

GENERAL ORDER NO. 89-21

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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MURRAY L. HARRIS, CLERK

BY
DEPUTY

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JUNE, 1989

AMENDED PLAN FOR THE MANAGEMENT OF OFFICIAL COURT REPORTERS

(Revision of January, 1983 Plan)

Pursuant to the recommendation of the Judicial Conference of the United States and that certain Resolution dated October 11, 1982, adopted by the Judicial Council of the United States Court of Appeals, Fifth Judicial Circuit, this Court Reporter Management Plan as amended has been approved and adopted by the United States District Court, Eastern District of Texas, subject to approval of the Fifth Circuit Judicial Council.

A. Introduction

The Court desires through this Plan to achieve effective control and management of the official court reporters. Management of all court reporting services in the Court is delegated to the Clerk of Court working under the direction of the Chief Judge. The Court Reporter Supervisor in the Clerk's Office will be responsible for the day-to-day management and supervision of an efficient reporting service within the Court and will provide the Clerk of the Court with all necessary information to enable the Clerk and the Court to ascertain that all requirements of this Plan are fully complied with.

The Plan is specifically designed to:

1. establish and maintain effective management of the court reporters by proper supervision and control;
2. continue the current, long-standing practice that court reporters serve the Court en banc;
3. develop effective utilization of the services of court reporters and an equitable distribution of their workload;
4. avoid backlogs and assure prompt delivery of transcripts;
5. assure appointment and retention of fully qualified court reporters;
6. minimize the use of temporary reporters; and
7. enhance the efficient operation of the Court and further its mission.

B. Court Reporter Supervisor

The Court Reporter Supervisor is responsible for determining the availability of court reporters. Whether a reporter is available to cover proceedings for judicial officers depends on the extent of the reporter's commitments for actual in-court/chambers services. Transcript preparation requirements do not free a reporter from the responsibility of devoting a proper portion of time to recording proceedings for visiting judges, senior judges, magistrates, or other judicial officers as required. The supervisor is responsible for scheduling contract or temporary reporters and needs to be assured that each of the court reporters is actually recording or scheduled to record proceedings in court or chambers before calling in a temporary court reporter.

The duties and responsibilities of the Court Reporter Supervisor shall include, but shall not be limited to:

1. assignment and reassignment of court reporters for the purpose of distributing the workload of all reporters fairly and equitably and assuring the best utilization of reporting personnel;
2. reviewing transcripts to assure full compliance with format requirements of the Judicial Conference of the United States and the Administrative Office of the United States Courts;
3. reviewing transcript billings to assure that authorized transcript rates are charged and that billing is in proper form;
4. determining compliance by all court reporters with the provisions of Title 28, Section 753, U.S.C. concerning the recording, certifying and filing of transcripts of all criminal arraignments, pleas and proceedings in connection with the imposition of sentence;
5. reviewing the time records of the court reporters to assure proper maintenance and accuracy;
6. reviewing the records of the court reporters to assure the timely filing of all reports required by the Judicial Conference of the United States and the Administrative Office of the United States;
7. providing to the Clerk all necessary information relating to the duties set forth above;
8. ascertaining actual and projected budget needs for contract reporting services and electronic sound recording equipment; preparing the forms for solicitation of bids by the Clerk for

- contract reporting services; scheduling contract court reporter services when needed and emergency substitute court reporters as required; assisting Magistrates' staff with transcript orders of electronic sound recording tapes; and monitoring transcripts for quality and timeliness; and
9. performing such other duties relating to court reporters as shall be directed by the Court.

C. Court Reporters

The basic duty of a court reporter is to attend and record verbatim by shorthand, mechanical means, electronic sound recording, or other method approved by the Judicial Conference, such court sessions or other proceedings as are specified by statute, rule, or order of court.

1. Types of Court Reporters

There are five types of court reporters who may serve in this District, and they are categorized according to how they are utilized or employed by the Court.

- a. Official staff reporters comprise the regular complement of reporters who serve in this District. They are appointed by the Court for an indefinite time and are salaried; they serve the Court en banc.
- b. Additional reporters are authorized in excess of the regular complement of official staff reporters by the Judicial Conference for specific periods. They are

salariied and serve the Court en banc. An example of an additional reporter is one which is authorized to serve in this District because a judge or judges who have attained senior status but have chosen to remain active and such choices have created the need for additional reporter services.

- c. Temporary Reporters are those reporters who are appointed with the approval of the Director of the Administrative Office for service not to exceed three months. They are paid on a fee/per diem basis or bi-weekly salaries that are computed on an annual rate. An example of a temporary reporter is one who is needed for a magistrate's court or a visiting judge's court and the Court Reporter Supervisor has determined that no court reporter is available because of work assignments. The use of temporary reporters is to be minimized.

- d. Contract reporters serve the court under a formal contract with pay established and set forth in the contract. They are utilized the same as temporary reporters but the terms and pay are set forth in a contract. Contractual services may be used only after the Court Reporter Supervisor has determined that no court reporter is available because of work assignments. The use of contractors is to be minimized.

- e. Substitute reporters are employees of an official staff, additional, or temporary court reporter and are paid by the employing court reporter. An oath must be administered

to all substitute court reporters. The use of substitutes should be limited to expedited, daily, or hourly transcript work, absence due to illness, leave without pay, vacations, or other reasons beyond the court reporter's control. The court reporter must obtain advance approval from the Court Reporter 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 to record proceedings while the reporter works on the backlogged transcripts. If it is necessary for a judge to appoint a substitute, the court reporter may voluntarily pay the substitute from his/her own funds or may be placed on leave without pay and have the court pay the substitute reporter.

Throughout this Plan all references to "court reporters" are the official staff reporters and additional reporters, both serving the Court en banc, unless a different type of reporter is specified.

2. Appointment and Dismissal of Court Reporters

The Court shall appoint and dismiss court reporters in accordance with the provisions of Title 28, Section 753, U.S.C. The policies and procedures of the Judicial Conference of the United States and the Administrative Office of the United States Courts must also be complied with. Only fully qualified reporters shall be appointed.

Pursuant to Judicial Conference policy, all initial appointments shall be on a probationary basis. The Court has fixed this probationary term to be a period of one year.

Court reporters who do not perform in a competent and satisfactory manner or do not comply with requirements of this Plan shall be subject to dismissal.

3. Assignments of Court Reporters

The geographical configuration of this District and the attendant problems associated with it must be taken into consideration in the assignment of court reporters. The Eastern District of Texas is comprised of seven statutorily authorized Divisions. Each has the necessary courtroom facilities for holding sessions of court. The District has the following judicial officer and court reporter positions:

<u>DIVISION</u>	<u>RESIDENT FULL-TIME JUDICIAL OFFICERS</u>	<u>COURT REPORTERS</u>
Tyler	2 judges; 1 senior judge; 2 magistrates	3*
Beaumont	2 judges; 1 senior judge; 2 magistrates	3*
Sherman	1 judge	1
Marshall	1 judge	1
Texarkana	None	0
Lufkin	None	0
Paris	None	0

*Includes one additional reporter for senior judge subject to annual review.

Each judge and magistrate travel routinely throughout the District, with assignments to other divisions fluctuating as the caseload and other factors change. At each of these divisions, it is usually necessary that the traveling judicial officer be accompanied by his/her staff and, when requested, a court reporter.

Court reporters are employed by the Court en banc, which controls their assignments. Because of the geographical area of the District and the need for judicial officers to travel, court reporters are primarily assigned to one district judge for reporting purposes but are available, when circumstances allow, to be assigned to other judges, visiting judges, magistrates, or land commissioners within the District. Travel of court reporters shall be minimized as much as possible.

In an effort to equitably apportion court reporting tasks at those divisions where two or more reporters are stationed, a system of "pooling" of court reporters shall be established. The Court Reporter Supervisor or other assigned person shall endeavor to equalize the workload among the available court reporters. Each court reporter shall submit to the Court Reporter Supervisor attendance reports and any other reports concerning workload and transcript backlog which may be required to effectively operate the pooling system.

4. Leave Act and Hours of Attendance

Effective January 2, 1989, all official court reporters assigned to the Tyler Division of this District are designated as fulltime employees with a regularly scheduled tour of duty of forty (40) hours per week, 8:00 A.M. to 5:00 P.M., daily. This shall entitle the employees to full retirement and leave benefits for that period of employment beginning January 2, 1989. Attendance and leave records shall be maintained and such records shall be certified to on an annual basis by the Judicial Officer to whom the court reporter is primarily assigned and by the Clerk of Court.

All other court reporters in this District are not under the Leave Act and have not been placed on a regular tour of duty. Court reporters not covered by the Leave Act must provide substitutes as needed at their own expense or be placed in a leave without pay status when taking vacations, leave for personal business, or sickness.

Reporters not covered by the Leave Act are considered to be on call every day court is in session, whether or not they are assigned primarily to one judge as a matter of convenience. Nevertheless, if the court needs reporting services for senior judges, visiting judges, magistrates or land commissioners, court reporters who are absent for whatever reason are responsible for coverage or providing a substitute at their own expense. Telephone availability

will be maintained to insure that if an emergency arises, the court reporter can be available on short notice. The Court Reporter Supervisor or other designated person shall be responsible for knowing the whereabouts of all reporters at all times.

5. Freelance Work

Court reporters under the Leave Act may not perform private (freelance) work during regularly scheduled working hours.

Court reporters not under the Leave Act are permitted to perform private (freelance) work, but service to the court officials shall take precedence and freelance must be approved in advance by the court.

6. Transcripts

It is the duty of the court reporter to transcribe promptly those proceedings when requested by any party who has agreed to pay the fees established by the Judicial Conference, to transcribe any and all proceedings as a judge or court may direct, and to transcribe or provide an electronic sound recording to the court for all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases.

a. Filing of Original Records

The court reporter must certify and file promptly with the Clerk of the Court all original notes and other

original records of proceedings the reporter has recorded. (See Guide to Judiciary Policies and Procedures, Vol. VI, Ch. I, D, 3 "Certifying and Filing Transcripts and Notes.")

In this District, each court reporter is to maintain his/her own file(s) of certified original notes or records. The Clerk of Court has designated the offices of the court reporters at each court location as an extension of the Clerk's office. Said files are to remain accessible to the Clerk (through the Court Reporter Supervisor or other authorized personnel in the Clerk's office), who shall monitor the maintenance and disposal of the original notes/electronic sound recordings prepared by the court reporters.

Upon request, parties or members of the public may review the original notes filed with the Clerk.

b. Scheduling of Work

Each court reporter shall advise the Court Reporter Supervisor, by means of a copy of the transcript order form, of each transcript order received from a party, when received, the length of the transcript, the estimated preparation time, and the required delivery date. If a problem develops regarding the delivery deadline, the Court Reporter Supervisor

shall take appropriate action to insure that the transcript is produced when required. The court copy of the transcript shall be delivered to the Court Reporter Supervisor within three days of delivery to the party. If the transcript is filed in a location other than Tyler, the Court Reporter Supervisor shall be furnished a copy of the file-marked title page(s).

Preparation of criminal transcripts generally shall have precedence over the preparation of civil transcripts.

No agreement shall be made to expedite any transcript which will delay the preparation of transcripts necessary for appeals.

Production of daily or hourly transcript is not to be subsidized by the court. If extra reporters are required to provide such transcript, the cost of such reporters shall be paid by the court reporter out of the earnings derived from the higher transcript rates as established by the Judicial Conference. This provision does not, however, prohibit other official reporters from assisting in producing such transcripts if there are no other official proceedings to record, including those of senior judges and magistrates and when no substantial transcript backlog will result.

c. Fees

The Judicial Conference and the District Court set transcript fees. The Judicial Conference sets maximum fees and the District Court sets fees with regard to production costs, up to the maximum authorized by the Judicial Conference. The District rates are set forth by General Order of the Court and are posted in each divisional office. Fees may be negotiated lower, but the maximum rates may not be exceeded for official court transcripts. In exceptional circumstances, only the Director of the Administrative Office may authorize higher transcript rates. The fees cover all costs of transcript production including the free copy for the Clerk of Court, postage, bindings, and cover. No additional charges may be made for any of these items. The court reporter shall not charge for any transcript provided to the court.

Transcript costs for all proceedings shall be charged in accordance with regular practice; that is, the party ordering the original transcript shall be charged the normal fee therefor and all parties ordering copies shall be charged that fee.

Court reporters who are found to be charging fees for official transcripts exceeding the maximum established rates will be required to make immediate reimbursement.

d. Billing for Payment

Each court reporter shall prepare an invoice for transcript payment. The court reporter is required to certify on each invoice for official transcripts that the fee charged and page format used conform to the regulations of the Judicial Conference of the United States. This includes charges for copies.

All invoices to be paid by the federal government are submitted to the Court Reporter Supervisor after the Judicial Officer has signed the voucher (SF-1034 or CJA-24, as appropriate).

All invoices to be paid by the Clerk's office from funds previously deposited with the Court by individual parties are to be submitted to the Court Reporter Supervisor or the designated alternate for preparation of vouchers for payment.

Copies of invoices submitted to individual parties for payment of official transcripts are to be submitted to the Court Reporter Supervisor on a monthly basis, due not later than the fifth working day of each month.

The Court Reporter Supervisor is charged with the responsibility of promptly advising the Clerk of any failure to comply with official transcript rates for all official transcript billings.

e. Appellate Transcripts

All requests for appellate transcripts shall be made on the form prescribed by the United States Court of Appeals for the Fifth Circuit. Upon receipt of a transcript order, a court reporter shall complete the form and distribute copies as provided on the form, with a copy being sent to the Court Reporter Supervisor. The "date of order" of a transcript purchase order shall be the date on which the court reporter certifies that satisfactory financial arrangements were completed between the court reporter and the party requesting the transcript.

If a transcript of a case on appeal is not delivered by the date mandated by the Fifth Circuit Court of Appeals, appropriate reduction of fees shall be credited by the reporter to the ordering party unless the Clerk of the Court of Appeals has granted a waiver in writing for good cause shown. Extension of due date does not automatically waive the reduction of fees.

7. Magistrates

Proceedings before United States magistrates may be recorded by electronic sound recording or by a court reporter. The magistrate shall determine which technique is to be used as to each case or hearing, taking

into account the provisions of 28 U.S.C. Sections 753(b) and 636(c) (7) or any other applicable authorities. Should a magistrate determine that it is necessary that the services of a court reporter is required in a particular case, a request to provide a reporter shall be directed through the Court Reporter Supervisor.

8. Records and Reports

The Judicial Conference has prescribed records which shall be maintained and reports which shall be filed by court reporters. The records must be accurate and auditable. Inspections of the records of court reporters including those related to private reporting activities are made from time to time by auditors of the Administrative Office pursuant to resolutions of the Judicial Conference of the United States.

a. Forms Which Must be Completed, Maintained, and Submitted

- (1). Form AO 37, Expense Ledger
- (2). Form AO 38, Attendance Ledger
- (3). Form AO 39, Transcript Orders and Collections Ledger
- (4). Form AO 44, Invoice

Information about these forms is set forth in the "Court Reporters' Manual" furnished to each court reporter.

These forms are to be submitted to the Court Reporter Supervisor twenty days after the end of each quarter except for Invoices. See Section 6 (d) above for Invoices.

b. Reports Which Must be Prepared and Submitted

- (1). Form AO 10, Financial Disclosure Report

Due May 15 of each year. A copy of the

completed report must be filed with the Clerk of Court.

- (2). Form AO 40A, Attendance and Transcripts of United States Court Reporters

Due 20 days after the end of each quarter.

The form is submitted to the Court Reporter Supervisor for review, signature, and forwarding to the Administrative Office.

- (3). Form AO 40B, Statement of Earnings of United States Court Reporters

Due by March 1 of each calendar year. The form is submitted to the Court Reporter Supervisor for review, signature, and forwarding to the Administrative Office.

Information about these reports is also contained in the "Court Reporters' Manual."

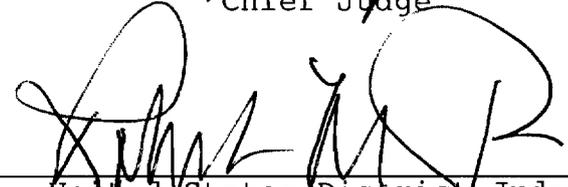
Other reports as may be required from time to time shall be submitted in a timely manner.

9. Sanctions

Any violation of this Plan shall be referred to the Chief Judge or his designee. The actions taken shall include, but not be 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.

Signed this 24th of July, 1989.


Chief Judge

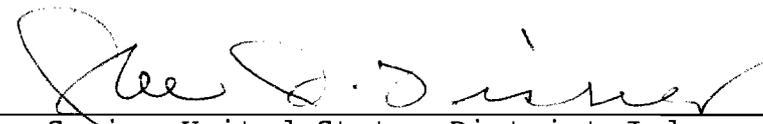

United States District Judge

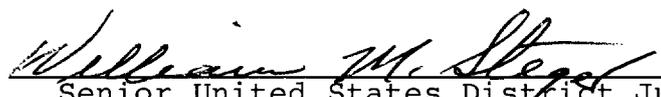

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