existing case law. See Salera v. Caldwell, 137 Hawaii 409, 375 P.3d 118 (2016); Konno v. County of Hawaii, 85 Hawaii 61, 937 P.2d 397 (1997). Court Reporter Services is an approved exemption pursuant to HAR § 3-120-4, Exhibit A #16. The Procurement Policy Board[7] has determined such services to be exempt under HRS chapter 103D "because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State." HAR § 3-120-4(b). Judiciary staff in various departments, e.g., Human Resources and Administrative Director's Office, review all contracts to ensure compliance with procurement and labor laws.

On January 8, 2021, the Judiciary posted a Request for Qualifications (RFQ J22001) to contractors of transcription services for fiscal year 2022. There were no respondents. On February 2, 2022, a Request for Qualifications (RFQ J23002) was posted for contractors of transcription services for fiscal year 2023. At present, only the Second Circuit maintains a contract with a freelance court reporter. However, this was a pre-existing contract that was renewed outside of the RFQ process. Second Circuit received an inquiry in response to RFQ J22001, however, the contractor could not comply with the prevailing Rules Governing Court Reporters because she is not certified by the Hawai‘i Supreme Court through the Hawai‘i Board of Certified Shorthand Reporters. The pay rate established by RGCR Rule 19 is less than what private court reporters typically earn, which could present a barrier to the Judiciary entering into contracts with freelance court reporters or court reporting agencies, although the Working Group is aware of at least one local transcriptionist company that charges the state rate. Third Circuit received comments that the one million dollar insurance limit was a barrier. In the First Circuit, freelance court reporters were not aware of the RFQ.

The process for assigning transcript requests for digital recordings is as follows: The request is offered to Judiciary court reporters first. If they are unable to provide the transcript, then it is offered to a contracted court reporter. If the contracted court reporter is unable to provide the transcript, then it is offered to an outside court reporting agency, such as Island Court Reporters; however, Island Court Reporters is only offered transcript requests that private counsel will pay for, which necessarily excludes criminal cases with court appointed counsel.

For in-person stenography in the First and Second Circuits, Judiciary court reporters are used exclusively, although at one time the Second Circuit also utilized a licensed court reporter on a per diem basis. Currently, there are no in-person Judiciary court reporters in the Third and Fifth Circuits.

[7] The Procurement Policy Board operates within the State Procurement Office in the Department of Accounting and General Services.

Summary of applicable statutes and court rules: HRS §§ 606-12 through 606-13.7; RGCR; HRAP Rule 10(b); RECPA Rule 7; HRPP Rule 55; HRCP Rule 80; RCCH Rules 25 & 25.1; HFCR Rule 80; HFCR Rules 43.1 & 80; RDCH Rules 25 & 25.1; DCRCP Rule 80; HCRR Rule 4(d); RSCH Rule 2.7(c); RTAC Rules 13 & 16.

B. Technology

1. Generally available

Generally, there are three major methods for transcription: stenography, digital recording, and voice writing, with variants allowing for computer-aided transcription and real-time transcription.

In **stenography**, court reporters in the courtroom use a stenographic keyboard or steno machine to capture the record by writing every word in phonetic shorthand.

In **digital recording**, proceedings are electronically recorded using digital audio or digital audio/video equipment. A court reporter or transcriber, or a contract court reporter, reviews the recording outside the courtroom and generates a written record of the recording. The Judiciary utilizes a combination of Justice Audio Visual Solutions (JAVS) and For The Record (FTR) digital recording equipment. FTR records in a proprietary format but JAVS records in the common MP4 format. Thus, FTR equipment allows the user to transcribe both FTR- and JAVS-recorded proceedings, whereas JAVS equipment does not allow the user to transcribe FTR-recorded proceedings.

In **voice writing**, court reporters wear a voice-silencing mask containing a microphone. They then repeat everything spoken during a legal proceeding into the microphone. Using computer speech recognition technology, it is possible for voice writing to provide real-time court reporting. The official written transcript is prepared afterward, either manually or with speech recognition software. The Working Group did not obtain pricing for voice writing equipment.

Computer-aided transcription (CAT) software is extremely sophisticated, expensive, and requires separate training for a court reporter to become comfortable with and proficient in all its functions and capabilities. CAT software is run on a laptop connected to a steno machine, either wirelessly or through USB, and it translates the steno machine keystrokes into readable, transcript-formatted text in real time, with specific spacing, line numbers, timestamping, margins, and automatic punctuation at the ends of questions and answers. There is virtually no delay in the time someone speaks and when the written words appear on the screen, although the transcription is raw and usually must be edited later. Regardless, CAT software assists the court

reporters to prepare transcripts quickly. Currently, the First and Second Circuit court reporters purchase their own CAT software and are trained to use CAT, and the respective divisions are enabled to support the use of CAT.

Last, **real-time transcription** utilizes sophisticated software, popularly known as voice recognition software, to immediately convert spoken word to text, without the aid of the mask utilized in voice writing, or the steno machine utilized in computer-aided transcription. While the technology is advancing rapidly, Working Group members reported it is not yet ready for courtroom use, where accuracy is paramount, and the group was unable to find a court that was utilizing this technology.

2. Currently used in each circuit and court

a. First Circuit

District Court Honolulu has twenty courtrooms equipped with FTR digital audio recorders, and one courtroom equipped with a FTR digital audio/video recording system.

Circuit Court Honolulu has eighteen courtrooms equipped with FTR digital audio recorders, two courtrooms equipped with FTR digital audio/ video.

The grand jury room is covered by a live court reporter, although the room has digital audio recording capabilities.

Family Court Kapolei has twelve courtrooms equipped with JAVS digital audio/video and one district court courtroom equipped with JAVS digital audio/video.

b. Second Circuit

Hoapili Hale has four circuit court courtrooms, two district court courtrooms, and two family court courtrooms, each equipped with JAVS digital audio/video. Lahaina District Court and Molokai District Court are equipped with JAVS digital audio/video, and Lanai District Court is equipped with JAVS digital audio. Hana District Court is equipped with a digital handheld recorder.

c. Third Circuit

Hilo has eight courtrooms and one grand jury room equipped with JAVS digital audio/video. Kona has seven rooms, including courtrooms, the grand jury room, and a hearing

room equipped with JAVS digital audio/video. South Kohala has one Family/District Court courtroom equipped with JAVS digital audio/video.

d. Fifth Circuit

The Fifth Circuit has six courtrooms equipped with JAVS digital audio/video.

In summary, First Circuit is primarily equipped with digital audio recorders (twenty-one courtrooms, one grand jury room), and sixteen courtrooms have digital audio/video recording capabilities. In the Second, Third, and Fifth Circuits, the courtrooms are equipped exclusively with JAVS digital audio/video.

e. Appellate Courts

The appellate courts utilize FTR audio/video. During the pandemic, the appellate courts used the recording feature of the appropriate web conferencing platform (Zoom or WebEx) utilized for remote oral argument at the time. Beginning, January 1, 2022, the appellate courts resumed in-person oral argument. Ordinarily, the appellate courts do not provide transcripts. Instead, litigants and the public may obtain digital copies of the recorded audio or audio/video proceedings, or review the recordings on the Judiciary's website or YouTube channel.

f. Federal District Court, Hawaii

By comparison, the four federal district court judges in Hawaii are each assigned a court reporter, and the three magistrate judges utilize FTR digital audio recording equipment. The court reporters prepare transcripts for appeal.

III. Challenges

A. Stakeholder Feedback

One of the Working Group's central objectives is understanding the stakeholders' experiences and expectations. In February 2020, the Working Group contacted several court transcription stakeholders, seeking their input to ensure that future planning considered any issues and concerns experienced by these users and to contribute to the Judiciary successfully providing critical transcript services. Below is a list of each group that responded to the survey letter; not all letter recipients responded. The response from the "Judges" group was from a separate survey that we included in this report as it is relevant to the Working Group's objective and provides compelling detail about at least a few of the judges' experience and expectation.

1. First Circuit Court Judges' comments

- Not at all comfortable with the idea of transitioning to an FTR courtroom.
- Very familiar with FTR but recordings are inferior to court reporter transcripts.
- The better solution might be to hire per diem court reporters as independent contractors to save on labor and benefit costs. This might also be a technique for attracting future full-time court reporters to the Judiciary.
- The court reporters are an extension of the court's eyes and ears.
- Human court reporters can informally read past utterances back to us to assist the court and the parties in recounting what was stated on the record.
- Sometimes a court reporter will whisper some advice to the court (such as telling us a witness was not placed under oath).
- Sometimes a court reporter will provide nonverbal signals to the court and staff (such as a frown or a quizzical look to suggest that something untoward occurred with the witness's testimony).
- Some court reporters inform the judge and staff of significant or improper occurrences during a recess when the judge and all other court staff were not present in the courtroom, but the court reporter was.
- Would be willing to migrate to a digital recording platform without a reporter present.

2. Legal Aid Society of Hawaii (LASH)

- Cost of the transcript is prohibitive to their clients who qualify for filing fee waivers.
- If this population is not represented, the cost can be a complete bar to access the courts.
- If this population is represented, cost falls on LASH and affects their advocacy.
- Timeliness of obtaining transcripts; need faster turnaround.

3. Intermediate Court of Appeals (ICA)

- With a readable PDF stored in JIMS, an unlimited number of people can access the transcript at the same time from any computer or device in any location with JIMS or qualified JEFS access.

- Digitized transcripts allow for better formatting capabilities, expediting review and disposition.

- ICA would consider any proposal to improve processes, but any proposal that slows the court's review and analysis, and requires ICA staff to transcribe oral proceedings would not be well-received.

- It would be difficult to access a verbatim audio record in a timely manner so as to allow the court to quickly understand the context of the oral proceeding and determine the accuracy of a party's representation concerning words spoken during a proceeding.

- ICA expects requests for transcripts and transcripts to be timely filed. Untimely requests for transcripts and numerous transcript extension requests need to be addressed.

4. Volunteer Legal Services Hawaii (VLSH)

- Biggest obstacle is transcription fees; understanding deposits.

5. Department of the Attorney General

- Difficulty accessing the court record.

- Inability to access court reporter notes after retirement.

- Experience with court records destroyed prematurely.

- Requesting that the Judiciary reexamine their record retention schedule and direct all court reporters to retain their stenographic notes until final judgment is entered and the time to appeal has elapsed.

6. Court Reporters

- Require all digital recordings be transcribed by a licensed court reporter, whether a Judiciary-employed court reporter or a contracted court reporter, under the supervising court reporter's supervision.

- Need to attract and retain official court reporters and establish contracts with licensed court reporters for overflow transcription work to be delegated, as needed, by the supervising court reporter.

- Audio/video recordings without a transcript is impractical for appellate review.

- Licensed court reporters are trained to redact and properly designate personal information contained within accessible transcripts, consistent with HCRR Rule 9.

- If a digital recording is outsourced to a transcriptionist, then sensitive information will be exposed to outside and unlicensed transcriptionists and potentially transcribed into an accessible transcript with no accountability, risking exposure of confidential information, such as grand jury materials and grand jurors' names, whereas Judiciary-employed court reporters are trained to handle confidential materials and maintain confidentiality under their licensing requirements.

- Hawaii is the only state with two official languages, and it has a strong cultural identity. Licensed Hawaii court reporters are tested in Hawaiian history and language as part of their licensing requirement, which enables them to accurately transcribe the Hawaiian language and common pidgin phrases that are unfamiliar outside our local culture. This skill is essential to transcription accuracy.

- In-person court reporting is faster, more efficient, and produces a more accurate record than digital recordings.[8] A court reporter averages twenty pages per hour for in-court transcriptions. When transcribing digital recordings, a court reporter transcribes the audio recording on the steno machine, converts the shorthand to a readable transcript, then certifies the transcript by proofreading and reviewing for errors. The process takes twice as long and the results are not as accurate, resulting in delays and increased costs. Also, digital recordings lead to garbled testimony and equipment failures. Without human judgment, digital recordings are unable to detect the nuances of human language, particularly Hawaiian and pidgin, with 100 percent accuracy.

[8] It may be helpful to poll trial and appellate judges to confirm this point.

- The antiquated court reporter staffing rubric is based upon fully-staffed court reporter offices and does not consider the advent of digital recordings. Currently, many court reporters are staffing calendars that result in less than two percent of transcripts requested. For example, regular criminal calendars last two to three hours and result in few transcript requests, usually for transcripts on appeal involving short hearings. It would be more efficient for a court reporter to transcribe from a digital recording the small number of transcripts requested for short hearings rather than have the court reporter sit in the entire two- to three-hour calendar. It would free up time for court reporters to clear the backlog of requests for transcripts of digital recordings. Considering these inefficiencies and staffing constraints, supervising court reporters should be allowed to strategically place court reporters in courtrooms where proceedings are being held that are most likely to result in transcript requests, e.g., (1) civil and criminal trials, (2) criminal evidentiary motions, and (3) civil motions calendars, in that order, otherwise the antiquated rubric will continue to increase the backlog and ultimately is unsustainable.

7. Court Administrators

- All vacant court reporter positions are under open recruitment, however, the circuits have been largely unsuccessful in finding court reporters, and with the Legislature monitoring vacancies, court administrators are pressured to re-describe the vacancies to other needed positions. This partly explains the declining number of court reporters over the years.

8. Others

The Judiciary may consider a broaders consultation process to include input from the Hawaii State Bar Association generally, or, more specifically, the Litigation, Appellate, and Government Lawyers sections.

B. National Trends

Nationally, the number of people graduating from court reporting programs dropped sixty-one percent from 1996 to 2006. Three years ago, 17,700 people worked as court reporters in the U.S., according to the Bureau of Labor Statistics. As of May 2018, that number was around 14,500, a decline of about eighteen percent. “There is a severe shortage and it's rough,” said Nancy Varallo, who owns a Massachusetts-based court reporting firm.

Courts throughout the nation have been adjusting to the decline of court reporters by leveraging digital recording and voice recognition technology. Some jurisdictions have opted to rely on digital recording out of necessity and based on fiscal considerations. While there are

efficiencies gained through the use of technology, some jurisdictions have found that real-time transcription remains the gold standard.

The following states and territories have made the transition to digital recording in their courts including Alaska, Colorado, Connecticut, Delaware, Kentucky, Maine, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, Oregon, Tennessee, Vermont, Guam, Northern Mariana Islands and Puerto Rico.

According to the DOJ Bureau of Justice Statistics, in comparing Hawai'i to other states with similar population numbers, it is evident from their 2017 comparison charts below that the number of courts using digital recording technology and transitioning to digital audio and video recording only continues to increase:

Making the Trial Record

State	Court Name	Who prepares the record?	Methods Used to Create the Verbatim Record	Who owns the record?	Who retains the record?
Hawai'i	Circuit	Court reporter	Steno type, with CAT or real-time technology | Steno type, without CAT or real-time technology | Audio recording, digital | Video r...	Court	Court
Hawai'i	District	Staff	Audio recording, digital | Video recording, digital	Court	Court

Making the Trial Record

State	Court Name	Who prepares the record?	Methods Used to Create the Verbatim Record	Who owns the record?	Who retains the record?
Vermont	Superior	Staff	Voicewriting, with CAT or real-time technology | Audio recording, digital	Court	Court

Making the Trial Record					
State	Court Name	Who prepares the record?	Methods Used to Create the Verbatim Record	Who owns the record?	Who retains the record?
Maryland	Circuit	Staff	Audio recording, digital	Court	Court
Maryland	District	Staff	Audio recording, digital	Court	Court
Maryland	Orphans	Staff	Attend court proceedings and make full and fair entries. Prepare photographic record of wills and papers filed.	Court	Court

Making the Trial Record					
State	Court Name	Who prepares the record?	Methods Used to Create the Verbatim Record	Who owns the record?	Who retains the record?
New Jersey	Municipal	Staff	Audio recording, digital | Audio recording, analog	Court	Court
New Jersey	Superior	Staff	Steno type, with CAT or real-time technology | Steno type, without CAT or real-time technology | Audio recording, digital | Video r...	Court	Court
New Jersey	Tax	Staff	Audio recording, analog	Court	Court

Making the Trial Record

State	Court Name	Who prepares the record?	Methods Used to Create the Verbatim Record	Who owns the record?	Who retains the record?
Massachusetts	Boston Municipal Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	District Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	Housing Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	Juvenile Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	Land Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	Probate & Family Court Dept	Contractor	Audio recording, digital	Court	Court
Massachusetts	Superior Court Dept	Court reporter | Contractor	Steno type, with CAT or real-time technology | Steno type, without CAT or real-time technology | Voicewriting, with CAT or real-ti...	Reporter | Court	Reporter | Court

Some courts moved to digital recording as a cost saving measure. In **California,** the state Legislative Analyst's Office recommended in 2011-2012 that state courts could save $113 million if every court used electronic court reporting. San Francisco Superior Court installed audio recording equipment to replace court reporters in misdemeanor and traffic trials in 2012 and expected to save $1.5 million in salary savings following the layoffs of 29 court reports. San Diego County eliminated court reporters for civil and family court cases.

In addition to cost, some courts moved away from human stenographers to maintain ownership of the court record. In **Kentucky** previously, "If the stenographer didn't show up, you couldn't have court." Thus, over time, Kentucky expanded their video recording systems to every court in the state, making it the only state to completely abandon stenography. Kentucky's progressive approach to the courtroom record ensured that no court reporters lost their jobs and allowed current staff to retire or move on before full adoption of the digital recording system as the official record to solve the court reporter shortage.

Other states have followed Kentucky's lead in the use of audio/video technology in the courtrooms. Some states use it to supplement court reporters in their transcription duties, while

others have audio/video systems that record courtroom events in the absence of a court reporter to store the files digitally until a transcription is needed, or a court reporter is available to transcribe from the recording.

Following in Kentucky's footsteps, three courts in **Indiana** participated in a year long pilot project to make audio recordings the official court record as they want to shorten the time it takes to get a transcript for appeal, down from ninety days to nearly no time at all, since the tape recording of the trial is the official record and no transcription is needed. Indiana notes that this effort is not to put court reporters out of work but since courts are on a tight budget, they're getting more work with no additional staff. They note that even if a court reporter never typed another transcript, they would have plenty of work to do. Less than a month into the pilot, an unexpected result is that an attorney used some of the audio from parts of a trial and played it back to the jury as part of his closing arguments.

In 2006, faced with too many trials and too few court reporters, **Minnesota** Hennepin County officials created a centralized court-reporting center, with live closed-circuit video and audio feeds from each courtroom that can be monitored from a central location. Both stenographers and digital system operations concede that digital recording system is better for the average misdemeanor or civil suit while stenography is best for high-profile or contentious litigation that merits a real-time transcript so the proceedings can be read back on demand. According to Hennepin County officials, nobody was laid off and no positions were eliminated. Although the element of cost savings was in the discussion, it really started because they didn't have enough people to fill those jobs.

Oklahoma's Supreme Court Chief Justice has implemented the Preserving the Record Task Force to address some of these issues – practical solutions to improve the court reporter shortage. Some vacancies have been alleviated by contracting with retired court reporters to provide services a few days a month. Supreme Court rules have been modified to allow temporary court reporters to practice and develop skills for passing the exam and to allow candidates to take the three exam parts separately and retain credit for each successful section. In addition, a new district court rule has opened the door for using video remote technology in district court proceedings and permitting the judge to use a live court reporter via videoconference when one is not available locally.

The task force has also encouraged the development of additional training programs for court reporter candidates in Oklahoma. There are now four schools in Oklahoma teaching court reporting theory and speed building and an additional program in the beginning phases of development. Tulsa Community College instituted a part-time program in January 2018 instructed by their president-elect of the OCRA. Another similar program was instituted a year later at Tulsa Community College's northeast campus by the OCRA treasurer and past president. In addition, a new program launched in January 2018 at Gordon Cooper Technology Center in

Shawnee began. A part-time online program also started in February 2018 at the Kiamichi Technology Center in McAlester.

Finally, after more than ten years without a change, the statute which sets official court reporters' salary cap was eliminated and allowed court reporters to receive a salary to be set pursuant to the budgeting process. The governor signed the state budget on April 8, 2019, and court reporters received the $2,000 state employee (that other state employees' received) salary increase.

According to a study by NCSC, fourteen states use audio or video recorders in lieu of court reporters. Most states cited cost as the reason for the shift to digital. In 2009, **Iowa** conducted a sample study of a dozen courts across five states and found that digitally recorded trials would save Iowa courts over $10 million each year in CR salaries. In 2009, **Utah** did away with court reporters and the state saved $1.3 million a year.

Iowa's 2009 study reviewed using technology that could transcribe in real time, speech to text dictation, but concluded that the technology was "not sufficiently advanced." Since then, speech to text software (like Siri or Alexa) has dramatically improved. However, technology still is not accurate enough, especially when dealing with dialects and accents.

The article noted that, "The moment you go from humans talking to computers to humans talking to humans, things get much harder."

The key question is not whether technology can outperform court reporters, but what will result in the fairest trial for defendants. When it comes to real-time disputes about what was said, having a court reporter to read back notes is critical. In complex cases with multiple defendants, getting a daily transcript is crucial for keeping track of each defendant's testimony, cross-examining witnesses or for planning closing arguments.

Whether audio tapes have improved court records is debatable as one defense attorney has seen transcripts made from audio recordings with chunks missing because something was inaudible or garbled. Thus, incoherent and incomplete transcripts make it harder to craft appeals, resulting in a breakdown of trust in the justice system. If the system is organized in such a way that meaningful appellate review is somehow impossible, the justice system suffers, and so does the public confidence in the system.

Some argue having a court reporter can ensure that everyone is heard, as transcripts made from audio can be lost if there is inaudible talk or if the recording device wasn't turned on. In those instances, portions of the trial are lost forever.

Wisconsin is working to place new audio and video recording systems in almost all courtrooms across the state within the next two to three years to address the shortage of court

reporters as a large number are set to retire, with very few new court reporters entering the field. They will then be responsible for storing the files that are recorded in the courtrooms and making them available.

The officials note that the system will not eliminate the need for someone to operate the computer system to record, and create transcripts from the recordings nor will it eliminate all court reporter positions throughout the state. They anticipate that this person would be a state employee, with similar duties to a court reporter, such as ensuring the recording equipment is operating properly, the recording is clear and understandable and creating a transcript of the recording.

In **North Carolina**, trials across the state were being canceled or postponed because of a shortage of court reporters caused by budget cuts. They had seven State court reporters, however, two left for higher paying jobs due to a fifty percent pay cut. For one trial, the judge informed the parties that for the trial to go forward, one option is for the parties to the lawsuit to privately retain a court reporter and split the costs. However, a Mecklenburg County Court Administrator noted that, "If only the people who can afford to come to the Court system are the ones that get access to justice, you know that's not equitable, that's not fair, impartial, judicial justice."

To make up for the shortage, lawmakers in North Carolina have been pushing for digital recorders but trial court administrators say that's a last resort. One administrator noted that there have been many times, so many parts, during these recordings that they can't make heads or tails out of what has been recorded and that's just not acceptable in Superior Court. One judge in charge of the state office that oversees administrative services for the court system noted that he'd like to use court reporters for complicated cases and digital recordings for more routine cases.

C. Impact of Doing Nothing.

The shortage of court reporters nationwide, and the inability to backfill court reporter vacancies in Hawaii, is well-documented. It appears live court reporting produces more efficient and accurate transcripts than other technologies, but brings high labor costs. The Judiciary currently employs about a dozen court reporters (out of eighteen authorized positions), but if all eligible court reporters retire, that number could quickly be halved. The Judiciary's average court reporter salary appears lower than the national average, but an accurate assessment is difficult given the uncertainty surrounding Judiciary-employed court reporter's income because they receive additional, unreported income for preparing transcripts for appeals. In any event, because there is no court reporting school in Hawaii, qualified court reporter applicants likely would come from the mainland. If the salary differential is meaningful, which cannot be confirmed without an accurate record of Judiciary-employed court reporter income, then without

an increase in salary and benefits, it could be difficult to recruit new applicants, considering the nationwide shortage and demand of court reporters, Hawaii's high cost of living, and moving expenses. In addition, individuals relocating from the mainland likely would experience short-term challenges learning Hawaii's unique language and culture. Thus, Hawaii's supply of licensed court reporters, or at least those willing to work for the salary and benefits offered by the Judiciary, could be dwindling and exhausted soon.

Currently, the Judiciary appears fixed with sufficient digital recording technology to withstand the inevitable retirement of court reporters, but utilizing court reporters to transcribe digital recordings is inefficient, causes unnecessary delays, and may result in an inferior product. If the number of court reporters decreases, leaving fewer court reporters available to transcribe digital recordings, then the remaining court reporters would see a corresponding increase in workload and court proceedings could be delayed due to an inevitable backlog. An efficient court system is jeopardized, as well as the public's perception of fair and equal justice when access to the verbatim record is not readily available or at excessive cost.

Even if no action is taken in the short term, at least some plan and timetable for implementing new methods of producing the legal record should be identified, tested and improved upon to ensure that accurate and efficient transcript production continues after the remaining court reporters retire.

IV. Possible Solutions

A. Recruitment/Retention

The Judiciary could improve the court reporter's salary and benefits package to attract qualified candidates to fill all court reporter vacancies, although it may be prudent to require existing court reporters to disclose average annual salaries attributable to appellate transcripts before considering an increased base package. It is not clear whether Judiciary advertising for court reporter vacancies indicates additional income is possible with appellate transcript requests; doing so may generate greater interest in the position.

Also, the Judiciary could advertise nationally with the NCRA, which appears to be within Human Resources' purview. Similarly, the Judiciary could promote the NCRA's A to Z Program to local communities and educational institutions. The program is designed to inform the public about court reporting as a career. The Judiciary could also offer internship opportunities to court reporters within these programs, to attract candidates to Hawaii.

Last, the Judiciary could ensure the current per page statutory rates are commensurate with the national average. Additional research is needed on this matter.

B. Court Reporting School

The Judiciary could consider a joint enterprise with the University of Hawai‘i at Mānoa William S. Richardson School of Law, or another educational institution, to open a court reporter school. This may be an overly ambitious option given the Judiciary employs, at most, about eighteen court reporters, although that number could increase if the Judiciary scales back digitally recorded proceedings and utilizes more court reporters. Dr. Debora Halbert, University of Hawaii's appointee to the Commission to Promote and Advance Civic Education, indicates the university is interested in instituting a court reporting program at the community college level. The program could tie into the paralegal program currently offered at Kapiolani Community College, within interconnectivity to neighbor islands via videoconferencing. The Working Group is working to connect Dr. Halbert with the NCRA about program requirements.

C. Contracts with individual outside court reporters

The Judiciary could enter into contracts with more individual court reporters, usually retired Judiciary court reporters, who would charge litigants the State rate for transcript originals and copies. The contracts would need to be consistent with State procurement laws and case law concerning privatization of public services, discussed in item II(A), above. If Judiciary court reporters are unable to meet the demand for written transcripts, then supervising court reporters likely would assign many of the digital recordings to contracted court reporters, which could improve the efficiency and productivity of in-court court reporters. Some court rules may require revision. See, e.g., HCRR Rule 10.8 (transcripts constitute court records that shall not be removed from the custody of the trial court clerk, appellate clerk, or Administrative Director, with limited exceptions).

D. Contracts with local court reporting agencies

If the Judiciary were to utilize private transcription services to offset the dwindling number of court reporters, it would result in significantly higher costs to the State and the litigants. For instance, local court reporting agencies would charge between $7.00 to $10.00 per page for the original transcript and about $3.50 per page for the copy, which would be about three to four times the current amounts charged by Judiciary court reporters. See Item II(A), supra. Again, the contracts would need to comply with State procurement laws and case law concerning privatization of public services.

This option may also require statutory and rule changes. Currently, as discussed below, it appears that ordinarily only official court reporters employed by the Judiciary are authorized to file transcripts in an appellate case. HRS §§ 606-12, 606-13; HRAP Rule 10(b)(1)(B)(iv), (E), (G); RGCR Rules 2, 19(a)-(b); see also HCRR Rule 10.8 (transcripts constitute court records that

shall not be removed from the custody of the trial court clerk, appellate clerk, or Administrative Director, with limited exceptions); but see RECPA Rule 7(c) ("If a transcript is made from a recorded proceeding, the Office of the Chief Court Administrator may have the transcript prepared and certified by any court employee, notwithstanding the provisions of Rule 2 of the Rules Governing Court Reporters.").

E. Transcription by Judiciary-employed, non-certified shorthand reporters

Currently, there is at least one court rule that authorizes the Chief Court Administrator to designate a court employee who is **not** a certified shorthand reporter to prepare and certify transcripts from recorded proceedings. See RECPA Rule 7(c).[9]

Additionally, HRAP Rule 10 **does not** expressly require transcripts on appeal to be filed by official court reporters only. It is understood that, at least at the ICA, such a requirement that appellate transcripts be prepared by official court reporters is inferred, based on the statutory duties of official court reporters as prescribed by HRS § 606-12, the ability for official court reporters to charge for transcripts under HRS § 606-13, and that only official court reporters can charge official transcript rates under RGCP Rule 19(a)-(b), when read in context with HRAP Rule 10(b)(1)(A), (B), (E), and (G).

HRS § 606-13.5 defines certified shorthand reporter, official court reporter, and private court reporter. It thus appears that, at least to some extent, these distinctions are intentional.

Interestingly, HRS § 606-13(c), which governs the salary and perquisites of official court reporters, states, in part, that "official court reporters **or other persons preparing transcripts**" shall provide their own supplies. When enacted in 1915, the statute did not distinguish between official court reporters or other persons preparing transcripts. Instead, the statute provided: "The reporter shall provide, at his own expense, all typewriting paper and carbon paper necessary to the preparation of all such transcripts." See 1915 Session Laws of Hawai‘i at 100. The statute underwent a series of amendments throughout the years. In 1972, the Legislature amended various statutes relating to the courts (e.g., HRS chs. 601, 602, 603, 606, 607, and 608) for consistency, technicality, and other reasons. The Legislature further amended HRS § 606-13 as follows: "The reporter or other persons preparing transcripts shall provide, at his own expense,

[9] RECPA Rule 7(c) provides:

> The Office of the Chief Court Administrator shall require that the transcripts are prepared and filed with the appellate court no later than 40 days after the filing of the notice of appeal. **If a transcript is made from a recorded proceeding, the Office of the Chief Court Administrator may have the transcript prepared and certified by any court employee, notwithstanding the provisions of Rule 2 of the Rules Governing Court Reporters.**

(Emphasis added.)

all typewriting paper and carbon paper necessary to the preparation thereof." See 1972 Session Laws of Hawai‘i at 334. Unfortunately, upon review of the legislative history, including the committee reports, it is unclear why the Legislature included the "other persons" language or to whom "other persons" refers.

Given the current landscape, the Judiciary may consider extending the exception in RECPA Rule 7(c) to other situations, or amending RGCR Rule 2 (requiring a court reporter to be certified by the Hawai‘i Supreme Court through the Hawai‘i Board of Certified Shorthand Reporters)[10] to permit transcribers to prepare and submit transcripts of recorded proceedings. It is not clear that the exception in RECPA Rule 7(c) is consistent with statutes governing "official court reporters" employed by the Judiciary. HRS §§ 606-12, 606-13. Therefore, additional statutory revisions may be necessary.[11] Regardless, transcription under this option likely would take longer than a court reporter's transcription, because the transcriber likely would not utilize a steno machine.

Another option to perhaps test the efficacy and efficiency of this proposal is that the Judiciary could designate or hire one individual on a temporary, part-time basis to transcribe recorded proceedings from all circuits. In doing so, the Judiciary could create a Transcriptionist job description at a SR12-SR17 level to replace, through attrition, each departing court reporter (SR-25). As explained below, it is not intended that the transcriptionist would be responsible for all digital recordings statewide, but would handle overflow transcript requests that current Judiciary reporters are unable to fulfill.

F. Transcription services

Rather than designating or hiring an individual to transcribe digital recordings, the Judiciary could consider retaining a private company to do so, although there are several drawbacks. The results of the Working Group's research are mixed. A mainland company quoted $8.00 per page for the original and the same price per page for the copy, and the company was unable to accommodate Hawaiian language or pidgin. In addition, utilization of such a

[10] RGCR Rule 2(a) provides:

> No person shall engage in the verbatim reporting of trials or judicial proceedings in any of the courts of the State of Hawai‘i, nor shall any person engage in the taking of oral depositions, for use in the courts of this state, unless such person shall possess a certificate as a Hawai‘i certified shorthand reporter issued by the supreme court through the Hawai‘i Board of Certified Shorthand Reporters.

[11] In the Second Circuit, private transcribers have been used to prepare transcripts, which are filed through an official court reporter.

company would require the Judiciary to purchase and install in each courtroom the company's proprietary digital audio system, which is impractical and cost- prohibitive.[12]

On the other hand, Maukele Transcribers, LLC, is owned and operated by Judge Peter Cahill's wife, Jessica Cahill, who has been a contracted transcriptionist since 2003.[13] Currently, Maukele Transcribers has various contracts with federal courts in Guam, Honolulu, and Pennsylvania, and it generates transcripts for courts in Nevada and all hearings before the Hawaii Office of Disciplinary Counsel. Maukele Transcribers partners with TheRecordXchange, using its platform to manage the company's business and pool of independent transcribers. Maukele Transcribers obtained some contracts following submission of a written response to a request for proposal, and others by applying to be included on a list of approved transcriptionists. In one instance, Ms. Cahill had to submit a sample transcription test from an audio file before being placed on the approved list.

Using Pennsylvania federal court as an example, if the court needs a transcription, it will e-mail Ms. Cahill to inquire if she can work on a request for transcript on appeal (providing details as to deadline, days, length, etc.). If she accepts, the court will upload audio files to audiobox.com. Federal courts utilize FTR and send her audio files, and she has not experienced any problems while generating the transcriptions. In fact, FTR audio files have four channels, and she can turn off three channels to isolate the person you want to hear.

According to Ms. Cahill, the federal district court in Hawai‘i has two court reporters on staff along with Ms. Cahill; she is the only outside transcriptionist contracted by the court. The court distributes the request for transcripts based on the last digit of the case number. For example, one court reporter works on case numbers ending in 1, 4, 7; the other court reporter works on case numbers ending in 2, 5, and 8; and Ms. Cahill would be assigned case numbers ending in 3, 6, 9 and 0. The court has opted not to seek additional court reporters as the two court reporters and Ms. Cahill have been able to meet the court's transcripts needs.

Ms. Cahill reports that federal courts require transcriptionists to be active members of the American Association of Electronic Reporters and Transcribers similar to the Hawai‘i Court Reporters and Captioners Association. They pay dues, are required to participate in annual continuing education, and are offered educational webinars.

According to Ms. Cahill, Nevada has an approved list of transcriptionists, but no contract is issued and it has not published a request for proposals. A transcriptionist can contact the

[12] It appears the federal district court in Hawai‘i previously sent digital recordings to a mainland company for transcription. However, this did not work as planned because the company did not recognize Hawaiian names.

[13] This report is not intended to endorse or promote Maukele Transcribers or its services. Instead, the Working Group simply offers an example of potential options and services available to address the current court reporter shortage based upon local experiences.

senior court recorder to be on the state's list of approved transcribers. The applicant must transcribe a test hearing with ninety-five percent accuracy and meet other criteria to be eligible. Nevada has a few court reporters but most of the thirty-two courtrooms are staffed with court recorders. Each court reporter or court recorder is assigned to a courtroom. All hearings or trials will have either a court reporter or court recorder present. The court recorders will sit in the courtroom throughout the proceedings listening to the proceedings through earphones and the court recorder will create log notes of each proceeding that will assist the transcriber.

Nevada utilizes JAVS to record court proceedings. All recordings are uploaded to TheRecordXchange platform, which provides a pool of qualified transcribers that work on transcript requests. Maukele Transcribers is a partner in TheRecordXchange. The court has various turnaround times—e.g., thirty days, four days, forty-eight hours, daily—for completion of transcripts. Through its partnership with TheRecordXchange, Maukele Transcripts provides various transcripts, including daily transcripts for jury trials. For the daily transcripts, the court recorder will upload her audio/video files to an order created on TheRecordXchange platform during each break. The transcribers in the TheRecordXchange pool of transcribers will work on the transcripts throughout the day. Once the daily transcript is completed, Ms. Cahill will proof and finalize the transcript and e-mail it to requesting parties before the next day's trial begins.

If this transcription services option is pursued, statutory and rule changes may be necessary to allow someone other than an official reporter employed by the Judiciary to file transcripts in appellate cases, but not necessarily to complete other transcript requests.

Court reporters' reservations concerning transcriptionists

For transcriptionists generally, the court reporters expressed concern with a potential lack of accountability (no governing body or regulations within the state), privacy violations, transcription errors, costs, duplicate transcripts, etc. The court reporters contend transcriptionists take an average of four hours to transcribe one hour of audio, plus editing and proofreading, which takes about twenty pages per hour. The court reporters suggest transcriptionists report to Judiciary court reporters, or supervising court reporters, to maintain control of transcripts, track production, and assure adherence to quality and standards.

G. Technological options

1. Central repository for digital recordings

The Judiciary could create a central repository for all digital recordings, accessible to court reporters statewide, which would allow court reporters to immediately access recordings and assist with the backlog in other circuits, where possible. Currently, after a party requests a

transcript on appeal, the court reporter transmits the request to courtroom staff, who retrieve the recording from equipment located in the courtrooms, then transmit the recordings to the court reporter, which could take days to complete. If court reporters had immediate access to all recordings, they could immediately begin transcription and more efficiently balance requests for transcripts of recorded proceedings.

Currently, each circuit maintains its own central repository where digital recordings are accessible to court reporters within the circuit. Because a statewide central repository may raise issues with bandwidth and data storage, giving all court reporters access to each circuit's separate repository may be an alternative, to allow court reporters statewide to work on requests for transcripts of recorded proceedings filed in any circuit. ITSD should be able to assess this option's feasibility.

Alternatively, the Judiciary could establish a statewide plan to deliver, maintain, and store digital recordings and court reporters' notes, which would enable courts to assume responsibility for and control of these documents. This should resolve any ambiguity over control of the court reporters' notes and the transcript. This option would require a program to oversee the process of accessing and producing digital recordings statewide.

2. Improve training

The Judiciary could provide better training for in-court staff responsible for indexing recorded proceedings. Frequently, transcripts of recorded proceedings are delayed because in-court staff incorrectly index files on the calendar, mix separate cases on the index within recordings, misfile hearings by date our courtroom number, etc. A statewide standardized guideline for court staff responsible for recording proceedings, and indexing and uploading related documents, would increase court reporter efficiencies.

3. Centralized monitor rooms utilizing CourtSmart

After many court reporters suffered physical ailments due to the stress of having to sit in one place for long periods with a steady hand on the keyboard, the Allegheny Court in Pennsylvania turned to a unique digital audio transcription system called CourtSmart. This system digitally captures the spoken word on ultra-sensitive microphones located throughout the courtroom. Once captured, audio is transmitted to a central control room where it is digitized by the CourtSmart audio servers and stored on hard disk and digital audio tape. Instead of sitting in the courtroom, court reporters monitor proceedings from a central monitoring room. For every four courtrooms, one reporter is required to monitor all activities through the aid of closed-circuit television. The reporter is able to add text notes to identify speakers, events or captions. If a transcript is ordered, the notes are helpful to whomever the work is assigned. The court reported

"huge" costs savings in that one employee now covers multiple hearings and five people now cover all hearings and transcript requests. CourtSmart also offers raw transcripts of the recorded proceedings, so the transcription does not have to be taken as the hearing occurs, and these speech-to-text transcripts may be edited and finalized by official court reporters for appellate cases. Courts in Minnesota, Pennsylvania, and Florida are successfully using CourtSmart. The Working Group did not obtain cost estimates for this option, but it may be worth exploring. A more thorough assessment is needed to determine whether existing courtroom equipment and recording systems (JAVS/FTR) are compatible with CourtSmart.

4. Digital recordings in lieu of transcripts

The Judiciary could utilize the digital audio/video record in lieu of transcripts in appellate cases. Kentucky has been following this procedure for thirty-five years, although it may be the only state doing so. Arguably, the digital audio/video record could be the most accurate, and trial court litigants frequently request a copy of digital audio/video recordings, which courts can provide quickly and at a fraction of the cost of a transcript, effectively expanding access to justice. In addition, the recording could quickly be provided to the appellate court, virtually eliminating delays due to incomplete transcripts. Advocates suggest a digital audio/video record would create greater accountability for judges and attorneys, could be utilized as a training tool for both, and could enhance courtroom security.

The ICA would not support this option. When reviewing motions or briefs that cite to transcripts, the ICA expects the verbatim transcripts to be accessible in a readable format in the appellate JIMS docket, which would allow the court to quickly understand the context of the oral proceeding and determine the accuracy of a party's representation concerning words spoken during the proceeding. The PDF meets these requirements and has several advantages.

First, the readable format allows the judge or staff to review the text of the oral proceedings as quickly or as slowly as they want, as many times as they deem necessary, at the speed best suited for their understanding and comprehension.

Second, with the PDF stored in JIMS, unlimited people can access the transcript at the same time from any computer or device in any location with JIMS or qualified JEFS access.

Third, and rather significantly, the PDF also allows the court to copy and paste text into relevant bench memoranda, orders, and opinions, as necessary, which expedites review and disposition.

Fourth, transcripts filed as PDFs in the appellate JIMS module present no storage, access, or photocopying problems for the court, as opposed to hard copies or DVDs, which are easily lost, damaged, or destroyed.

The ICA would consider any proposal to improve the process but any change that slows the court's review and analysis, and shifts the burden to ICA staff to transcribe what transpired during oral proceedings, would not be well-received.

If the Judiciary considers this option, then rule changes would be required. See HRAP Rule 10(a) & HCRR Rule 4(d) (designating transcripts part of the record on appeal); HRAP Rule 28(b) & RTAC Rule 16 (requiring citations to specific page number in transcript); RSCH Rule 2.7(c) (requiring written transcript). In addition, this option would significantly reduce court reporter income and hasten the elimination of court reporters in the Judiciary.

5. Hybrid Solution - Electronic Recordings for Non-Appeal Cases

FTR Cloud Services provides a solution that would allow court staff to review audio/video recordings of court proceedings. The audio/video recording is timestamped allowing the court staff to identify pertinent portions of the proceeding. Since the solution is cloud based, authorized users may access the recordings from anywhere with internet access. An add-on speech to text feature allows for a user to search the recording for specific words and produce an initial transcript. A court reporter supervisor may review the initial transcript and assign it to a court reporter to finalize and certify.

FTR Cloud Services also enables court users to request and access audio recordings through the online service. If an official transcript is requested, the request may also be made via the online service. This hybrid model allows for ease of access to audio recordings as well as to transcript service that may be provided by the existing court reporters in the Judiciary.

The estimated cost for this product is $247 per courtroom per month in addition to a request fee ranging from $10 to $25 that is typically paid to the vendor by the court user. Initial discussions with the vendor suggest such a mechanism is available for enabling JAVS recordings to be converted and accessible via FTR Cloud Services. Additional research is necessary to assess whether FTR Cloud Services meets Judiciary technical and operational requirements.

The circuits continue to explore other online tools that could provide a mechanism for court users to access audio recordings. This could reduce the number of transcripts requested for non-appeal cases, which could allow court reporters to dedicate resources to time-sensitive appellate cases.

6. Upgrade digital audio courtrooms to digital audio/video

As a result of the pandemic, video hearings are here to stay and provide greater access to justice. The estimated cost to upgrade an existing FTR digital audio courtroom to digital

audio/video would be about $70,000 per courtroom. To upgrade an older audio system would be about $100,000 per courtroom.

During the pandemic, some civil circuit judges allowed First and Second Circuit court reporters to appear virtually via video (Zoom) in certain proceedings. The court reporter appeared as a "participant" in the Zoom hearing and could see and hear speakers. While there may have been audio and or other technical issues during a Zoom hearing, court staff and users were able to adjust and were mindful that a court reporter appeared virtually. The upgrade to the courtroom audio system would enhance the capacity of a court reporter to provide live transcription virtually.

8. Convert all courtrooms to JAVS or FTR

The Judiciary's most populous circuit, the First Circuit, utilizes FTR and JAVS, whereas neighbor islands mostly utilize JAVS. Neighbor island court reporters cannot assist First Circuit court reporters with digital recordings because they are unable to transcribe FTR recordings. On the other hand, if neighbor island court reporters become overwhelmed, or there is central processing on Oahu, then First Circuit court reporters could transcribe JAVS and FTR recordings from neighbor islands. To allow all court reporters to assist each other whenever necessary, the Judiciary may consider converting all courtrooms to JAVS or FTR.

FTR has higher upfront costs, but lower maintenance costs. Servicing either product depends on whether technicians are located on-island. The Third Circuit had higher maintenance costs for its FTR equipment because the technicians are located on Oahu, while its JAVS maintenance costs were lower because the JAVS technician is located on Hawaii island. Another potential concern is that if the Judiciary commits to one provider, then it could be stuck with that provider and if the provider experiences problems, then switching to another provider could result in increased costs. Alternatively, the Judiciary may be able to negotiate a better rate from one provider under an exclusivity agreement.

If all digital recordings are stored and made accessible via a statewide centralized network, or court reporters are given access to each other's networks, then the conversion proposed here would be unnecessary.

H. Standardized word rates

To more accurately assess transcript preparation and filing fees imposed upon litigants, the Judiciary may consider restructuring the fee schedule to be based upon a word rate rather than a page rate. With inconsistent formatting, the page rate can be confusing and expensive. Computer software readily provides word courts, making standardized word rates easy to

calculate and able to provide the most accurate way to assess fees. Oklahoma established a standardized rate per 100 words. Additional research is needed to compare the average cost per transcript based upon the page rate versus the word rate, and its impact on court reporter income.

I. Limit live court reporters

In the First Circuit, live court reporters have been limited to grand jury and civil and criminal trials. All other proceedings are recorded via FTR and or JAVS unless live court reporters are not needed for grand jury or trials. With the limited number of Judiciary court reporters, circuits may be required to prioritize live court reporter coverage and resort to FTR or JAVS.

The Judiciary could promulgate a statewide standard for Court Administrators to determine the best usage for court reporters, with the goal of using them in proceedings most likely to result in requests for transcripts.

J. Statewide Court Reporter Coordinator

The Judiciary could create a new statewide Court Reporter Coordinator position to supervise assignment of live, in-person court reporters and transcription of digital recordings statewide. Time permitting, the coordinator may prepare transcripts of digital recordings, but the primary responsibilities would be to monitor requests for live court reporters throughout the state, requests for transcripts of digital recordings, assign the transcripts to court reporters or transcribers throughout the State, oversee the technology, and develop a training program for court staff to ensure staff properly set up, operate, and maintain the recording equipment, and for litigants to fulfill their obligations to make the trial court record.

K. Grants

The Judiciary could designate an individual, perhaps the statewide court reporter coordinator, to research grant opportunities for providing the most advanced technology to Hawaii courtrooms. William and Mary School of Law operates a joint project with the NCSC, called the Center for Legal and Court Technology, which provides empirical and legal research on courtroom technology. The Center, which receives grants from Cisco and partners with other groups for research purposes, operates a Court Affiliates program, which is described as an interactive information exchange system for all courts to share legal, technical, and practical information about everything related to courtroom technology.

V. Recommendations

A. Goals

Before discussing recommendations, it is imperative to establish the Judiciary's goals for providing transcripts to the stakeholders. The Working Group proposes the following:

• Assuring stakeholders that courtroom testimony will be preserved and no confidential or off-the-record conversations will be inappropriately disclosed or published in an accessible transcript. These practices are necessary for stakeholders to feel confident that an accurate and timely transcript of court proceedings will be available and can be produced.

• Assuring court reporters that their work is valued and preferred over alternative methodologies for fulfilling the Judiciary's mission of administering justice in an impartial, efficient, and accessible manner, while recognizing the decline in qualified applicants for court reporter vacancies makes it difficult to fulfill the mission and requires the Judiciary to consider alternatives.

• Standards, practices, and procedures must be in place to ensure the success of building digital reporting and transcribing practices.

• Reinstating the public's confidence in gaining quick access to the courts by making cost-effective and efficient decisions.

Below are recommendations to implement the set goals, which may require time to conduct feasibility studies, pilot projects and propose amended court rules as well as develop the necessary infrastructure for statewide implementation.

B. Short-term recommendations

1. Retain Judiciary court reporters, as long as they continue to meet job requirements.

2. Limit in-person court reporting to proceedings most likely to result in requests for transcripts. Priority proceedings to be determined collaboratively by supervising court reporters, chief judges, and court administrators or their designees.

3. Establish a statewide court reporter coordinator position with responsibilities described above.

4. Create a transcriptionist position to transcribe digital recordings statewide, supervised by the statewide court reporter coordinator. If the Judiciary does not create the coordinator position, then the transcriptionist should be supervised by the supervising court reporter in each circuit.

5. Retain commercial transcription services, like Maukele Transcribers. It may be more reliable and fiscally prudent, particularly in the short term, for the Judiciary to utilize commercial transcription services with established track records in the local community than to create a transcriptionist position within the Judiciary, although the Judiciary could do both at the same time. Apparently, federal courts routinely utilize commercial transcription services and Maukele Transcribers has an established performance record in Hawaii. A Judiciary-employed transcriptionist would create internal overhead and additional labor costs for the Judiciary, regardless of whether there was overflow work available after Judiciary court reporters exercise what the Working Group recommends as their right-of-first-refusal for transcripts of digital recordings. See item 10 below. In contrast, utilizing a commercial transcription service like Maukele Transcriberts,which accepts the state payment rate for transcripts, would not incur similar operational and labor costs.

6. Establish either a central repository for all digital recordings to be accessed by court reporters and transcribers statewide, or give all court reporters and transcribers access to digital recordings archived in each circuit.

7. Authorize an emergency exception to the requirement in RGCR Rule 2(a) that only individuals certified by the Hawai‘i Supreme Court through the Hawai‘i Board of Certified Shorthand Reporters may prepare and file transcripts of **digital** recordings. This would allow Judiciary transcriptionists and entities offering services like Maukele Transcribers to prepare and file transcripts of digital recordings. Although RECPA Rule 7(c) currently authorizes the Chief Court Administrator to designate a court employee who is **not** a certified shorthand reporter to prepare and certify transcripts from recorded proceedings, the rule expressly states the authority is granted “notwithstanding” RGCR Rule 2, which suggests a broader exception to other rules, e.g., HRAP Rule 10, may be possible. As noted above, additional statutory revisions may also be necessary. If the Judiciary finds statutory revisions are unnecessary, which apparently happened when it promulgated

RECPA Rule 7(c), then this option might provide immediate relief while the Judiciary explores the creation of a transcriptionist position.

8. Allow in-person court reporters to appear remotely statewide, supervised and coordinated by the statewide court reporter coordinator. This happened frequently during the pandemic, although some trial court judges may prefer court reporters to appear in court. This would allow more flexibility for court reporter coverage in various courtrooms and potentially attract new court reporters located both within and outside the state. Several mainland courts have instituted these procedures. Currently, only the First and Second Circuits have live court reporters. This option potentially could expand live court reporting to the Third and Fifth Circuits.

9. Authorize the use of per diem court reporters for in-court proceedings, whether appearing in-person or remotely. This could have an immediate impact on the court reporter shortage and result in cost savings for the Judiciary.

10. Give Judiciary court reporters priority in all in-court proceedings and transcript requests. Essentially, whether appearing in-person or transcribing digital recordings, Judiciary court reporters would have a right of first refusal, and the overflow would be assigned to other individuals or entities. Either the statewide court reporter coordinator or the supervising court reporter in each circuit would process and assign all requests for transcripts of digital recordings. This would help court reporters keep track of transcripts being prepared to avoid duplication while also alleviating court reporters' concern with being bypassed or replaced in the process.

    Although perhaps best determined by the statewide court reporter coordinator or the supervising court reporter, we recommend the following priority system for the different types of court reporters to participate in in-court proceedings: (1) Judiciary court reporters, (2) per diem court reporters, (3) individual, external court reporters (specifically targeting retired Judiciary court reporters), and (4) local court reporting agencies.

    Similarly, we recommend the following priority system for transcription of digital recordings: (1) Judiciary court reporters, (2) external transcriptionist, whether freelance or corporate, (3) Judiciary transcriptionist, and (4) individual, external court reporters (specifically targeting retired Judiciary court reporters).

11. Widely advertise FY 2023 RFQ for contract transcription service, including targeted advertising to retired Judiciary court reporters.

12. Explore FTR Cloud Services for First Circuit (all other circuits utilize JAVS).

13. Improve training for in-court staff responsible for recordings to improve recording quality and reduce incidents of transcripts lost due to equipment misuse or malfunction.

14. Standardize and update the request for transcript form to give the requester the option of requesting a DVD copy of digital recordings, rather than a more expensive and potentially cost-prohibitive written transcript.

15. Update the Judiciary website concerning requests for written transcripts and digital recordings to create a more comprehensive and simplified user experience. For example, see https://www.cand.uscourts.gov/about/clerks-office/transcripts-court-reporters/

B. Long-term recommendations

1. Increase compensation and benefits package for Judiciary court reporters, to help retain current court reporters and attract new applicants.

2. Ensure court reporter recruitment efforts reflect the potential for additional income from transcript requests.

3. Pursue a joint venture with the University of Hawai‘i to develop a court reporter school, with an emphasis on retaining graduates for Judiciary employment.

4. Explore CourtSmart and other technological tools that could supplement existing resources.

5. Establish a standardized word rate for transcript fees.