

Guide to Judiciary Policy

Vol 6: Court Reporting

Ch 1: Overview

§ 110 Overview

- § 110.10 Purpose
- § 110.20 Authority
- § 110.30 Applicability

§ 115 Methods to Record Court Proceedings

- § 115.10 Court Reporters
- § 115.20 Electronic Sound Recordings
- § 115.30 Methods in Bankruptcy Courts

§ 120 Court Reporters' Duties

- § 120.10 Introduction
- § 120.20 Duties or Conditions of Employment
- § 120.30 Administering Oaths

§ 130 Court Reporting Management Plan and Court Reporting Supervisor

- § 130.10 Introduction
- § 130.15 Judicial Conference Policy
- § 130.20 Responsibilities
- § 130.25 Elements of a Plan
- § 130.30 Court Reporting Supervisor
- § 130.35 Availability of Reporters
- § 130.40 Use of Contract Court Reporters
- § 130.45 Attendance
- § 130.50 Number and Kind of Reporters
- § 130.55 Administrative Office Review of the Plan
- § 130.60 Sample Plans

§ 140 Records and Reports

- § 140.10 Introduction
- § 140.15 Statutory Authority
- § 140.20 Judicial Conference Policy
- § 140.25 Automated Court Reporter Application System
- § 140.30 Preparing Form AO 40A (Attendance and Transcripts of U.S. Court Reporters)
- § 140.35 Preparing Form AO 40B (Statement of Earnings of U.S. Court Reporters)
- § 140.40 Record Keeping

- § 140.45 Review of Reports by Court
 - § 140.50 Penalty for Not Submitting Reports
 - § 140.55 Records Disposition
-

§ 110 Overview

§ 110.10 Purpose

This volume is primarily designed to provide guidance on the use of court reporting and electronic sound recording methods of keeping the record in the federal courts. It also provides references and links to other statutory and policy guidance regarding court reporters. The responsibility to administer reporting services lies directly with each court, although there is a series of requirements established by statute and by the Judicial Conference that each court must fulfill. This volume of the Guide outlines those tasks and responsibilities of the court and court reporter.

§ 110.20 Authority

The authority to take a record and transcribe the record of district court proceedings comes from 28 U.S.C. § 753. Court reporters' duties and conditions of employment are primarily determined by 28 U.S.C. § 753, the Judicial Conference, and the courts. This volume incorporates references to Judicial Conference policy, case law, and Administrative Office requirements related to the use of court reporters.

§ 110.30 Applicability

This volume applies to the district courts of the United States, the District Court of Guam, the District Court of the Northern Mariana Islands, the District Court of the Virgin Islands, and the bankruptcy courts as units of the district courts. It does not apply to the United States Supreme Court, the Court of International Trade, the United States Court of Federal Claims or the appellate courts.

§ 115 Methods to Record Court Proceedings

§ 115.10 Court Reporters

Court reporters record court proceedings by manual shorthand, machine (stenotype) shorthand, or stenomask methods. The Judicial Conference endorsed the use of realtime reporting technology by official court reporters in the district courts to the extent that funding is available to support its use. JCUS-SEP 94, p. 49.

§ 115.20 Electronic Sound Recordings

If a judge elects to use electronic sound recording, a deputy clerk operates the recording equipment and maintains detailed log notes. The deputy clerk functions as an electronic court recorder operator and is not considered a court reporter.

§ 115.30 Methods in Bankruptcy Courts

Bankruptcy courts ordinarily use electronic sound recording or contract court reporters. **See:** Guide, Vol 6, § 340 (Electronic Sound Recording). If a bankruptcy judge elects to use a court reporter, contract reporters (**see:** Guide, Vol 6, § 450 (Contract Court Reporting)) are used to take the record; there are no official staff court reporters in bankruptcy courts. The Judicial Conference disapproved of the use of realtime reporting systems (**see:** Guide, Vol 6, § 320 (Realtime Reporting)) in bankruptcy courts because they did not appear to be cost effective. JCUS-MAR 94, p. 16. The Director of the AO may grant an exception for disabled judges to use realtime reporting systems. JCUS-SEP 98, p. 42-43.

§ 120 Court Reporters' Duties

§ 120.10 Introduction

Court reporters record proceedings and produce transcripts. Types of court reporters providing such services are categorized according to how they are utilized or employed in the court.

§ 120.10.10 Official Staff Reporters

Official staff reporters are salaried employees of the district court appointed by the court for an indefinite term pursuant to the authority of the Judicial Conference.

§ 120.10.20 Temporary Reporters

Temporary reporters are part or full-time, salaried employees of the court appointed by the court for a limited term not exceeding three months.

§ 120.10.30 Combined-Position Reporters

Under 28 U.S.C. § 753(a), the duties of a court reporter may be combined with those of any other employee of the court if the court and the Judicial Conference are of the opinion that it is in the public interest.

§ 120.10.40 Contract Reporters

Contract reporters serve the court under a contract as provided under 28 U.S.C. § 753(g), and under delegated procurement authority from the Director of the AO.

§ 120.10.50 Substitute Reporters

Substitute reporters are employees of an official staff, temporary, or combined-position court reporter, hired with the approval of the court, and are paid by the employing court reporter. **See:** Guide, Vol 6, § 440.

§ 120.20 Duties or Conditions of Employment

§ 120.20.10 Recording Proceedings

As a condition of employment, a court reporter must attend and record verbatim by shorthand or mechanical means such court sessions or other proceedings, as specified by statute, rule, or order of court.

§ 120.20.20 Transcribing

As a condition of employment, the court reporter transcribes promptly the proceedings requested by a party who has agreed to pay the fees established by the Judicial Conference, and any proceedings that a judge or the court may direct. It is also the duty of the court reporter to file a transcript or provide an electronic sound recording to the court, without charge, of all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases. Certification of the recording by the court reporter is required. **See:** Form AO 35 and Guide, Vol 6, § 380.30.

§ 120.20.30 Certifying and Filing Transcripts and Notes

- (a) A court reporter must promptly certify and file with the clerk of court all original shorthand notes and other original records of proceedings the reporter has recorded, identifying in the certification the court in which the proceedings were conducted. **See:** § 140 (Records and Reports).
- (b) The reporter must also file with the clerk of court, for the records of the court (through the court reporter supervisor or designee), a copy of all transcripts prepared. The court's copies will be delivered by the court reporter to the court reporting supervisor (or designee in the case of divisional offices) concurrently with, but no later than three working days after, delivery to the requesting parties; the court reporting supervisor forthwith will file the transcript with the clerk of court.

- (c) (1) If a transcript is not ordered, the court reporter will deliver the original shorthand notes or other original records to the clerk of court (through the court reporting supervisor) within 90 days after the conclusion of the proceeding or, if a contract reporter, within 90 days after the expiration of the contract, whichever comes first.
- (2) If a transcript is ordered, the original shorthand notes or records must be submitted to the clerk of court (through the court reporting supervisor) within 90 days after the transcript is delivered to the requesting parties.
- (d) Upon request, parties or members of the public may review the original notes filed with the clerk of court. **See:** 28 U.S.C. § 753(b)(3).

§ 120.20.40 Administrative

As a condition of employment, official, temporary, and combined-position reporters are required to perform administrative duties related to their work. Administrative duties include:

- billing for official transcripts ordered and prepared,
- delivery and/or mailing of transcripts,
- financial and other record keeping,
- preparation and filing of all required local and AO reports,
- answering telephone calls from other court personnel, attorneys, and litigants,
- responding to correspondence,
- reading notes to the court, counsel, or a jury, and
- such other official duties as required by the court.

§ 120.30 Administering Oaths

- (a) Court reporters inherently do not have the authority to administer oaths because this authority is not conferred by the statute creating their offices. A reporter may administer an oath, however, if he or she is a notary public and state or local law empowers notaries to do so.
- (b) A court employee who is also a deputy clerk may administer oaths under 28 U.S.C. § 953. In this vein, the clerk of court may deputize an official court reporter who is not already a deputy clerk, conferring the oath-taking authority.

§ 130 Court Reporting Management Plan and Court Reporting Supervisor

§ 130.10 Introduction

Each court has the responsibility to supervise its court reporters and electronic court recorder operators in the performance of their work, as well as in their dealings with the parties requesting transcripts. The court must maintain efficient and cost-effective procedures that will provide for the recording of all proceedings required by law, without delaying the proceedings, and in such a manner that transcripts requested are delivered within the time and cost requirements of the Judicial Conference. In order to achieve these ends, each court will designate a supervisor who will carry out the requirements of the Judicial Conference, assigning reporting tasks in such a manner that resources are fully and efficiently utilized. Additionally, the supervisor will be responsible for determining whether billings and transcript formats comply with Judicial Conference requirements.

§ 130.15 Judicial Conference Policy

- (a) The Judicial Conference recommends "that the judicial council require each district court, subject to such exceptions as may be granted by the circuit council, to develop a court reporter management plan that will provide for the day-to-day management and supervision of an efficient court reporting service within the court. Each plan must provide for the supervision of court reporters in their relations with litigants as specified in the Court Reporter Act, including fees charged for transcripts, adherence to transcript format prescriptions and delivery schedules. The plan must also stipulate that supervision be exercised by the clerk of court, district court executive, judge or other individual designated by the court; that reporting tasks be apportioned equitably at the same site; and that, through scheduling, the use of contractual services be minimized to every practical extent. The supervisor will implement Judicial Conference policies regarding court reporting services. Each Court Reporter Management Plan must be approved by the judicial council of the circuit and a copy sent to the Administrative Office for review. The Administrative Office will assist the courts in establishing supervised court reporting services and productivity standards." JCUS-MAR 82, p. 8.
- (b) The Judicial Conference also provides, "... that circuit councils oversee the implementation of and compliance with court reporter management plans of the district courts." JCUS-SEP 87, p. 63.

§ 130.20 Responsibilities

§ 130.20.10 Circuit Judicial Council

Each circuit judicial council requires each district court within its circuit to develop a written court reporting management plan providing for the daily management and supervision of reporting services. The circuit judicial council will approve a Court Reporting Management Plan for each court that complies with Judicial Conference requirements. When the district courts amend their plans, the circuit judicial councils must review them to ensure that they contain all the required elements listed below in § 130.25.

§ 130.20.20 District Court

Each district court must develop a Court Reporting Management Plan.

§ 130.20.30 Administrative Office

The AO is directed by the Judicial Conference to assist the courts in establishing supervised court reporting services and productivity standards.

§ 130.25 Elements of a Plan

Court Reporting Management Plans must provide for effective management of court reporting services through proper supervision and control. This ensures court reporting services for judges including visiting and senior judges, magistrate judges, and other judicial officers as needed by:

- (a) Making clear that the court reporters serve the court *en banc* and not a particular judge;
- (b) Ensuring that court reporters fulfill their statutory duties;
- (c) Ensuring that court reporters adhere to Judicial Conference requirements;
- (d) Equitably apportioning the attendance in court and chambers among all the reporters assigned to a court at the same location;

Note: In courts with three or more reporters this may be best accomplished by sharing and rotating reporters among judicial officers. Rotation can equalize the number of reporting hours so that no one reporter is required to bear a disproportionate share of reporting hours and resulting transcript preparation.

- (e) Providing for supervision of the relationship between parties and court reporters through monitoring of transcript orders, delivery, billings, format, and rates charged by court reporters and transcribers (if the court uses electronic sound recording);
- (f) Stating the procedures for accepting transcript orders, delivery, and billings;
- (g) Providing for avoidance of backlogs of transcripts and assuring prompt delivery of high quality transcripts, particularly for cases on appeal to the court of appeals;
- (h) Stating the court's policy on reporters engaging in private reporting work, including taking depositions and reporting for grand juries;
- (i) Delineating the number and type of court reporters and electronic court recorder operators required to cover all of the court's reporting needs, including the need for combined-position or temporary court reporters;
- (j) Delineating the need for contract court reporter services;
- (k) Minimizing travel of the court's reporters and outside reporters hired to cover the court;
- (l) Providing for appointment and retention of fully qualified court reporters, and dismissing court reporters who do not perform in a satisfactory manner;
- (m) Stating the terms of the probationary period for newly appointed court reporters;
- (n) Prohibiting the routine apportionment of accelerated transcript costs among parties in criminal cases;
- (o) Stating when reporters are to deliver the file copy of the transcript (whether in paper copy or electronic form) or the electronic sound recording for filing with the clerk of court;
- (p) Stating that the reporter should file a transcript of arraignments, pleas, and sentencing proceedings within 30 days of the close of the proceeding unless they were recorded on electronic sound recording equipment, in which case the electronic recording, accompanied by a certification of the reporter, will be filed as soon as the recording has been used to capacity;

- (q) Stating that the court reporting supervisor (or other court official) must verify that forms, Attendance and Transcripts of United States Court Reporters (Form AO 40A), and Statement of Earnings of United States Court Reporters (Form AO 40B) have been reviewed before submission to the AO;
- (r) Ensuring that required records and reports are submitted in a timely manner;
- (s) Stating whether reporters are assigned a regular tour of duty, specifying the regular hours of attendance, and that the court reporting supervisor is responsible for maintaining leave records of court reporters under 5 U.S.C. chapter 63, subchapter I ("Annual and Sick Leave Act of 1951," formerly referred to as the "Leave Act");
- (t) Stating how records for an electronic sound recording system are to be stored and retrieved, and how transcript quality and timeliness from such a system are to be monitored;
- (u) Stating the court policy for providing Data Communications Network (DCN) access to staff court reporters; and
- (v) Establishing policy for the provision of realtime court reporting to parties and to the court, as well as the management of human, hardware, and software realtime resources.

§ 130.30 Court Reporting Supervisor

Each plan will designate a supervisor of court reporting services. The supervisor may be a judge, district court executive, a clerk of court, or other person designated by the court. The responsibility of the supervisor is to implement the elements of the court reporting management plan, including the day-to-day management and supervision of all official court reporters, so that the court's mission is furthered by the effective and efficient utilization of court reporting services.

§ 130.35 Availability of Reporters

The court reporting supervisor is responsible for determining the availability of court reporters and electronic court recorder operators. Whether a reporter is available to cover proceedings for judicial officers depends on the extent of the reporter's commitments for actual in-court and chambers reporting services. Transcript preparation requirements do not free a reporter from the responsibility to record proceedings for visiting judges, senior judges, magistrate judges, or other judicial officers as required.

§ 130.35.10 Availability of Realtime Reporting

The Judicial Conference has not determined that realtime reporting is a requirement in all court proceedings. Therefore, those services may not be available in districts where the official court reporters are not capable of providing the services. The court cannot use contract court reporter funding to pay appearance fees for a contract realtime reporter in place of an available staff reporter just because the staff reporter cannot provide realtime services. A request for realtime reporting must not increase the court's costs in any way. Even where there is no immediate financial impact on a district court, however, the authority lies with the judges of the court to determine how court reporting services will be provided, consistent with Judicial Conference policy.

§ 130.40 Use of Contract Court Reporters

The supervisor is responsible for scheduling contract reporters, but only when the court's official staff reporters are actually recording, or scheduled to record, proceedings in court or chambers or are on leave. **See:** Guide, Vol 6, § 450 (Contract Court Reporting).

§ 130.45 Attendance

Official staff reporters who are on a tour of duty and under the 5 U.S.C. chapter 63, subchapter I must be available in the courthouse during normal work hours as needed unless on approved leave status. Courts may assign court reporters to a regularly scheduled 40-hour work week with starting and ending times specified in advance; and when not actually recording court proceedings, reporters must devote their regular work time to preparing official transcripts and performing all required administrative duties. **See:** Guide, Vol 6, § 230 (Benefits) and Vol 12, Ch 9 (Leave and Attendance).

§ 130.50 Number and Kind of Reporters

The management plan must also delineate the number and type of court reporters and electronic court recorder operators that will be assigned to the particular district court to cover its reporting needs. District courts receive staffing credit and resources based upon the number of active judges and activity by senior judges and visiting judges. Courts also receive staffing credit for electronic court recorder operator positions in the allocation of staffing resources for clerks' offices for magistrate judges. **See:** Guide, Vol 6, § 280 and § 410 (Reporting for Magistrate Judges).

§ 130.55 Administrative Office Review of the Plan

An electronic copy of the court reporting services management plan must be sent to the AO for review:

District Court Administration Division (OCA-DCAD)
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, D.C. 20544-0001

§ 130.60 Sample Plans

Courts may obtain copies of sample court reporting services management plans from the AO District Court Administration Division. **See:** Court Reporter Management Plans on the J-Net.

§ 140 Records and Reports

§ 140.10 Introduction

Under 28 U.S.C. § 753(d), court reporters must submit reports, which serve as an aid to the Judicial Conference in setting the salaries of court reporters and transcript fees. For the AO to fulfill its responsibility for auditing and inspecting court reporters' records, the court reporters must maintain accurate, legible records that are auditable. Reporters must complete record keeping forms that document the information contained in their Form AO 40A (Attendance & Transcripts of United States Court Reporters) and their Form AO 40B (Statement of Earnings of United States Court Reporters). Court reporters are not required to file Form AO 10 (Financial Disclosure Reports).

§ 140.15 Statutory Authority

Under 28 U.S.C. § 753(d), "The Judicial Conference will prescribe records which will be maintained and reports which will be filed by the reporters. Such records will be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

- the quantity of transcripts prepared;
- the fees charged and the fees collected for transcripts;
- any expenses incurred by the reporters in connection with transcripts;
- the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and
- such other information as the Judicial Conference may require."

§ 140.20 Judicial Conference Policy

- (a) "The Director submitted to the Conference proposed forms to be used by reporters in filing with the Administrative Office information as to their attendance in court, transcripts furnished and fees charged, as well as their

receipts and expenses. The Conference, pursuant to section 5a(d) [now 28 U.S.C. § 753(d)] of the Judicial Code, approved these forms and directed that they be used by the reporters in conformity with the instructions accompanying the forms, in preparing and filing their reports." JCUS-SEP 44, p. 15.

- (b) "The Ad Hoc Committee (on Court Reporters) did note that the lack of credible data relating to their workload and earnings, self-reported by court reporters, has hampered the work of the Conference in resolving court reporter management problems. The Ad Hoc Committee urged the Conference to require the district courts, consistent with guidelines of the Administrative Office, to review for completeness and accuracy the reports submitted by court reporters. These reports are used both by the Administrative Office and by committees of the Conference in the allocation of additional personnel and in setting transcript fees and salaries. The Committee also recommended that court reporters be required to maintain and certify, under penalty of perjury, proper records of time, attendance, transcript production, and earnings.

The Conference adopted the findings and conclusions of the Ad Hoc Committee on Court Reporters, and directed that the Ad Hoc Committee continue to monitor the situation and propose appropriate management reforms until discharged by the Judicial Conference." JCUS-MAR 87, p. 10.

- (c) "The Conference approved a report and proposals submitted by the Ad Hoc Committee which, as amended,...require court reporters to keep their financial, attendance, and transcript records on standardized forms developed and provided by the Administrative Office." JCUS-SEP 87, p. 63.

§ 140.25 Automated Court Reporter Application System

The Automated Court Reporter Application (ACRA) automates the submission and archiving of court reporter data. The ACRA application is designed to manage the automated creation and processing of the AO 40A and AO 40B forms. The application provides for the court reporter to digitally sign the completed form and for a designated court official to review and digitally approve it. Reporting, administration, and other management tasks are provided by user roles to manage access to the data.

§ 140.25.10 Automated Submission

The ACRA system validates the contents of the submitted AO 40A and AO 40B forms to ensure that data submitted does not violate the system's business rules by:

- (a) verifying that data exists in required fields;
- (b) verifying that court reporter and court official electronic signatures exist when necessary, and that the submitting user is authorized to use a particular signature;
- (c) performing numeric and range validations on designated values; and
- (d) verifying that certain data such as places of attendance are contained within a list of accepted values.

Form validation is dependent upon the status of the form (open, rejected, pending approval, or approved), which is controlled by the user. Validations are performed at each process step, including digital signature verification and displaying or emailing the errors and warnings.

§ 140.25.20 ACRA User Roles

The system handles the processing of Forms AO40A and AO40B based upon the user role. Each role has a defined set of abilities to create, edit, and/or delete each type of form. Five roles exist:

- (a) Court Reporter
Primary user of the application, creates/modifies AO 40A and AO 40B forms;
- (b) Court Official
Approves Court Reporters' AO 40A and AO 40B forms, and monitors reports;
- (c) Court Executive
Queries data and runs reports as needed;
- (d) AO User
Enters AO 40A and AO 40B form data submitted by mail or fax that need to be entered into ACRA; and

(e) AO System Administrator

Same privileges as AO User plus maintains the application and has access to additional web pages and data.

§ 140.30 Preparing Form AO 40A (Attendance and Transcripts of U.S. Court Reporters)

Form AO 40A can be completed using ACRA. ACRA automates the submission and archiving of court reporter data. The ACRA application is designed to manage the automated creation and processing of the AO 40A and AO 40B forms.

§ 140.30.10 Coverage

All official staff, temporary, and combined-position court reporters — but not those serving on a contractual basis, or intermittently on a “when-actually-employed” basis — must complete this form quarterly. This includes employment for a partial quarter. Grand jury proceedings and the taking of depositions are considered private reporting and should not be reported on this form.

§ 140.30.20 Due Date

This form should be submitted so that it is received within 20 days after the end of each calendar year quarter, i.e., by April 20, July 20, October 20, and January 20 for the preceding quarter.

§ 140.30.30 Separation of Reporter

In the event a reporter retires, resigns, or is otherwise separated, Form AO 40A must be filed within 20 days from the date of separation.

§ 140.30.40 Information to be Included

(a) Time Spent Recording Court Proceedings

(1) Number of Days

The days of recording include the days that a court reporter (or a substitute court reporter) was required to be present at the courthouse or in chambers for a scheduled trial, hearing, or other official proceeding and was actually engaged in recording such proceedings, regardless of the amount of time spent recording the proceedings (e.g., five minutes or five hours). If there was a scheduled trial and the case was settled after the court reporter

reported for duty, the court reporter may count that day as a day of attendance provided the reporter was required to make a record of the settlement. If the court reporter is required to be in the courthouse on a standby basis and did not report a scheduled trial, hearing, or official proceeding, the court reporter may not count that day as a day of attendance.

(2) Number of Hours

Report the number of hours recording official proceedings before judges, magistrate judges, or other judicial officers. Recording time does not include lunch periods, recesses, preparation, or set-up time. Also, do not include waiting for the jury or other standby time during which the reporter can prepare transcripts or attend to any of the tasks associated with transcript orders. However, include standby time while in the courtroom or chambers. Round all hours up to the next whole number.

(3) Recording by Substitute Reporters

Substitute hours include the hours that the substitutes were employed by the court reporter to assist in the production of expedited, daily, or hourly transcripts, as well as the hours that substitutes were employed by those reporters not under 5 U.S.C. chapter 63, subchapter I ("Annual and Sick Leave Act of 1951," formerly referred to as the "Leave Act") for absences due to illnesses, vacations, or other reasons.

(4) Administrative and Transcript Preparation Hours

(A) List the number of hours spent in the courthouse or while on an approved telework plan by an official court reporter performing all administrative duties in connection with the official position. Administrative hours include:

- billing for official transcripts ordered and prepared;
- delivery and/or mailing of official transcripts;
- financial and other record keeping;
- preparation and filing of all required local and AO reports;
- answering telephone calls from other court personnel, attorneys, litigants;
- responding to official correspondence;
- reading notes to the court, counsel, or a jury; and

- other official duties as may be required by the court.

(B) List the number of hours spent in the courthouse or while on an approved telework plan by an official court reporter in transcribing official proceedings. This includes all time an official court reporter spent typing, dictating, scoping, proofreading, checking, and verifying case citations, medical and technical terms, and all other aspects of transcribing official proceedings. It does not include the hours of transcribers, note readers, scopists, or other supporting personnel employed by an official court reporter spent in these activities or the number of hours outside of the courthouse or an approved telework plan that were spent on transcribing court proceedings.

(b) Travel

(1) Items Covered

Report hours spent traveling to and from places of holding court away from the court reporter's official duty station.

(2) Exclusion

Do not include time spent commuting between the court reporter's residence and office or time spent in travel to assist an assigned reporter in the production of daily or realtime transcripts for parties.

(c) Transcripts of Official Proceedings (Requested by the Parties)

(1) Items Covered

Include the number of pages of official transcript, both originals and copies, prepared for sale, regardless of whether payment has been made or delivery has been accomplished. Include the pages of transcript of proceedings which were recorded by substitute reporters.

(2) Exclusion

Do not include copies of transcripts delivered to the clerk of court for the records of the court and transcripts furnished to judges at their request and without charge in this section of the report but as indicated below.

(d) Transcripts Furnished to the Court Without Charge

(1) Items Covered

- (A) Include the number of pages of original transcripts of arraignments and pleas in connection with the imposition of sentence in criminal cases recorded by the court reporter and by substitute reporters when transcripts of such proceedings are prepared to meet the statutory requirement.
- (B) Include the number of pages of original transcript prepared and furnished to judges at their request and without charge.
- (C) Include the number of realtime pages provided to the court by certified realtime reporters and non-certified reporters.

(2) Exclusion

Do not report transcripts of arraignments, pleas, and sentences requested by the parties here but under § 140.30.40(c)(1).

(e) Backlog

Include an estimate of the number of transcript pages on order over 30 days but not transcribed as of the end of the quarter. Include the dates of the oldest unfilled orders for civil and criminal transcripts.

§ 140.30.50 Certification by Court Reporter

By signing the Form AO 40A, the court reporter certifies, under penalty of perjury under 28 U.S.C. § 1746, that the information requested is true and correct.

§ 140.30.60 Review by Court Official

By signing the form, the court reporting supervisor or other court official indicates that the completed form has been reviewed.

§ 140.30.70 Submission

The completed form should be presented to the appropriate court official for review and signature. Form AO 40A can be completed and electronically submitted using ACRA. Forms not submitted using ACRA may be faxed to the attention of the AO District Court Administration Division (DCAD) Court Reporter Program Specialist at 202-502-1133 or mailed to:

District Court Administration Division (OCA-DCAD)
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, D.C. 20544-0001

§ 140.35 Preparing Form AO 40B (Statement of Earnings of U.S. Court Reporters)

The AO 40B Form can be completed using ACRA. ACRA automates the submission and archiving of court reporter data. The ACRA application is designed to manage the automated creation and processing of the AO 40A and AO 40B forms.

§ 140.35.10 Coverage

All official staff temporary, and combined-position court reporters with the exception of the those serving on a contractual basis or intermittently on a “when-actually-employed” basis must complete a form AO 40B annually even if employment for the year were only partial.

§ 140.35.20 Due Date

This form should be submitted so that it is received by April 15 of each year for the prior calendar year.

§ 140.35.30 Separation of Reporter

In the event a reporter retires, resigns, or is otherwise separated, and only worked for part of a year, a Form AO 40B should be filed within 60 days from the date of separation, even if employment for the year were only partial.

§ 140.35.40 Information to be Included

Each line on the AO 40B form is divided into three columns: official transcripts, private reporting, and total, and three sections: gross income, expenses, and net income. All income and expenses for official transcripts and private reporting must be reported.

(Note: Do not include Federal salaries as part of official transcript earnings.) It is important that receipts and expenses be properly allocated and reported in the respective categories. Follow basic accounting principles when completing this form. Discrepancies will be resolved by the court and the AO.

(a) Official Transcripts

This column should include receipts and expenses incident to the production and sale of transcripts of official court proceedings ordered by private parties, persons proceeding in forma pauperis or under the Criminal

Justice Act (18 U.S.C. § 3006A), and agencies of the United States. If more than one reporter participates in the production of expedited, 14-day, daily, or hourly transcript, each reporter should prorate his or her portion of the gross transcript fees earned and enter this amount.

(b) Private Reporting

This column should include gross income and expenses normally involved with private reporting activities. Fees for transcripts of grand jury proceedings and fees for taking depositions are considered income from private reporting and must be reported in this column. Private reporting activities prior to employment with the court should not be reported.

(c) Income

Income should include cash receipts from the sale of transcripts, including any fees received for transcripts produced by reporters employed by an official court reporter (either as a substitute or to assist with expedited transcript production). Receipts for private reporting work should include attendance fees, fees from the sale of transcripts, salary, dividends, trust funds, or other income from private reporting activities.

(1) Gross Receipts

The total gross income figure is the sum of all monies received by a court reporter and the reporter's business structure during the calendar year, regardless of the amount actually drawn for income tax purposes or corporate arrangements. Gross income, however, does not include monies received by a court reporter for transcripts produced by other official court reporters (regardless of whether the receipts were for ordinary or accelerated transcript) in a trust-like relationship. Those monies are to be reported in the gross income report by the official reporter who earned them by producing the transcript.

(2) Income from Private Reporting

(A) Gross income from private reporting should be only that income that the official reporter earned individually, and not the earnings of any other employees of a court reporting firm that the official reporter may own.

(B) Gross income from "salary, dividends, trust funds, and all other income from private reporting activities" should include

only that prorated amount which the reporter earned directly during the days and hours that the non-tour-of-duty reporter would otherwise have been working for the court in the courthouse were the reporter on a tour-of-duty.

(3) Compensation Paid to Substitute Reporters

This includes payments to substitute reporters for attendance fees to replace an official court reporter not under 5 U.S.C. chapter 63, subchapter I in the courtroom because of absences due to medical reasons, vacation, or other absences; or to help an official court reporter in the production of expedited, daily, hourly, or realtime transcripts. Transcript fees, less production costs, paid to a substitute reporter are listed in this category.

(4) Exclusions

Unless a court reporter actually pays monies to one or more of the court's official reporters to attend and record the proceedings, no monies should be listed for them in this section of the report. Neither should any monies paid to an official reporter for the production of transcript be listed in this section of the report. Rather, such receipts should be reported by each official reporter in his or her own report.

(5) Examples for Computing Income

(A) Example 1

Reporter Smith needs help on a daily copy (\$6.05 per page) and solicits help from official reporter Jones (another official staff reporter). Each reporter produces 300 pages of transcript for a total of 600 pages, which comes to a total amount of \$3,630.00. Reporter Smith reports 300 pages (not the entire 600) on Form AO 40A as pages produced and \$1,815.00 (not \$3,630.00) on Form AO 40B as "Gross Receipts." Reporter Jones reports 300 pages of transcript on Form AO 40A as pages produced and \$1,815.00 on Form AO 40B as "Gross Receipts." No amount is reported under "Compensation Paid to Substitute Reporters." Each reporter then subtracts the reproduction costs of the transcript on a pro rata basis as well.

(B) Example 2

Reporter Smith needs help on a daily copy case and hires an outside reporter to help. Each reporter produces 300 pages of transcript for a total of 600 pages, which comes to a total amount of \$3,630.00. Reporter Smith reports all 600 pages on Form AO 40A and \$3,630.00 on Form AO 40B. Reporter Smith then shows the actual amount of monies disbursed to the outside reporter as "Compensation Paid to Substitute Reporters" expenses.

(d) Expenses

(1) Allocation

Expenses may be allocated between private and official work either on an actual expense basis or by application of the ratio (percentage) of receipts from official and private reporting — except for travel incident to private reporting work and rent of office space, which are chargeable only to private reporting.

(2) Compensation

(A) This includes compensation paid to note readers, transcribers, typists, scopists, clerks, and substitute reporters for attendance fees to replace an official court reporter who is not under the 5 U.S.C. chapter 63, subchapter I in the courtroom because of absences due to medical reasons, vacation, or other absences; or to help an official court reporter in the production of expedited, daily, hourly, or realtime transcripts. Transcript fees, less production costs, paid to a substitute reporter are listed in this category and compensation for meals and parking should also be included. However, the cost of charities, gifts or entertainment may not be listed as expenses to offset income from "Official Transcripts."

(B) Official court reporters may not pay monies to another official reporter to attend and record the proceedings on their behalf for any reason. Receipt of monies by official reporters as a result of the above situations should be reported by the official reporter in his or her own report.

(3) Travel

Expenses (including transportation, meals and hotel) incurred for official travel in excess of the amounts reimbursed by the government are not allowable. Amounts reimbursed by the government should sufficiently cover the reporter's official travel expenses.

(4) Rent for Office Space

Official court reporters are provided office space at the courthouse. They are expected to perform their services and to house their equipment there. If they choose to rent space elsewhere, they may not list this cost as an expense to offset income from "Official Transcripts." Home office expenses may not be listed.

(5) Telephone

Telephone service for the courthouse office used for communicating with parties about transcript orders, which the reporter pays, may be listed as an expense.

(6) Postage

The cost of regular postage for mailing official transcripts may be listed as an expense. The cost difference between regular postage and extraordinary delivery is to be charged to parties. Court reporters may not list this cost as an expense.

(7) Copy Expenses

The cost of copying services paid by the court reporter for duplicating official transcripts may be listed as an expense.

(8) Supplies and Materials

Supplies and materials incident to taking the record, preparing transcripts, and maintaining an office are to be included in this category. The cost of legal directories, dictionaries, and other reference books may be included if they are purchased for and used by the court reporter to produce official transcripts.

(9) Software, Software Support, Internet Access, and Telecommunications Expenses

The cost of these products and services may be included as an expense if their use is directly related to the production of official transcripts, i.e. computer-aided transcription software; fees for realtime software support; internet access to a legal research service to locate a proper citation used in testimony.

(10) Depreciation

(A) Items Covered

In order for a court reporter to list as an expense the cost of furniture and equipment in connection with both official and private reporting activities, the reporter should depreciate the cost of such furniture and equipment over their estimated useful life. Items must be depreciated, and the full cost must be prorated over the years of useful life, rather than deducting it at one time. Only items that are directly related to the production of official transcript may be depreciated. Listing the payment of loan *principal* to a bank or other lending institution for furniture or equipment, in addition to interest and allowable depreciation, is **not** allowed. However, for information on furniture loan interest, **see:** § 140.35.40(11)(A)(iv).

(B) Exclusions

Items that cannot be included as an expense are automobiles, boats, offices in private homes, equipment used for private reporting, and any other items that do not pertain to official reporting.

(C) Method of Computing

It is recommended that depreciation be taken based on the straight-line method because it is the simplest method. However, other methods of computing depreciation (sum of the digits, declining balance, etc.) may be used if they are used for tax purposes. The court reporter should state the method used for depreciation. The cost or other basis (less estimated salvage value, if any) would be written off over the useful life of the equipment. For example, using the straight-

line method, a copier that costs \$600 having a useful life of five years and no salvage value, would be depreciated at the rate of 20%, or \$120 per year.

(11) Other Expenses

(A) Items Covered

This includes items that are not included in any other category. These items must be necessary to the production of official transcripts and must be itemized on the back of Form AO 40B. These are:

(i) Equipment Insurance

Reporters who insure their equipment against fire, theft, and vandalism may list this expense under "Official Transcripts." If the equipment is used for both official transcripts and private reporting, the reporter should apportion the cost accordingly.

(ii) Income Protection Insurance

A reporter not under 5 U.S.C. chapter 63, subchapter I who purchases income protection insurance may claim this expense under "Official Transcripts." If the insurance covers private reporting too, the reporter should apportion the cost accordingly.

(iii) Training or Seminar Costs

Reporters who pay for training courses to learn to operate equipment to produce official transcript or to improve their reporting skills may list this expense under "Official Transcripts." Travel costs to these training events, including parking and taxi expenses, may also be included. Other training or seminars, as well as association conventions or conferences, may not be listed.

(iv) Interest Expenses

Reporters who pay interest expenses on equipment and furniture purchased to produce official transcripts,

may list this expense under "Official Transcripts." The interest expense must be listed in the year actually paid.

(v) Taxes

Reporters who pay sales taxes on supplies, furniture, and equipment used to produce official transcripts may list this expense under "Official Transcripts." For supplies, the taxes may be totaled and listed in line 17 on the form. However, for furniture and equipment, the sales tax should be added to the purchase price and depreciated over the useful life of the equipment and furniture. Personal property taxes and self-employment taxes may not be listed.

(vi) Banking Charges

Reporters who pay for banking service charges may list this expense under "Official Transcripts" if such an account is established solely for official transcript fees and expenses.

(vii) Bad Checks and Related Fees

Reporters may list the expense of bad checks and related fees under "Official Transcripts" if they are not recovered from the parties and if the amount of the check is entered as income.

(viii) Accounting Fees

Reporters who pay accounting fees for preparation of Form AO 40B, for determining depreciation computation, for filing reports with the Internal Revenue Service (IRS) for employees, and for maintaining records may list this expense under "Official Transcripts." However, tax return preparation fees may not be listed.

(B) Exclusions

Items that cannot be included under "Official Transcripts" (some may be included under "Private Reporting") are:

(i) Liability Insurance

Professional liability insurance premiums are excluded because they are a personal rather than an official expense. Court reporters are not required as a condition of employment to maintain such insurance.

(ii) Notary Public

Court reporters are not required to be a notary public. Therefore, fees for being approved as a notary public are not necessary expenses.

(iii) Other Insurance

Court reporters may not claim other insurance costs not related to official reporting activities.

(iv) Association Convention and Conference Costs

Court reporters may not claim seminar or convention (e.g., National Court Reporting Association, United States Court Reporters Association) costs not related to official reporting activities (**see:** Guide, Vol. 6 § 140.35.40(d)(11) (A)(iii)).

(v) Dues to professional organizations

(vi) Fees for professional tests

(vii) Business lunches

(viii) Medical expenses

(ix) Contributions to private retirement accounts

(x) Storage Fees

Storage space is provided at the courthouse for all official notes and records.

(xi) Legal fees

(xii) Advertising

- (xiii) Referral fees
- (xiv) Art or art depreciation
- (xv) Publications
- (xvi) Flowers to the typists
- (xvii) License fees for private reporting
- (xviii) Employee parking at the courthouse
- (xvii) Any other items

Court reporters may not claim any other items that are not necessary for a court reporter to perform official reporting tasks. However, these costs may sometimes be reported as an expense incident to "Private Reporting."

(e) Net Income or Loss

Total gross income minus expenses equals the net income or loss to be reported. If a reporter incurs a loss from his or her private activities, the reporter should enter a zero on line 20 of Form AO 40B. Losses from private activities may not reduce a reporter's official earnings.

§ 140.35.50 Certification by Court Reporter

By signing the Form AO 40B, the court reporter certifies under penalty of perjury pursuant to 28 U.S.C. § 1746, that the information requested is true and correct.

§ 140.35.60 Review by Court Official

By signing the form, the court reporting supervisor or other court official indicates that he or she has reviewed the completed form.

§ 140.35.70 Submission

The completed form should be presented to the appropriate court official for review and signature. The AO 40B can be completed and electronically submitted using ACRA. Forms not submitted using ACRA may be faxed to the attention of the AO DCAD Court Reporter Program Specialist at 202-502-1133 or mailed to:

District Court Administration Division (OCA-DCAD)
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, D.C. 20544-0001

§ 140.40 Record Keeping

§ 140.40.10 Required Forms

Court reporters may obtain reporting and record keeping forms from the J-Net Forms Center. To complete Form AO 40A and Form AO 40B, official court reporters must maintain accurate and auditable records. The specific accounts used by a court reporter may vary. However, for the purpose of completing the required forms, the following information (forms) must be completed and maintained:

(a) Form AO 37 (Expense Ledger)

Form AO 37 contains accounts payable or expenses owed to a creditor resulting from a written contract, an oral contract, or an implied promise to pay.

(1) Most expenses result from the purchase of supplies, equipment, employment services, and services on credit. When a bill or employee's salary is paid, the reporter enters the transaction in the Expense Ledger.

(2) For example, if an item such as note paper is purchased, the reporter's bill or invoice copy is marked paid and the entries are posted in the Expense Ledger as follows:

(A) Payee;

(B) Date;

(C) Check number;

(D) Invoice number;

(E) Compensation paid to:

- Substitute reporters due to absence,
- Substitute reporters to assist with daily and hourly transcript,
- Note readers,

- Transcribers,
 - Typists,
 - Scopists, and
 - Other clerical personnel.
- (F) Employer contributions under the Federal Insurance Contributions Act (FICA), Social Security, Workers Compensation, and any other employer taxes or assessments relating to the employment of substitute reporters or other personnel. Amounts withheld from their wages may not be listed as expenses;
- (G) Travel expenses for substitute reporters and other personnel;
- (H) Rent for:
- Copy equipment,
 - CAT equipment, and/or
 - Others (specify).
- (I) Equipment repairs, maintenance contracts, and maintenance agreements;
- (J) Postage;
- (K) Telephone;
- (L) Other communications expenses (specify);
- (M) Supplies and materials including legal directories, reference books, and dictionaries;
- (N) Other expenses (specify); and
- (O) Totals (amount).
- (b) Form AO 38 (Attendance Ledger)

Form AO 38 is a daily log of time spent recording official proceedings in court and in chambers by the court reporter and/or a substitute.

- (1) Recording time does not include lunch periods, recesses, preparation or set-up time. Also, waiting for the jury or other standby time during which the reporter can prepare transcripts or

attend to any of the tasks associated with transcript orders cannot be included. However, standby time while in the courtroom or chambers may be included. A scheduled trial which was settled after the reporter reported for duty may be counted if the reporter recorded the settlement.

- (2) The entries that should be posted are:
 - (A) Date;
 - (B) Place;
 - (C) Travel time; and
 - (D) Recording time before:
 - Judge,
 - Magistrate judge, and/or
 - Other (specify).
- (3) This form should be kept readily available. At the end of each quarter, all days and hours should be totaled and reported on Form AO 40A. Hours should not be rounded on a daily basis; however total quarterly hours should be rounded up to the next whole number and entered on Form AO 40A.

(c) Form AO 39 (Transcript Order and Collections Ledger)

Form AO 39 is divided into two parts: orders and collections. It is used to record all orders of transcript. Once the transcript has been completed, the actual number of pages that are delivered is recorded. All monies collected from the sale of transcripts are recorded on this form.

- (1) For example, if an order is taken, the entries that should be posted are:
 - Name of ordering party,
 - Case name,
 - Case number,
 - Appeal or not, and
 - Date ordered or deposit received.
- (2) When the transcript has been prepared, the delivery entries are posted. They are:

- Date of delivery,
 - Invoice number, and
 - Actual number of transcript pages.
- (3) Transcripts furnished to the court at no charge are recorded; and
- (4) When collections are received, the following are recorded:
- Date of payment, and
 - Amount of payment.
- (d) Form AO 44 (Invoice)

Preparation of an invoice is required to meet the Judicial Conference's policy that the reporter is required to certify on each invoice that the fee charged and the page format used conform to its regulations. Form AO 44 (Invoice) is a model invoice form and is an itemized statement of the transcripts sold to a party. It is prepared by the court reporter and is a sale invoice which consists of an original and two copies. The original should be given to the party. A copy should be retained by the court reporter and used as the accounts receivable file copy, and a copy should be given to the court reporting supervisor to review for Judicial Conference rate requirements. The invoice includes:

- Name of client,
- Criminal or civil,
- Date ordered,
- Date delivered,
- In the matter of,
- Number of pages,
- Number of copies,
- Type of delivery schedule,
- Discounts,
- Refunds,
- Total due, and
- Certification of reporter of compliance with fee and transcript format prescribed by the Judicial Conference.

§ 140.40.20 Inspection

Under 28 U.S.C. § 753(d), court reporters' records are to be inspected and audited in the same manner as the records and accounts of clerks of the district courts. Records to be inspected include those related to both official and private reporting activities.

§ 140.45 Review of Reports by Court

§ 140.45.10 Court Official

Each district clerk or his/her designee will review for accuracy and completeness forms AO 40A and AO 40B received from the court reporter(s).

§ 140.45.20 Review

The review must determine that the information submitted is accurate and complete.

- (a) For Form AO 40A (Attendance and Transcripts of United States Court Reporters), the review will:
 - (1) Ascertain that the reporter has completed the form as required;
 - (2) Ascertain accuracy and completeness;
 - (3) Compare the entries pertaining to "Attendance" to Form AO 38 (Attendance Ledger), and to judicial statistics; and
 - (4) Compare the entries pertaining to "Transcripts" to Form AO 39 (Transcript Orders and Collections Ledger).
- (b) Form AO 40B (Statement of Earnings of United States Court Reporters)
 - (1) For "Official Transcripts," the review will:
 - (A) Ascertain that the reporter has completed the form as required;
 - (B) Ascertain accuracy and completeness;
 - (C) Compare the entries pertaining to gross income for "Official Transcripts" to Form AO 39 (Transcript Orders and Collections Ledger);
 - (D) Compare the entries pertaining to expenses for "Official Transcripts" to Form AO 37 (Expense Ledger), and against the allowable expenses listed above;
 - (E) Verify that the reporter has a receipt for each expense listed; and

- (F) If questions arise, review Form AO 44 (Invoice), cancelled checks, and transcript orders as necessary to ascertain completeness and accuracy.
- (2) For "Private Reporting," the reviewer will verify only that the "Official Transcripts" column has been prorated accurately if the reporter has commingled funds and resources for official and private activities.

§ 140.45.30 Corrections

The reviewer will bring any errors to the attention of the court reporter for correction before submitting the forms to the AO, and also advise the chief judge of the court of such errors.

§ 140.45.40 Due Dates

Reviews will be completed timely so that reports reach the AO in accordance with the dates established by the Judicial Conference.

§ 140.50 Penalty for Not Submitting Reports

§ 140.50.10 Judicial Conference Policy

Salaries will be withheld from court reporters who are delinquent in complying with the Judicial Conference directive under the statute to report annually their attendance and financial reports. JCUS-MAR 71, p. 28.

§ 140.50.20 AO District Court Administration Division

Court reporters shall file their reports when due; however, when reports are not received, this office is responsible for ensuring that the reporter's salary is withheld for as long as the reporter fails to submit the required reports. Withheld salaries are released upon receipt of the delinquent reports.

§ 140.55 Records Disposition

§ 140.55.10 Original Notes

- (a) Statutory Authority

"The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve

them in the public records of the court for not less than ten years."
28 U.S.C. § 753(b).

(b) Sample Certification

Each reporter should certify the original notes and other original records with the following information:

"In accordance with 28 U.S.C. § 753(b), I certify that these original notes are a true and correct record of proceedings in the United States _____ Court for the _____ District of _____ before _____ [Judicial Officer] on _____ [Date].

by _____.
Signature of Court Reporter

§ 140.55.20 Arraignments, Pleas, Sentences, and Other Proceedings.

"The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection." 28 U.S.C. § 753(b).

§ 140.55.30 Responsibilities

(a) Court Reporting Management Plan

The court reporting management plan should state that reporters are physically to turn over their original shorthand notes and electronic sound recordings to the clerk of court, who is responsible for the safekeeping of all court reporter records, as stated below.

(b) Court Reporter

The court reporter is responsible for attaching an official certificate to original records and filing them with the clerk of court, and filing with the clerk of court a transcript or an electronic sound recording of all arraignments, pleas, sentences, and other proceedings required by the court. This normally means each packet of notes or tape recordings should be individually certified. However, if there are several packets for one trial, tightly bound together, one certification is sufficient.

- (1) If transcripts are not ordered, the court reporter should deliver the original shorthand notes and other original records to the clerk of court within 90 days after the conclusion of the proceeding, or within 90 days after the expiration of the contract, whichever comes first.
 - (2) If transcripts are ordered, the original shorthand notes or records should be submitted to the clerk of court within 90 days after the transcript is delivered to the requesting parties. The reporter is also responsible for delivering to the court reporting supervisor a certified copy of any transcript made which is then filed with the clerk of court.
- (c) Clerk of Court

The clerk of court is responsible for the safe keeping of all such filed records. The original notes or other original records and the copy of the transcript in the clerk's office are available during normal office hours for inspection by any person without charge. The clerk may designate that the notes and recordings be transferred to the clerk's office for storage or maintained under suitable conditions in the court reporter's office. Transcribed records are filed in the case file and disposed of as part of the case file.

§ 140.55.40 Records Disposition Schedule

Records disposition for all records relating to court reporting should be done in accordance with the records disposition schedule. **See:** Records Disposition Schedules (Guide, Vol 10, Appx 6A and Appx 6B).

Guide to Judiciary Policy

Vol 6: Court Reporting

Ch 2: Court Reporter Personnel and Administrative Matters

§ 210 Overview

§ 220 Appointment

§ 220.10 Model Employment Dispute Resolution Plan

§ 220.15 Advertising Vacancies

§ 220.20 Screening

§ 220.25 Qualifications for Appointment

§ 220.30 Equivalent Qualifying Examinations

§ 220.35 Waiver of Qualifications

§ 220.40 Submission of Waiver Request

§ 220.45 Appointment Authority

§ 220.50 Appointment Oath of Office

§ 220.55 Probationary Appointments

§ 220.60 Staff Reduction and Termination

§ 230 Benefits

§ 240 Tour of Duty

§ 240.10 Leave

§ 240.15 Qualifications for Benefits Under 5 U.S.C. Chapter 63, Subchapter I

§ 240.20 Court Decision on Coverage Under 5 U.S.C. Chapter 63, Subchapter I

§ 240.25 Court Reporter Management Plan

§ 240.30 No Private Reporting Activities

§ 240.35 Duties of Reporters on a Tour of Duty and Under 5 U.S.C. Chapter 63, Subchapter I

§ 240.40 Leave by Reporters on a Regular Tour of Duty

§ 240.45 Duties of Court Reporters Not Covered by 5 U.S.C. Chapter 63, Subchapter I

§ 250 Salary

§ 250.10 Statutory Authority

§ 250.20 Judicial Conference Policy

§ 250.30 Salary Rate Adjustments

§ 260 Space and Facilities

§ 260.10 Design Standards

§ 260.15 Office Space

- § 260.20 Authorization
- § 260.25 Use
- § 260.30 Electrical Outlets
- § 260.35 Furniture
- § 260.40 Telephone Service
- § 260.45 Data Communications Network
- § 260.50 Supplies, Services, and Other Equipment
- § 260.55 Copy Equipment
- § 260.60 Anti-Virus Computer Software

§ 270 Travel

- § 270.10 Travel Funding
- § 270.20 Approval by the Clerk of Court
- § 270.30 Travel by Temporary and Substitute Court Reporters
- § 270.40 Travel by Contract Court Reporters
- § 270.50 Advance of Funds

§ 280 Allocation of Court Reporter Authorized Work Units (AWU) for Judges

- § 280.10 Computation of Allocation
- § 280.20 Active District Judge Court Reporter Authorized Work Unit (AWU) Computation
- § 280.30 Senior District Judge Court Reporter Authorized Work Unit (AWU) Computation
- § 280.40 Magistrate Judges

§ 210 Overview

This chapter provides guidance on the recruitment, qualifications, and appointment of court reporters, space and facilities authorized to court reporters, travel, and the annual allocation of court reporter authorized work units. For personnel policies for all judicial employees, including court reporters, **see:** Guide, Vol 12.

§ 220 Appointment

- (a) "Each district court of the United States, ... the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters." 28 U.S.C. § 753(a). **See:** Guide, Vol 12, § 510.30 (Statutory Appointing Authority).
- (b) A reporter is appointed to serve at the pleasure of the court *en banc*. A reporter is required to serve all judges and the selection and retention of

reporting staff should be addressed by the court as a whole. JCUS-MAR 82, p. 10.

§ 220.10 Model Employment Dispute Resolution Plan

By direction of the Judicial Conference, each court is required to promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. To ensure that each applicant for a court reporter position is given fair consideration, the court should follow the procedures for filling vacancies as stated in its Equal Employment Opportunity Plan, in particular the requirement to advertise vacancies. **See:** Model EEO Plan and Model Employment Dispute Resolution Plan of 2010.

§ 220.15 Advertising Vacancies

The court should seek qualified court reporter applicants who reflect the makeup of all such persons in the labor market. Vacancy announcements should be placed on the Job Vacancies page on the J-Net and publicized outside the court. Courts may place free ads in *The Circuit Rider*, published quarterly by the United States Court Reporters Association (USCRA); in the *JOB BANK*, published by the National Court Reporters Association (NCRA); or in *The Stenomask Reporter*, published monthly by the National Verbatim Reporters Association (NVRA).

§ 220.20 Screening

To ensure that only fully-qualified reporters are employed, the courts should undertake area-wide or national recruitment efforts that result in careful screening of all applicants. Such screening should determine the applicant's ability to produce accurate transcripts in a timely manner.

§ 220.25 Qualifications for Appointment

Qualifications for appointment can be found in the Guide, Vol 12, § 580 (Qualifications).

§ 220.30 Equivalent Qualifying Examinations

§ 220.30.10 Registry of Professional Reporters (RPR)

The NCRA examination for a Registered Professional Reporter (RPR) consists of a written knowledge section plus a skills section. The skills section requires the ability to record 180 words per minute for literary matter, 200 words per minute for jury charge, and 225 words per minute for testimony, and transcribe the recorded material at 95% accuracy within 75 minutes. **See:** Guide, Vol 12, § 580 (Qualifications).

§ 220.30.20 Registered Merit Reporter (RMR)

The NCRA examination for a Registered Merit Reporter (RMR) consists of a written knowledge section plus a skills section. The skills section requires the ability to record 200 words per minute for literary matter, 240 words per minute for jury charge, and 260 words per minute for testimony, and transcribe the recorded material at 95% accuracy within 75 minutes. **See:** Guide, Vol 12, Ch 6 (Pay).

§ 220.30.30 Certified Realtime Reporter (CRR)

The NCRA Certified Realtime Reporter (CRR) examination is a skill test and consists of five minutes of professionally audio-recorded dictation at 180 words per minute. Reporters are required to produce a simultaneous translation and display of live proceedings utilizing computer-aided translation within five seconds of stenotype input, and at a 96% accuracy rate. Without editing, the candidate must produce an ASCII (computer language) text file on diskette. **See:** Guide, Vol 12, Ch 6 (Pay).

§ 220.30.40 Other Professional Associations

Professional associations (other than the NCRA) and state license examinations may be acceptably equivalent to the NCRA testing, but the requirements for the examinations at the time of administration should be evaluated on a case-by-case basis as the requirements change from time-to-time. Court reporters are not required to have active membership in the NCRA or another association to qualify for appointment or promotion in the federal courts. The only requirement is that the reporter attain the credential by passing the qualification examination. NCRA and other professional associations may, however, require the court reporter to be a member of the association before allowing a court reporter to register for or participate in testing. **See:** Guide, Vol 12, § 580 (Qualifications).

§ 220.35 Waiver of Qualifications

Waiver of qualifications for court reporters can be found in the Guide, Vol 12, § 580 (Qualifications).

§ 220.40 Submission of Waiver Request

Requests for waivers are to be directed to the AO Court Personnel Management Division and should be submitted and approved prior to appointment of a court reporter. **See:** Guide, Vol 12, § 580 (Qualifications).

§ 220.45 Appointment Authority

- (a) "The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties when requesting transcripts." 28 U.S.C. § 753(c).
- (b) "That the Conference enunciate the policy already set forth in 28 U.S.C. § 753 that court reporters are not employed by, nor do they form part of the personal staff of, an individual judge. They are employed by the court *en banc* which controls their assignments. In conformity with 28 U.S.C. § 753(a), a reporter should continue to retain his [or her] employment at the pleasure of the court *en banc*, regardless of the death, resignation, or retirement of an individual judge or other reason creating a judgeship vacancy. In the period between such an occurrence and the appointment of a new judge, the reporter should continue to serve other active judges, senior judges and magistrates. If the volume of work in the long run does not justify the retention of the full complement of reporters, a reduction should be accomplished through relocation, attrition, or by giving a reasonable notice for termination of the appointment." JCUS-MAR 82, p. 10.

§ 220.50 Appointment Oath of Office

When appointed, official staff, temporary, and combined-position reporters are required to take an oath of office. Form AO 78A (United States Courts Appointment) is used to administer the appointment oath. **See:** Human Resources Manual, Section 5 (Personnel Processing Procedures for Non-Chambers Staff).

§ 220.50.10 Sample Oath for Recording Proceedings

In addition to the appointment oath for official court reporters, all court reporters, including contract reporters, should be administered an oath for recording court proceedings.

I swear that I will faithfully, impartially, and truly report all court proceedings held before the judges of this district.

§ 220.55 Probationary Appointments

§ 220.55.10 Judicial Conference Policy

All initial appointments of court reporters shall be on a probationary basis to be fixed by the employing court. JCUS-SEP 77, p. 56. **See:** Guide, Vol 12, § 510.30 (Statutory Appointing Authority).

§ 220.55.20 Court Reporting Services Management Plan

Each court's Management Plan should state the terms of the probationary period. It is recommended that the probationary period not exceed one year.

§ 220.60 Staff Reduction and Termination

- (a) All reporters serve at the pleasure of the court *en banc*. The court is entitled to make changes in the reporting staff at will. There is no requirement, moreover, that a court give preference to a reporter with seniority. In the case of a staff reduction, competence may be a primary consideration in deciding which reporters are to be retained.
- (b) Should it be necessary to reduce the reporting staff because of reduced workload, and where this cannot be accomplished by relocation or attrition, the court should give a reasonable notice of termination when possible.
- (c) In the event the need for shorthand, stenotype, or other reporter services should diminish by reason of the utilization of an electronic sound recording system, necessitating a reduction in court reporter staffing, funding for the court reporter position will be discontinued one year from the date of the election to the electronic sound recording system. JCUS-MAR 97, p. 28-29.

§ 230 Benefits

Official staff and combined-position court reporters, as employees of the federal judiciary, are entitled to many of the same benefits available to other federal employees. A court reporter, who is placed on a regular tour of duty consisting of a pre-specified number of work hours per week in the courthouse or in an approved telework plan during which hours the reporter may generate official court transcripts but may not perform any private (freelance) work of any kind, is to earn leave in accordance with 5 U.S.C. chapter 63, subchapter I ("Annual and Sick Leave Act of 1951," formerly referred to as the "Leave Act"). The court reporter should confer with the clerk of court if there are questions concerning benefits eligibility and participation as a federal employee. **See:** Benefits page on the J-Net; Guide, Vol 12, Ch 7 (Benefits); and Guide, Vol 12, Ch 9 (Leave and Attendance).

§ 240 Tour of Duty

The Conference approved a report and proposals submitted by the Ad Hoc Committee [on court reporters] which, as amended, require a court that places some of its reporters on a regular tour of duty to place all reporters in the same location on a regular tour of duty although courts may, for good and sufficient reasons when approved by their judicial councils, exempt any reporters on staff at the time of adoption of this policy. JCUS-SEP 87, p. 63.

§ 240.10 Leave

These guidelines are to be used for general guidance for court reporter leave. Leave regulations contained in the Guide, Vol 12, Ch 9 (Leave and Attendance) are the governing regulations.

§ 240.15 Qualification for Benefits Under 5 U.S.C. Chapter 63, Subchapter I

- (a) Before 1983, court reporters were not assigned regular tours of duty and therefore were not entitled to coverage under 5 U.S.C. chapter 63, subchapter I (“Annual and Sick Leave Act of 1951,” formerly referred to as the “Leave Act”). Without a tour of duty, they are considered to be part-time employees who do not have an established regular tour of duty during the administrative work week. **See:** 5 U.S.C. § 6301(2)(ii); 25 Comp. Gen. 185, 188 (1945).
- (b) Court reporters must come under 5 U.S.C. chapter 63, subchapter I, if they are assigned regular tours of duty, i.e., prescribed work hours. This is the case regardless of the number of hours per week that they are required to work, because part-time employees are also entitled to annual and sick leave on a *pro rata* basis. **See:** 5 U.S.C. § 6302(c).
- (c) A court reporter who is covered by 5 U.S.C. chapter 63, subchapter I must use annual or sick leave for any paid absence from work, and is not required or authorized to hire a substitute to cover the absence.

§ 240.20 Court Decision on Coverage Under 5 U.S.C. Chapter 63, Subchapter I

Reporters may come under 5 U.S.C. chapter 63, subchapter I only as a consequence of a court's decision that, to use its reporters effectively and efficiently, it is in the interest of the court to assign regular tours of duty in the courthouse or under an approved telework plan to the reporters. The court must notify the AO Office of Human Resources when assigning its reporters to regular tours of duty.

§ 240.25 Court Reporter Management Plan

The court's Court Reporter Management Plan must state whether reporters are assigned a regular tour of duty, and specify the regular hours of attendance.

§ 240.30 No Private Reporting Activities

Reporters may not engage in private reporting or transcribing activities, or other private business of any kind, during their regular tours of duty.

§ 240.35 Duties of Reporters on a Tour of Duty and Under 5 U.S.C. Chapter 63, Subchapter I

When reporters are not needed to record the proceedings of judicial officers during their regular tours of duty, they must remain available in the courthouse and may prepare official transcripts as required by 28 U.S.C. § 753 or by rule or order of court, including transcripts for which they are entitled to collect a fee from a party or the United States under 28 U.S.C. § 753.

§ 240.40 Leave by Reporters on a Regular Tour of Duty

For information about leave by reporters on a regular tour of duty, **see:** Guide, Vol 12, Ch 9 (Leave and Attendance).

§ 240.45 Duties of Court Reporters Not Covered by 5 U.S.C. Chapter 63, Subchapter I

For more information on duties of court reporters not covered by 5 U.S.C. chapter 63, subchapter I, **see:** Guide, Vol 12, § 920.20.15 (Duties of Court Reporters Not Covered by 5 U.S.C. chapter 63, subchapter I).

§ 250 Salary

- (a) The salary of an official court reporter is primarily payment for recording court proceedings in court and in chambers, for producing transcripts requested by a judge, and for filing required copies of transcripts with the clerk of court. The annual salary does not depend on the number of hours that the court needs reporting services; as a result, federal court reporters' base salary is not determined by the number of hours recording court proceedings. **See:** Guide, Vol 12, § 630 (Pay Rates for Ungraded Positions).

- (b) The preparation of transcript for parties is not compensated by the annual salary. Therefore, if a reporter is not available to record a proceeding because of transcript production, the reporter must hire a substitute if they are not covered by 5 U.S.C. chapter 63, subchapter I (“Annual and Sick Leave Act of 1951,” formerly referred to as the “Leave Act”) or be on approved annual leave if they are covered under 5 U.S.C. chapter 63, subchapter I. The compensation paid to the substitute is neither paid nor regulated by the court.
- (c) As part of their salaried tasks, reporters must submit Form AO 40A (Attendance and Transcripts of U.S. Court Reporters) and Form AO 40B (Statement of Earnings of U.S. Court Reporters). If these reports are not submitted within the time limitations set by the Judicial Conference (**see:** Guide, Vol 6, § 140 (Records and Reports), the Conference has authorized the AO to withhold court reporter salary payments. JCUS-MAR 71, p. 28.

§ 250.10 Statutory Authority

“Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States.” 28 U.S.C. § 753(e).

§ 250.20 Judicial Conference Policy

- (a) In September 2009, the Judicial Conference approved a pay system for official court reporters, which included the retention of longevity pay for all currently employed official court reporters and elimination of longevity pay for future official court reporters, for implementation beginning on October 11, 2009. **See:** JCUS-SEP 09, p. 20-21.
- (b) “The recommendation of the employing court is a prerequisite for any increase or combination of increases above the current starting salary. All salary rates will be adjusted upwards whenever there is a statutory increase for judiciary employees generally.” JCUS-SEP 77, pp. 55-56. Salary adjustments are not automatic and require the court to submit Form AO 193 (Request for Personnel Action), signed by the chief judge, on behalf of the court, as the appointing authority.
- (f) The requirements set forth for meritorious, and realtime, or longevity pay may not be waived.

§ 250.30 Salary Rate Adjustments

The Rates of Pay tables (salary levels) for each location are issued annually by the AO Court Personnel Management Division. **See:** Court Reporter Pay Tables on the J-Net.

§ 260 Space and Facilities

- (a) The courts should provide space for reporters (excluding contract reporters) to conduct their official business, including the transcription of official transcripts by themselves, their transcribers, or by computer aided transcription equipment. The court reporters are provided spaces adjacent to the chambers and courtroom. They are provided a private office of 150 net square feet and a storage area of 50 net square feet. **See:** Guide, Vol 16, Appx 2A (U.S. Courts Design Guide), pp. 4-15.
- (b) Space will not be altered to accommodate equipment, but dedicated electrical lines may be installed if approved by the clerk of court and subject to funds availability.
- (c) Courts must coordinate all space issues with officials in the circuit executive's office so that approvals may be obtained, where appropriate, from the circuit judicial council.
- (d) Private reporting services are not to be operated in federal courthouses.
- (e) Court reporters must not use court copying and reproduction machines to produce transcripts for sale or to provide the clerk with its certified transcript copy, except as provided below in § 260.55 (Copy Equipment).

§ 260.10 Design Standards

For complete regulations governing office space, **see:** Guide, Vol 16, Appx 2A (U.S. Courts Design Guide).

§ 260.15 Office Space

The Judicial Conference has approved specific office space limitations for official court reporters. **See:** Guide, Vol 16, Appx 2A (U.S. Courts Design Guide), pp. 4-15, and revisions to the U. S. Courts Design Guide. It should be noted, however, that the Design Guide is a guideline for space, not an entitlement to space.

§ 260.20 Authorization

Space is authorized for official staff, temporary, and combined-position court reporters; contract court reporters are not allotted space. Neither the court nor the AO has authority to sub-lease space to contract court reporters. If the court desires to have contract court reporters located in the same building as the court, the court should pursue one of the following options:

- (a) In Federal space, the court should require that the General Services Administration (GSA) grant a permit or a license to the court reporters for the desired space.
- (b) In leased space occupied by the court, the court could direct the contract court reporter to deal directly with the lessor if the desired space is not leased by the GSA or it has already been deleted from the lease, or the court could contact GSA for a lease amendment to have the desired space deleted from the lease and have the contract court reporter obtain the space directly from the lessor.

§ 260.25 Use

Office space in a government-owned or leased building may be used by court reporters only in the conduct of official court business.

§ 260.25.10 Prohibition Against Advertising Court Address

- (a) "All public buildings outside of the District of Columbia and outside of military reservations purchased or erected out of any appropriation under the control of the Administrator of General Services, and the sites of the public buildings, are under the exclusive jurisdiction and control, and in the custody of, the Administrator." **See:** 40 U.S.C. § 3101. The Administrator has promulgated some basic regulations governing the use of such space which provide in part as follows: 'Soliciting alms and contributions, commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on GSA controlled property is prohibited.' (41 CFR 101-20.308 [recodified at 41 CFR part 102-74.410])." (OGC Opinion, March 7, 1980.)
- (b) Therefore, a reporter must not use the address of a government owned or leased building when advertising for private reporting work. By the same token, a reporter must not indicate by notation on the office door, or by advertising, either on government premises, in the telephone directory, or otherwise, that the reporter engages in private reporting work in the federally provided office. If the court has approved the reporter's

engagement in private reporting work, all advertised, private reporting business must be conducted on private premises wholly disassociated from the official activities of the court reporter; the reporter's advertising may not refer to the address of the federally provided office.

§ 260.30 Electrical Outlets

As part of the office space, the courts may pay reasonable costs to install "dedicated" electrical outlets for electrical machinery such as computers, word processors, or photocopiers used in the production of official transcripts.

§ 260.35 Furniture

(a) A reporter is authorized the following level C furniture:

- Desk, Flat Top, or Secretary (choice of one),
- Chairs (as required), and
- Filing Cabinet — one cabinet may be provided for storage of current and pending notes.

See: Guide, Vol 16, § 420 (Furniture Levels and Cost Ceilings).

(b) The court reporter's request for furniture and furnishings should be submitted to the clerk of court and filled from excess whenever possible. If excess cannot be obtained, the clerk of court should process the request subject to the availability of funds.

§ 260.40 Telephone Service

(a) Court reporters need telephones for:

- communicating with court officials about assignments, and
- for communicating with parties about transcript orders.

(b) The cost of telephone hardware and service for the sale of transcripts must be borne by the court reporter.

§ 260.40.10 Judicial Conference Policy

"[U]nder the statute [Court Reporter Act, 28 U.S.C. § 753], the expense of the telephone service of the reporters is to be paid by them and is not to be compensated by the government." JCUS-SEP 45, p. 9.

§ 260.40.20 Arrangements for Service and Billing

Except as stated below in § 260.40.30 (Court-Installed Telephones), a reporter must make arrangements for telephone service. Bills are to be sent directly to the reporter for payment.

§ 260.40.30 Court-Installed Telephones

When court officials must communicate assignments to court reporters, the court may install inter-office communication equipment for its reporters. Such equipment, however, may not be used for transcript business or for private purposes. The court may provide 911 service access to any court-installed telephones.

§ 260.40.40 Long Distance Calls

If a reporter has a telephone connection with a government switchboard, the reporter is not authorized to use the government-leased long distance network facilities for making toll calls. The court reporters commercial lines must be used for making all long distance calls.

§ 260.40.50 Telephone Relocation Expenses

The initial cost of telephone installation of a phone system for transcript sales must be borne by the court reporter. The expense to relocate telephone lines due to subsequent changes of office space initiated by the court may be borne by the court.

§ 260.45 Data Communications Network

The Committee on Automation and Technology (now called the Committee on Information Technology) considered the needs of court reporters during its March 1999 meeting. Under a plan endorsed by that committee (**see:** CR-IT-MAR 99, pp. 13-14), access to the Data Communications Network (DCN) must be through government-owned equipment, and official reporters at each of the official court reporter-staffed offices would share one computer plus related peripheral equipment at each location for access to the DCN. Official court reporters are strictly prohibited from using any government-owned computer hardware or any automated systems accessed through the DCN to generate transcript income. Contract court reporters must not be allowed access to the DCN at any time.

Official court reporters authorized by the chief judge to access the DCN for official purposes may be granted remote access via the request for access process. For more information on the DCN, **see:** Guide, Vol 15, § 330 (Data Communications (DCN) Security). For information on remote access to the DCN, **see:** Guide, Vol 15, § 330.30.40(c) (Eligibility for Remote Access).

§ 260.50 Supplies, Services, and Other Equipment

"All supplies shall be furnished by the reporter at his [her] own expense." 28 U.S.C. § 753(e). The judiciary does not furnish supplies, such as note paper or notebooks, stenotype tape, transcript paper and covers, dictating tape, or electronic storage media. Nor does it furnish equipment such as computers, typewriters, stenotype machines, dictating machines, or transcribing machines.

§ 260.50.10 General Services Administration (GSA) Self-Service Stores

Court reporters are not authorized to purchase supplies from GSA.

§ 260.50.20 Postage and Delivery Costs

The Comptroller General has determined that each court reporter must pay for their own postage and all associated expenses of all mailings, including official mailings. Accordingly, each court reporter must transmit all mail with prepaid postage affixed. **See:** Comptroller General Decision B-192018, Oct. 22, 1979.

§ 260.50.30 Extraordinary Delivery Costs

If parties in unusual circumstances require delivery that fosters unusual costs, such as overnight mail services, messenger services, or other special delivery methods, the court reporter may bill the party for the difference between ordinary delivery costs and the cost for special delivery.

§ 260.50.40 Letterheads

Letterheads are supply items and must be obtained at a reporter's own expense. GSA regulations *prohibit* official reporters of the federal courts to use, as a medium for advertising their private reporting businesses, letterheads which bear the address of a United States courthouse or other federal building in which they have been assigned office space. **See:** § 260.25.10 (Prohibition Against Advertising Court Address).

§ 260.55 Copy Equipment

Court reporters must provide their own copying facilities such as photocopying machines. They should not use the court's copying equipment for official or private business. Such use is restricted because it backlogs needed copying in the court and delays case processing. Also, copy fees are established by the Judicial Conference and must be charged by the clerk for any private copying done on a court's copier, and these fees are deposited into the United States Treasury. Use of court-provided copy equipment, even with the court reporter paying the established copy fees, would deplete the courts' copy appropriations. Nonetheless, in an emergency, a court reporter may

obtain approval from the clerk of court to use the court's equipment and reimburse the court the same user-charge paid by the public.

§ 260.60 Anti-Virus Computer Software

Court reporters must secure their personal computers against viruses from computer hackers by installing the latest anti-virus software, as well as taking other preventative measures such as use of passwords and off-site backup of computer files. For more information about computer security, **see:** IT Security Policy 2007-4 (Wireless Technology Use v2.5).

§ 270 Travel

- (a) Court reporter travel is covered in the Judiciary Staff Travel Regulations. **See:** Guide, Vol 19, Ch 4.
- (b) A court has the responsibility to provide court reporting services to a visiting judge, preferably from its normal complement of reporters, or through a contractor. In some circumstances, however, it is less expensive for the visiting judge to take a reporter on assignment because the travel costs, including transportation and subsistence, are less expensive than obtaining contractual services in the visited court.
- (c) If a court reporter is authorized to travel on official business, the government pays transportation, lodging, and subsistence expenses just as it does for other court employees. Authorization for such travel within a district can be approved only when it is performed at the direction of a judge or a court through the clerk and court reporting supervisor and is for the purpose of recording court proceedings. Court reporter travel out of their home district must be authorized by the Administrative Office.

§ 270.10 Travel Funding

- (a) The clerk of the district court is given an annual allotment for travel which includes travel by official staff, temporary, and combined-position court reporters and electronic court recorder operators incident to providing services for sessions of court for judges and other judicial officers within the geographic boundaries of the district.
- (b) If additional travel funds are required for a court reporter to travel outside the district to accompany a judge for the purpose of recording court proceedings, the clerk of court may request additional funding from the AO District Court Administration Division. The request should be submitted in

advance in writing along with a certification from the host court of its inability to provide court reporter services. If funds are available, a travel authorization and associated funding will be provided.

- (c) Court reporters may not claim reimbursement for travel expenses incurred in assisting another reporter incident to the production of daily or expedited transcripts or the handling of backlogs.

§ 270.20 Approval by the Clerk of Court

Under the Judiciary Staff Travel Regulations (**see:** Guide, Vol 19, § 420.20.10(g)), clerks of court may authorize official travel by court reporters. Section 420.20.30 of the staff travel regulations permits clerks of court to delegate this function to a court reporter's supervisor, and it is recommended that this be done. Since the clerk of court is the disbursing officer, it is recommended that the court reporting supervisor or a judicial officer approve the reporter's travel voucher.

§ 270.30 Travel by Temporary and Substitute Court Reporters

Temporary and substitute court reporters may travel under the same circumstances as official and combined-position reporters and are allowed reimbursement for travel expenses when traveling away from their official duty stations. Travel reimbursement is not to be in excess of the amount which would have been allowed to an official staff, or combined-position court reporter.

§ 270.40 Travel by Contract Court Reporters

A contract court reporter may be paid or reimbursed for travel expenses to the extent provided in the contract. Reimbursement is according to the Judiciary Staff Travel Regulations, except that conflicting contractual terms have precedence over these regulations. **See:** Guide, Vol 19, § 410.20(c). Contractors, including court reporters, are not entitled to government airfares under any conditions. Subsistence allowances must be claimed on an actual expenses (itemized) basis. Allowances may not exceed these regulations in the absence of specific provisions within the contract. Each trip shall be authorized in a manner that provides for verification and documentation to assure that travel is only for officially approved purposes and within the scope of the contract. When overnight lodging is required, subsistence and travel expenses should be recorded on Form SF 1012 (Travel Voucher) and attached to Form AO 336 (Voucher Attendance Court Reporters). Contract court reporter funds are used to pay for this travel, not clerks' office travel funds.

§ 270.50 Advance of Funds

Travel advances may be issued to court reporters consistent with the Judiciary Staff Travel Regulations. **See:** Guide, Vol 19, § 430.30.

§ 270.50.10 Request

Court reporters, other than contract court reporters, may be advanced funds sufficient to meet prospective expenses of travel and subsistence in connection with official travel under the same provisions as other court employees. When such advances are desired, the following forms must be prepared:

- (a) Standard Form 1038 (Advance of Funds Application and Account)

This form should be prepared in triplicate for each advance and signed by the court reporting supervisor. The original and one copy should be forwarded to the clerk of court.

- (b) Standard Form 1012 (Travel Voucher)

Upon completion of travel, this form must be prepared in the name of the court reporter. The original and one copy should be attached to Form SF 1038 and forwarded to the clerk of court for reimbursement.

§ 270.50.20 Outstanding Advances

Once the travel has been completed, the SF 1012 should be prepared with reference to outstanding travel advances. The full amount of an advance shall be liquidated immediately upon the completion of a trip.

§ 270.50.30 Excess Advances

In the event the advance exceeds the reimbursable amount, the difference shall be paid by check drawn to the order of the clerk of court at the time of submission of the travel voucher. Any such submission must be made within 30 days after the completion of travel, consistent with the Guide, Vol 19, § 430.30 (Judiciary Staff Travel Regulations).

§ 280 Allocation of Court Reporter Authorized Work Units (AWU) for Judges

"The number of reporters shall be determined by the Judicial Conference of the United States." 28 U.S.C. § 753(a). Although reporting resources are allocated based on the number of active district judges and the activity of senior judges, these resources are assigned to the entire court. The Judicial Conference has a policy that court reporters

do not form part of the personal staff of an individual judge, but are employed by the court en banc which controls their assignments. **See:** § 220.45(b).

§ 280.10 Computation of Allocation

- (a) The total court reporter staffing allocation for a court consists of an annual allocation of court reporting resources based upon the sum of two computations. One computation is made for active district judge reporting requirements (not including ECRO credit for active district judges using electronic sound recording systems), and a second computation is made for senior district judge reporting requirements (SJR). The result of the two computations is summed and the court receives a single allocation. Funds may be used by the court unit for full or part-time staff reporters, contract court reporters or electronic court recorder operator positions. The allocation of reporting resources is redetermined each fiscal year as part of the budget development process. If the sum of the two computations is greater than the current level, funding is increased to address the need for additional reporting resources. If the sum of the two computations is less than the current level, the court's allocation of reporting resources (and associated funding) will decrease. Depending upon how those resources have been used, a reduction in staff may be necessary. Funds provided on the allocation may be reprogrammed under the Budget Decentralization Program.
- (b) It will be the court's responsibility to track activity that would result in a significant change in the level of authorized court reporter staffing. Courts should contact the AO District Court Administration Division to request such adjustments to the allocation if there is a significant change during the fiscal year. For active judge and senior judge resource calculations, **see:** Court Reporter Tool on the J-Net.

§ 280.20 Active District Judge Court Reporter Authorized Work Unit (AWU) Computation

- (a) Court reporter AWUs for active district judges, including new judges, are based upon a ratio formula of one court reporter position per on-board active district judge who elects to have proceedings recorded by manual shorthand, machine (stenotype) shorthand, or stenomask methods. The active district judge court reporter AWU staffing computation will be calculated at the beginning of each fiscal year as set forth in the Allocation of Court Reporting Resources for United States District Courts and the district court reporter staffing formula. **See:** Staffing page on the J-Net.

- (b) The Judicial Conference authorized the Administrative Office, when the court requests, to provide court reporter staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status. The additional credit may be withdrawn if other vacant judgeships are filled before the specific vacancy for which the court reporter credit was given. JCUS-MAR 99, p. 26.

§ 280.30 Senior District Judge Court Reporter Authorized Work Unit (AWU) Computation

- (a) Senior judge reporting requirements have grown significantly in recent years. Many judges who take senior status retain large caseloads and continue to draw new cases, and therefore have reporting needs similar or equivalent to those of active judges in their districts.
- (b) In March 1996, the Judicial Conference established criteria for allocating AWU resources for senior judges. Court reporter staffing credit (and associated funding) will be provided to the courts based upon the total number of in-court hours reported by the senior judges during the prior statistical reporting year or period. The criteria will require 650 senior judge hours for one position; partial position credit will be authorized for fractional remainders when the in-court time for senior judges was reported at less than 650 hours in court; and 650 hours will be subtracted for each official court reporter on board above the fiscal year court reporter position ceiling for active judges. **See:** JCUS-MAR 96, p. 25.
- (c) If requested by a court, and certified by the circuit judicial council, staffing credit (and associated funding) for a full court reporter position will be provided to the court for any senior district judge who draws cases substantially on the same basis as all active judges in the district, with this certification to be redetermined each year by the circuit councils; the in-court hours for senior judges so qualifying will be removed from the calculation. **See:** JCUS-MAR 96, p. 25.
- (d) The senior district judge court reporter staffing computation will be calculated at the beginning of each fiscal year as set forth in the Allocation of Court Reporting Resources for United States District Courts and the district court reporter staffing formula. **See:** Staffing page on the J-Net. It is the court's responsibility to track activity that may affect changes in the level of court reporter staffing authorized. If the court's allocation of reporting resources decreases, depending upon how those resources have been used, a reduction in staff may be necessary.

§ 280.30.10 Additional Computation Guidelines

- (a) If an active judge has taken senior status during the prior statistical reporting period, in-court hours while an active judge will be counted toward the senior district judge court reporter AWU computation.
- (b) To determine senior district judge in-court hours, data from JS 10 reports from the statistical reporting period (year) consistent with that used for the fiscal year clerks' office staffing allocations will be used. Normally, the statistical reporting year is the 12-month reporting period ending June 30.
- (c) In general, courts visited by judges on inter- or intra-circuit assignment have the responsibility to provide court reporting services for the visiting judge from its complement of court reporting resources. In-court hours of visiting senior district judges reported by the home district will be included in that district's senior district judge court reporter AWU computation.
- (d) Each year the circuit judicial council must review, and where appropriate, certify the designations of the district courts as to the senior district judges drawing cases substantially on the same basis as the active district judges of that district court and provide the certifications to the AO District Court Administration Division. The AO will advise the district courts and the circuit councils of the due date for the certification each year. Because the senior district judge in-court hours are already reported to the AO on the JS 10 report, there is no need for the circuit council to recollect, report, or certify that data.

§ 280.40 Magistrate Judges

- (a) Both the Congress and the Judicial Conference have expressed concern with the growing cost of the use of court reporters and have encouraged the use of electronic sound recording equipment for recording magistrate judge proceedings. They have also encouraged the use of electronic sound recording tapes, as opposed to written transcripts, by all judges in reviewing the record of proceedings. The need for a court reporter to record proceedings conducted before magistrate judges will vary according to the type of proceedings in issue and individual circumstances. **See:** Guide, Vol 6, § 410.
- (b) As a general rule, electronic sound recording equipment should be used to record proceedings conducted before a magistrate judge. Where, however, the magistrate judge determines a court reporter is required by specific rule or statute, or by the particular circumstances of an individual

case, the court reporting supervisor should assign one of the official court reporters. **See:** Guide, Vol 6, § 410.

- (c) If an official court reporter is not available, the court reporting supervisor may use a contract reporter whose attendance is paid by the court; there can be no charge to the parties for the contract reporter's attendance.

Guide to Judiciary Policy

Vol 6: Court Reporting

Ch 3: Types of Reporting Methods

§ 310 Overview

§ 310.10 Authority

§ 310.20 Methods of Reporting

§ 320 Realtime Reporting

§ 320.10 Introduction

§ 320.20 Judicial Conference Policy

§ 320.30 Guidelines

§ 320.40 Waiver of Responsibility – Disclaimer for Realtime Unedited Transcripts

§ 320.50 Realtime Reporting Standards

§ 330 Realtime Technical Standards

§ 330.10 Realtime Court Reporting Technical Standards Overview

§ 330.20 Scope

§ 330.30 Authority

§ 330.40 Responsibilities

§ 330.50 Realtime System Requirements

§ 330.60 Additional Procedural and Implementation Issues

§ 340 Electronic Sound Recording

§ 340.10 Statutory Requirements and Judicial Conference Policy

§ 350 Recording Proceedings by Electronic Sound Recording

§ 350.10 Authority for Guidelines

§ 350.20 Election to Use Electronic Sound Recording Equipment

§ 350.30 Deputy Clerks – Electronic Court Recorder Operators

§ 350.40 Responsibilities of the Clerk of Court

§ 360 Analog Electronic Sound Recording Equipment Specifications

§ 360.10 Purpose

§ 360.20 Required Equipment Features

§ 360.30 Analog System Equipment Options

§ 360.40 Analog Cassette and Tape Features Required

§ 370 Digital Audio Recording Technology Specifications

§ 370.10 Introduction

§ 370.20 Digital Audio Recording Technology Overview

- § 370.30 Mandatory Requirements for Digital Recording Systems
- § 370.40 Digital Audio System Needs Assessment
- § 370.50 Integration of Digital Audio Recording Systems and CM/ECF
- § 370.60 System Acquisition and Implementation

- § 380 Ordering Transcripts and Tapes on Electronic Media
 - § 380.10 Sale of CD's and Tapes
 - § 380.20 Preparation of Transcripts from Electronic Sound Recordings
 - § 380.30 Certification of Electronic Sound Recording Records
 - § 380.40 Back Up Tapes Made by Court Reporters
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§ 310 Overview

§ 310.10 Authority

- (a) United States district judges have the discretion to determine the means for recording their proceedings. Under 28 U.S.C. § 753(b), "Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge." District judges may direct the use of shorthand, mechanical means, electronic sound recording, or any other suitable method authorized by the Judicial Conference as the means of producing a verbatim record of proceedings required by law or by rule or order of the court. JCUS-SEP 83, p. 48.
- (b) If a bankruptcy judge elects to use a court reporter, contract reporters are used to take the record; there are no official staff court reporters in bankruptcy courts.
- (c) As a general rule, electronic sound recording equipment should be used to record proceedings before a magistrate judge. However, the magistrate judge may determine a court reporter is required by specific rule or statute, or by the particular circumstances of an individual case. In such a case, the court reporting supervisor should assign one of the official court reporters.

§ 310.20 Methods of Reporting

§ 310.20.10 Manual Shorthand Reporting

Taking the record using pen writing is rare, but may still be in use. For this type of reporting, a steno note pad or special paper is used to create handwritten shorthand characters that correspond to the spoken word. The two major shorthand languages are Gregg and Pitman.

§ 310.20.20 Machine (Stenotype) Reporting

The verbatim record is taken by a skilled official court reporter using a stenotype machine. The reporter records, on paper pads or to a computer, letters or letter combinations that correspond to the spoken word. The letters and letter combinations are translated to a written transcript. Machine (stenotype) reporters either type or transcribe from their stenotype notes, employ a note reader to transcribe their notes, dictate their notes onto electronic media to be transcribed by a typist / transcriber, or use a computer-aided transcription (CAT) system to generate the transcript. The use of CAT software to produce transcripts is the most common method used by court reporters.

§ 310.20.30 Stenomask Reporting

The verbatim record is taken by a skilled court reporter trained to listen to the court proceedings and repeat, without disrupting the proceedings, what is said in the courtroom into a special face-mask microphone. The reporter's voice is recorded onto a tape recorder, recorded digitally, or spoken directly into speech recognition software for transcription to a written transcript. Stenomask reporters either type the transcript from the tape recording, have a typist or transcriber listen to the tape and type the transcript, or play the digitally recorded voice into a speech recognition software for transcription to a written transcript.

§ 320 Realtime Reporting

§ 320.10 Introduction

Realtime reporting technologies allow the stenotype or stenomask record to be electronically transcribed in the courtroom using software that translates the shorthand/stenomask recording instantaneously and displays it on a monitor in front of the reporter, judge, attorneys, or other participants.

§ 320.20 Judicial Conference Policy

The Judicial Conference endorsed the use of realtime reporting technologies by official court reporters in the district courts to the extent that funding is available to support their use. JCUS-SEP 94, p. 49. The Conference disapproved the use of realtime reporting systems in bankruptcy courts because they did not appear to be cost effective. JCUS-MAR 94, p. 16. The Director of the AO may grant an exception for disabled judges to use realtime reporting systems. JCUS-SEP 98 p. 42-43.

§ 320.20.10 Certified Realtime Reporters

The Conference recognized as certified realtime reporters (CRR) those official court reporters who have successfully completed the certified realtime reporter examination offered by the National Court Reporters Association, or who have passed an equivalent qualifying examination, and permitted certified realtime reporters to sell unedited, uncertified transcripts at rates approved by the Conference. JCUS-MAR 96, p. 26.

§ 320.30 Guidelines

§ 320.30.10 Definitions

(a) Realtime

A technological enhancement to the machine stenotype and voice stenomask reporting method that allows a stenotype or stenomask reporter to produce an unedited transcript of the court proceedings almost instantaneously (i.e., in "realtime") for review by court participants and interested parties in the courtroom. As the reporter's shorthand notes are keyed into the stenotype machine or the voice stenomask is recorded, they are translated into their English text equivalent by computer software stored in the reporter's personal computer, and the translated (but unedited and uncertified) text is then transmitted via telecommunications lines and displayed on monitors or stored on personal computers within the courtroom at various locations (e.g., at the judge's bench and counsel tables). With some additional computer software, many realtime systems will allow court participants, such as the judge and participating counsel, to mark, annotate, and search the realtime transcript during and after the court proceedings.

(b) Realtime Unedited Transcript

"A draft transcript produced by a Certified Realtime Reporter as a byproduct of realtime to be delivered electronically during the proceedings or immediately following adjournment." CRRs should not sell realtime

unedited transcript to anyone who is not a party to the case without prior approval of the presiding judge. Communications Access Realtime (CART) for the hearing impaired should be approved by the court only after alternatives which are more cost effective have been considered. CART for ADA purposes is considered to be an interpreting program, not for the primary purpose of taking the record. **See:** Guide, Vol 5, § 255.

§ 320.30.20 Equipment

All parties requesting realtime services will be responsible for providing their own personal computers, viewer/annotation software, and monitors. Upon the request of the parties, reporters may make equipment and software available. The CRR will provide wiring and data communications connections needed to provide these realtime services. Parties should coordinate and pre-test their equipment with the CRR before official proceedings begin. **See:** § 330 (Realtime Technical Standards).

§ 320.40 Waiver of Responsibility – Disclaimer for Realtime Unedited Transcript

- (a) It is the AO Office of General Counsel's opinion that the court reporter is not at risk for personal liability arising from inaccuracies in unedited realtime transcripts. Nevertheless, in order to avoid misunderstandings, such transcript should be presented with written warnings that they are unedited and subject to later revision. **See:** Guide, Vol. 6, § 510.30.40 (Realtime Unedited Transcript).
- (b) In any event, the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., renders the government exclusively liable for harm caused by the negligent performance of official duties by a federal employee. **See:** Guide, Vol 20, Ch 2 (Federal Tort Claims).

§ 320.50 Realtime Reporting Standards

§ 320.50.10 General Policy

- (a) Effective June 1, 1996, the Judicial Conference established a new category of "realtime unedited transcript." JCUS-MAR 96, p. 26. Realtime includes the following services:
 - The instantaneous translation of the proceedings on a computer monitor;
 - The opportunity to scroll forward and backward, search the record for key words or phrases and mark portions of the text using viewer/annotation software; and

- The realtime unedited transcript and appended notes on diskette delivered during the proceedings or at the end of the day.
- (b) When realtime services are requested by a party to the case, a CRR may charge and collect for realtime unedited transcript. CRRs should not sell realtime unedited transcript to anyone who is not a party to the case without prior approval of the presiding judge.
- (c) Realtime reporting services require the use of specialized computer software which allows specially trained court reporters to display the unedited record of the proceedings at the judges bench and at the attorney's tables as the proceedings are occurring. This software offers several advantages including:
- The software enables court reporters to display the English text transcription instead of their stenographic symbols;
 - Attorneys are able to use testimony for immediate cross examination instead of having to wait for a transcript;
 - Judges can make rulings more quickly as they do not have to wait for a transcript; and
 - Attorneys and judges can issue code portions of the realtime transcript for referral purposes later during the proceedings or, in some situations, a hearing impaired individual can follow the proceeding's progress by reading the transcript.
- (d) At its September 2011 session, the Conference amended the maximum realtime transcript rate policy adopted in March 1999 to eliminate the requirement that a litigant who orders realtime services in the courtroom must purchase a certified transcript (original or copy) of the same pages of realtime unedited transcript at the regular rates, effective January 1, 2012. JCUS-SEP 11, p. __.

§ 320.50.20 Qualifications of Reporters Charging for Realtime Unedited Transcripts

Official court reporters who have successfully completed the Certified Realtime Reporter examination or who have passed an equivalent qualifying examination are recognized as Certified Realtime Reporters (CRR). CRRs are permitted, but not required, to sell realtime unedited uncertified transcript on electronic storage media. The National Court Reporters Association (NCRA) CRR examination consists of five

minutes of professionally audio-recorded dictation (straight matter) at variable speeds ranging from 180-200 words per minute. At a 96% accuracy rate, reporters must produce a simultaneous translation and display of live proceedings utilizing computer-aided translation within 5 seconds of stenotype input. Without editing, the reporter must produce an ASCII (computer language) text file on diskette. Reporters are required to provide all necessary personal equipment and software (computer, display writer, cable, and realtime software).

§ 320.50.30 Production

- (a) The transcript format guidelines prescribed by the Judicial Conference apply to realtime unedited transcript with the following exceptions:
 - (1) Realtime unedited transcript must be clearly marked as such with a header or footer that appears at the top or bottom of each page of transcript stating, "Realtime Unedited Transcript Only";
 - (2) The realtime unedited transcript should not include an appearance page, an index, or a certification; and
 - (3) The diskette label may be a different color than the color used on diskettes containing the text of certified transcript and should be hand stamped with the words, "Realtime Unedited Transcript Only".
- (b) Realtime unedited transcript sold on computer diskette may be in ASCII format, or any other format requested by the ordering party and agreed to by the court reporter. It should include any notations made to the electronic file by the ordering party during the proceedings. Diskettes may not contain any protection or programming codes that would prevent copying or transferring the data.

§ 320.50.40 Distribution

- (a) A CRR providing realtime unedited transcript should offer comparable services to all parties to the proceeding. The primary purpose of realtime unedited transcript is to provide access to a draft transcript of the proceedings on diskette at the end of each day. It is not intended to be used in subsequent proceedings for impeachment or for any other purpose, including further distribution.
- (b) It should be noted that when realtime unedited transcript is provided, there may be two versions of the transcript for one proceeding—unofficial and official. The realtime unedited transcript may contain errors, some of which could change the accuracy or meaning of the testimony. A realtime

unedited transcript will not satisfy the requirement for the reporter to provide or file a certified transcript with the district court clerk or as the record on appeal.

- (c) Realtime unedited transcript may only be distributed to ordering parties to the case. It should not be made available to the public, including news organizations or other nonparticipants. It is recommended that each CRR request that parties acknowledge receipt of a realtime unedited transcript by signing a disclaimer which explicitly states that the ordering party is aware that the realtime unedited transcript is not an official record of the court proceedings.

§ 330 Realtime Technical Standards

Realtime technical standards and guidelines have been developed governing the implementation and use of realtime reporting systems in the district courts. The technical standards, below, apply to Certified Realtime Reporters who charge fees for realtime reporting services.

§ 330.10 Realtime Court Reporting Technical Standards Overview

- (a) At the request of the Judicial Conference, the AO developed technical standards and guidelines governing the implementation and use of realtime reporting systems in the district courts. The following technical and procedural standards for realtime court reporting are intended for use by those district courts choosing to adopt the use of realtime reporting. These technical standards apply to Certified Realtime Reporters who charge fees for realtime reporting services. They do not apply to court reporters who are producing realtime records for personal training purposes or who are providing the realtime record for internal court use only.
- (b) The realtime court reporting technical standards take an open-systems approach so that, for those courts choosing to adopt realtime court reporting technologies, the court and court reporter and all other court participants wishing to take advantage of realtime reporting may do so in a way that provides maximum flexibility and freedom of product choice, while ensuring that the various parts of the overall realtime system are interoperable and provide adequate service levels and security. Several procedural standards are also included to address such implementation issues as determining who pays for what in providing realtime services.

§ 330.20 Scope

The Judicial Conference's endorsement of the use of realtime reporting in the district courts is not intended to mandate the use of this reporting method; the choice of reporting method is left to the discretion and approval of the judge.

§ 330.30 Authority

The realtime court reporting technical standards were approved by the Committee on Automation and Technology (now the Committee on Information Technology) in January 1996.

§ 330.40 Responsibilities

§ 330.40.10 Court Reporters

- (a) Certified Realtime Reporters who charge fees for realtime reporting services must comply with these realtime translation system standards.
- (b) Court reporters should be responsible for providing necessary training and operational support to the judge and other judiciary staff in the use of realtime reporting services.
- (c) For additional responsibilities of court reporters arising from the provision of realtime reporting services, **see:** § 330.50.30 (Court Reporter's Realtime Translation System Standards).

§ 330.40.20 Judges and Court Staff

To permit the effective coordination of software procurement and the necessary training and support of judiciary personnel, each district should standardize on a single specific realtime viewer/annotation software package. Judges adopting realtime reporting services should select the version of the court-standard viewer/annotation software that is compatible with the appropriate PC operating system installed in chambers; that is, the judge and chambers staff should use the same PC operating system in chambers and the courtroom.

§ 330.40.30 District Court Administration Division (DCAD)

The District Court Administration Division (DCAD) of the Administrative Office (AO) — in coordination with the United States Court Reporters Association (USCRA), the National Court Reporters Association (NCRA), and the National Verbatim Reporters Association — will review and identify those viewer/annotation software products that comply with these standards and make this information available to interested district courts.

§ 330.40.40 Non-Judiciary Court Participants

- (a) Non-judiciary court participants (e.g., plaintiffs, defendants, counsel):
 - (1) may use whatever viewer/annotation software package they prefer, so long as it is compatible with the court reporter's realtime translation system; and
 - (2) are responsible for ensuring the compatibility and necessary integration with the court reporter's realtime translation system.
- (b) To ensure proper interoperability, non-judiciary persons providing their own PCs and viewer/annotation software should coordinate and pre-test their equipment with the realtime reporter before official proceedings begin.

§ 330.50 Realtime System Requirements

§ 330.50.10 Realtime Components

Realtime court reporting systems may be characterized as having two components: a realtime translation system used by the court reporter to translate stenotype keystrokes or voice recordings into English (by using vendor-supplied stenotype or voice translation software in combination with the reporter's personalized translation or voice dictionary); and an interoperable viewer/annotation system used by other court participants to view (and perhaps search and annotate) the translated (but unedited and uncertified) transcript.

§ 330.50.20 Interoperability between Systems

The federal courts endorse and encourage an open-systems approach to the implementation of realtime court reporting systems within the federal judiciary. The court reporter's choice of a realtime translation system should be able to be made independently of any court participant's choice of a viewer/annotation system, and the two system components should be able to interoperate. The judiciary encourages realtime vendors to seek and establish industry-wide standards that will enable all realtime translation systems to interoperate with all viewer/annotation systems.

§ 330.50.30 Court Reporter's Realtime Translation System Standards

- (a) The court reporter's realtime translation system should be portable, preferably residing on a portable personal computer. The reporter's realtime translation system must be easily installed in the courtroom and operational within a few minutes, compatible with any realtime cabling

previously installed in a district courtroom (for technical details, **see:** § 330.50.50 (Realtime Wiring and Interconnection Standards in the Courtroom)), and capable of transmitting the translated (but unedited and uncertified) English text to locations specified by the court.

- (b) The court reporter's realtime translation system must be capable of providing an unedited, uncertified English text translation:
 - (1) within three seconds of the spoken word;
 - (2) transmitted in a non-proprietary ASCII text format via standard PC connections;
 - (3) that can be displayed on designated computer and/or television monitors installed within the courtroom;
 - (4) that enables parties paying for the services to capture the unedited text translation on their personal computers during the court proceedings; and
 - (5) that is also stored on the court reporter's realtime system in a non-proprietary ASCII text format following the prescribed federal court transcript format guidelines.
- (c) The court reporter may acquire and operate any realtime translation system (software and hardware) of his or her choosing which meets the prescribed realtime standards and which enables the reporter to achieve or exceed, on average, 96% realtime accuracy during district court proceedings.

§ 330.50.40 Judges and Court Staff Realtime Viewer/Annotation System Standards

- (a) Each district court should adopt a single realtime viewer/annotation system standard for use by court personnel (e.g., judges and law clerks) within that district. Judiciary personnel will normally be trained and supported by the court reporters in the use of the standard viewer/annotation software chosen by the court. This standard does not apply to non-judiciary participants (e.g., plaintiffs, defendants, counsel), who should be free to choose any realtime viewer/annotation software compatible with the court reporter's realtime translation system.

- (b) The realtime viewer/annotation system:
- (1) preferably should operate on a Windows-based personal computer, with a minimum configuration of a Pentium III processor running Microsoft Windows;
 - (2) should be capable of receiving the incoming ASCII text stream from the court reporter's realtime translation system via standard PC connections;
 - (3) should be capable of simultaneously capturing and storing the realtime unedited text and entering annotations to that text during the proceedings; and
 - (4) should be capable of preserving the content and correct positional linkage of all annotations to the realtime unedited text record, to any additional realtime edits and updates provided by the realtime reporter, and to the final certified record.

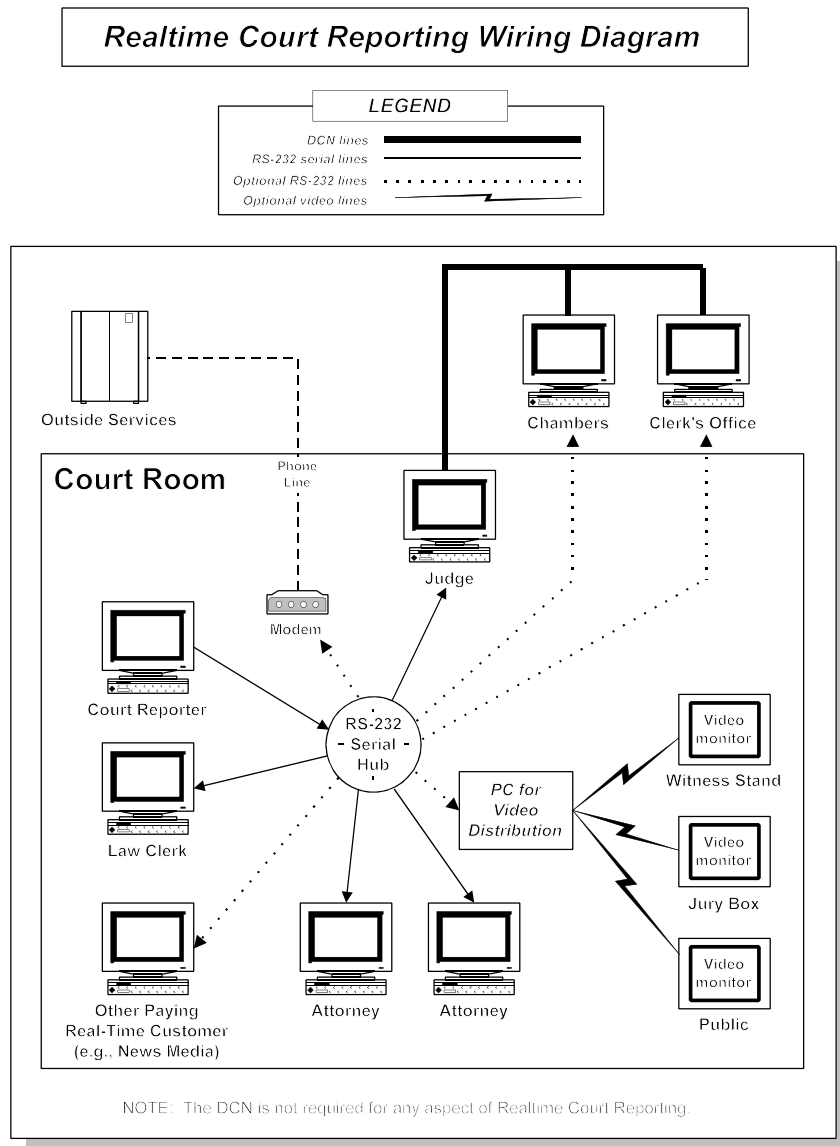
§ 330.50.50 Realtime Wiring and Interconnection Standards in the Courtroom

- (a) The communications wiring to support the interconnection of the court reporter's realtime translation system to the court participants' viewer/annotation systems (e.g., at the bench, counsel tables, witness stand, and jury box) will be configured in a RS-232 serial hub fashion, with direct-wired connections to each location in the courtroom from the court reporter's realtime translation system serial-hub. **See:** § 330.50.60 (Realtime Court Reporting Wiring Diagram). The wiring will contain at least two pairs of unshielded twisted wire, plus one spare pair. The wiring must be solid copper twisted pair cabling that meets all National Electrical Code (NEC) specifications for an office environment (including a fire-retardant jacket) and be approved by the Underwriters Laboratory. Individual twisted pairs are wrapped in impregnated glass tape and jacketed in plenum material which meets Articles 725 and 800 of the NEC for fire-retardancy. The unshielded twisted-pair cable drops will be terminated with RJ-45 jacks. All wiring, both video and serial, will be installed in the courtroom in a way that is both unobtrusive and safe.
- (b) In courtrooms requiring cables in excess of 200 feet which must support data transfer rates up to 19.2 kbps, or in courtrooms containing noisy electrical environments (i.e., installations requiring data cables to be run in close proximity to fluorescent lighting fixtures or to electrical surges caused by photocopiers or coffee makers), limited-distance modems and Belden 88103 cable or equivalent may be required for reliable data

transmission. The RS-232 transmit-data and receive-data signals should not be placed in the same twisted pair, in order to minimize crosstalk between these lines.

- (c) Each court must determine who is to be responsible for providing and ensuring compatibility of communications hardware (i.e., ensuring interoperability between the serial hub, the limited-distance modems, the computers, the video terminals, and the software provided by the realtime court reporting system).
- (d) Realtime court reporting will not use the Judiciary's Data Communications Network (DCN) for distribution within the courtroom. On those computers that are connected to the DCN (e.g., the judge's PC on the bench), the realtime viewing/annotation software must not interfere with the simultaneous operation of the computer on the DCN for DCN applications (e.g., word processing and electronic mail).
- (e) DCN connectivity will not be provided between the court reporter's realtime translation system and court participants' viewer/annotation systems (e.g., at the bench, counsel tables, witness stand, and jury box). Connectivity between the court reporter's realtime translation system and court participants' viewer/annotation systems must be achieved using non-DCN connections (i.e., by serial line connections, as specified above).

§ 330.50.60 Realtime Court Reporting Wiring Diagram



(a) Commentary

- (1) Realtime Court Reporting Wiring Diagram gives a pictorial representation of the distribution of realtime court reporting information. The realtime ASCII text stream is sent from the court reporter's translation system to a RS-232 serial hub, where it is re-transmitted to the judge, the law clerk, and both attorneys. Optionally, the realtime court reporting text stream could also be sent from the serial hub to the clerk's office, chambers, and/or any other realtime subscribers.

- (2) In addition, the realtime court reporting text stream can be transmitted, whenever required, from the serial hub to the video distribution station, which is a personal computer capable of displaying realtime court reporting information via a video output to monitors located at the jury box, witness stand, and public areas in the court room. In instances when the video signal from the video distribution station needs to be displayed in only one place (e.g., only to the witness stand), a more efficient means of distribution would be to use the video distribution PC as the display and place it in the needed location; this would save the cost of the video monitors and the cabling to unneeded locations.
- (b) Various DCN network security and capacity considerations strongly suggest that all non-judiciary personnel should be precluded from directly or indirectly connecting into the judiciary's DCN system. Even for judiciary-only use, some limitations on the use of realtime services via the DCN may need to be imposed in larger jurisdictions so as to avoid any degradation in the DCN's overall service levels (i.e., information flow and storage capacity).

§ 330.50.70 Realtime Courtroom Equipment Standards for Court Participants

- (a) The court will provide for each requesting judge a personal computer at the bench with realtime viewer/annotation software, and a similar courtroom workstation configuration for the law clerk and courtroom deputy, as necessary. The court will provide all wiring and data communications connections needed to interconnect the PC workstations for the judge, law clerk, and courtroom deputy to the RS-232 serial hub. As necessary, the court will provide similar wiring to connect chambers and clerk's office workstations to the RS-232 serial hub. Each realtime courtroom will have the capability of temporarily installing appropriately sized video monitors at the jury box or witness stand to permit hearing-impaired jurors and witnesses to view the realtime record. As necessary, the court will provide the video distribution PC and wiring needed to connect the RS-232 serial hub and the various video monitors to the video distribution PC. Because of the varying size of courtrooms and participant locations in the courtroom, no specific type or size of video monitors can be recommended. If the court chooses to install the RS-232 serial hub and all of the wiring as permanent infrastructure, the judiciary will pay for the equipment and installation in accordance with appropriate procurement requirements and include this equipment in the court's equipment inventory. Serial hubs and wiring installed as part of the court infrastructure by official court reporters prior to the re-issuance of this standard, remain the property of the court reporters. Stenotype writing

machines and computers used by the official court reporters in the courtroom must be provided by the court reporter, regardless of whether they are installed as permanent infrastructure.

- (b) If the court does not install the RS-232 serial hub and wiring as permanent infrastructure, the court reporter will provide the RS-232 serial hub and all wiring and data communications connections needed to provide realtime reporting services to non-judiciary users. (Requirements contained in 28 U.S.C. § 753, the Court Reporters Act remain.)

§ 330.60 Additional Procedural and Implementation Issues

In developing a comprehensive set of guidelines to address the management of computer systems and information within the courtroom, a variety of procedural and policy issues must be analyzed pertaining to the acquisition, costs, maintenance, operational control, ownership, portability, and resource sharing of realtime court reporting systems.

§ 330.60.10 Realtime Reporting Financial Policies

Under 28 U.S.C. § 753, the Court Reporters Act, court reporters are required to furnish at their own expense all supplies necessary to produce transcripts of court proceedings. This requirement has been interpreted by the General Accounting Office (GAO) in response to a request from the Federal Judicial Center for an opinion relating to an early pilot project on computer-aided transcription. Computer-Aided Transcription Program in Federal Courts, B-185484, May 25, 1977 (unpublished, 1977 WL 12951 (CG)). This opinion relies on an earlier decision relating to a similar project in the Superior Court of the District of Columbia, which has a similar statute relating to the services and compensation of court reporters. District of Columbia Court Reporters, B-185484, May 21, 1976 (unpublished, 1976 WL 10249 (CG)). In its decision, the GAO determined that the word “supplies” as used in 28 U.S.C. § 753(e) includes the equipment required to produce transcripts by this process. In the decision relating to the District of Columbia Courts, the GAO said that the furnishing of all equipment at his or her expense was necessary to a court reporter’s right to profit from the sale of transcripts. In response to the Federal Judicial Center’s subsequent request for clarification, the GAO said that if a court reporter reimbursed the government for the full cost of providing the service or equipment which allowed the reporter to provide transcripts through the use of the computer-aided system, this would comply with the requirements of the law.

§ 330.60.20 Compensation for Realtime Reporting Services

Jurisdiction regarding the compensation of official court reporters (including making recommendations to the Judicial Conference regarding the determination of fees for

realtime services) lies with the Committee on Judicial Resources. The following cost-sharing guidelines should be used to control costs and compensation to realtime reporters.

- (a) Pursuant to 28 U.S.C. § 753(f), the Judicial Conference sets maximum fees court reporters may charge for preparing and providing realtime and official transcripts to non-judiciary persons. **See:** Maximum Transcript Rates on the J-Net.
- (b) If a Certified Realtime Reporter chooses to offer realtime reporting services and charge fees, all requesting parties to a court proceeding will be able to capture in realtime the unedited, uncertified transcript on their personal computers during court proceedings. The court (e.g., the judge, law clerk, and courtroom deputy) will have the option of being provided realtime reporting services (without additional court reporter remuneration); the court reporter may charge fees, as prescribed by the Judicial Conference, to other persons (e.g., counsel, litigants) requesting realtime reporting services, but may not provide realtime services to anyone who is not a party to the proceeding.
- (c) During any particular proceeding, the court reporter may charge authorized transcript fees, in accordance with Judicial Conference policy, for providing the realtime and official transcripts of court proceedings only if ordered by non-judiciary persons. For example, judges may make a policy of requiring realtime reporting for their own use, and the reporter will provide it to the court without additional remuneration. On the other hand, non-judiciary persons may request (and pay for) realtime reporting services, even if the judge chooses not to use these services.
- (d) Based on current circumstances and a rule of reason, the following allocation of costs specifies which components of the realtime system are to be purchased and maintained by the court reporter, and which components are to be provided by the court:
 - (1) Except to the extent the court has installed the serial hub and wiring as permanent infrastructure, regardless of who receives realtime reporting services, the court reporter is responsible for the acquisition, installation, and maintenance of:
 - (A) the reporter's realtime translation system and ancillary components;
 - (B) all necessary wiring and data communications connections (including any necessary connectors and adapters to

connect standard laptop serial connectors to RJ-45 jacks) to provide realtime reporting services between the court reporter's system and all locations serving a paying or potential paying customer;

- (C) any equipment (e.g., personal computers, video monitors) or software (viewer/annotation software) provided by the court reporter to a paying customer or potential paying customer; and
 - (D) the RS-232 serial hub.
- (2) The court is responsible for the acquisition, installation, and maintenance of:
- (A) all necessary wiring, including any necessary connectors and adapters, between the RS-232 serial hub and the judge's bench, law clerk and courtroom deputy desks, witness stand, jury box, and public viewing area;
 - (B) any personal computers or monitors and appropriate realtime viewer/ annotation software located at the judge's bench and law clerk/courtroom deputy desks; and
 - (C) any monitors for the witness stand, jury box, and public viewing area, and the personal computer used for video distribution to the monitors.

Note: In those courthouses under construction or undergoing major courtroom renovations, the court will provide conduits and electrical outlets for realtime reporting services at all appropriate locations in the courtroom. If the court chooses to install the RS-232 serial hub and wiring as part of the permanent infrastructure to all potential users of realtime reporting, the judiciary will pay for the RS-232 serial hub, wiring and installation.

§ 340 Electronic Sound Recording

§ 340.10 Statutory Requirements and Judicial Conference Policy

§ 340.10.10 Judicial Conference Policy

- (a) "Effective January 1, 1984, pursuant to 28 U.S.C. § 753(b), individual United States district court judges may direct the use of shorthand, mechanical means, electronic sound recording, or any other suitable method, as the means of producing a verbatim record of proceedings required by law or by rule or order of the court. The judge should consider the nature of the proceedings, the availability of transcription services, and any other factors that may be relevant in determining the method to be used in producing a verbatim record that will best serve the court and the litigants." JCUS-SEP 83, p. 48.
- (b) "Electronic sound recording equipment, for purposes of this regulation, shall be multi-channel audio equipment. This regulation shall be augmented by guidelines issued by the Director of the Administrative Office, containing technical standards for equipment and procedures for implementation." JCUS-SEP 83, p. 48.
- (c) "In the event the need for shorthand, stenotype, or other reporter services should diminish by reason of the utilization of electronic sound recording system, necessitating a reduction in court reporter staffing, funding for the court reporter position will be discontinued one year from the date of election to the electronic sound recording system." JCUS-SEP 83, p. 48.
- (d) In September 1999, the Judicial Conference took the following action:

"Approved digital audio recording technology as a method of taking the official record in federal court proceedings, to be implemented upon the development of guidelines by the Director of the Administrative Office and on the condition that additional funds over the cost of analog systems will not be provided. The guidelines should include technical and functional system requirements and a self-assessment tool for courts to use when deciding whether to purchase digital audio recording systems." JCUS-SEP 99, p. 8.

§ 350 Recording Proceedings by Electronic Sound Recording

§ 350.10 Authority for Guidelines

These guidelines were issued by the Director of the AO pursuant to regulations adopted by the Judicial Conference under 28 U.S.C. § 753(b). These guidelines may not be construed to limit the discretion of judges to use a court reporter or other approved alternative method for recording proceedings.

§ 350.20 Election to Use Electronic Sound Recording Equipment

- (a) A United States district judge, including a senior judge, a bankruptcy judge or a judge of a territorial district court, who elects to direct the full-time use of electronic sound recording to record official proceedings of the court should advise, as appropriate, the chief of the District or the Bankruptcy Court Administration Divisions of the Administrative Office. Note that the provision of funding for such equipment by the AO for a judge opting to convert to electronic sound recording may be limited to the extent that a balance of funds for contract court reporting remains available to the court.
- (b) As a general rule, electronic sound recording equipment should be used to record proceedings conducted before a magistrate judge.
- (c) The electronic sound recording equipment provided pursuant to these guidelines may not be used to back up court reporters, who are required by law to furnish their own equipment.

§ 350.30 Deputy Clerks – Electronic Court Recorder Operators

§ 350.30.10 Administrative Office Responsibilities

The AO will:

- (a) Provide electronic court recorder operator staffing credit to the court for each judicial officer electing to use electronic sound recording equipment.
- (b) Provide courts with a model Electronic Court Recording Manuals for use in developing policy and procedure guidance for local application.
- (c) Assist courts in evaluating the qualifications of transcription services for providing verbatim and timely transcripts in accordance with the transcript format guidelines approved by the Judicial Conference. **See:** Guide, Vol 6, § 520 (Transcript Format).

§ 350.30.20 Electronic Court Recorder Operator Responsibilities

The Electronic Court Recorder Operator will:

- (a) Attach an official certificate to the analog audiotape or digital media that contains the recording of a proceeding.

Note: Regarding digital recordings, if a court maintains original digital audio recording files on high-capacity storage devices, such as a hard drive that may contain many such recordings, the Electronic Court Recorder Operator should file a paper certificate with the clerk of court certifying that the original record of the proceeding was taken and identifying its file location. This could be done by date and time, with a list of all proceedings involved for that date.

- (b) Maintain a log of the proceeding to be retained as an aid to the transcription of the record.

§ 350.40 Responsibilities of the Clerk of Court

The clerk of court is responsible for the efficient and effective functioning of electronic sound recording systems. These responsibilities include:

- (a) Supervising electronic court recorder operators;
- (b) Preserving the audio records according to records disposition schedules established under statute, by the National Archives and Records Administration, or by the Judicial Conference (**see:** Guide, Vol 10, Ch 6);
- (c) Assigning operators to record proceedings as needed;
- (d) Cross-training personnel so that operators are available as needed;
- (e) Reproducing audio recordings and making them available as required by law, at the rates prescribed by the Judicial Conference;
- (f) Establishing a system for listening to the audio recordings in the courthouse;
- (g) Arranging for the transcription of the record, or such parts thereof, as may be requested by the court or a party;
 - (1) Sending a copy of the audio recording and a copy of the log to the transcription service;

- (2) Receiving deposits from parties ordering transcripts, other than the United States, in an amount sufficient to cover the estimated cost of transcription;
 - (3) Monitoring payment of the transcription service upon receipt of the transcript and the extra copy for the records of the court;
 - (4) Delivering the transcript to the party upon settlement of the account; and
 - (5) Monitoring the actual fee charged to the party by the transcription service, so as not to exceed transcript rates as prescribed by the Judicial Conference;
- (h) Monitoring transcripts produced by transcription services to ensure that they conform to the transcript format requirements of the Judicial Conference.

§ 360 Analog Electronic Sound Recording Equipment Specifications

§ 360.10 Purpose

The purpose of these standards is to specify the types of sound recording equipment to be used when a judge directs the use of analog electronic sound recording equipment as the sole method of recording official court proceedings under 28 U.S.C. § 753(b).

§ 360.20 Required Equipment Features

Electronic sound recording systems to be used in courtrooms by district judges must be able to provide continuous, uninterrupted recording for clear playback and transcription. The following features must be factory installed and may not include any modification by a dealer. The minimum requirements are as follows:

- (a) Dual transport system using standard audio cassettes;
- (b) Minimum of eight audio inputs recording onto four separate channels, with a minimum of two inputs per channel;
- (c) If a system uses tape with a leader, the tape must advance automatically beyond the leader before any recording on the tape commences;
- (d) Output for a headset for off-tape monitoring;

- (e) Recording speed of 15/16 inches per second;
- (f) A playback speaker, either external or internal, and an external speaker jack;
- (g) Incapable of erasure or over-recording;
- (h) Automatic switch over from one transport to the other must occur in the following situations:
 - (1) Detection of any prerecorded signal on the tape;
 - (2) Tape motion stops;
 - (3) Broken tape; and
 - (4) End of the tape, at least two minutes before the tape runs out.
- (i) Key lock to secure all functions as well as lock tape in unit;
- (j) Playback capability from each channel individually as well as from any combination of channels;
- (k) A search/playback function capable of quickly locating any point on the tape for playback, and of searching to the point of the last recorded signal so as to record at the point where the last recording left off;
- (l) Audible sound warning in the following situations:
 - (1) Detection of a prerecorded signal on a tape;
 - (2) Tape stops during recording; and
 - (3) Broken tape.
- (m) Audible sound warning at least fifteen seconds in duration when the end of the tape is near and other transport is not ready to record;
- (n) Four-digit index display system with provisions for a remote index display; and
- (o) A device to reset the digital index counter to "0" and to rewind the tape to the beginning of the audiotape upon insertion of a cassette audiotape.

§ 360.30 Analog System Equipment Options

The following features are not required but are desirable:

- (a) Public address output;
- (b) Audible sound warning at least 15 seconds in duration in the event of a power loss or broken microphone line;
- (c) Eight hard-wired microphone inputs;
- (d) Adequate input sensitivity to accommodate dynamic microphones. If condenser microphones are required, they should be phantom powered;
- (e) Portability of equipment;
- (f) A speaker jack that is separate from the jack for the headset used for off-tape monitoring;
- (g) An index display counter accurate within two digits in search or playback situations;
- (h) Audible sound recorded on the tape whenever the recording begins; and
- (i) Automatic gain control for each channel.

§ 360.40 Analog Cassette and Tape Features Required

- (a) Recording tape or cassette must be compatible with the recording machine;
- (b) The following are required features of the cassette case:
 - (1) Type: Standard Phillips;
 - (2) Body Material: Medium Impact, High Temperature Polystyrene;
 - (3) Window: Hard Clear Plastic;
 - (4) Bond: Screw Bond Joining, Top and Bottom;
 - (5) Slip Sheet: Polyolefin or Silicone Impregnated Paper;
 - (6) Guide Rollers: Delrin;

- (7) Tape Hubs: Delrin;
 - (8) Roller Pins: Stainless Steel; and
 - (9) Pressure Pad: Phosphor Bronze and Felt.
- (c) The following are required features of the cassette tape:
- (1) Length C90: 423 Feet, +5/-0 Feet;
 - (2) Tape Type: high grade, low noise, music quality, ferric oxide formulation, with mylar back; must be coated with dark color, must have very low shedding characteristics; such as the TDK ADC series cassettes, the 3M-Scotch AVC series cassettes, or equivalents;
 - (3) Leader: must be clear (less than 10% grey);
 - (4) Tape Oxide; and
 - (5) Translucence: equal to or greater than 80% grey.
- (d) The cassette cover must be one-piece clear soft plastic "soap dish" style with snap closing.

§ 370 Digital Audio Recording Technology Specifications

§ 370.10 Introduction

These guidelines contain information for courts to use in performing self-assessments when considering or implementing digital audio recording technology. As a preliminary step, courts may wish to review Digital Audio Recording Technology: A Report of a Pilot Project in Twelve Federal Courts (May 14, 1999), a Federal Judicial Center report that includes an attachment entitled "Description of the Features of a Digital Audio Recording System." Courts using analog recording equipment should continue to refer to the electronic sound recording specifications set forth in § 360.30 (Analog System Equipment Options).

§ 370.20 Digital Audio Recording Technology Overview

- (a) Digital audio technology involves a combination of sound systems (microphones and mixers), personal computers, and specialized software and/or hardware. These systems provide sound recordings in a digital

format and also may provide annotation capabilities to automate log notes and tie them to the digital voice record. No simultaneous text or transcript is produced beyond the recorder's log notes. Digital recording systems may be used with existing courtroom sound systems, and may require a computer in the courtroom for the deputy clerk monitoring the record. This computer, as well as a computer for the judicial officer, if desired, may be linked to either the court's local area network or used in stand-alone mode, depending on the design of the system. It should be noted these systems do not provide an instantaneous transcript in the courtroom, and they provide different services than those offered by realtime court reporting methods.

- (b) Digital recording systems typically provide the ability to append electronic court recorder log notes to digital voice files, which can then be transmitted to transcribers, judges, and court staff electronically. This technology allows judges and court staff to listen to the record from their own computer workstations, and can allow judicial officers and law clerks to make their own private annotations to the digital voice record, if desired.
- (c) This method of taking the record is replacing analog recording systems because it allows recorded information to be stored in digital format, which is consistent with other computer-integrated courtroom technologies. The digital format will permit integration of the record with other elements of electronic case management systems, such as docketing and imaging, thereby enhancing access to the record for judicial officers, chambers and clerk's office personnel, the public, and the bar.

§ 370.30 Mandatory Requirements for Digital Recording Systems

The AO has determined that only a limited number of requirements must be met to provide the basic recording function. By limiting requirements, the AO anticipates that vendors and courts will have greater flexibility in taking advantage of ongoing technological advances and will be able to tailor systems to each court's unique environment without undue restriction.

In addition to conforming with applicable guidelines for courtroom technologies and sound systems, digital audio recording systems must meet the following minimum requirements.

§ 370.30.10 Digital Sound Processing

A digital recording system must be able to convert the analog audio signal received from the microphones into a digital signal. Value-added elements, may include

mechanisms to boost or clarify the audio signal, or to save the recording in a compressed file format.

§ 370.30.15 Confidence Monitoring

- (a) Confidence monitoring is a mechanism for ensuring that the audio signal has been recorded accurately to tape, disk, or other storage media. The mechanism accesses the already recorded signal from tape, disk, or other storage media (not the signal directly from the microphones) and transmits it to a headset worn by the electronic court recorder operator who then is able to check the quality of the recording.
- (b) A digital recording system must have safeguards to prevent accidental erasure or over-recording of the record and provide automatic error detection to ensure continuous, uninterrupted recording for clear playback and transcription. It also must include an output for a headset for “off-media” monitoring, and a playback speaker in the courtroom to permit replay of the record.

§ 370.30.20 Multi-Channel Recording and Channel Isolation

- (a) The system must include multi-channel recording and channel isolation to keep separate the audio signals received from different microphones. Channel isolation provides the ability to listen to one channel of the recording while turning off the others. Isolating a channel is helpful for listening to or transcribing a playback without competing sound from other microphones.
- (b) For in-courtroom use, 4-channel recording is the minimum requirement, but in circumstances where 4-channel capability is not advantageous, such as in recording proceedings conducted over a telephone (for which only one signal source would be available), courts may suspend the requirement. All multi-channel digital audio recording systems must provide channel isolation capability.

§ 370.30.25 Storage Mechanisms

- (a) All systems must be able to store the audio signal as a digital file. Typical options for doing this include storing the file on the hard disk of the recorder’s workstation or on a local server. Some systems may also offer automated mechanisms for writing a copy of the session recording to secondary storage, either digital audio tape (DAT) or other high-capacity portable media, including writeable compact discs (CDs). System

configurations that include a central server may also copy recording files to that server.

- (b) The DAT tape or other high-capacity media provides a mechanism for storing session material off-line, which can be restored to primary storage if older records no longer available on-line are needed. Copying data to a central server allows material from different courtrooms to be readily accessible to others.

§ 370.30.30 Playback Access

All digital systems must provide the capability to listen to material that was previously recorded through playback in or out of the courtroom. Courts considering digital audio systems may wish to establish ease and extent of playback access as major criteria in selecting or configuring a system. Depending on the system configuration, access may be achieved from the court recorder's workstation or from other networked locations such as workstation in chambers. The ability to re-play recordings in chambers, on demand, without requiring assistance from the court recorder can be a major benefit offered by digital recording systems. Internet access is also a feature, and courts should ensure that adequate security measures are in place in accordance with applicable information resource management (IRM) policies.

§ 370.30.35 Capability to Duplicate Digital Audio Recordings to Analog

- (a) Digital audio format will completely replace analog formats in the future. Many attorneys and transcription services may not be equipped to use digital recording formats. Thus, courts implementing digital audio recording systems must maintain the capability to convert digital recordings to an analog format, typically on a cassette tape, as prescribed in current electronic sound recording guidelines in § 360.
- (b) The necessary duplicating and reformatting equipment must be able to provide 2-channel, analog recordings for general public use. Courts also may use digital media, such as compact disc (CD) or digital audio tape (DAT) when providing copies of recordings to transcribers, attorneys, and/or the general public. It should be noted that the availability of audio files via Internet access is possible, but may not be practical due to the large file size of the recordings.

§ 370.30.40 Archival Storage and File Formats

- (a) Recordings or annotation notes made by digital audio systems must be available according to the record retention schedules. **See:** Guide, Vol 10, Appx 6A and Appx 6B. Digital systems must be able to export files

for archiving in a non-proprietary format. Alternatively, files may be converted to analog format using standard cassette audio tape or archived in digital format with an executable file that allows users to replay the recording independent of proprietary software.

- (b) This requirement is important because digital audio recording systems often use proprietary formats to store their data files. Thus, it is possible that recordings made in one court could not be accessed by a court that did not own a proprietary license for the vendor system that created the file. Similarly, as technology changes and new capabilities are incorporated into recording systems, even if a court is still using the same vendor, it may have a difficult time restoring a recording that is several years old. This situation would interfere with the clerk's responsibility to maintain a copy of the record that is accessible both now and in the future, according to records disposition schedules established by law or the Judicial Conference.
- (c) Currently, there are no approved file formats or storage media standards for digital audio files. However, the ".wav" format for digital audio is a publicly available, non-proprietary format that can be accessed from many different products and utilities. Standard ASCII text files can be used as a standard format for the session information and annotations. Records management issues and the need for a migration plan are discussed in § 370.40 (Digital Audio System Needs Assessment).

§ 370.30.45 Common System for Transcribers

- (a) The federal courts endorse and encourage an open-systems approach to the implementation of digital audio recording systems within the federal judiciary.
- (b) While the federal judiciary does not want to preclude arbitrarily any vendor from marketing products to transcription services, for transcription purposes digital audio recording systems used in the federal judiciary must be able to produce digital files in an industry standard format, such as ".wav" for audio or ASCII for text.
- (c) In addition, transcribers must have the capability of isolating channels and adjusting the volume for each channel in order to transcribe accurately the record without requiring the transcribers to purchase proprietary hardware or software system components.
- (d) To meet this purpose, digital audio files may be accompanied by an executable program that allows the receiving transcription service to listen

to the recording, isolate channels, adjust volume, and view any related annotations.

§ 370.30.50 Emergency Backup

- (a) Courts should ensure that appropriate backup measures are in place when using digital audio recording systems, including emergency equipment and procedures to be used when the primary recording system fails and is unable to take the record of a proceeding. Options include:
 - (1) having a spare workstation with the digital recording system pre-loaded and ready for service to continue recording;
 - (2) using a low-end digital system, such as a laptop with a recording sound board to take the audio record and taking hand notes; or
 - (3) reverting to a backup analog recorder and hand-written log notes.
- (b) The emergency plan also should include a method for entering the recording and any annotations taken with the backup system into the primary digital recording system so that there are no gaps in the material accessible through the digital system.

§ 370.30.55 Disaster Recovery Plan

Systems must include plans for off-line backup of the audio files and annotations database, as applicable, for disaster recovery. Digital audio tape or other high-capacity media provide a secondary storage mechanism coupled with periodic backups of the disks on the servers or workstations provide preventive maintenance. Off-site storage of backup media is strongly encouraged.

§ 370.30.60 System Security

Systems must include procedures to provide basic identity checking to validate the user. For systems that allow users other than court recorder operators, including judges, to make annotations or that allow users to declare their annotations “private,” there must be security procedures to lock and unlock those files. If Internet access is offered, courts must install security measures in accordance with the Guide, Vol 15, Ch 5 (Managing IT Resources).

§ 370.40 Digital Audio System Needs Assessment

- (a) Extensive planning is a critical element in the successful implementation of a digital audio recording system in a federal court setting. Such planning

can be complex because there are so many components, interactions, and sources of information to consider, as well as the acquisition process and implementation. Therefore, this guide is provided as a tool for courts to use in planning and successfully acquiring a digital audio recording system.

- (b) It is important that each court location carefully assess its requirements, distinguishing between required and optional functionality. Courts may establish a task force to assist in determining the requirements of the court. This will give judges, chambers staff, courtroom staff, and transcribers information about the operation of hardware, software, and networks. System requirements should be standardized as fully as possible in each court to make providing system support easier and to reduce time and costs for training operators and judicial officers.
- (c) Courts should consider the following critical areas when making preliminary assessments of their requirements.

§ 370.40.10 Centralized or Courtroom-Based System Configuration

- (a) Configurations for digital audio recording systems, distinguish between “stand-alone,” “networked,” and “central server” systems. “Stand-alone” refers to a configuration where all the components of the digital audio recording system reside on the court recorder’s workstation in the courtroom. In “networked” configurations, some of the components of the digital audio system are located in the courtroom and some are located elsewhere. As long as all of the storage and access to the digital audio recording functions are maintained solely on the workstation in the courtroom, it can be considered stand-alone — for example, even if the workstation is also used to run e-mail over the network.
- (b) However, when a digital audio recording system function is performed over the network — for example, backups to a storage device — then it is considered to be a “networked” system. The networked system is described as being on the network and allowing other computers on the network to share access to the digital audio files on the main recording system in the courtroom. It also allows for the possibility of sharing disk storage and other peripherals that are on the network and not directly attached to the court recorder’s workstation.
- (c) There may be two types of “stand-alone” configurations. The “isolated stand-alone” system is described as being totally isolated from the network and other computers, with all components physically attached to the court recorder’s workstation located in the courtroom. The

“participating stand-alone” system is described as having all of the components for the digital audio recording system confined to a single workstation in the courtroom, but that workstation is connected to the court’s network and can share in other network services for purposes not related to digital audio recording.

- (d) A “central server” configuration is one in which audio signals are sent from several courtrooms to servers and monitoring equipment in a single centralized control room. This approach requires less equipment in the courtroom and allows for more efficient use of servers, storage disks, and other peripherals. A court recorder in the central location records and monitors sessions being held in more than one courtroom at a time, logging one session while ensuring that the equipment is functioning properly in all others. A courtroom-based configuration maintains the recording, monitoring, and note-taking equipment and processes in the courtroom itself, with only long-term file storage in a central location.
- (e) Courts interested in pursuing the centralized option should be aware that because of the type and level of log notes taken in most federal courtrooms, a single court recorder would not be able to fully annotate the proceedings in multiple courtrooms. Thus, to the extent sound quality and an acceptable transcript depends on constant attention to the recording and on detailed log notes, central monitoring of multiple courtrooms is not recommended.

§ 370.40.15 Hardware and Software Compatibility & Network Capacity

- (a) Digital recording equipment may require new hardware and software as well as changes in the court’s existing network configuration and computer systems support. It is important for the court to work with potential vendors to identify potential problems and opportunities. Each offeror must provide minimum specifications and cost estimates during the market research phase of the acquisition process, including:
 - (1) Understanding how the court’s existing hardware and software will be used, with or without upgrades in the digital recording system;
 - (2) Identifying additional hardware and software that would be required and how that would be integrated into the court’s current computer environment. In this regard, potential conflicts with existing hardware and software should be identified; and
 - (3) Performing a detailed analysis of existing network capabilities in relation to the additional requirements that would be imposed by a

digital audio recording system. Determining additional server needs and other network equipment or connectivity requirements. Assessing system integration issues.

- (b) All requirements must be set forth in the statement of work. **See:** Guide, Vol 14, § 230.30 (Statement of Work (SOW)).

§ 370.40.20 Sound Systems

Courts should also work with digital audio recording system vendors to determine if their existing sound systems are adequate for the products under consideration. If installation of a digital audio system would require modification to existing sound systems, the court should consider using the services of one of the AO's audio/video design term contractors available through the Space & Facilities Division. These designers can ensure that existing sound systems are modified appropriately to accommodate this new digital technology.

Note: Digital audio recording system vendors should not open, adjust, or work in the court's existing audio sound system cabinets since this could invalidate warranties or maintenance contracts on the sound systems.

§ 370.40.25 Record Annotation Options

- (a) Using a digital audio recording system to take the record of a proceeding can offer advantages, such as improved sound quality, easier access through electronic retrieval or transmission, and inclusion as an element in an electronic case file.

In addition, digital audio also typically offers the opportunity to directly link the audio file to the recorder's notes (or annotations made by others) for easy search, replay, or transcription. Alternatively, digital audio can allow notes from an external source, such as WordPerfect, to be related to the audio file via time synchronization.

- (b) Courts interested in digital audio recording systems should consider the following issues related to record annotation:
 - (1) The advantages of an integrated note-taking/recording system may include better linkage between log notes and the audio file(s) to which they relate. Disadvantages may include the need for a data base file to maintain the log notes, more difficulty in editing log notes, and greater reliance on proprietary formats;

- (2) Using a separate note-taking system, such as WordPerfect, may offer the advantage of easier editing, reliance on industry standards, and less technical complexity. However, the lack of direct integration with the audio record may require greater user set-up time and adversely affect the ability to access and play back selected parts of the record;
- (3) In evaluating integrated or separate system designs for note-taking or any other digital audio features, courts should test all systems and procedures to ensure that they meet the requirements set forth in the Statement of Work:
 - (A) Evaluate the level of effort required to set up a recording session. Consider whether setup information can be adjusted from session to session or must be completely reentered each time;
 - (B) Determine whether the screens accommodate all of the information that court recorders and/or transcribers need to enter into the log, such as names and addresses for all attorneys;
 - (C) Consider whether court recorders can enter this information at a convenient time and without disruption to court proceedings;
 - (D) Consider whether the court recorder's notes can be edited after they are entered; and
 - (E) Evaluate whether electronic court recorders can maintain the same level of quality with the new note-taking system as they achieved with the older system of log notes.
- (4) Consult with your court's judges as to whether they want to take private notes from the bench that could be integrated with the audio record. If so, involve them in selecting the design.

§ 370.40.30 System Integration Opportunities and Data Storage

Integrating a digital audio recording system with a court's case management system to import case information electronically can save data entry time and reduce errors. Consult with the case management system's designers and supporters as to the feasibility of such integration. While the technology for integration is likely to be available, cost will probably be a key issue. In addition, depending on each court's

determination of needs, this functionality may or may not be a system requirement for every court. Integration requirements must be identified specifically in the Statement of Work.

§ 370.40.35 Impact on Court Operations

A new recording system may have an effect on how the court functions. Courts must evaluate the following:

- (a) Modifications, if any, that may be required in current courtroom, chambers, or clerk's office procedures to accommodate a new way of doing business.
- (b) Physical impacts on the courtroom or other operational areas, including impact on courtroom aesthetics, court recorders' line of sight, and access to aisles and exits. Wiring issues and the ability to "hide" equipment should be reviewed carefully, particularly in older or ceremonial courtrooms.
- (c) Impacts on staffing requirements, such as requirements for extra systems support and training.

§ 370.40.40 Product Suitability and Customization Requirements

In considering the purchase of a digital audio system, courts must determine whether the product under consideration accommodates the way cases are handled, e.g., appellate, bankruptcy, district, or magistrate matters.

- (a) Carefully assess the product's capabilities and features to determine the extent of customization, such as special screens or "hot keys," that may be required to handle particular proceedings, including motion calendars, or special cases, such as sealed cases. If special screens and/or "hot keys" are needed, establish a testing and training period to ensure their functionalities and capabilities.
- (b) If customization is needed, responsibility for making the changes must be firmly established under the court or the vendor. If the vendor is required to customize the product, make sure that the required customization is defined in the statement of work. A vendor's proposal will then address the changes to be made with performance deadlines. The contract must include a requirement to support the system in the future with all customization.
- (c) If the court would be responsible for customizing the system, the court must ensure that it has adequate technical expertise and determine the

extent of assistance, including software, manuals, or technical support, that the vendor must provide to help make such customization possible. Also, the court should consider whether such customization would affect vendor support or warranty provisions.

- (d) Courtroom staff, including those responsible for electronic sound recording, should be involved in evaluating proposals. Arrange for an actual in-courtroom test of a product, rather than a simple office demonstration, as well as an explanation of training requirements and the kind of training to be provided.
- (e) If possible, make a site visit to another court with a system already installed and operating.

§ 370.40.45 Records Management Issues

Implementation of audio digital recording raises a number of records management issues. Central to these concerns is cost. Analog tapes require some maintenance over their record life span. Tapes deteriorate and must be stored in an acceptable temperature and humidity range. Digital records are susceptible to obsolescence of the software to read them and the hardware upon which they are stored. As a result, they need more care-taking and periodic refreshes for both hardware and software. **See also:** Guide, Vol 10, Ch 6 (Records Management); and Records Management page on the J-Net.

§ 370.40.50 Transcription Issues

A court must assess the court community's need for transcription services. If transcripts are regularly needed either by judges or attorneys, the court must determine whether transcription companies are available to transcribe the record.

- (a) Courts may find that if judges can easily listen to the record in chambers, or attorneys have access to the record via the Internet, the demand for transcripts may decrease.
- (b) Moreover, the court must consider the use of digital audio recording technology with transcription firms to assess the readiness of the firms to make the switch to digital transcription. Providing sufficient volume to make the transcription company's special equipment purchase worthwhile may be an issue.
- (c) The court must determine how to send digital audio files to transcription firms via the Internet or modem. Special procedures will be necessary for the transcription of sealed, redacted, and other sensitive proceedings.

- (d) The court must determine whether the equipment they are considering meets the needs of their transcription companies. Foot pedals that meet industry standards must be used. The transcription software must allow them to keep their hands on the keyboard as much as possible and have windows and fonts that are sizeable and capable of displaying more than one line of text at a time. And, to assist transcribers in the identification of speakers, the digital recording software must time stamp the log notes when a court recorder begins the log note rather than at the completion of the note.
- (e) The court must identify transcription service providers that are capable of accommodating digital recording files.

§ 370.40.55 Training

- (a) The training program must be tailored to the background and needs of the users, including judges, electronic court recorders, and transcribers, and must provide training materials and reference manuals that can be used after the training is completed. If a court's computer systems staff are to provide ongoing hardware and/or software support to users, they must be trained as well. With sufficient training, systems staff may be able to diagnose and, perhaps with telephone assistance from the vendor, resolve problems that would otherwise require site visits. Training requirements must be identified in the Statement of Work.
- (b) Responsibility for training should not fall entirely on the vendors. A court must help by identifying user needs (e.g., the level of computer literacy and/or the type and nature of tasks to be performed) and by scheduling uninterrupted training that includes hands-on courtroom experience as appropriate to the user. If users need basic computer training, the court should arrange for it to occur prior to training on the digital recording software. Courts must be willing to set aside sufficient time for on-going training and accommodate individual training needs as necessary.

§ 370.40.60 Implications of Adding Courtrooms or Chambers to the System

- (a) Courts wishing to "phase in" digital recording in a few courtrooms at a time must adhere to all procurement authority limitations. **See:** § 370.60 (Systems Acquisition and Implementation).
- (b) Courts using a centralized digital audio design that want to install systems in additional courtrooms must be aware that existing equipment and services may need to be enhanced to support expansion. Adding courtrooms to these systems will necessitate changes to existing

hardware, requiring more support from systems staff, and may necessitate hiring personnel for that purpose.

- (c) To the extent that additional contractors are required to support infrastructure changes, it will be up to the court to coordinate the efforts of the various contractors so that each contractor can perform its responsibilities without other contractors acting as impediments. A good way to handle multiple contractors is to bring them together periodically for coordinating meetings.

§ 370.40.65 Implications of Running a Mixture of Analog and Digital Systems

Courts may decide to use digital recording systems in some, but not all, courtrooms that currently use analog electronic sound recording. Issues to consider include the following:

- Use of mixed recording modes may undercut the advantages of eliminating the older analog technology,
- Court recorders may not be able to substitute for each other in different courtrooms unless cross-training is kept up on both systems,
- It may become complicated to produce tapes and obtain transcripts due to storage of the record in different modes and in different locations, and
- Integration of existing analog systems with new digital systems is problematic; sound quality may be impacted adversely if parallel systems are maintained.

§ 370.40.70 Emergency Backup Planning

- (a) Courts may run their analog systems in parallel with the new digital systems as long as they deem necessary to mitigate risk to the record in the event of a malfunction. For courts that continue to use this mode for backup, the issues cited above regarding maintaining older technology, keeping up training, and locating recorded material will persist. Also, a major issue to be considered may be the need not only to split the audio signal from the microphone to feed into both the analog and digital systems, but also to amplify the signal to serve both recording systems. In some cases, installation of special equipment is required.
- (b) An alternative to an analog backup is to have an emergency “crash cart” pre-loaded with the digital audio system that can be substituted quickly in the courtroom if a system fails. However, there are drawbacks to this

approach. The first is the cost associated with buying and maintaining an emergency backup, which must be kept current (i.e., loaded with current versions of the software and possibly even the function key “shortcuts”) so that it can be substituted in the middle of court proceedings. Second, use of a crash cart resolves problems that arise from a faulty workstation in the courtroom, but would not necessarily compensate for server or network problems.

- (c) A second alternative that might be considered is use of a digital mini-disk recorder or laptop with sound input for emergency backup in court. This machine would not be able to reproduce a multi-track recording, but it could be substituted easily during a short break in proceedings. Since such a digital recorder would only record audio, the court recorder would have to revert to handwritten log notes. This approach addresses the cost and technology issues, but does not address the problem of having the log notes in a non-digital format. This potentially could be solved if the digital audio files from a different source, such as a mini-disk, could be transferred into the principal digital recording system with log notes to be added at a later time.

§ 370.40.75 Security Issues

- (a) Digital audio recording systems require a security plan in accordance with the Computer Security Act. This plan is a written assessment of the security risks associated with the system, and how these risks have been mitigated, including countermeasures or defenses put in place.
- (b) For a digital audio recording system, such a plan would cover or include, but not be limited to, the following items:
 - (1) Authentication of valid users of the system, and written procedures covering authorized users and uses of the system,
 - (2) System level access protections allowing different kinds of access for different types of users, including features allowing locking of "private" annotation files, etc,
 - (3) Protections for the possible inadvertent connection to a building LAN that could allow access to unauthorized users,
 - (4) Protections for problems resulting from sending digital files to authorized users (such as transcription services) over transmission media that would allow access by unauthorized users. For example, sending unencrypted files over the Internet,

- (5) Protections for the possible tapping of cables carrying such information,
 - (6) Protections for other unauthorized listening to sealed or other sensitive court proceedings,
 - (7) Written backup and recovery procedures to ensure availability of the files and also to prevent unauthorized access to backup media of sensitive proceedings, and
 - (8) To the extent that courts opt to make digital audio recordings publicly available through the Internet or other electronic means, procedures must be in place to ensure privacy and protect sensitive information and to preclude malicious or inadvertent disclosure or alteration.
- (c) Each court must develop its own procedures and ensure that the system handles and secures sealed and other sensitive matters.

§ 370.50 Integration of Digital Audio Recording Systems and CM/ECF

Many courts have given considerable attention to the integration of digital audio recording records with the Case Management/Electronic Case Files system (CM/ECF) to improve the overall efficiency and effectiveness of court operations. Courts have expressed an interest in several processes for linking/integrating digital audio recording records with CM/ECF. **See:** Memorandum, Jan. 27, 2006, Integration of Digital Audio Recording Systems and CM/ECF.

§ 370.60 System Acquisition and Implementation

The court must develop a statement of work and select an acquisition method. For guidance, courts should contact the AO Procurement Management Division.

§ 380 Ordering Transcripts and Tapes on Electronic Media

§ 380.10 Sale of CD's and Tapes

- (a) Upon request, the court may reproduce tapes or compact disks on its own duplicating equipment or on commercial equipment and may sell copies of electronic sound recording tapes and CD's made as the official record to the public at the prevailing rate prescribed by the miscellaneous fee schedule in effect. Orders for tape copies should be submitted to the

clerk's office on Form AO 436 (CD/Tape Order). This provision does not apply to reporters' backup tapes used to augment the record.

- (b) Electronic sound recording tapes of arraignments, changes of plea, and sentencing that have been filed with the clerk of court are public records and, therefore, are available for review. Audio recordings of arraignments, changes of plea, and sentencing proceedings filed by official court reporters with the clerk of court are public records and must be accompanied by a certification. This certificate, Form AO 35, will:
 - (1) List the docket number, the name of the defendant, and the nature of the proceedings (i.e., arraignment) in each case which is to be found on the sound recording.
 - (2) Recite that the electronic sound recording was made in the regular course of the court reporter's profession.
 - (3) Recite that the reporter has played back the recording and certifies that it is a true and correct record of the proceedings, that it is sufficiently intelligible, that it can be transcribed without undue difficulty and that he or she has filed the original of the recording to which this certificate is attached.
 - (4) State that the reporter has certified and filed his original shorthand notes or other original record with the clerk for preservation as required by 28 U.S.C. § 753(b) as amended.
 - (5) Include the signature of the court reporter.

§ 380.20 Preparation of Transcripts from Electronic Sound Recordings

- (a) The court may have transcripts prepared by professional transcription services based on credentials offered by the profession. This would include firms or individuals that have been certified by the American Association of Electronic Reporters and Transcribers (AAERT) or provisionally approved by the AO.
- (b) While the Judicial Conference does not permit the AO to maintain a central listing of certified transcribers, a court may keep a local list of transcribers certified by AAERT or provisionally approved by the AO.
- (c) If a court exceeds a dollar amount for transcription services above the \$5,000 level per year, the court may need to consult the procurement

acquisition guidelines. **See:** Guide, Vol 14, § 325 (Small Purchase Procedures).

- (d) The person or transcription firm designated to transcribe the proceedings recorded by electronic sound recording must authenticate the original transcript and each copy with a certification on the last page. **See:** Guide, Vol 6, § 520 (Transcript Format).

§ 380.30 Certification of Electronic Sound Recording Records

- (a) Electronic Court Recorder Operator

The electronic court recorder operator is required to certify that the recording is a true and correct record of the proceedings. For example: "Certified by operator to be true and correct" and signed by the operator. For cassette tape labels with the certification included on the label, **see:** Form AO 438.

- (b) Certification

The person or transcription firm designated to transcribe the proceedings recorded by electronic sound recording must authenticate the original transcript and each copy with a certification on the last page. **See:** Guide, Vol 6, § 520 (Transcript Format).

§ 380.40 Back Up Tapes Made by Court Reporters

Back up tapes made by court reporters for their own convenience and not otherwise required by 28 U.S.C. § 753 are the personal property of the court reporters. There is no public entitlement to these recordings, with the exception of recordings of arraignments, changes of plea, and sentencings filed with the clerk of court, which are covered above in § 380.10(b) (Sale of CDs and Tapes).

Guide to Judiciary Policy

Vol 6: Court Reporting

Ch 4: Reporting Activities

§ 410 Reporting for Magistrate Judges

- § 410.10 Introduction
- § 410.20 Statutory Authority
- § 410.30 Guidelines for Recording Court Proceedings
- § 410.40 Judicial Conference Policy
- § 410.50 Responsibilities
- § 410.60 Attendance Fees
- § 410.70 Transcripts of Magistrate Judge Proceedings

§ 420 Reporting for the United States Attorney's Office

- § 420.10 Considered Private Reporting
- § 420.15 Judicial Conference Policy
- § 420.20 Comptroller General Decision
- § 420.25 Department of Justice (DOJ) Circular
- § 420.30 Fee Arrangements
- § 420.35 Grand Jury Reporting
- § 420.40 Deposition Work
- § 420.45 Court Approval
- § 420.50 Court Reporting Supervisor Approval
- § 420.55 Disallowed Use of Substitute Reporters
- § 420.60 Disallowed Use of Contractors
- § 420.65 Disallowed Attendance Fees
- § 420.70 Transcript Fees
- § 420.75 Reporting Income

§ 430 Private Reporting Activities

- § 430.10 Introduction
- § 430.15 Statutory Authority
- § 430.20 Judicial Conference Policy
- § 430.25 Court Approval
- § 430.30 Not Permitted During Tour of Duty
- § 430.35 Approval of Substitutes by Court Reporting Supervisor
- § 430.40 Types of Private Reporting
- § 430.45 Transcript Fees
- § 430.50 Use of Federally Provided Space and Equipment
- § 430.55 Private Office
- § 430.60 Prohibition Against Advertising Court Address

- § 430.65 Letterheads
- § 430.70 Mail
- § 430.75 Housing Employees of the Court Reporter
- § 430.80 Reporting Income

§ 440 Substitute Court Reporters

- § 440.10 Introduction
- § 440.20 General Counsel Opinion
- § 440.30 Appropriate Activities
- § 440.40 Approval for Hiring
- § 440.50 Voluntary Use of Substitute Reporter
- § 440.60 Judge Appointed (Involuntary) Use of Substitute Reporter
- § 440.70 Qualifications
- § 440.80 Oath
- § 440.90 Court Reporter Responsibilities

§ 450 Contract Court Reporting

- § 450.10 Statutory Authority
- § 450.20 Judicial Conference Policy
- § 450.30 Funds Appropriated for Contract Court Reporter Services
- § 450.40 Attendance Fees for Contract Court Reporters Not to Be Levied on Parties

§ 410 Reporting for Magistrate Judges

§ 410.10 Introduction

United States magistrate judges are an integral part of the district courts, and their requirements for reporter services should be considered as part of the overall needs and resources of the district courts. The method of taking the record of proceedings conducted before magistrate judges will vary according to the type of proceedings and individual circumstances.

§ 410.10.10 Use of Court Reporters

As a general rule, electronic sound recording equipment should be used to record proceedings conducted before a magistrate judge. Where, however, the magistrate judge determines a court reporter is required by specific rule or statute, or by the particular circumstances of an individual case, the court reporting supervisor should assign one of the official court reporters. If an official court reporter is not available, the court reporting supervisor may use a contract reporter whose attendance is paid by the court; there can be no charge to the parties for the contract reporter's attendance.

§ 410.20 Statutory Authority

The following statutes and rules require the use of court reporters or suitable electronic sound recording equipment to record specific magistrate judge proceedings:

(a) 28 U.S.C. § 753 - Court Reporters Act.

(b) 18 U.S.C. § 3060(f) – Preliminary Examinations.

"Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment."

(c) 18 U.S.C. § 3401(e) – Misdemeanors.

"Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment."

(d) 18 U.S.C. § 4107(e) and 4108(e) – Consent Verification Hearings.

(e) 28 U.S.C. § 636(c)(5) – Civil Consent Proceedings.

(f) Fed. R. Crim. P. 5.1(g) – Preliminary Hearings.

"Recording the Proceedings. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations."

(g) Fed. R. Crim. P. 6(f) – The Grand Jury (Indictment and Return).

(1) "The grand jury — or its foreperson or deputy foreperson — must return the indictment to a magistrate judge in open court."

(2) "Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge." 28 U.S.C. § 753(b).

- (h) Fed. R. Crim. P. 58(e) – Petty Offenses and Other Misdemeanors.
"The court must record any proceedings under this rule by using a court reporter or a suitable recording device."
- (i) Fed. R. Civ. P. 72(b)(1) which governs court-ordered referrals of dispositive motions and prisoner petitions to magistrate judges under 28 U.S.C. § 636(b) and requires that "[a] record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings."
- (j) Fed. R. Civ. P. 73(a) implements the civil trial jurisdiction of magistrate judges permitted with the consent of the parties under 28 U.S.C. § 636(c) and provides that "When authorized under 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. § 636(c)(5)."
- (k) At least one court of appeals has concluded that 28 U.S.C. § 753(b) does not require that proceedings before a magistrate judge be taken down by a court reporter. In *Nettles v. Wainwright*, 677 F.2d 404, 409 n.5 (5th Cir. Unit B 1982) (en banc) the court noted that "Congress consistently evinced the view that magistrate judge proceedings are not required to be taken down by an official court reporter using stenographic means but that electronic sound recording may be used instead."

§ 410.30 Guidelines for Recording Court Proceedings

§ 410.30.10 Introduction

Generally, all matters handled by magistrate judges in open court should be recorded. Producing a record encourages dignity in the conduct of the proceedings and provides the basis for an appeal or subsequent review.

§ 410.30.20 Who Determines How Record Will Be Taken

A magistrate judge determines whether the record will be taken by electronic sound recording, by a court reporter, or by other means subject to the court's court reporting management plan. This applies to both civil and criminal proceedings conducted by a magistrate judge.

§ 410.30.30 Determination of Recording Method

While formal guidelines have not been presented to the Judicial Conference for adoption, the following set of guidelines are suggested for making a determination on the method of recording:

- (a) Use an official court reporter, an electronic sound recording system with a dedicated operator, or a contract court reporter for:
 - (1) detention hearings,
 - (2) motion hearings that involve witnesses or many exhibits;
 - (3) all trials and evidentiary hearings, including petty offense and misdemeanor trials; and
 - (4) special master references involving several witnesses and exhibits.
- (b) Use electronic sound recording equipment operated by the courtroom clerk (or clerical assistant) for:
 - (1) misdemeanor, and petty offense cases (except trials);
 - (2) initial court proceedings in felony cases;
 - (3) motion hearings in civil and criminal cases that do not involve witnesses or many exhibits; and
 - (4) civil and criminal conferences held in open court, including initial pretrial, discovery, omnibus, status, and final pretrial conferences.
- (c) The proper method of recording proceedings for which the method is not specified is left to the discretion of the magistrate judge within the guidelines of the court's court reporting management plan.

§ 410.40 Judicial Conference Policy

"[T]hat under-utilized reporters should be made available for the recording of proceedings before magistrate judges, senior judges, visiting judges, and land commissioners to minimize or obviate the need for reportorial services on a contractual basis." JCUS-MAR 80, p. 20.

§ 410.50 Responsibilities

§ 410.50.10 Court Reporting Management Plan

Each court's court reporting management plan must include the reporting services required for the court's magistrate judges.

§ 410.50.20 Magistrate Judge

The magistrate judge is responsible for notifying the court reporting supervisor in the event a court reporter is required.

§ 410.50.30 Court Reporting Supervisor

The court reporting supervisor is responsible for making assignments to meet magistrate judges' needs in accordance with federal or court rules.

§ 410.60 Attendance Fees

Official staff, temporary, and combined-position court reporters or their substitutes may not charge attendance fees for recording magistrate judge proceedings. In no case may the parties be charged court reporter attendance fees regardless of which type of reporter, including substitutes or contractors, provides the service.

§ 410.70 Transcripts of Magistrate Judge Proceedings

§ 410.70.10 Authority

The preparation and cost of transcripts of magistrate judge proceedings recorded by a court reporter, including a contract court reporter, are governed by 28 U.S.C. § 753. Accordingly, the reporter must prepare a transcript of the requested portion of the proceedings for delivery to the party or judge making the request. Official staff court reporters may not charge the court for producing a transcript when requested by a district judge or by a magistrate judge; however, they may charge parties who have requested transcripts. Contract court reporters may charge for transcripts requested by a district judge or by a magistrate judge and by parties. A certified copy must also be delivered to the clerk of court without charge under 28 U.S.C. § 753(b).

§ 410.70.20 When Required By a District Judge On Review

- (a) Under 28 U.S.C. § 636(b)(1), a district judge must make a "de novo determination of those portions of [a magistrate judge's] report or specified proposed findings or recommendations to which objection is made." A number of decisions by the courts of appeals have held that the "de novo

determination" provided for in 28 U.S.C. § 636(b)(1) requires the district judge to read the transcript or listen to the tape recording of the evidence considered by the magistrate judge. Examples:

- (1) *Taylor v. Farrier*, 910 F. 2d 518 (8th Circuit 1990) (failure to review the evidence and failure even to have a transcript filed with the district court in this case made de novo review impossible), and
 - (2) *Calderon v. Waco Lighthouse for the Blind*, 630 F.2d 352 (5th Cir. 1980) (to make a de novo determination of the credibility of a witness, the judge must at least read the transcript or listen to the tape recording).
- (b) Fed. R. Civ. P. 72(b), which governs court-ordered referrals of dispositive motions, requires a transcript of the record or portions thereof when timely objections to the findings of a magistrate judge are filed unless the district judge otherwise directs. The party objecting to the recommended disposition must arrange for the transcript. A free copy will then be provided for the court's use under 28 U.S.C. § 753(b).

§ 410.70.30 When Required By a Magistrate Judge

- (a) To minimize costs and delays, it is recommended that a magistrate judge not order a transcript for the magistrate judge's own use in preparing findings and preparing a report. Nevertheless, in exceptional cases, the provision of a transcript may be necessary where:
- (1) there is a lengthy or complex record,
 - (2) the subject matter of the hearing or trial is technical or difficult,
 - (3) important credibility questions are involved, or
 - (4) there are serious conflicts in the testimony.
- (b) Whenever possible, the magistrate judge should explore alternatives to the ordering of a lengthy transcript, including:
- (1) the use of an electronic recording,
 - (2) the taking of notes by the magistrate judge,
 - (3) requiring the parties to file proposed findings of fact,

- (4) the use of partial transcripts, and
 - (5) asking the reporter to read back from the original notes.
- (c) Transcripts, moreover, should only be required in the case of evidentiary hearings.
- (d) Fed. R. Civ. P. 53 governs a magistrate judge acting as special master under 28 U.S.C. § 636(b)(2). Rule 53(e)(1) directs that, "in an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file . . . a transcript of the proceedings [with the clerk]. . . ." The AO Office of General Counsel has concluded that Rule 53 requires the cost of such a transcript to be taxed to the parties, to be apportioned among them as directed by the court. This applies whether the transcript was prepared by an official reporter, a court employed transcriber, or a contractor.

§ 420 Reporting for the United States Attorney's Office

§ 420.10 Considered Private Reporting

- (a) Reporting for a grand jury and taking depositions for a U.S. attorney's office may be approved by the court but are considered private reporting work. They are not salaried or statutory duties of the official staff, temporary, or combined-position court reporters under 28 U.S.C. § 753. Court reporters under a tour of duty may not engage in grand jury or deposition reporting or any other private activities during their assigned hours.
- (b) The only exception is for grand jury returns that take place in open court. **See:** § 410.20(g) (The Grand Jury (Indictment and Return)).

§ 420.15 Judicial Conference Policy

"The Committee therefore recommended that the Conference approve the existing policy whereby the Department of Justice shall continue to provide for the recording of grand jury proceedings. . . ." JCUS-SEP 81, p. 97.

§ 420.20 Comptroller General Decision

"[I]f it be a fact that said allowance [for attendance at grand jury or depositions] -- is fixed upon a time basis, it represents salary, as distinguished from fees, and payment

thereof (to a salaried reporter) would be in contravention of the double compensation statutes." Comptroller General Decision B-76606 (Oct. 7, 1948).

§ 420.25 Department of Justice (DOJ) Circular

"*Salaried Reporter as Grand Jury Stenographer*. In obtaining grand jury reporting by solicitation of competitive bids, the salaried reporter may quote. If the bid contains a quotation for his own services on a time basis, that is, by the day or hour, the quotation will have to be disregarded as such income would be considered as salary and in violation of sections 58 and 62, title 5, United States Code, which prohibit receipt of two salaries [now at 5 U.S.C. § 5533]. If the salaried court reporter's bid is for the services of someone in addition to himself, the *per diem* or per hour quotation can be accepted for the assistant's services but not for the salaried reporter himself. If the quotation is wholly for transcript charges with no *per diem* or hourly rates, the salaried court reporter's bid, if low, may be accepted whether it is exclusively for his own services or for his services and those of others." Department of Justice Circular No. 3916, Supp. No. 1, Oct. 31, 1945.

§ 420.30 Fee Arrangements

Any fees or charges for reporting and transcription of grand jury proceedings or depositions for the United States Attorney must be arranged by the reporter with the Department of Justice.

§ 420.35 Grand Jury Reporting

- (a) Reporting for a grand jury is considered private reporting. **See:** § 430 below. The Judicial Conference has prescribed that each court fully utilize its staff reporters to perform official reporting and transcription duties; however, if an official staff, temporary, or combined-position reporter is available and is current with transcript production, and if the court reporting supervisor approves, the reporter may engage in grand jury reporting. Reporters under 5 U.S.C. chapter 63, subchapter I ("Annual and Sick Leave Act of 1951," formerly referred to as the "Leave Act") may not report grand jury proceedings during their scheduled tour of duty. The only exception is for grand jury returns that take place in open court. **See:** § 410.20(g) (The Grand Jury Indictment and Return).
- (b) The court may not pay contractors or others to fulfill its ongoing reporting needs for any judicial officer to allow the reporter to engage in grand jury reporting.
- (c) If a reporter uses a computerized system of transcription which involves transcription by an independent service center (as opposed to an on-

premises, self-contained system), the reporter should **not** use it for grand jury proceedings, and should consider some other method free from potential for abuse of the secrecy requirements for grand jury proceedings.

§ 420.40 Deposition Work

Taking of depositions for a U.S. attorney's office is considered private reporting. Although discouraged, if a court's reporter is available and if the court reporting supervisor approves, the reporter may engage in deposition work. Reporters under 5 U.S.C. chapter 63, subchapter I may not report depositions during their scheduled tour of duty.

§ 420.40.10 Compensation

The U.S. attorney's office may not be charged an attendance fee for taking such depositions since doing so would violate dual compensation statutes.

§ 420.45 Court Approval

Each court should decide whether to permit court reporters to engage in private reporting for grand juries and taking depositions.

§ 420.50 Court Reporting Supervisor Approval

The court reporting supervisor must approve, in advance, any request by an official court reporter to perform grand jury or deposition work. The supervisor must determine that permitting such work will not be in conflict or adversely affect the production of transcripts.

§ 420.55 Disallowed Use of Substitute Reporters

An official reporter may not hire a substitute reporter to record a proceeding before a judicial officer to free the official reporter to report for a grand jury or take a deposition.

§ 420.60 Disallowed Use of Contractors

Courts may not contract for reporting services to free its reporters to report grand jury proceedings or take depositions.

§ 420.65 Disallowed Attendance Fees

An official staff, temporary, or combined-position reporter may not collect attendance fees from the U.S. attorney's office. Such fees would be considered a second federal salary, which is prohibited by the dual compensation law, 5 U.S.C. § 5533.

§ 420.65.10 Use of Assistants

If a court reporter's bid includes the services of assistants and the U.S. attorney's office awards a contract to the court reporter, the cost of the assistants' services must be paid to the court reporter by the U.S. attorney's office.

§ 420.70 Transcript Fees

Court reporters may charge for transcripts provided for grand jury proceedings and depositions at rates agreed to by the U.S. attorney's office or other private parties. The maximum rates for transcripts established by the Judicial Conference do not apply.

§ 420.75 Reporting Income

Fees for transcripts for grand jury proceedings and depositions are considered private income and must be reported as such on Form AO 40B (Statement of Earnings of United States Court Reporters).

§ 430 Private Reporting Activities

§ 430.10 Introduction

Private reporting activities are not salaried or statutory duties. The legislative history of 28 U.S.C. § 753 clearly indicates that court reporters might engage in private reporting work, that is to say, on work not to be performed by them in the United States courts. The extent to which court reporters are allowed to engage in such private reporting is a matter that has been left to the discretion of each individual court. Whenever there is a conflict between official and private reporting work, the court reporter must postpone private reporting work. Court reporters must make sure that they do not neglect their official reporting duties, particularly the preparation of transcripts for cases on appeal, in order to engage in private reporting business ventures.

Court reporters receive benefits as employees of the United States government. Thus, they are required to be available for attending court sessions and recording the proceedings.

§ 430.15 Statutory Authority

"The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts." 28 U.S.C. § 753.

§ 430.20 Judicial Conference Policy

"The Conference in March, 1982, requested the Committee to reconsider the question of whether the Conference should forbid reporters to engage in outside reporting work. Judge Hunter pointed out that although 28 U.S.C. § 753 clearly contemplates that reporters may engage in outside reporting activities, some courts have found it necessary to limit or prohibit outside activity so that reporters would have the time and energy to produce transcripts in a timely manner for the parties and the courts of appeals. Other courts have derived benefits from their reporters' participation in outside firms, finding that they have been furnished qualified substitutes and that the problems of obtaining transcripts in a timely manner had been eliminated by virtue of additional resources. Of the 220 district judges who responded to a survey conducted by the Committee, 60 percent were not in favor of a blanket prohibition of outside reporting work by the Conference. Furthermore, district courts are now developing court reporter management plans which, if properly implemented, should prevent abuse in the use of substitutes as well as avoid transcript backlog caused by outside reporting. Proper management of reporting services and the recently adopted disincentives to late transcript production should eliminate any problems that remain. The Committee therefore recommended that the Conference reaffirm its policy adopted in March, 1980 (Conf. Rept. p. 19) that the matter of outside reporting continue to be left to the discretion of each individual court; however, where there is a conflict between official and private reporting, the reporter should be required to postpone any outside work." JCUS-MAR 83, p. 11.

§ 430.25 Court Approval

Each court must decide whether to permit its court reporters to engage in private reporting.

§ 430.30 Not Permitted During Tour of Duty

Court reporters who are under 5 U.S.C. chapter 63, subchapter I ("Annual and Sick Leave Act of 1951," formerly referred to as the "Leave Act"), by being placed on a regular tour of duty, may not perform any private work during their tour of duty, but may do so on personal time (nights, weekends or while in an approved leave status) as long as the court determines that it is not in conflict with official duties. Court reporters under 5 U.S.C. chapter 63, subchapter I may, during their assigned tour-of-duty, generate

official transcripts, which are not considered private reporting work, for reimbursement by parties in court proceedings. JCUS-SEP 83, p. 49.

§ 430.35 Approval of Substitutes by Court Reporting Supervisor

In those courts that permit private reporting, the use of substitutes by one of the court's reporters to record court proceedings while the reporter engages in private reporting work is to be discouraged and must be approved, in advance, by the court reporting supervisor.

§ 430.40 Types of Private Reporting

Activities not related to recording court sessions and preparing official transcript for court sessions are considered private reporting. These include:

- grand jury reporting,
- taking of depositions, and
- any other reporting activities not related to salaried or statutory duties.

§ 430.45 Transcript Fees

Court reporters may charge for transcripts provided for grand jury proceedings and depositions at rates agreed to by the U.S. attorney's office or other private parties. The maximum rates for transcripts established by the Judicial Conference do not apply.

§ 430.50 Use of Federally Provided Space and Equipment

Any space provided by the federal government is to be used only in support of the reporter's official duties. Space, equipment, and supplies necessary to private reporting work are to be provided at the court reporter's expense and used outside the courthouse.

§ 430.55 Private Office

If a reporter desires to carry on and develop a private reporting business through advertising and if the court permits private reporting, the reporter must conduct such work in a private office outside the court. All advertising should refer to the private office.

§ 430.60 Prohibition Against Advertising Court Address

Court reporters may not use their addresses in government-owned or leased buildings when advertising for private reporting work.

§ 430.65 Letterheads

Letterheads are supply items and must be provided at the reporter's expense. General Services Administration (GSA) regulations prohibit court reporters from using letterheads that bear the address of the United States courthouse or other federal building in which they have been assigned office space if the letterheads include advertisements for private reporting work such as taking depositions.

§ 430.70 Mail

Postage for any mail which the court reporter uses for private reporting work must be paid by the reporter, the same as mail for official reporting work.

§ 430.75 Housing Employees of the Court Reporter

Any employee the court reporter hires for private reporting activities may not be housed in office space assigned to the reporter for official duties within the courthouse or other federal building.

§ 430.80 Reporting Income

All income from private reporting work including both attendance fees and charges for transcripts should be reported on Form AO 40B (Statement of Earnings of United States Court Reporters).

§ 440 Substitute Court Reporters

§ 440.10 Introduction

Substitute court reporters are employees of official staff, temporary, and combined-position court reporters hired to attend court sessions and record the proceedings.

§ 440.20 General Counsel Opinion

It is the opinion of the AO General Counsel "that a court reporter who is covered by the Leave Act, 5 U.S.C. § 6301 et seq., must use annual or sick leave for any paid absence from work (Office of General Counsel Memorandum, dated Dec. 4, 1992, to Chief, Court Reporting and Interpreting Branch, Court Administration Division). There is no provision in the Leave Act for hiring substitutes to cover any absence." **See:** Guide, Vol 6, § 240 (Tour of Duty).

§ 440.30 Appropriate Activities

The use of substitutes should be limited to:

- (a) expedited, daily, or hourly transcript work, and
- (b) reporters not on a tour of duty or under 5 U.S.C. chapter 63, subchapter I (“Annual and Sick Leave Act of 1951,” formerly referred to as the “Leave Act”) for absence due to illness, vacations, or reasons beyond the court reporter's control.

§ 440.40 Approval for Hiring

A court reporter must obtain advance approval from the court reporting supervisor prior to hiring a substitute. In addition, a court may direct a court reporter who is unable to complete transcripts on time to hire a substitute at the reporter's expense to record proceedings while the reporter works on the backlog of transcripts.

§ 440.50 Voluntary Use of Substitute Reporter

Court reporters who are not under 5 U.S.C. chapter 63, subchapter I may employ substitute reporters according to the requirements of the Judicial Conference.

§ 440.50.10 Judicial Conference Policy

- (a) “[E]ach reporter should devote his (or her) personal services to duties of his (or her) position, but that when he or she needs assistance for the purpose of furnishing transcripts of proceedings currently or for other reasons he or she should be permitted to employ assistants satisfactory to the judge of the court whose proceedings he or she is reporting, to be compensated by the reporter.” JCUS-APR 44, p. 3.
- (b) “The Committee further recommended that the Conference, as a matter of policy, discourage the use of substitute reporters, and limit such use to daily copy work, absence due to illness, vacations, and other similar circumstances beyond the control of the reporter.” JCUS-MAR 80, pp. 19, 20.

§ 440.50.20 Limiting the Need for Substitute Reporters

Court reporters should limit the need for substitute reporters by using note readers, scopists, typists, and computer assisted transcription systems to produce transcripts.

By using these resources, court reporters should be able to stay current with their transcript production requirements and be available to attend court sessions and record the proceedings.

§ 440.60 Judge Appointed (Involuntary) Use of Substitute Reporter

§ 440.60.10 Introduction

A district judge or the chief judge of a circuit may appoint a substitute reporter in the event a court reporter is unable to complete transcripts in a timely fashion.

§ 440.60.20 Judicial Conference Policy

"Because of the inordinate delays that have taken place throughout the system in the preparation of transcripts by court reporters in cases that are being appealed, the Conference agreed that substitute reporters should be employed to service the requirements of the district judge where the official court reporter is unable to complete his [or her] transcripts in a timely fashion and that the salary of the official reporter be subject to withholdings not to exceed the sum necessary to compensate the substitute reporter until the transcripts are current. The need for substitute reporter service is to be determined by the district judge affected or by the chief judge of the circuit, at his [or her] option, acting through the circuit executive." JCUS-MAR 75, p. 8.

§ 440.60.30 Payment

(a) Payment by Court Reporter

If it is necessary for a judge to appoint a substitute, the court reporter may:

- (1) voluntarily pay the substitute from the court reporter's own funds, or
- (2) be placed on leave without pay and have the court pay the substitute reporter.

(b) Withholding Salary

If the court reporter chooses not to pay the substitute, the Judicial Conference has approved the withholding of salary of the court reporter not to exceed the sum necessary to compensate the substitute reporter until the transcripts are current. The court should notify the AO to withhold the salary of the court reporter.

§ 440.70 Qualifications

Any substitute reporter hired by a reporter or appointed by a judge to attend court sessions and record the proceedings must meet the minimum qualification requirements established by the Judicial Conference for official staff reporters.

§ 440.80 Oath

The substitute reporter must take an oath to make and report faithfully, impartially, and truly all proceedings held before judicial officers. **See:** Guide, Vol 6, § 220.50 (Appointment Oath of Office).

§ 440.90 Court Reporter Responsibilities

The official staff, temporary, or combined-position court reporter is ultimately responsible for the performance of the substitute. In particular, the court reporter is responsible for ensuring that the substitute:

- (a) provides satisfactory reporting services for the courts;
- (b) produces certified transcript for proceedings recorded by the substitute as required by statute or rule of the court upon request of a judge or order by parties;
- (c) follows the format and page rates established by the Judicial Conference;
- (d) certifies and files original notes with the clerk of court;
- (e) certifies and transcribes or provides an electronic sound recording of all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases;
- (f) requests extensions of time for delivery of transcripts, if required; and
- (g) provides information on the number of pages of transcript produced for inclusion on the employing reporter's Form AO 40A.

§ 450 Contract Court Reporting

§ 450.10 Statutory Authority

- (a) Under 28 U.S.C. § 753(g), circuit councils are to provide the Director of the Administrative Office with a determination that, in a given district, court

reporters should be provided on a contractual basis. Under 28 U.S.C. § 332(d)(1) and (2)), the councils have the discretion to take a more active role in supervising the courts' administration of contractual court reporting programs if they wish. (AO Office of General Counsel opinion, Oct. 16, 1989.) The need for contractual services should be delineated in the courts' court reporting management plans.

- (b) Under the Court Reporter Statute, 28 U.S.C. § 753(g), the district courts — and the bankruptcy courts as units of the district courts — may contract for court reporting services when necessary:

If, upon the advice of the chief judge of any district court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such district court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such district court should be provided the judges of such district court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Director of the Administrative Office, in writing, of such determination, the Director of the Administrative Office is authorized to and shall contract, without regard to Section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. § 5) [revised and recodified at 41 U.S.C. § 6101], with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court.

§ 450.20 Judicial Conference Policy

§ 450.20.10 District Court

- (a) “The Conference, at the request of the Committee, thereupon restated its policy on the utilization of full-time court reporters as follows: (1) that prior to employing contract court reporters a court should make every effort to fully utilize its permanent reporting staff and (2) that the use of pooling systems for court reporters in multi-judge courts is encouraged. JCUS-MAR 81, p. 24.

- (b) “[T]hrough scheduling, the use of temporary or contractual services is to be minimized to every extent practicable.” JCUS-MAR 82, p. 8.
- (c) “That reporting services for senior judges are to be provided through a combination of official employees and contract reporting services.” JCUS-MAR 82, p. 11.
- (d) The court is allowed to hire a contract court reporter [to assist an official reporter] when all the following conditions exist:
 - (1) the official court reporter has requested relief because a judge has scheduled more than one trial per day, and the reporter is reporting for at least five hours on each such day;
 - (2) the chief judge of the district certifies that a judge has scheduled more than one trial per day requiring reporting services for five or more hours per day and the court’s other official court reporters are unable to cover the proceedings because they are scheduled to report other proceedings or are on leave;
 - (3) the purpose for considering and approving the relief is not to allow the official court reporter to work on transcript production; and
 - (4) an official court reporter not under a tour of duty who is provided relief is prohibited from engaging in private reporting work on those days relief is provided. JCUS-MAR 92, p. 27.

§ 450.20.20 Bankruptcy Court

Bankruptcy courts ordinarily use electronic sound recording. **See:** Guide, Vol 6, § 340 (Electronic Sound Recording). If a bankruptcy judge elects to use a court reporter, contract reporters (**see:** Guide, Vol 6, § 450 (Contract Court Reporting)) are used to take the record; there are no official staff court reporters in bankruptcy courts. The Judicial Conference disapproved of the use of realtime reporting systems (**see:** Guide, Vol 6, § 320 (Realtime Reporting)) in bankruptcy courts because they did not appear to be cost effective. JCUS-MAR 94, p. 16.

§ 450.30 Funds Appropriated for Contract Court Reporter Services

§ 450.30.10 General Authorization

A general authorization for the payment for transcripts ordered from contract court reporters by district, magistrate and bankruptcy judges has been provided. Funds allotted to the district and bankruptcy courts specifically for the attendance and travel of

contract court reporters may not be used to pay contractors for court-ordered transcripts. For additional information on the allotment guidelines, **see:** BOC 2532 (Payment for Transcripts).

§ 450.30.20 Funds Allotted for Attendance and Travel

Funds allotted for the attendance and travel of contract court reporters may not be used to assist official reporters in the production of expedited, daily, or hourly transcripts, nor to replace official reporters to allow them to engage in transcript production or in private reporting work.

§ 450.40 Attendance Fees for Contract Court Reporters Not to Be Levied Against Parties

Contractual attendance fees and the cost of court-ordered transcripts cannot be levied against parties.

Guide to Judiciary Policy

Vol 6: Court Reporting

Ch 5: Transcripts

§ 510 Overview

- § 510.10 Introduction
- § 510.15 Statutory Authority
- § 510.20 Transcripts for the Court
- § 510.25 Transcripts and Records for the Clerk of Court
- § 510.30 Transcripts Requested by Parties
- § 510.35 Court Reporting Supervisor Responsibilities
- § 510.40 Electronic Sound Recording Tapes and Electronic Media
- § 510.45 Arraignments, Changes of Pleas, and Sentencings
- § 510.50 Statement of Reasons Report for Sentencing Guidelines
- § 510.55 Retired or Separated Court Reporter Transcripts

§ 520 Transcript Format

- § 520.10 Introduction
- § 520.13 Judicial Conference Policy
- § 520.16 Compressed Transcript
- § 520.20 Realtime Unedited Transcript
- § 520.23 Paper
- § 520.26 Ink Color
- § 520.30 Preprinted Marginal Lines
- § 520.33 Line Numbers
- § 520.36 Typing
- § 520.40 Content
- § 520.43 Title Page
- § 520.46 Indexes
- § 520.50 Numbering
- § 520.53 Cover
- § 520.56 Punched Holes
- § 520.60 Fastener
- § 520.63 Certification
- § 520.66 Copies
- § 520.70 Redaction

§ 530 Fees

- § 530.10 Fee Schedule Determination
- § 530.15 Statutory Authority
- § 530.20 Judicial Conference Policy

- § 530.25 Notification of Fees
 - § 530.30 Judge Ordered Transcripts
 - § 530.35 Setting Transcript Rates by the Court
 - § 530.40 Justifying Higher Rates
 - § 530.45 Scope
 - § 530.50 What the Fees Include
 - § 530.55 Items for Which No Fee May Be Charged
 - § 530.60 Permissible Extra Fees
 - § 530.65 Transcripts in CJA Cases
 - § 530.70 Transcripts for the Court of Appeals
 - § 530.75 Fees for Transcripts to be Paid by the United States
 - § 530.80 Routine Apportionment of Transcript Rates
 - § 530.85 Electronic Sound Recording Tapes
 - § 530.90 Certification of Transcript Rates
 - § 530.95 Sanctions for Overcharging
- § 540 Transcripts for Cases on Appeal
- § 540.10 Introduction
 - § 540.20 Federal Rules of Appellate Procedure
 - § 540.30 Due Dates
 - § 540.40 Required Forms
 - § 540.50 Full Transcript Not Required for Criminal Appeals
 - § 540.60 Use of Substitute Reporters
 - § 540.70 Withholding Salary / Placing Reporter on Leave Without Pay
 - § 540.80 Temporary Retention of Transcript Deposits by Clerk of District Court
- § 550 Criminal Justice Act (CJA) and In Forma Pauperis Proceedings
- § 550.10 Introduction
 - § 550.20 Statutory Authority
 - § 550.30 Judicial Conference Policy
 - § 550.40 Transcripts
 - § 550.50 Procedures for Payments
 - § 550.60 Depositions
- § 560 Copyright Laws
- § 560.10 Introduction
 - § 560.20 Statutory Authority
 - § 560.30 District Court Opinion
 - § 560.40 References to Copyright
 - § 560.50 Copying and Selling Transcripts
 - § 560.60 Reproduction of the Clerk of Court's Copy
 - § 560.70 Inspection of the Clerk of Court's Copy

Appendix

Appx 5A Sample Transcript

§ 510 Overview**§ 510.10 Introduction**

One of the primary responsibilities of a court reporter is to provide a transcript of court proceedings upon the request of a party or order of court. The court reporter must also provide to the court a transcript or an electronic sound recording of all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases. When realtime services are requested by a party to the case, a Certified Realtime Reporter (CRR) may charge and collect fees for realtime unedited transcript. CRRs should not sell realtime unedited transcript to anyone who is not a party to the case without prior approval of the presiding judge. The redaction of transcripts must be performed to protect the privacy and security of information when made publicly available electronically. The purpose of this chapter is to detail the requirements for transcript production, delivery, fees and format.

§ 510.15 Statutory Authority

- (a) "The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him [or her] and filed with the clerk as provided in this subsection. He or she shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his [or her] official certificate, and deliver the same to the party or judge making the request." **See:** 28 U.S.C. § 753(b)(3).
- (b) "The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made." **See:** 28 U.S.C. § 753(b)(3).

- (c) “The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.” **See:** 28 U.S.C. § 753(b)(3).
- (d) “The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.” **See:** 28 U.S.C. § 753(b)(3).

§ 510.20 Transcripts for the Court

It is the duty of the court reporter to provide transcripts to the court as provided by 28 U.S.C. § 753. To track court ordered transcripts, a Form AO 435 (Transcript Order), or other locally adopted form, should be prepared for each transcript requested.

§ 510.20.10 Transcript Requested by the Judge

- (a) Set forth in 28 U.S.C. § 753(b) are the duties and responsibilities of official court reporters, including the responsibility to provide certified transcripts without charge to a requesting judge.
- (b) In March 2009, the Judicial Conference amended its transcript fee policy to make explicit that official court reporters may charge only copy fees for transcripts provided to parties when the original transcript was produced at the request of a judge. The language from the “Judge-Ordered Transcripts” portion of the Judicial Conference’s March 2009 session report (JCUS-MAR 09, p. 28) states:

Section 753(b) of title 28, United States Code, sets forth the duties and responsibilities of official court reporters, including the responsibility to provide certified transcripts without charge to a requesting judge. With regard to transcript requests from parties, section 753(f) provides that court reporters may charge and collect fees from parties ordering transcripts at rates prescribed by the court, subject to the approval of the Judicial Conference. The Conference has set maximum transcript rates based in part on whether the transcript is an original (currently \$3.65 per page for ordinary delivery, i.e., delivery within 30 days) or a copy (\$.90 per page for ordinary delivery). Questions have been raised as to whether the original or copy fee applies when a party requests a transcript that was originally produced at the

request of a judge. Noting that providing a transcript to a judge is considered part of a reporter's official duties for which the reporter is paid an annual salary, the Committee agreed that only one original transcript can be produced and that all subsequent orders for the same transcript are copies for which the lower fee would apply. On recommendation of the Committee, the Conference amended its transcript fee policy to make explicit that official court reporters may charge only copy fees for transcripts provided to parties when the original transcript was produced at the request of a judge.

§ 510.25 Transcripts and Records for the Clerk of Court

(a) Transcript Delivery

A certified transcript copy should be delivered by the court reporter to the clerk or the clerk's designee (court reporting supervisor) concurrent with, but not later than three working days after, delivery to the requesting party. Upon receipt, the transcript copy should be docketed in the case file by the clerk's office staff.

(b) Public Inspection

Judicial Conference policy provides that both the original notes or other original records and a copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge. The clerk's copy is an official court record which serves as the control copy with which the clerk may compare verbatim records being forwarded on appeal. No fee is to be charged any person for use of the clerk's copy. The clerk's copy is available to the judge if the judge desires to use it; and in some instances, where the "original papers rule" is followed, this copy may be forwarded to the court of appeals when an appeal is filed.

(c) Transcripts on Electronic Media

The transcript copy filed with the clerk of court under 28 U.S.C. § 753(b) may be in paper or electronic format as determined by the court. The electronic transcript must be in portable document format (PDF) and consistent with the transcript format guidelines in § 520.

§ 510.25.10 Transcripts in the Case Management/Electronic Case Files System

- (a) In September 2003, the Judicial Conference adopted a policy requiring courts that make documents electronically available via the Public Access to Court Electronic Records (PACER) system also to make prepared electronic transcripts of court proceedings available remotely. To address privacy concerns, the policy includes a process for redacting personal identifying information from transcripts. JCUS-SEP 03, pp. 16-17.
- (b) In September 2007, the Judicial Conference approved the following policy regarding the availability of transcripts of court proceedings in electronic format (JCUS-SEP 07, p. 12):
 - (1) A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days (unless extended by the court) after it is delivered to the clerk.
 - (2) During the 90-day period:
 - a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference;
 - the transcript will be available within the court for internal use; and
 - an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's Case Management/ Electronic Case Files (CM/ECF) system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.
 - (3) After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for download from the court's CM/ECF system through the judiciary's PACER system.
- (c) During the 90-day period (which may be extended by the court), access to the transcript in CM/ECF is restricted to four types of users:
 - court staff;
 - public terminal users;

- attorneys of record or parties who have purchased the transcript from the court reporter/transcriber; and
 - other persons as directed by the court (e.g., appellate attorneys).
- (d) The requirement to provide a certified copy of a transcript to the clerk for the records of the court has not changed. As in the past, when a transcript is originally produced, a certified copy must be promptly delivered by the court reporter to the clerk or the clerk's designee concurrent with, but not later than three working days after delivery to the requesting party.

§ 510.25.20 Redaction of Electronic Transcripts

(a) Authority

Amendments to the Federal Civil and Criminal Rules of Procedure implementing the E-Government Act of 2002 requirement to protect the privacy and security of publicly available electronic filings took effect on December 1, 2007. The amendments to Civil Rule 5.2 and Criminal Rule 49.1 require that personal identification information be redacted from documents filed with the court:

- Social Security numbers (or taxpayer identification numbers) to the last four digits;
- financial account numbers to the last four digits;
- dates of birth;
- individuals known to be minor children to the initials; and
- in criminal cases, any home addresses stated in court to the city and state.

(b) Process

(1) Notice of Electronic Filing

The court reporter, transcriber, or clerk will file a Notice of Electronic Filing of Official Transcript in CM/ECF when a transcript is delivered to the clerk for the court's records. This notice includes language that indicates that parties have seven calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. This notice of filing is transmitted to the parties in the

case via the Notice of Electronic Filing (NEF) through CM/ECF or manually by the clerk's office, if the parties are not registered for CM/ECF. Redaction responsibilities apply to the attorneys even if the requestor of the transcript is a judge or a member of the public/media.

(2) Filing Notice of Intent to Request Redaction

The redaction of transcripts will be requested by counsel to a case. Counsel will file a Notice of Intent to Redact within five days of the transcript being delivered to the clerk.

(3) Counsel will then follow-up, within 21 calendar days of initial delivery of the transcript to the clerk, with a specific request for redaction noting the page numbers and line numbers where redaction is required.

(4) If No Redaction Request is Filed

If an attorney files a Notice of Intent to Request Redaction or a motion for extension of time to file this notice, and then doesn't submit a Redaction Request, the court will need to take action, either to have the attorney withdraw the Notice of Intent to Request Redaction or to issue a show cause order as to why the attorney has not met the redaction requirements. Court reporters/transcribers do not have the responsibility to:

- redact information unless there is a redaction request made by the parties to the case, or
- notify the parties of material that should be redacted.

The parties have the responsibility to review the transcripts and request redactions, if necessary.

(c) Additional Information

For additional guidance and frequently asked questions on transcripts in CM/ECF and redaction, **see:**

- Memorandum, Jan. 30, 2008, Guidance for the Implementation of the Judicial Conference Policy to Make Transcripts of Court Proceedings Available Electronically via CM/ECF; and

- Memorandum, Feb. 22, 2008, Guidance for Court Reporters and Transcribers on the Electronic Availability of Transcripts in CM/ECF and Transcript Redaction Procedures.

§ 510.30 Transcripts Requested by Parties

§ 510.30.10 Statutory Authority

"The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts." **See:** 28 U.S.C. § 753(c).

§ 510.30.20 Judicial Conference Policy

- (a) "Each [court reporting management] plan is to provide for the supervision of court reporters in their relations with litigants as specified in the Court Reporter Act, including fees charged for transcripts, adherence to format prescriptions, and delivery schedules." JCUS-MAR 82, p. 8.
- (b) Transcripts may be sold on electronic media in ASCII format, or other format requested by the ordering party and agreed to by the court reporter or transcriber, whether they represent originals, first copies, or additional copies. Court reporters and transcribers who have Computerized Assisted Transcript (CAT) or suitable word processing equipment are encouraged to provide diskettes of transcripts to parties upon request, but court reporters and transcribers who do not have CAT or suitable word processing equipment are not required to provide diskettes of transcripts to parties. Court reporters and transcribers must continue to produce paper originals and paper copies at the Judicial Conference rates when ordered by parties. JCUS-SEP 91, p. 65.

§ 510.30.30 Responsibilities

- (a) Court Reporters

In their dealings with parties requesting transcripts, court reporters must maintain a professional relationship and provide timely quality service. In their dealings, they should:

- (1) Adhere to the transcript format established by the Judicial Conference.
- (2) Adhere to transcript page rates per delivery category established by the court and the Judicial Conference.

- (3) Not require parties to purchase more pages than they want or need.
 - (4) Not require parties to purchase more copies than they want or need.
 - (5) Provide (whenever possible) the type of service requested such as ordinary, expedited, daily, hourly or realtime transcript.
- (b) Parties

Parties requesting transcript should complete Form AO 435 (Transcript Order) or other form available from the court reporter.

§ 510.30.40 Realtime Unedited Transcript

Effective June 1, 1996, the Judicial Conference defined the category of “realtime unedited transcript” as “draft transcript produced by a certified realtime reporter (CRR) as a byproduct of realtime to be delivered electronically during the proceedings or immediately following adjournment.” The Conference also authorized the Administrative Office (AO) to issue guidelines to implement this policy. JCUS-MAR 96, p. 26.

- (a) When realtime services are requested by a party to the case, a CRR may charge and collect for realtime unedited transcript. CRRs should not sell realtime unedited transcript to anyone who is not a party to the case without prior approval of the presiding judge. It is recommended that each CRR request that parties acknowledge receipt of a realtime unedited transcript by signing a disclaimer which explicitly states that the ordering party is aware that the realtime unedited transcript is not an official record of the court proceedings.
- (b) The following is a sample disclaimer statement:

REALTIME UNEDITED TRANSCRIPT DISCLAIMER IN THE MATTER OF

v.

The realtime unedited transcript of proceedings in the above-titled matter is delivered unedited and uncertified by the court reporter at the request of the undersigned.

You agree that you will not distribute this realtime unedited transcript in any form, written or electronic, to the public, including news organizations and other nonparticipants.

The realtime unedited transcript shall not be relied upon for purposes of verbatim citation of the record or used for any purpose that requires a certified transcript of a proceeding.

The realtime unedited transcript has not been edited, proofread or corrected. It is a draft transcript and is not certified to be true and correct. It may contain computer-generated mistranslations of stenotype code or electronic transmission errors, resulting in inaccurate or nonsensical word combinations, or untranslated stenotype symbols which cannot be deciphered by non-stenotypists. The realtime unedited transcript may differ from a certified transcript of the same proceedings in content, page and line numbers, punctuation and formatting. The realtime unedited transcript contains no appearance page, index or certification page.

The undersigned agrees to indemnify and hold harmless the court reporter for any use by any person of the realtime unedited transcript.

Printed Name of Purchaser

Signature of Purchaser

Date

§ 510.35 Court Reporting Supervisor Responsibilities

The court reporting supervisor should monitor all orders for transcripts and the relationship between court reporters and those requesting transcripts. It is recommended that the court reporting supervisor maintain records of all transcript orders to ensure compliance with all regulations regarding timely preparation, format, and fees charged.

§ 510.40 Electronic Sound Recording Tapes and Electronic Media

§ 510.40.10 Tapes and Electronic Media in Lieu of Transcript

(a) Availability

To minimize the cost of litigation when proceedings have been recorded as the official record by electronic sound recording equipment, the court should advise parties requesting transcripts that they may choose to purchase copies of the tapes or other electronic media from the clerk of court in lieu of transcript for their own use.

(b) Backup Tapes

This provision does not apply to court reporters' backup tapes used to augment the steno notes. Backup tapes made by court reporters for their own convenience and not otherwise required by 28 U.S.C. § 753 are the personal property of the court reporter. There is no public entitlement to these recordings, or to backup tapes made for the convenience of the court.

§ 510.40.20 Professional Transcription Services – Electronic Sound Recordings

(a) Introduction

The court may have transcripts prepared from analog or digital audio tapes by professional transcription services or official court reporters. Upon request, the AO will assist courts in evaluating the qualifications of transcription services for providing verbatim and timely transcripts in accordance with the transcript format guidelines approved by the Judicial Conference. **See:** Guide, Vol 6, § 380.20 (Preparation of Transcripts from Electronic Sound Recordings).

(b) Costs

The court may not charge parties for the cost of duplicating tapes or electronic media of proceedings that the court sends to a transcriber for filling transcript orders.

(c) Transcript Orders

Orders for transcripts should be submitted to the clerk's office on a Transcript Order form (AO 435).

(d) Preparation

All format, delivery time schedule, and fee requirements adopted by the Judicial Conference apply as if the transcript were produced by one of the court's reporters. The court reporting supervisor must monitor the production of transcripts by in-court personnel, court reporters, or professional transcription services. Court employees, other than court reporters, may not retain fees for preparation of official transcripts even if prepared on their own time. If a court employee, other than a court reporter, produces transcript for a private party, the fees for such must be deposited into the United States Treasury. An official staff, temporary, or combined-position court reporter is not required, but may agree, to produce transcript from tapes of proceedings which the reporter did not attend. Such transcripts may be ordered by parties, or by a judge, including magistrate judges. The reporter shall be considered as a transcriber and may be paid no more than the rates established by the Judicial Conference.

§ 510.40.30 Certification of Transcription

The person or transcription services firm designated to transcribe the proceedings recorded by electronic sound recording must authenticate the original transcript and each copy with a certification on the last page. **See:** § 520.63 (Certification).

§ 510.45 Arraignments, Changes of Pleas, and Sentencings

§ 510.45.10 Statutory Authority

"The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him [or her] and filed with the clerk as provided in this subsection." **See:** 28 U.S.C. § 753(b).

§ 510.45.20 Judicial Conference Policy and Office of General Counsel

- (a) "If, in lieu of transcribing all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases, the court reporter elects to file an electronic sound recording of such proceedings, the reporter shall file such recording with the clerk of the United States District Court together with a certificate in the form set forth in § 380.10(b) at no expense to the government (judiciary)." JCUS-MAR 66, pp. 6-7.

- (b) The Congress and the Judicial Conference have insisted that the requirements of 28 U.S.C. § 753 as to the transcribing or recording of pleas and sentences in criminal cases be carefully and promptly observed. The reporter should file a transcript within 30 days of the close of the proceeding unless it was recorded on electronic sound recording equipment, in which event the electronic recording, accompanied by a certification of the reporter, shall be filed as soon as the recording has been used to capacity.
- (c) A judge should consider whether the clerk's copy is sufficient before approving the production of another copy at government expense for transcripts of arraignments, pleas, and sentences that are requested by a defendant proceeding under the Criminal Justice Act (CJA) who attacks the validity of the conviction under 28 U.S.C. § 2255 and desires for use on the motion transcripts of the plea and proceedings in connection with the imposition of the sentence. Since this motion is made in the trial court, there is always available in the clerk's files a certified electronic sound recording or a transcript copy of these proceedings (which the reporter must file without charge, under 28 U.S.C. § 753) which is available to the defendant and to the court with other papers in the case, for consideration in connection with the motion.
- (d) “[T]he Judicial Conference approved a Committee [on Judicial Resources] recommendation to amend a 1966 policy in order expressly to allow court reporters to charge parties (including the Department of Justice and parties proceeding under the Criminal Justice Act) for transcripts produced of arraignments, changes of plea, or proceedings in connection with the imposition of sentencing when an electronic recording of the proceeding has been filed with the court in lieu of a written transcript.” JCUS-MAR 96, p. 27.
- (e) The opinion of the AO Office of General Counsel (OGC) is that unedited versions of realtime transcript (ASCII versions of proceedings taken by realtime reporting systems) are not acceptable in lieu of certified transcripts of arraignments, changes of plea, and sentencing proceedings. The only exception to the requirement that a reporter file a certified transcript of each arraignment, change of plea, and sentencing proceeding, 28 U.S.C. § 753(b), is when the court reporter creates an electronic sound recording and the reporter certifies the recording and files it with the clerk. OGC Memorandum, July 7, 1978, Fees for Transcripts of Arraignments, Pleas, and Proceedings in Connection with the Imposition of Sentence.

§ 510.50 Statement of Reasons Report for Sentencing Guidelines

§ 510.50.10 Statutory Authority

The Sentencing Reform Act requires the district court to place on the record a statement of reasons for each criminal sentence under the Sentencing Guidelines **See:** 18 U.S.C. § 3553(c). Moreover, under 28 U.S.C. § 994(w) and the request of the Sentencing Commission, the court must send a report of the statement of reasons to the Commission.

§ 510.50.20 Judicial Conference Policy

(a) Form

To facilitate the filing of a statement of reasons by the court, the Judicial Conference Committee on Criminal Law has developed a one-page form for use as part of the judgment order.

(b) Preparation

The Committee on Criminal Law recommends that the probation officer, rather than clerk's office personnel, be responsible for assisting the court with the preparation of the statement of reasons. The Committee also advises that a statement of reasons is required in every case. However, if the court requires the court reporter to prepare a transcript of the statement of reasons, the reporter must furnish the transcript at no expense to the government.

§ 510.55 Retired or Separated Court Reporter Transcripts

- (a) Any reporter, after quitting, being terminated or retiring from the court, remains responsible for producing requested transcripts of proceedings recorded during the period of employment at the rates in effect at the time the transcript was ordered. Court reporters must make every effort to serve the ordering party by producing the transcript according to the delivery schedule established by the Judicial Conference. Any court reporter refusing to transcribe a court proceeding could be ordered by the court to show cause.
- (b) Court reporter notes are the property of the court and must remain in the custody of the clerk of court. The notes may be removed only for purposes of providing a transcript. A court reporter no longer employed by the court must file a copy of the transcript with the clerk of court within three days of delivery to the ordering party. The court reporting supervisor

should assist the retired or separated court reporter in obtaining the notes and act as liaison between the reporter and ordering party.

§ 520 Transcript Format

§ 520.10 Introduction

The Judicial Conference prescribed the transcript format in 1944 to assure that each party is treated equally throughout the country. JCUS-SEP 44, Appendix. Although the Conference has made some adjustments from time to time, the format has remained substantially the same. It is essential that the format requirements be followed because minor changes result in significant monetary losses to parties. No court, judge, supervisor, reporter, or transcriber may authorize a deviation from the requirements set forth by the Judicial Conference. The per-page transcript rates are based on strict adherence to the prescribed format. The format standards incorporate government standards for archival materials and assure that all transcript produced in federal courts is produced on the same basis.

§ 520.13 Judicial Conference Policy

- (a) Transcripts may be sold in computer diskette [electronic media] form in ASCII format, or other format requested by the ordering party and agreed to by the court reporter or transcriber, whether they represent originals, first copies, or additional copies.

Each page of transcript sold on diskette must be formatted consistent with the Judicial Conference's approved transcript format guidelines, and electronic media may not contain any protection or programming codes that would prevent copying or transferring the data." JCUS-SEP 91, p. 65.

- (b) To conform to available technology, the Judicial Resources Committee recommended, and the Judicial Conference approved, an amendment to the transcript format guidelines to delete the requirement that words be hyphenated at the end of a line of transcript text. JCUS-MAR 95, p. 22.
- (c) On recommendation of the Committee on Judicial Resources, the Conference modified the transcript format guidelines to provide an exception to the requirement that each page of transcript contain 25 lines of text. The exception allows a page break before and after sidebar conferences, bench conferences, and hearings on motions in jury trials when the transcript is produced under the daily or hourly delivery schedule and the exception is approved by the presiding judicial officer. Court reporters are required to reduce the page count for billing purposes by

one-half page for every page of transcript which includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break. This modification will make it easier for a judge to provide portions of a transcript to a jury for review. JCUS-MAR 96, p. 26.

§ 520.16 Compressed Transcript

As with electronic media, court reporters and transcribers who have the capability may sell compressed transcripts on a per page basis. However, there is no requirement to provide such service.

§ 520.20 Realtime Unedited Transcript

- (a) Realtime unedited transcript sold on any electronic media may be in ASCII format, or any other format requested by the ordering party and agreed to by the court reporter.
- (b) It should include any notations made to the electronic file by the ordering party during proceedings.
- (c) Electronic media may not contain any protection or programming codes that would prevent copying or transferring the data.
- (d) The transcript format guidelines prescribed by the Judicial Conference apply to realtime unedited transcript with the following exceptions:
 - (1) Realtime unedited transcript must be clearly marked as such with a header or footer which appears at the top or bottom of each page of transcript stating, "Realtime Unedited Transcript Only."
 - (2) The realtime unedited transcript should not include an appearance page, an index, or a certification.
 - (3) The electronic media label may be of a different color than that used on diskettes containing the text of certified transcript and hand stamped with the words, "Realtime Unedited Transcript Only."

§ 520.23 Paper

The format standards for paper transcript incorporate government standards for archival materials, as well as assure that all transcript produced in federal courts is produced on the same basis, whether by official staff, contract, or substitute reporters, or by transcription companies.

(a) Size

Paper size is to be 8-1/2 X 11 inches

(b) Weight

The weight of paper is to be at least 13 pounds for both originals and copies.

(c) Type

The paper type for both originals and copies is to be of chemical wood or better quality.

(d) Color

White paper is to be used for both originals and copies.

§ 520.26 Ink Color

Black ink is to be used for both originals and copies.

§ 520.30 Preprinted Marginal Lines

The use of preprinted solid left and right marginal lines is required. The use of preprinted top and bottom marginal lines is optional. All preprinted lines must be placed on the page so that text actually begins 1-3/4 inches from the left side of the page and ends 3/8 inch from the right side of the page.

§ 520.33 Line Numbers

Each page of transcription is to bear numbers indicating each line of transcription on the page.

§ 520.36 Typing

§ 520.36.10 Type Size

The letter character size is to be 10 letters to the inch. This provides for approximately 63 characters to each line. (Type should be letter quality.)

§ 520.36.15 Number of Lines Per Page

(a) Line of Text Per Page Requirement

Each page of transcription is to contain 25 lines of text. The last page may contain fewer lines if it is less than a full page of transcription. Page numbers or notations cannot be considered part of the 25 lines of text.

(b) Exception

An exception to the above requirement of 25 lines of text will be allowed when daily or hourly transcript of jury trials is produced and the exception is approved by the presiding judicial officer. The exception allows a page break before and after sidebar conferences, bench conferences, and hearings on motions. Court reporters are required to reduce the page count for billing purposes by one-half page for every page of transcript that includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break. This modification will make it easier for a judge to provide portions of a transcript to a jury for review.

§ 520.36.20 Margins

Typing is to begin on each page at the 1-3/4 inch left margin and continue to the 3/8 inch right margin.

§ 520.36.25 Spacing

Lines of transcript text are to be double spaced.

§ 520.36.30 Upper and Lower Case

Upper and lower case is preferred, but all upper case may be used.

§ 520.36.35 Indentations

(a) Q and A

- (1) All "Q" and "A" designations shall begin at the left margin. A period following the "Q" and "A" designation is optional. The statement following the "Q" and "A" shall begin on the fifth space from the left margin. Subsequent lines shall begin at the left margin. **See:** Appx 5A (Sample Transcript).

(2) Since depositions read at a trial have the same effect as oral testimony, the indentations for "Q" and "A" should be the same as described above. In the transcript, each question and answer read from a deposition should be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark should be used.

(b) Colloquy

Speaker identification shall begin on the tenth space from the left margin followed directly by a colon. The statement shall begin on the third space after the colon. Subsequent lines shall begin at the left margin.

(c) Quotations

Quoted material other than depositions shall begin on the tenth space from the left margin, with additional quoted lines beginning at the tenth space from the left margin, with appropriate quotation marks used.

§ 520.36.40 Interruptions of Speech and Simultaneous Discussions

Interruptions of speech shall be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking. At the discretion of the transcriber, simultaneous discussions may also be noted in this manner. **See:** Appx 5A (Sample Transcript).

§ 520.36.45 Punctuation and Spelling

Punctuation and spelling shall be appropriate standard usage. For example, if a question in "Q" and "A" is indeed a question, it should be followed by a question mark. **See:** Appx 5A (Sample Transcript).

§ 520.36.50 Page Heading (Also Known as "Headers")

A page heading is brief descriptive information noted to aid in locating a person and/or event in a transcript. A page heading should be provided on each page of witness testimony; a page heading is optional for other types of persons and/or event notations. Listing the last name of the witness or other party and the type of examination or other event is sufficient. Page headings shall appear above line 1 on the same line as the page number. This information is not to be counted as a line of transcript. **See:** Appx 5A (Sample Transcript).

§ 520.36.55 Parenthetical Notations

Parenthetical notations are generally marked by parentheses; however, brackets may be used. Parenthetical notations shall begin with an open parenthesis on the fifth space from the left margin, with the remark beginning on the sixth space from the left margin. Parentheses are used for:

- customary introductory statements such as call to order of court or swearing in a witness, and
- indicating non-verbal behavior, pauses, and readback/playback.

For types of parenthetical notations, **see:** § 520.40.20(a). **See also:** Appx 5A (Sample Transcript).

§ 520.36.60 Legibility

The original transcript and each copy are to be legible without any interlineations materially defacing the transcript.

§ 520.40 Content

§ 520.40.10 Verbal

Except as noted below, the transcript shall contain all words and other verbal expressions uttered during the course of the proceeding.

(a) Striking of Portions of the Proceeding

No portion of the proceeding shall be omitted from the record by an order to strike. Regardless of requesting party, the material ordered stricken, as well as the order to strike, must all appear in the transcript. **See:** Appx 5A (Sample Transcript).

(b) Editing of Speech

(1) The transcript should provide an accurate record of words spoken in the course of proceedings. All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences should be transcribed as spoken. **See:** Appx 5A (Sample Transcript).

(2) In the interest of readability, however, false starts, stutters, uhms and ahs, and other verbal tics are not normally included in

transcripts; but such verbalizations must be transcribed whenever their exclusion could change a statement's meaning.

(c) Reporting of Audio/Video Recordings

Generally, audio/video recordings played in court are entered as an exhibit in a proceeding. Since such recordings are under the direct control of the court, audio/video recordings need not be transcribed unless the court so directs.

(d) Private Communications and Off the Record Conversations

Private communications and off the record conversations inadvertently recorded should not be included in the transcript. **See:** Appx 5A (Sample Transcript).

(e) Call to Order, Swearing in, or Affirmation of Witnesses or Jurors

(1) Standard summary phrases shall be used for customary introductory statements such as the call to order of court and the swearing in or affirmation of witnesses.

(2) These should appear in parentheses and begin with an open parenthesis on the fifth space from the left margin, with the remark beginning on the sixth space from the left margin.

(3) The following phrases can be employed:

- (Call to Order of the Court),
- (The Jury Is Sworn),
- (The Witness Is Sworn), and
- (The Witness Is Affirmed).

(f) Identification of Speaker

(1) All speakers must be properly identified throughout the transcript, initially by their full name, thereafter by the following designations or courtesy titles, in capital letters indented ten spaces from the left margin:

(2) Proper Transcript:

Speaker	Identification
the judge	THE COURT
attorney	MR., MRS., MS., OR MISS. + (last name)
witness	THE WITNESS (in colloquy)
interpreter	THE INTERPRETER
defendant (in criminal cases)	THE DEFENDANT

See: Appx 5A (Sample Transcript).

(g) Testimony Through Interpreter

When interpreters are used, it will be assumed that answers are made in a foreign language and interpreted unless a parenthetical "(in English)" is inserted. **See:** Appx 5A (Sample Transcript).

§ 520.40.20 Nonverbal

(a) Designation of Portions of Proceedings and Time of Occurrence
(Parenthetical Notations)

Parenthetical notations in a transcript are a court reporter's or electronic court recorder operator's own words, enclosed in parentheses, recording some action or event. Parenthetical notations should be as short as possible consistent with clarity and standard word usage.

The following parenthetical notations should be used to designate portions of proceedings. Designations requiring a time notation are listed first:

(1) Proceedings Started, Recessed, and Adjourned, with Time of Day and Any Future Date Indicated where Appropriate

Examples:

- (Recess at 11:30 a.m.)
- (Recess at 12:30 p.m., until 1:30 p.m.)
- (Proceedings concluded at 5 p.m.)

See: Appx 5A (Sample Transcript).

(2) Jury In/Out

Examples:

- (Jury out at 10:35 a.m.)
- (Jury in at 10:55 a.m.)

If a jury is involved, it is essential to indicate by the proper parenthetical notation whether the proceeding occurred:

- in the presence of the jury,
- out of the presence of the jury,
- out of the hearing of the jury,
- prior to the jury entering the courtroom, or
- after the jury left the courtroom.

(3) Defendant Present/Not Present

In criminal trials, this designation must be made if not stated in the record by the judge.

(4) Bench/Side Bar Conferences

This designation should note whether the bench/side bar conference is on or off the record. If all the attorneys in court are not participating in the bench/side bar conference, the parenthetical notation should so indicate.

Examples:

- (Bench conference on the record)
- (Bench conference off the record with Mr. Smith, Mrs. Jones, and Mr. Adams)
- (At side bar on the record)

- (At side bar)
- (End of discussion at side bar)

See: Appx 5A (Sample Transcript).

(5) Discussions off the Record

This designation should note where the discussion took place.

(6) Chambers Conferences

This designation should note the presence or absence of parties in chambers.

Examples:

- (Discussion off the record in chambers with defendant not present)
- (Discussion on the record in chambers with defendant present)

(b) Speaker/Event Identification

References to speakers and events that occur throughout proceedings should be properly noted in capital letters and centered on the appropriate line.

Examples:

- AFTER RECESS
- DIRECT EXAMINATION
- CROSS EXAMINATION
- REDIRECT EXAMINATION
- RECROSS EXAMINATION
- FURTHER REDIRECT EXAMINATION
- PLAINTIFF'S EVIDENCE
- PLAINTIFF RESTS
- DEFENDANT'S EVIDENCE
- DEFENDANT RESTS
- PLAINTIFF'S EVIDENCE IN REBUTTAL

See: Appx 5A (Sample Transcript).

(c) Nonverbal Behavior, Pauses

It is the responsibility of the attorneys, as well as the judge in some instances, to note for the record any significant nonverbal behavior (i.e., physical gestures, and lengthy pauses on the part of a witness.) If counsel or the court refers to the witness's affirmative or negative gesture, parenthetical phrases may be used to indicate physical gestures.

Examples:

- (Nods head up and down)
- (Shakes head from side to side)
- (Indicating)

See: Appx 5A (Sample Transcript).

(d) Readback/Playback

All readbacks and/or playbacks, and the party requesting should be noted parenthetically as follows:

- (1) If the question and/or answer requested to be read or played back appears on the same page as the request, the following parenthetical should be used:

(The last question and/or answer was read/played back)

See: Appx 5A (Sample Transcript).

- (2) If, however, the question and/or answer, or both, appear on a previous page, the court reporter or audio operator should replay or restate the question and/or answer both, in full, with appropriate quotation marks and parentheses. The following parenthetical should be used for playbacks:

(The record was replayed)

(e) Indiscernible or Inaudible Speech on Electronic Sound Recording

- (1) Incomplete records of proceedings are unacceptable in a court of law. It is therefore highly undesirable to have any portion of a transcript labeled "indiscernible" or "inaudible."

- (2) Every effort must be made to produce a complete transcript. The indication "inaudible" or "indiscernible" should be used only when it is impossible to transcribe the record.

§ 520.43 Title Page

§ 520.43.10 Contents

Each transcript is to include a title page indicating:

- (a) court name;
- (b) district;
- (c) case name;
- (d) civil or criminal docket case number;
- (e) name and title of judge or other judicial officer presiding;
- (f) type of proceeding;
- (g) date and time of proceeding;
- (h) volume number (if multi-volume);
- (i) name and address of each attorney and name of party represented;
- (j) whether a jury was present;
- (k) if steno based, court reporter's name, address, and telephone number;
- (l) if electronic sound recording equipment based, audio operator's name, plus name, address, and telephone number of transcription company;
- (m) method by which the proceedings were recorded; and
- (n) method by which the transcript was produced.

Note: Examples of this statement include the following:

- (1) Proceedings recorded by mechanical stenography, transcript produced by notereading.

- (2) Proceedings recorded by mechanical stenography, transcript produced by computer.
- (3) Proceedings recorded by shorthand/stenomask, transcript produced from dictation.
- (4) Proceedings recorded by electronic sound recording, transcript produced by transcription service.

§ 520.43.20 Record of Appearance

Beginning on the title page, the court reporter is to include the complete record of appearances.

§ 520.43.30 Cost

The court reporter may charge for the title page as a full page of transcript.

§ 520.46 Indexes

Each volume is to contain an index that is to be numbered. It is preferable to have the index at the end. The court reporter may charge for the index page as a full page of transcript.

§ 520.46.10 Requirement

- (a) The index shall indicate the pages at which each of the following begins:
 - direct examination,
 - cross-examination,
 - redirect examination,
 - recross-examination,
 - further redirect examination, and
 - recall of each witness.
- (b) The index shall also indicate on behalf of whom the witness or witnesses were called, such as:
 - PLAINTIFF'S WITNESSES,
 - WITNESSES FOR THE GOVERNMENT,
 - DEFENDANT'S WITNESSES, or
 - WITNESSES FOR THE DEFENSE

- (c) A separate table in the index should indicate the page at which any exhibit was marked for identification and received in evidence.

§ 520.46.20 Master Index for Longer Transcripts

In a protracted case (i.e., a transcript of one thousand pages or more) in addition to the individual index, there may be a master index set forth in its own separate volume, consisting of a compilation of all of the individual indexes. **See:** Appx 5A (Sample Transcript).

§ 520.46.30 Keyword Indexing Service

No charge is permitted additional to the normal page rates for keyword indexing services. No additional charge is permitted for the cost of the diskette itself.

§ 520.50 Numbering

§ 520.50.10 Pages

- (a) The pages of the transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days involved.
- (b) The court reporter shall place the page number at the top right corner of the page flush with the right margin above the first line of transcription.
- (c) The page number does not count as a line of transcript.
- (d) The pagination of the transcript of the further proceedings in the same matter shall follow consecutively the pagination of earlier proceedings, unless the presiding official directs otherwise.

§ 520.50.20 Multi-Volumes Transcripts

Multi-volume transcripts should be numbered in either of the following ways:

- (a) Each volume of transcript should be numbered consecutively. One volume of transcript should be at least equal to one day of court proceedings. Pages may be numbered consecutively for each volume of transcript, with the cover page of each volume designated page I. Using this method, page numbers will begin with a volume number followed by the page number.

Examples:

- 1-14 (Volume 1, page 14)
- 2-54 (Volume 2, page 54)

- (b) If preferred, the pages may be numbered consecutively for an entire multiple-volume transcript.

Examples:

- 56 (Volume 1, page 56)
- 521 (Volume 3, page 521)

See: Appx 5A (Sample Transcript).

§ 520.53 Cover

The court reporter is to cover at no charge the original and each copy of transcript with front and back covers of good quality, consisting of white or colored 140 pound index paper, #1 sulphite paper, heavy weight transparent plastic, or similar material as the court approves.

§ 520.56 Punched Holes

If the court reporter punches transcript with three holes in the left margin, the holes are to be 4-1/4" center to center, with the middle hole centered in the page.

§ 520.60 Fastener

The court reporter is to secure the transcript for each proceeding separately with a suitable fastener of permanent nature.

§ 520.63 Certification

§ 520.63.10 Requirement

- (a) The court reporter or transcriber is to authenticate the original transcript and each copy with a certification on the last page.
- (b) The certification is to appear on the last page of each volume of transcript. If more than one court reporter or transcriber is involved in the production of the transcript being certified, then the certifications of each court reporter or transcriber involved shall be required at the end of each

(c) Electronic Sound Recording

"I (we), court approved transcriber(s), certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter."

Signature of Approved Transcriber

Date

Typed or Printed Name

(d) Redacted Transcripts

At the end of the transcript, and without causing a "page roll-over" (a smaller font may be used) the redacted transcript should be certified by the court reporter/transcriber stating:

"I (we) certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court on day/mo/year, and incorporating redactions of personal identifiers requested by the following attorneys of record: _____, in accordance with Judicial Conference policy. Redacted characters appear as an "x" (or a black box) in the transcript."

Signature of Approved Transcriber

Date

Typed or Printed Name

See: Memorandum, Feb. 22, 2008, Guidance for Court Reporters and Transcribers on the Electronic Availability of Transcripts in CM/ECF and Transcript Redaction Procedures.

§ 520.66 Copies

Transcript copies may be reproduced by any method of reproduction which produces black text on single-sided white paper. There may be no markings on the original or copies that would hinder the clear reproduction by mechanical means by any court official or party.

§ 520.70 Redaction

There are various software programs that are available to assist court reporters/transcribers in the redaction process. The use of these programs is permissible, as long as page and line integrity remains intact. If a court reporter does not have access to such a program, the reporter may also manually redact. Whatever method is used to redact, page and line integrity must be maintained from the original transcript to the redacted transcript.

§ 520.70.10 Manual Redaction

To manually redact, the court reporter/transcriber should place an “x” in the space of each redacted character. Manual redactions should have the same number of x's as characters deleted to preserve page and line numbers of transcripts.

§ 520.70.20 Title Page

The title page of the transcript should indicate that it is a redacted transcript immediately below the case caption and before the Volume number and the name and title of the Judge. A notation of “REDACTED TRANSCRIPT” should be inserted on a blank line, and care should be taken to ensure that the addition of this text does not cause changes to the length of the title page.

§ 520.70.30 Charge for Redacted Transcripts

The Judicial Conference has not authorized an additional fee that the court reporter/transcriber can charge for providing redacted transcripts to the court for the electronic records of the court.

§ 530 Fees

§ 530.10 Fee Schedule Determination

- (a) “The Conference, pursuant to 28 U.S.C. § 753(f) authorized district courts to prescribe fees which court reporters may charge and collect for transcripts requested by the parties, including the United States, at the following rates.” JCUS-MAR 80, pp. 17-18. **See:** Current maximum transcript rates on the Court Reporting page of the J-Net.
- (b) Each district court must adopt a schedule of transcript fees for reporters and transcribers, subject to maximum rates established by the Judicial Conference. The Conference has established six transcript categories based on delivery times and whether the transcript is in draft form or

certified, and has set a maximum rate for each. Neither the parties, nor the reporter, nor the transcriber, nor the court may negotiate a higher rate without Judicial Conference approval; however, in exceptional circumstances the Director of the AO may authorize higher original transcript rates for staff reporters. Fees may be negotiated lower than the court approved rates. Courts should set fees in each jurisdiction with regard to production costs, up to the maximum authorized by the Judicial Conference.

§ 530.15 Statutory Authority

- (a) “The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties including dealings with parties requesting transcripts.” 28 U.S.C. § 753(c).
- (b) “Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He or she shall not charge a fee for any copy of a transcript delivered to the clerk for the records of the court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. § 3006A), or in *habeas corpus* proceedings to persons allowed to sue, defend, or appeal *in forma pauperis*, shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal *in forma pauperis* shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.” 28 U.S.C. § 753(f).

§ 530.20 Judicial Conference Policy

§ 530.20.10 Realtime Unedited Transcript

- (a) Effective June 1, 1996, the Judicial Conference defined the category of “realtime unedited transcript” as “a draft transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically

during the proceedings or immediately following adjournment.” JCUS-MAR 96, p. 26.

- (b) The Judicial Conference approved transcript fee rates for realtime unedited transcripts provided by certified realtime reporters to establish the maximum page rate authorized for the provision of realtime services, including the production and distribution of realtime unedited transcripts. **See:** Current maximum transcript rates on the Court Reporting page of the J-Net.

Note: At its September 2011 session, the Conference amended the maximum realtime transcript rate policy adopted in March 1999 to eliminate the requirement that a litigant who orders realtime services in the courtroom must purchase a certified transcript (original or copy) of the same pages of realtime unedited transcript at the regular rates, effective January 1, 2012. JCUS-SEP 11, p. ___.

§ 530.20.20 Transcripts in CJA Multi-Defendant Cases

- (a) In multi-defendant cases involving CJA defendants, no more than one certified transcript should be purchased from the court reporter on behalf of CJA defendants. CJA multi-defendant transcript orders may be requested in electronic format to simplify making multiple copies; or, one of the CJA counsel or the clerk of court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be charged to the CJA appropriation. A court reporter could also furnish duplication services at the commercially competitive rate. **See:** Guide, Vol 7A, § 320.30.30 (Commercial Duplication in Multi-Defendant Cases) and JCUS-SEP 87, p. 95.
- (b) Courts may want to obtain price quotations from copy services (at least three where feasible) to determine the commercially competitive rate for each court location. The AO estimates that ten cents per page would be a maximum copy rate, with such rate often lower and rarely higher. Commercial rates should be monitored by the court on a periodic basis to ensure accuracy and compliance with the guideline.
- (c) This policy also applies where more than one transcript is ordered on behalf of a single party under the CJA. An example would be where a party under the CJA orders both an electronic media copy and a paper copy.

§ 530.25 Notification of Fees

For the public to be aware of the maximum transcript fees to be charged, a schedule of the prescribed fees is to be posted prominently in the clerk's office. JCUS-MAR 82, p. 9. Courts should instruct clerks of court to notify members of the bar of the fee rates and format regulations established by the Judicial Conference and the procedure for addressing issues regarding fees charged.

§ 530.30 Judge Ordered Transcripts

§ 530.30.10 Regular and Temporary (Salaried) Reporters

- (a) Title 28 U.S.C. § 753(b) sets forth the duties and responsibilities of official court reporters, including the responsibility to provide certified transcripts without charge to a requesting judge. With regard to transcript requests from parties, § 753(f) provides that court reporters may charge and collect fees from parties ordering transcripts at rates prescribed by the court, subject to the approval of the Judicial Conference.
- (b) The Conference has set maximum transcript rates based in part on whether the transcript is an original or a copy. Questions have been raised as to whether the original or copy fee applies when a party requests a transcript that was originally produced at the request of a judge. Noting that providing a transcript to a judge is considered part of a reporter's official duties for which the reporter is paid an annual salary, the Committee agreed that only one original transcript can be produced and that all subsequent orders for the same transcript are copies for which the lower fee would apply. On recommendation of the Committee, the Conference amended its transcript fee policy to make explicit that official court reporters may charge only copy fees for transcripts provided to parties when the original transcript was produced at the request of a judge. JCUS-MAR 09, pp. 28-29. **See:** § 510.20 (Transcripts for the Court).

§ 530.30.20 Contract Court Reporters

- (a) The relevant provisions of the contract govern payment of transcript prepared for a judge. Reporters under contract, based on the terms of the contract, are not under the requirement to provide original transcripts at no charge to a district or magistrate judge.
- (b) Contract court reporters' attendance fees cover only the time they spend in court. Therefore, the Comptroller General allowed payment to contract

court reporters for transcripts produced when ordered by a judge of the court. **See:** Comptroller General Decision B-77066 (July 13, 1948).

§ 530.30.30 Land Commission Proceedings

“Court reporters are not entitled to payment in addition to their salaries for providing transcripts of land commission proceedings to judges or to land commissioners appointed by judges in land condemnation cases. Accordingly, neither the Department of Justice nor the Administrative Office of the United States Courts may pay for such transcripts from their appropriations.... However, reporters whose services are obtained on a contractual basis are entitled to payment, from the Administrative Office,” when such transcript is ordered by the court. **See:** Comptroller General Decision B-184875 (June 11, 1976).

§ 530.35 Setting Transcript Rates by the Court

“In setting the transcript rates to be charged by the court reporters in each area, the district court should look to comparable services rendered in the state courts and consider setting the transcript rates in their courts coincide with any lower comparable state rate. No other types of transcripts are authorized, other than those defined above. Litigants and parties have the privilege and right to order transcripts at the rate fixed by each district court, not to exceed the above maximum rates. A notice of the rates established by the district courts and of the reporter's obligation to furnish transcripts at those rates and under those conditions shall be published in a conspicuous place or otherwise disseminated to the public.” JCUS-MAR 80, p. 18.

§ 530.40 Justifying Higher Rates

“The Committee [on Court Administration (now under jurisdiction of the Judicial Resources Committee)] recognized that situations may exist in some specific districts justifying higher rates for those districts alone. Upon the recommendation of the Committee, the Conference authorized the Director of the Administrative Office to increase transcript rates for original transcripts only [not copies] by no more than 20 percent of the existing maximum rate when, in the Director's judgment, a district court justifies such an increase.” JCUS-MAR 81, pp. 7-8.

§ 530.40.20 Procedure for Requesting Higher Rates

- (a) Court
 - (1) The chief judge of the district court should submit an analysis to the Director of the AO supporting:
 - the amount of higher rate requested;

- for which types of transcript (ordinary, 14 day, expedited, daily, and hourly); and
- its impact on total and net income derived by official court reporters based on annual average transcript production.

(2) The analysis should include a justification based on the following information:

(A) A comparison of transcript fees corresponding to ordinary, expedited, daily, and hourly transcript categories of court reporters in the local or state courts.

(B) A comparison of total compensation of court reporters in the local or state courts including:

- salary,
- benefits,
- private work,
- transcript income, and
- net income from official transcript sales.

The policies of the local and state courts that affect total compensation for court reporter work should be identified, including salary schedules, benefits, work hours, transcript format and whether transcript production is subsidized or supported by the purchase of equipment or supplies.

(C) Using the Form AO 40A (Attendance and Transcripts of United States Court Reporters) and Form AO 40B (Statement of Earnings of United States Court Reporters) reports, an analysis of total income of staff reporters from salary, transcript sales, private work, and in-court hours of service over a 3-5 year period.

(b) The AO will:

- (1) compare the salary, transcript income, and margins of profit of the district's reporters by using reporter statements of earnings, to those of other reporters in other federal courts and nationally;
- (2) evaluate the court reporter turnover; and

- (3) after this comparison, the Director will notify the chief judge whether the increase is justified and, if justified, the effective date of the rate change.

§ 530.45 Scope

The maximum rates adopted by the Judicial Conference apply to:

- official staff,
- temporary,
- combined-position,
- contract, and
- substitute reporters, and transcribers.

§ 530.45.10 Billing Responsibility

All reporters and transcribers are responsible for correct billings. Billings shall be monitored by the court reporting supervisor, and certified as correct by the court reporter or transcriber.

§ 530.45.20 Purchases

Copies of audio cassettes and digital audio compact disks when the original record was taken by electronic sound recording may be purchased from the court under the Miscellaneous Fee Schedule. Transcription of audio recordings of court proceedings recorded using electronic sound recording systems, may be purchased through the court at rates set by the court up to the maximum rates approved by the Judicial Conference.

§ 530.50 What the Fees Include

§ 530.50.10 Services Descriptions	
Item	Description
(a) Transcript Production	The fees cover all costs of transcript production.
(b) Original Fees	For any given proceeding/date there can only be one original charge. All other transcripts of the same proceeding shall be at the copy rates.

§ 530.50.10 Services Descriptions	
Item	Description
(c) 14-Day, Expedited, Daily, and Hourly Transcripts	In the case of 14-day, expedited, daily, hourly and realtime unedited transcripts, the approved fees are to cover the above items, as well as payments to extra reporters, typists, and transcribers to help produce the transcript.
(d) Copy Fees	A copy fee is charged if the party orders and receives a copy. Only one copy charge is permitted for multi-defendant cases involving CJA-represented defendants.
(e) Fees for Sale of Transcript on Electronic Media	The rates allowed for electronic media transcripts are the same as those allowed for paper transcripts whether they represent originals, first copies, or additional copies. No additional charge is permitted for the cost of the electronic media.
(f) Compressed Transcripts	The maximum per page rate for each compressed original or copy of a transcript is the same as that for a full-size transcript
(g) Realtime Feed	Realtime reporting technologies allow the stenotype or stenomask record to be electronically transcribed in the courtroom using software that translates the shorthand/stenomask recording instantaneously and displays it on a monitor in front of the reporter, judge, attorneys or other participants. A realtime "feed" is the electronic data flow from the court reporter to the computer of each person or party ordering and receiving the realtime transcription in the courtroom.

§ 530.50.20 Fee Calculation Examples

The page rates used in these examples are changed periodically by the Judicial Conference, and should be verified on the Maximum Transcript Rates page on J-Net.

- (a) *A defense attorney in a multi-defendant CJA case orders an original and two copies of an ordinary transcript of 100 pages.*

The court reporter may charge the party the original ordinary transcript rate per page for the original transcript. At the request of the CJA attorney, original transcript may be delivered in paper copy or electronic

format for the defender to make and provide copies to any other CJA parties in the case needing a copy. Additional paper copies may be provided to other defense counsel at the commercially competitive copy rate as approved by the court. The reporter must provide a certified copy to the clerk of court without charge for the court record.

(b) *A party in a civil case requests daily transcript copy and two copies of a trial generating 200 pages per day.*

(1) The charge to the private attorney would be the:

- original daily transcript rate (\$6.05 per page in this example) for the original;
- first copy daily transcript rate (\$1.20 per page in this example); and
- additional copy daily transcript rate (\$.90 per page in this example) for the second (multi-page transcript) copy to the same attorney.

(2) The charges per day would be:

- $\$6.05 \times 200 \text{ pages} = \$1,210$ for the daily copy;
- $\$1.20 + \$.90 = \$2.10 \times 200 \text{ pages} = \420 for two copies per day.

(3) Any copies to opposing counsel would be charged at \$1.20 for the first copy and \$.90 per page for additional paper or electronic copies.

§ 530.55 Items for Which No Fee May Be Charged	
Item	Description
(a) Transcript copy filed with the Court	A party may not be charged for any transcript provided to the clerk of court as the court's copy.

§ 530.55 Items for Which No Fee May Be Charged	
Item	Description
(b) Judge's Copy	A judge-ordered copy is not the same as the certified copy delivered to the clerk for the records of the court. The court reporter may not charge a party, including the government, for any certified transcript provided to a judge regardless of the existence of an order so granting. Any certified transcript, previously produced by a reporter without charge to a judge, and subsequently requested by a party may be charged only at the copy fee rate. If requested by a judge, a court reporter may produce a non-certified or unedited transcript for a judge's use, and it does not have to be filed with the clerk for the records of the court.
(c) Viewing the Record by a Party	A transcript on file in the clerk's office may be examined without charge to a party or other member of the public.
(d) Postage	Postage costs are considered an ordinary business expense; therefore, the court reporter or transcriber may not charge for ordinary postage. However, when the party requests expedited delivery, the court reporter or transcriber may bill the party for the difference between ordinary postage cost and the cost for expedited delivery.
(e) Keyword Indexes	The index pages may be billed at the page rate, but no charge is permitted in addition to the normal page rates for keyword indexing services.
(f) Cover	The cover is a required part of the transcript and the court reporter may not charge extra for the transcript cover. See: § 520.53.
(g) Certification	The certification is a required part of the transcript and the court reporter may not charge extra for the certification. See: § 520.63.
(h) Canceled Orders	When a transcript order is canceled, only the pages produced may be charged. There is no charge for pages not produced. If a deposit was received and no pages were produced prior to the cancellation, the full deposit must be returned to the party. Any pages that were produced must be provided to the ordering party and a certified transcript filed with the clerk of court.

§ 530.60 Permissible Extra Fees

§ 530.60.10 Subsistence Cost for Reporters

In areas where the court's reporter may need to hire reporters from outside the community area to help produce expedited, daily, or hourly transcript, the reporter may bill the party for the subsistence costs of other reporters or auxiliary personnel. These costs are authorized up to the amount of travel subsistence that a government employee may be reimbursed for the same travel. Compensation for auxiliary personnel as an attendance fee, however, is not billable to the party.

§ 530.65 Transcripts in CJA Cases

Transcripts provided for parties proceeding under the CJA and to parties allowed to proceed in forma pauperis are to be paid from funds appropriated for those purposes. For complete information, **see:** § 550 (Criminal Justice Act (CJA) and In Forma Pauperis Proceedings).

§ 530.70 Transcripts for the Court of Appeals

§ 530.70.10 Ordering Responsibility

The appellant is responsible for ordering the transcript and paying the court reporter for the cost of the transcript. If the court of appeals requests that additional transcript pages be submitted, it is the responsibility of the parties to order and pay the court reporter or transcriber for such transcript.

§ 530.70.20 Filings

The reporter or transcriber must prepare an original and a copy whenever a certified transcript is ordered. One copy is filed in the clerk's office, and the original transcript is delivered to the party. No additional fee is charged the party if the copy from the clerk's records is forwarded as part of the record on appeal. The practice of charging for a copy taken from the clerk's file was abolished in 1963 by the Judicial Conference.

§ 530.70.30 Payment Form

Transcripts for appellants proceeding under the CJA or in forma pauperis are to be paid by the United States out of money appropriated for such purposes.

§ 530.70.40 Prepayment

Reporters or transcribers may request prepayment of fees before beginning transcript preparation, except they may not request prepayment by the United States government.

Some circuits require that a portion of the prepayment be held in escrow, however, until the transcript is prepared.

§ 530.70.50 Temporary Retention of Transcript Deposits by Clerk of Court

The clerk of court may receive and hold transcript fee deposits as an incentive to the court reporter to fulfill transcript orders on time; and further, the court has the discretion to make this “escrow” arrangement standard practice for all transcript fees. The court’s authority is the Court Reporter Act, 28 U.S.C. § 753, and the Judicial Conferences March 1982 resolution concerning management of court reporters. JCUS-MAR 82, pp. 8-12.

§ 530.70.60 Fees for Transcripts to Be Paid by Parties

See: § 540 (Transcripts for Cases on Appeal).

- (a) Rule 10, Federal Rules of Appellate Procedure (The Record on Appeal)

“At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.”

- (b) Judicial Conference Policy

"That the Judicial Conference reaffirm its September 1963, decision that no court reporter is authorized to receive payment of a fee for providing a transcript for the clerk's office in the preparation or perfection of an appeal. It is also recommended that the Conference approve the policy that a reporter may charge a party only for transcript ordered by and delivered to the party and that the reporter must bear the expense of providing a copy of a transcript to be filed with the clerk of the district court and a copy to be submitted to the court of appeals, if required. It is further suggested that the Ninth and Tenth Circuit Courts of Appeals should review their requirements that a copy of the transcript be retained in the district court since it duplicates the copy of the transcript that is submitted to the court of appeals." JCUS-SEP 83, p. 51.

- (c) Cases Covered

- (1) Appeals to a Circuit from a District Court

Transcripts for appealed cases should be delivered within 30 days from the date ordered or from the date satisfactory arrangements for payment have been made. If the customary practice of the court reporter is not to require prepayment, the 30-day period

begins upon acceptance of the transcript order by the court reporter.

(2) Appeals from a Magistrate Judge to a District Judge

A transcript in a case on appeal from a magistrate judge to a district judge should be paid for in the same manner as an appeal from the district court to the court of appeals.

(d) Late Delivery of Transcripts

(1) Judicial Conference Policy

“That for a transcript of a case on appeal not delivered within 30 days of the date ordered and payment received therefor, or within such other time as may be prescribed by the circuit council, the reporter may charge only 90 percent of the prescribed fee; that for a transcript not delivered within 60 days of the date ordered and, payment received therefor, or within such other time as may be prescribed by the circuit council, the reporter may charge only 80 percent of the prescribed fee. No fee may be charged which would be higher than the fee corresponding to the actual delivery time. In the case of a transcript which is subject to Fed. R. App. P. 11(b), the reduction in fee may be waived by the clerk of the court of appeals for good cause shown. Nothing contained herein should be construed as sanctioning untimely delivery, nor should this provision be considered the only penalty that could be imposed by the court or circuit council on habitual offenders.” JCUS-MAR 82, p. 10.

(2) Penalties

Late delivery of transcripts impedes the work of the courts. Each circuit council decides the due dates for the delivery of transcripts and the amount of penalties to be applied when such dates are not met. Therefore, reporters and transcribers may not charge the full fee if they do not produce an appellate transcript within the time limits required by the circuit councils. Additionally, the district courts or circuit councils may impose other penalties. One such penalty would be to require the reporter to compensate a courtroom substitute while the reporter prepares the overdue transcripts.

(3) Waiver by Clerk of the Court of Appeals

While true hardship cases may arise occasionally, the clerk of the court of appeals should grant exceptions to the fee reductions sparingly. Only the clerk of the court of appeals may waive this requirement for good cause. Otherwise, the fee reduction must be given. Approval of an extension by the court of appeals under Fed. R. App. P. 11(b) does not constitute a waiver of the fee reduction by the clerk of the court of appeals. A waiver must be granted separate and apart from the request for an extension of time by the court reporter or transcriber.

(4) Monitoring by Supervisor

The court reporting supervisor shall monitor fees and transcript delivery to determine the reporter's compliance with any required fee reduction.

(5) Overcharging

If overcharges occur by virtue of a late delivery, the reporter or transcriber must refund the overcharges to the ordering party.

§ 530.75 Fees for Transcripts to Be Paid by the United States

(a) Judicial Conference Policy

"In appeal cases in forma pauperis in which the transcript is furnished at government expense, the Director of the Administrative Office was instructed to authorize payment for as many carbons [copies] as are required to perfect the appeal by the rules of court." JCUS-OCT 46, p. 12.

(b) Cases Covered

(1) Appeals to a Circuit from the District Court

Court reporters may be paid by the AO for transcripts provided in civil proceedings other than habeas corpus and those filed under section 2255 to persons permitted to appeal in forma pauperis if the trial judge or circuit judge certifies that the:

- suit or appeal is not frivolous, and
- transcript is needed to decide the issue presented by suit or appeal.

See: § 550 (Criminal Justice Act (CJA) and In Forma Pauperis Proceedings).

(2) Appeals to a District Court from the Bankruptcy Court

The Court Reporter Act, 28 U.S.C. § 753(f), provides that the government will pay for transcripts on appeal when the party requesting the transcript has been granted pauper status under 28 U.S.C. § 1915 and the trial judge or a circuit judge has certified that the appeal is not frivolous but presents a substantial question. This is the same determination that is made in the course of an appeal in a civil case before the district court.

(3) Special Master Proceedings

The United States may pay fees for transcripts of proceedings before a special master on behalf of an indigent who meets the requirements of 28 U.S.C. § 1915, if the order appointing the Master provides for the preservation and filing of a record in any evidentiary hearing (**see:** Rule 53(b)(2)(C) of the Rules of Civil Procedure) and the proceedings of the Special Master are being reviewed by a district judge.

(4) Transcripts Required for District Judge Review of Proceedings before a Magistrate Judge

A transcript of oral hearings before a magistrate judge under 28 U.S.C. § 636(b) on motions for summary judgment, with a report and recommendation to be provided to the judge, falls within the purview of 28 U.S.C. § 636(b)(1)(B); therefore, the AO may pay the cost of preparing such a transcript when the transcript is required by the district court. **See:** 28 U.S.C. § 1915(b)(2); and OGC Memorandum, Jan. 13, 1987.

(5) Transcripts Which May Be Paid From the Court's Non Appropriated Fund

If a litigant has met the requirements to proceed in forma pauperis under 28 U.S.C. § 1915, in situations where appropriated funds are not authorized for transcript payment, and a transcript is deemed necessary, the court may authorize payment from the court's non-appropriated fund.

- (6) Transcripts Provided under the Criminal Justice Act (18 U.S.C. § 3006A, 28 U.S.C. § 2255, and *Habeas Corpus*)

Form CJA 24 (Authorization and Voucher for Payment of Transcript) is used by court reporters or transcribers to obtain payment for transcripts ordered under the CJA, except for transcripts ordered by the federal public or community defenders. Payments for transcripts ordered by federal public or community defenders will be paid by means of a Form AO 435 (Transcript Order) or equivalent document. Only transcripts ordered on a Form CJA 24 require prior judicial approval. Payments to court reporters are subject to post audit by the Administrative Office. **See:** § 550 (Criminal Justice Act and In Forma Pauperis Proceedings).

- (c) Using the Billing with Annotated Information in Lieu of Form SF 1034 (Public Voucher for Purchases and Services Other than Personal)

- (1) A general authorization has been provided to each court for transcripts which are required by the court from contract reporters or provided to parties proceeding in forma pauperis on appeal in non-CJA cases, without prior approval of the AO regardless of the cost of the transcript order. Funding codes information will be disseminated to each court at the beginning of every fiscal year in the Allotment Guidelines for General Authorizations. All payments must be made in compliance with the transcript payment regulations outlined in this chapter. The invoice used in lieu of Form SF 1034 must include the:

- case number;
- case name;
- date of proceeding(s) transcribed; and
- page rate — the transcript rate, which must not exceed the maximum rates approved by the Judicial Conference, must be stated.

- (2) Court-Ordered Transcript

In addition to § 530.75(c)(1), above, if the transcript is court ordered from a contract reporter, state the name and title of the judicial official who ordered the transcript.

(3) In Forma Pauperis

In addition to § 530.75(c)(1), above, if the transcript is for a party proceeding in forma pauperis in civil cases on appeal, or for a party proceeding in forma pauperis in any civil or criminal case before a United States magistrate judge conducted under 28 U.S.C. § 636(b) or 18 U.S.C. § 3401(b), and is required by the district court, the following are required:

(A) Certified Copy of Court Order

The invoice (or alternative Form SF 1034) should be supported by a certified order of the court authorizing the party to proceed in forma pauperis and to receive the transcript at the expense of the United States.

(B) Certification

- (i) In cases appealed to a court of appeals, there should be attached to the invoice (or alternative Form SF 1034), a certification by the trial judge, or an appellate judge that "the appeal is not frivolous but presents a substantial question." This is not required for matters on appeal to the district judge from a magistrate judge.
- (ii) "In a direct appeal in a case in which counsel is assigned under the CJA, neither the CJA nor 28 U.S.C. § 753(f) requires the signing of a pauper's oath or certification by the Court that the appeal is not frivolous in order to obtain a transcript." **See:** Guide, Vol 7A, § 320.30.10(b).

(C) Civil Actions on Appeal

In the instance of civil actions on appeal (other than habeas corpus or Section 2255), the invoice (or alternative Form SF 1034) should include all items (A) and (B) above and:

- (i) Type of civil appeal (e.g., civil rights, prisoner's petition, private party)
- (ii) Number of copies chargeable to the federal judiciary and the distribution of such copies

(iii) Condemnation Hearings and Proceedings

In addition to § 530.75(c)(1) above, in the instances of condemnation hearings and proceedings required by 28 U.S.C. § 753, the invoice (or alternative Form SF 1034) should be supported by:

- (a) a certified copy of the court order allowing the transcript and specifying the number of copies to be furnished, and
- (b) the number of copies chargeable to the federal judiciary and the distribution of such copies.

(iv) Transcripts from State Court Proceedings Ordered by a Judicial Officer

Transcript fees for state court proceedings which have been ordered by federal judicial officers can be paid by appropriated funds upon receipt of an invoice from the court reporter or transcriber with verification of the request by the court.

(d) Filing the Invoice or Alternative Form SF 1034

- (1) The original and first copy should be submitted to the clerk of court or designated approving official with
 - (A) an invoice billing the court and referencing the case number, category of transcript ordered, total number of pages, and page rate; and
 - (B) other supporting documentation required.
- (2) The second copy should be retained in the court reporter's files.

(e) Payment

- (1) Services claimed on the billing or SF 1034 are usually paid by the clerk of court or designated disbursing officer who certifies and pays vouchers on the basis of the approving officer's prior approval. Payments may not be made in advance of the rendering of services. A single authorization may be used to support a series of vouchers.

(2) Payment to Contract Court Reporters

All fees are set by the terms of the contract, subject to the maximum fee rates established by the Judicial Conference. Whenever the contractor delivers a transcript to a party in response to a transcript order, the contractor must provide a free copy to the clerk of court under the terms of the contract. “Terms and Conditions” of the court reporter contract mandate that the court pay for an original transcript when ordered by the district or bankruptcy court and, with proper documentation, for a transcript ordered by a party proceeding in forma pauperis on appeal. Concurrently, the contractor must deliver a free copy to the clerk of court. Courts may not pay for a transcript ordered by and furnished to a party not proceeding in forma pauperis on appeal.

§ 530.80 Routine Apportionment of Transcript Rates

§ 530.80.10 Judicial Conference Policy

- (a) “That the furnishing of accelerated transcript services in criminal proceedings should be discouraged, however, recognizing that there are some circumstances in which such transcript services are necessary and required by either the prosecution or the defense, or both, accelerated transcript services may be provided.” JCUS-MAR 80, p. 19; JCUS-SEP 86, p. 19.
- (b) “That in those cases where accelerated transcript services are provided, the party from whom the request or order emanates shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the Criminal Justice Act, the CJA counsel shall be entitled to a copy at the copy rate.” JCUS-MAR 80, p. 19; JCUS-SEP 86, p. 19.
- (c) “That the present practice, in some districts, of routinely apportioning the total cost of accelerated transcript services equally among the parties should be abandoned.” JCUS-MAR 80, p. 19; JCUS-SEP 86, p. 19.

§ 530.80.20 Court Action

Courts should ensure that the court reporting services management plan prohibits the routine apportionment of accelerated transcript costs among parties in criminal proceedings.

§ 530.85 Electronic Sound Recording Tapes

§ 530.85.10 Introduction

- (a) The court may have transcripts prepared by professional transcription services. All format, delivery time schedule, and fee requirements adopted by the Judicial Conference apply as if the transcript were produced by one of the court's reporters. **See:** Guide, Vol. 6 § 380.20 (Preparation of Transcripts from Electronic Sound Recordings).
- (b) Court employees, other than court reporters, may not retain fees for preparation of official transcripts even if prepared on their own time. If a court employee, other than court reporters, produces a transcript for a private party, the fees for such must be deposited into the United States Treasury.

§ 530.85.20 Judicial Conference Policy

- (a) "The Conference approved an amendment...of the regulations of the Director to provide that the rates and conditions for transcripts prepared by electronic recording of proceedings before magistrate judges be the same rates and conditions established by the Conference for transcripts prepared by an official court reporter." JCUS-SEP 77, p. 64.
- (b) "For transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters." JCUS-MAR 81, p. 14.

§ 530.85.30 General Counsel Opinion

- (a) "Official court reporters are the only court employees who may receive compensation other than their salary for the performance of official duties, namely fees for the preparation of transcripts." OGC Memorandum, June 8, 1983.
- (b) "When the court designates a non-reporter employee to transcribe the record of a courtroom proceeding, that employee produces the transcript as part of his or her official duties.... That employee is entitled, therefore, to work on the transcript during regular working hours and to have all supplies furnished by the government. Any fee collected for the transcript represents a reimbursement to the government of the costs of having a

non-reporter employee prepare the transcript and must be paid into the Treasury pursuant to 31 U.S.C. § 3302(b). The retention of these fees by a non-reporter employee could offend the spirit if not the letter of the criminal statutes on conflict of interest.” 18 U.S.C. § 201(g), § 209.

§ 530.85.40 Sales of Tapes to the Public

- (a) Upon request, the court may reproduce tapes on its own duplicating equipment or on commercial equipment and may sell copies of electronic sound recording tapes made as the official record to the public at the prevailing rate prescribed by the miscellaneous fee schedule in effect.
- (b) This provision does not apply to reporters' backup tapes used to augment the court reporter's steno notes.

§ 530.90 Certification of Transcript Rates

- (a) Judicial Conference Policy

“The reporter is required to certify on each invoice that the fee charged and the page format used conform to the regulations of the Judicial Conference.” JCUS-MAR 82, p. 9.

- (b) Certification

Form AO 44 (Invoice), contains the following certification that the reporter must sign:

“I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.”

§ 530.95 Sanctions for Overcharging

- (a) Judicial Conference Policy

“That to insure compliance with regulations of the Judicial Conference, each court may be directed to take any necessary action including, but not limited to, dismissal of the court reporter or restitution of overcharges, whether they arise out of a violation of page rates, page format, or time limits for delivery.” JCUS-MAR 82, p. 9.

(b) Retention of Deposits

As part of its management responsibility, the clerk of court may receive and hold transcript fee deposits and other payments as an incentive to the court reporter to fulfill transcript orders on time.

(c) Monitoring

The court reporting supervisor must monitor fees charged for transcripts including reviewing invoices and vouchers for compliance with the court's approved fee schedule and any fee reductions imposed for late delivery.

(d) Refunding

If court reporters and transcribers bill accurately and supervisors monitor attentively, fees should always be correct. However, in the case of mistakes or failure to comply with the maximum rates established by the Judicial Conference and the district court, reporters or transcribers must refund over-billings to the ordering party.

(e) Termination

Reporters who intentionally overcharge should be terminated. Courts are advised to discontinue using transcription services which intentionally overcharge.

§ 540 Transcripts for Cases on Appeal

§ 540.10 Introduction

Cases appealed to the United States courts of appeals require the timely transmission of the record from the lower court. A transcript of the proceedings normally is a required part of the record to be transmitted to the court of appeals.

- (a) For a court reporter to charge full fees prescribed by the Judicial Conference, the transcript must be delivered within 30 days or within such other time as may be prescribed by the circuit judicial council.
- (b) The clerk of the court of appeals may grant an exception for good cause to the requirement to reduce the fee.
- (c) Court reporters should use note readers or technological tools like computer assisted transcription equipment to help them manage high

volume production and meet the needs of the courts and the public for timely transcripts.

- (d) Under 28 U.S.C. § 753(f), the reporter may require any party requesting a transcript to prepay the estimated fees in advance except transcripts that are to be paid by the United States government. **See:** § 530 (Fees).

§ 540.20 Federal Rules of Appellate Procedure

§ 540.20.10 Rule 10, Federal Rules of Appellate Procedure (The Record on Appeal)

The Rule states:

- (a) Composition of the Record on Appeal

The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.

- (b) The Transcript of Proceedings

- (1) Appellants Duty to Order

Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

- (A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:
 - (i) the order must be in writing;
 - (ii) if the cost of the transcript is to be paid by the United States under the CJA, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion

If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript

Unless the entire transcript is ordered:

(A) the appellant must within the 10 days provided in Rule 10(b)(1) file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) Payment

At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable

If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best

available means, including the appellants recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(e) Agreed Statement as the Record on Appeal

In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the courts resolution of the issues. If the statement is truthful, it together with any additions that the district court may consider necessary to a full presentation of the issues on appeal must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record

- (1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.
- (2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
 - (A) on stipulation of the parties;
 - (B) by the district court before or after the record has been forwarded; or
 - (C) by the court of appeals.
- (3) All other questions as to the form and content of the record must be presented to the court of appeals.

§ 540.20.20 Rule 11, Federal Rules of Appellate Procedure (Forwarding the Record)

The statute states:

(a) Appellants Duty

An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk

(1) Reporters Duty to Prepare and File a Transcript

The reporter must prepare and file a transcript as follows:

- (A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.
- (B) If the transcript cannot be completed within 30 days of the reporters receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.
- (C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.
- (D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) District Clerks Duty to Forward

When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits

other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal

The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellees brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Reserved]

(e) Retaining the Record by Court Order

- (1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.
- (2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.
- (3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties

The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record Needed for a Preliminary Motion in the Court of Appeals

If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal,
- for release,
- for a stay pending appeal, or
- for additional security on the bond on appeal or on a supersedeas bond; or for any other intermediate order

the district clerk must send the court of appeals any parts of the record designated by any party.”

§ 540.30 Due Dates

Transcripts for appealed cases should be delivered within 30 days from the date ordered or from the date satisfactory arrangements for payment have been made. If the customary practice of the court reporter is not to require prepayment, the 30-day period begins upon acceptance of the transcript order by the court reporter.

§ 540.40 Required Forms

Court reporters must complete and submit the designated transcript order form used by their court/circuit indicating acceptance of the order as may be required by the court of appeals. Some courts are using the nationally supported Transcript Order Form. **See:** Form AO 148 (Sample Transcript Purchase Order).

§ 540.50 Full Transcript Not Required for Criminal Appeals

§ 540.50.10 Judicial Conference Policy

"It is the sense of the Conference that a substantial number of criminal appeals can be fairly conducted without a full transcript of all testimony and proceedings. ...that among other methods, the processing of appeals should be expedited by such steps as the following: All counsel should be required to exhaust all efforts to perfect appeals without full trial transcripts, by use of such traditional devices as preparation of limited transcripts, and preparation of an agreed statement or other summary of the evidence." JCUS-OCT 71, pp. 61-62.

§ 540.60 Use of Substitute Reporters

In the event that an official staff, additional, temporary, or combined-position court reporter is not able to provide transcripts in a timely fashion, i.e., within 30 days, the judge may appoint a substitute reporter at the expense of the reporter. **See:** Guide, Vol 6, § 440 (Substitute Court Reporters).

§ 540.60.10 Judicial Conference Policy

"Because of the inordinate delays that have taken place throughout the system in the preparation of transcripts by court reporters in cases that are being appealed, the Conference agreed that substitute reporters should be employed to service the requirements of the district judge where the official court reporter is unable to complete his transcripts in a timely fashion and that the salary of the official reporter be subject to withholdings not to exceed the sum necessary to compensate the substitute reporter until the transcripts are current. The need for substitute reporter service is to be determined by the district judge affected or by the chief judge of the circuit, at his [or her] option, acting through the circuit executive." JCUS-MAR 75, p. 8.

§ 540.70 Withholding Salary / Placing Reporter on Leave Without Pay

If it is necessary for the judge to appoint a substitute reporter while the court reporter is preparing backlogged transcripts, either the court reporter bears the cost of a substitute appointed by a judge or the court reporter is placed on leave without pay.

§ 540.80 Temporary Retention of Transcript Deposits by Clerk of District Court

As set forth in an OGC memorandum dated February 20, 2003, the clerk of the district court may receive and hold transcript fee deposits as an incentive to the court reporter to fulfill transcript orders on time. The court has the discretion to make this "escrow" arrangement standard practice for all transcript fees. This practice is within the court's authority under the Court Reporter Act, 28 U.S.C. § 753, and also within the scope of the Judicial Conference's March 1982 resolution concerning management of court reporters. JCUS-MAR 82, pp. 8-12.

§ 550 Criminal Justice Act (CJA) and In Forma Pauperis Proceedings

§ 550.10 Introduction

Court reporters are to be paid for transcripts provided to parties proceeding under the CJA and to parties allowed to appeal in forma pauperis. Payment is to be made by the United States from funds appropriated for that purpose at rates not to exceed those established by the Judicial Conference. Except as specified herein, transcripts ordered

in multi-defendant cases by more than one party under the CJA must be copied at commercially competitive rates.

§ 550.20 Statutory Authority

- (a) "Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. § 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal *in forma pauperis*, shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in proceedings brought under [28 U.S.C. § 2255] to persons permitted to sue or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal *in forma pauperis* shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid by the United States." 28 U.S.C. § 753(f).
- (b) "Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under [28 U.S.C. § 636(b)] or under [18 U.S.C. § 3401(b)]; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to [28 U.S.C. § 636(c)]. Such expenses shall be paid when authorized by the Director of the [AO]." 28 U.S.C. § 1915(c).
- (c) "Judgement may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States." 28 U.S.C. § 1915(f)(1).
- (d) "Attorneys shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate judge or the court." 18 U.S.C. § 3006A(d)(1).

- (e) “Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate defense may request them in an ex parte application.” 18 U.S.C. § 3006A(e)(1).

§ 550.30 Judicial Conference Policy

"It is the sense of the Conference that a substantial number of criminal appeals can be fairly conducted without a full transcript of all testimony and proceedings.... All counsel should be required to exhaust all efforts to perfect appeals without full trial transcripts, by use of such traditional devices as preparation of limited transcripts, and preparation of an agreed statement or other summary of the evidence." JCUS-OCT 71, pp. 61-62.

§ 550.40 Transcripts

Transcripts provided for parties proceeding under the CJA and to parties allowed to proceed in forma pauperis are to be paid from funds appropriated for those purposes. The court reporter must prepare such transcript in the format prescribed by the Judicial Conference. Also, the court reporter may not exceed the rates for transcript established by the Judicial Conference in effect at the time authorization was made. In the absence of prior special authorization, trial transcripts should exclude:

- prosecution and defense opening statements,
- prosecution argument,
- defense argument,
- prosecution rebuttal,
- voir dire, and
- the jury instructions.

§ 550.40.10 Authorization for Payment

See: Guide, Vol 7A, § 320.30.10 (Authorization and Payment).

§ 550.40.20 Apportionment of Costs

See: Guide, Vol 7A, § 320.30.20 (Accelerated Transcript Costs).

§ 550.40.30 Commercial Duplication in Multi-Defendant Cases

See: Guide, Vol 7A, § 320.30.30 (Commercial Duplication in Multi-Defendant Cases).

§ 550.50 Procedures for Payments

§ 550.50.10 Panel Attorneys

The panel attorney program is funded on a payment rather than an obligation basis, thus transcripts for panel attorneys are paid from the current fiscal year on the payment date without regard to the date ordered. Requests for payments must be supported on Form CJA 24 (Authorization and Voucher for Payment of Transcript), approved by a judicial officer.

§ 550.50.20 Pro Se Defendants

Vouchers ordered by eligible pro se defendants will be processed in the same manner as those ordered by panel attorneys. AO Office of Finance and Budget Memorandum, Aug. 4, 1998.

§ 550.50.30 Form CJA 24 (Authorization and Voucher for Payment of Transcript)

(a) Use

This form is used by court reporters or transcribers to obtain payment for transcripts ordered under the CJA by panel attorneys, but not for transcripts ordered by federal public or community defenders. Payment for transcripts ordered by federal public or community defenders will be by means of a Form AO 435 (Transcript Order) or equivalent document. AO Office of Finance and Budget Memorandum, Aug. 4, 1998.

(b) Items Covered – Payment for Transcript Produced

In addition to the transcript cost, the reporter is to be reimbursed for the following expenses for which receipts must be attached to the form.

(1) Travel and subsistence of assistants who aid in the preparation of daily or hourly transcript, if authorized in advance by the district judge or magistrate judge.

(2) Extraordinary delivery costs, such as courier services or express mail. (Regular postage is not to be claimed.)

(c) According to the Judicial Conference resolution of expediting appeals (JCUS-OCT 71, pp. 61-62), in the absence of specific authorization by a district judge or magistrate judge on Form CJA 24, trial transcripts **may not** include:

- Prosecution opening statements
- Defense opening statements
- Prosecution argument
- Defense argument
- Prosecution rebuttal
- Voir dire
- Jury instructions

(d) Distribution of Copies

After the transcript services have been rendered and the Form CJA 24 approved, distribution is to be made as follows:

- (1) After disbursement, the original and Copy 1 are to be retained by the disbursing officer.
- (2) Copy 2 is to be retained in the court's files.
- (3) Copy 3 is to be retained by the payee.

§ 550.50.40 Form SF 1034 (Public Voucher for Purchases and Services Other than Personal)

(a) Purpose of Form

Form SF 1034 is used by court reporters to obtain payment of transcripts furnished to Federal Public Defenders and persons proceeding in forma pauperis in civil cases on appeal, and for proceedings before a United States magistrate judge in any civil or criminal case if such transcript is required by the district court, in the case of proceedings conducted under 28 U.S.C. § 636(b) or 18 U.S.C. § 3401(b).

(b) Federal Public Defenders

Transcripts are paid from the current fiscal year when the transcript is ordered and are vouchered on Form SF 1034 or equivalent, which is paid by the district court. Judicial approval is not required and CJA 24 forms are no longer used for transcripts ordered by FPDOs. (AO Office of Finance and Budget Memorandum, Aug. 4, 1998)

(c) Community Defenders

Transcripts are paid directly by the Community Defender Offices from grant funds. Judicial approval is not required, and payment requests

should not be submitted to the district court. AO Office of Finance and Budget Memorandum, Aug. 4, 1998.

§ 550.50.50 Payments by the Clerk of Court

The Criminal Justice Act Panel Attorney Payment System provides the process for payment of transcripts ordered under CJA and the checks are issued by the AO, not the district court's disbursing office. AO Office of Finance and Budget Memorandum, Aug. 4, 1998.

§ 550.60 Depositions

Depositions for Criminal Justice Act attorneys are considered private reporting. **See:** Guide, Vol 6, § 420 (Reporting for U.S. Attorney's Office) and § 430 (Private Reporting Activities).

§ 560 Copyright Laws

§ 560.10 Introduction

Transcripts produced from records of proceedings in United States courts are not protected by copyright. This applies whether the transcript was produced by a court employee, a contractor, or a transcriber. Because transcripts are in the public domain, they may be used, reproduced, and sold by attorneys, parties, and the general public without additional compensation to the court reporter, contractor or transcriber.

§ 560.20 Statutory Authority

- (a) "Copyright protection under this title [Title 17, U.S. Code] is not available for any work of the United States Government." 17 U.S.C. § 105.
- (b) "A work of the United States Government is a work prepared by an officer or employee of the United States Government as part of that person's official duties." 17 U.S.C. § 101.

§ 560.30 District Court Opinion

"Absent an express contractual reservation of copyright in an artist, title to the copyright is presumed to be in the employer, the person at whose instance and expense the work is done.... [The contractor's] free-lance status does not defeat the application of the work for hire doctrine. The doctrine applies equally as well to an independent contract as it would to a salaried member of [the employer's] staff." *Samet & Wells, Inc. v.*

Shalom Toy Co., Inc., 429 F. Supp. 895, 901-2 (E.D.N.Y. 1977), *affirmed*, 578 F.2d 1369 (2nd Cir.).

§ 560.40 References to Copyright

Transcripts are in the public domain and are not protected by copyright. Transcripts may not bear statements which would lead one to believe that they are protected by copyright. It is a criminal offense to place such a statement in a transcript or to distribute transcripts containing such a statement with fraudulent intent. 17 U.S.C. § 506(c).

§ 560.50 Copying and Selling Transcripts

Transcripts may be freely copied, sold, and distributed by members of the public without compensation to the court reporter or transcriber.

§ 560.60 Reproduction of the Clerk of Court's Copy

The Judicial Conference policy regarding the electronic availability of transcripts of court proceedings imposed a 90 day rule for redaction of privacy information from transcripts, as follows:

- (a) A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk.
- (b) During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.
- (c) After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for download from the court's CM/ECF system through the judiciary's PACER system.
- (d) After the 90-day period, the transcript copy filed with the clerk of court may be reproduced without compensation to the court reporter or transcriber under the same terms and conditions that any other official public document in the case file may be reproduced.

§ 560.70 Inspection of the Clerk of Court's Copy

Any transcript on file with the clerk of court may be inspected by any member of the public during normal court hours without compensation to the court reporter or transcriber. The clerk may not charge a fee for the right to inspect. 28 U.S.C. § 753(b).

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENISE M. OLIVER and
ELIZABETH ANN MOODY,

Plaintiffs,

Docket No. CV 81-1224

vs.

St. Louis, Missouri
August 28, 2009

WILLIAM FOUNDATION HOSPITALS,
C. Z. TORT, F. W. WINSTON,

Defendants.

VOLUME III
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT JUSTICE
UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by mechanical stenography,
transcript produced with computer.

1 MR. JONES: That is all I have for this witness.

2 THE COURT: All right. Suppose we recess for a short
3 period now, say 15 minutes.

4 (Recess at 10:30 a.m. until 10:45 a.m.)

5 MR. JONES: If it please the Court, Your Honor, the
6 defendant is ready to proceed. I would like to call Ann
7 Hannan.

8 ANN D. HANNAN, DEFENDANT'S WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. JONES:

11 Q. Would you give your full name, Ann?

12 A. Ann D. Hannan.

13 Q. And where do you live?

14 A. At 425 Rockway Place, Lake Summit.

15 Q. And how have -- I mean, how long have you lived there?

16 A. For about 20 years.

17 Q. And what do you do for a living?

18 A. I work as a checker at Green Grocery on Long Street.

19 Q. How long have you worked there, Miss Hannan?

20 A. I was hired by Clem Staples, I mean, the deceased --

21 MR. PLASKY: I object. Your Honor, I would like the
22 witness's answer stricken from the record as nonresponsive.

23 (Off-the-record discussion at sidebar.)

24 THE COURT: Objection sustained. Will you proceed.

25

1 BY MR. JONES:

2 Q. Miss Hannan, how many years did you work as a checker at
3 Green Grocery Store?

4 A. For ten years and maybe three, four months.

5 Q. Did you work all that time?

6 A. (Witness nods.)

7 Q. Was that a yes, Miss Hannan?

8 A. Yeah.

9 Q. Were you ever laid off for any reason?

10 A. No, never, 'cause Mr. Staples seen where I was livin' and
11 he knew I needed the money.

12 Q. Why did you --

13 THE COURT: Pardon me, Counsel, for interrupting you,
14 but I would like to ask the witness one question.

15 I don't understand what you mean by that statement.
16 Please explain what your living conditions were, Miss Hannan.

17 THE WITNESS: They were awful, Judge. The house had
18 no electricity. We only got a water pump two years ago.

19 THE COURT: Thank you.

20 You may proceed, Counsel.

21 MR. JONES: Your Honor, at this time I would like to
22 call the Court's attention to the case of State versus Tilden
23 which states:

24 "On June 20, 1969, the defendant was on his way home
25 and was struck by an automobile which was traveling

1 MR. JONES: That's all I have.

2 THE COURT: Are you sure that there is no more
3 testimony for the record?

4 MR. PLASKY: Nothing further.

5 THE COURT: You may step down. I am going to call a
6 short recess.

7 (Recess from 3:35 p.m. until 4:05 p.m.; all parties
8 present.)

9 THE COURT: You may proceed, Mr. Jones.

10 MR. JONES: May it please the Court. I have a
11 witness, Mary Ramirez, and she only speaks Spanish. I have
12 brought Jorge Lopez, a Spanish teacher who has been officially
13 certified by the U.S. Courts, to act as an interpreter.

14 THE COURT: Yes, Mr. Lopez has acted as an
15 interpreter in this court before.

16 MR. PLASKY: I know Mr. Lopez and agree that he be
17 the interpreter.

18 THE COURT: I will have the deputy clerk administer
19 the oath to Mr. Lopez and then to Mrs. Ramirez.

20 (Interpreter sworn.)

21 MARY RAMIREZ, DEFENDANT'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. JONES:

24 Q. What is your name?

25 A. Mary Ramirez.

1 Q. Where do you live?

2 A. Now I live at 245 Davis Road in Summerville, but I just
3 moved there three months ago. I am living with my mother and
4 father in their home.

5 Q. Do you remember the afternoon of July 14, 1979?

6 THE INTERPRETER: I am sorry, I didn't hear the date.
7 Did you say July 14?

8 MR. JONES: Yes.

9 THE INTERPRETER: She said, "Yes."

10 BY MR. JONES:

11 Q. And, where were you on July 14 at about 4:00 p.m.?

12 A. Shopping at SAVE-A-LOT.

13 Q. What time did you get to the store?

14 A. 1:00.

15 MR. PLASKY: Your Honor, may we go off the record?

16 THE COURT: Yes.

17 (Bench conference off the record.)

18 THE COURT: You may proceed, Mr. Jones.

19 MR. JONES: May we have the last question and answer
20 read back?

21 (The last question and answer were read.)

22 BY MR. JONES:

23 Q. At about 4:00 p.m. did you see anything unusual?

24 A. I saw that woman over there (indicating) take a steak and
25 put it in a shopping bag. Her, her (indicating).

1 Q. You are pointing at the defendant, Lynn Roger, are you
2 not?

3 A. Yes, that woman right there.

4 MR. JONES: Let the record show that the witness has
5 correctly identified the defendant.

6 THE COURT: I would like to make the record clear
7 that

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