

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

AMENDED PLAN FOR MANAGEMENT
OF COURT REPORTING SERVICES

PURSUANT to the provisions of 28 U.S.C. § 753, the policies and procedures established by the Judicial Conference of the United States, the United States District Court for the District of Utah hereby adopts the following Amended Plan for Management of Court Reporting Services. The Court desires through this Plan to achieve effective control and management of court reporting services which include stenographic, computer assisted, electronic sound recording operators, and real-time court reporting. When approved, this plan will supersede the prior plan (August 31, 1993).

The following provisions are enacted for the management of court reporters:

1. Supervision and Implementation: The clerk of court (clerk) is hereby designated as the court reporter supervisor and is authorized to perform the supervisory, administrative, and oversight functions hereinafter set forth. The clerk may delegate a portion of the day-to-day coordination, scheduling, and review duties set forth in this plan to a deputy clerk. The clerk periodically shall advise the court regarding the effectiveness, efficiency, and equity of work distribution of court reporting services provided pursuant to this plan.

2. Appointment, Probationary Status, and Retention of Court Reporters: Court reporters shall be appointed in accordance with and subject to the provisions of the Court Reporter Act, 28 U.S.C. § 753, the policies of the Judicial Conference, and the administrative provisions established by the Administrative Office of the United States Courts. No reporter shall be appointed or serve as a contractual or permanent court reporter unless such reporter is fully qualified under the standards adopted by the Judicial Conference of the United States.

All new official reporters hired by the court will be in probationary status for the first six months of their employment during which time their performance will be monitored by the judge to whom they are assigned and by the clerk. This probationary period may be extended for an additional six months by the judge where the performance of the new reporter does not meet the required minimum standards of performance for federal court reporters. The continuing employment of new court reporters is contingent upon satisfactory completion of the six-month probationary period.

Reporters are employed by the court en banc and shall retain their employment at the will of the court *en banc*, regardless of the death, resignation, or retirement of an individual district judge. If the volume, current and projected, of court reporting work does not justify retention of the full complement of existing reporters, the court will initiate a reduction in the number of court reporters through relocation, attrition, or termination upon notice of not less than sixty days. Selection for retention shall be based upon merit.

All official and contract court reporters who perform reporting services for the court are expected to be familiar with and to comply with the provisions set forth in the *Court Reporters' Manual*, Volume VI of the *Guide to Judiciary Policies and Procedures*.

3. Assignment and Availability: Court reporters shall be assigned to active judges as a matter of convenience. However, when necessary and subject to the approval of the judges to whom they are so assigned, any court reporter may be reassigned temporarily by the clerk to another judicial officer or panel of judicial officers. The clerk shall endeavor to equalize the burdens of reporting and transcription by assignment of the additional reporting duties set forth above. All official court reporters, when not actively engaged in reporting court proceedings or otherwise on leave or taking compensatory time as authorized by their assigned judge, should be available during normal business hours so they can be summoned to report in court as emergency and other official needs dictate. The court will provide senior judges with coverage by available official court reporters. Contract court reporters will be used only when there is no official court reporter available.

4. Substitute Reporting Services: Pursuant to Judicial Conference policy, the clerk shall make every reasonable effort through scheduling to reduce the need for temporary or contractual court reporting services. To the extent that the complement of official court reporters cannot fulfill the reporting needs of the court, contract court reporters will be employed to respond to the court's additional requirements (i) subject to the approval of the Tenth Circuit Judicial Council and (ii) in accordance with the court reporter contracting provisions established by the Administrative Office of the United States Courts and the policies of the Judicial Conference.

When any official reporter is disabled from service for medical reasons, a substitute reporter will be provided at court expense. However, absent prior approval by the Administrative Office and a physician's certification, no reporter may be maintained in sick leave status for more than thirty (30) days in the aggregate in any calendar year. Except as noted above, any necessary replacement reporter services required, including those necessitated by the demands of accelerated copy, shall be provided at the assigned reporter's expense. Such expense shall not be passed on to litigants ordering transcripts except pursuant to the current schedule of transcript fees adopted by the Judicial Conference of the United States.

5. Place of Work, Hours, and Notes: All official reporters employed on a full-or half-time basis by the court shall be subject to the provisions of the Leave Act, 5 U. S. C. § 6301 et seq., and have prescribed work hours. They shall maintain regular hours of work, Monday through Friday, or appropriate portions thereof for half-time reporters, that correspond to the work schedules of the judges to whom they are assigned. Unless otherwise on leave or taking compensatory time as authorized by their assigned judge, all official reporters should be in their offices or in court during their daily working schedule to ensure their availability to the court's judges for recording proceedings and to litigants for the purposes of making arrangements for the production and delivery of certified transcripts.

Court reporters employed by the court earn leave according to the schedules set forth in the Leave Act. The clerk shall be responsible for maintaining court reporter leave records. Sick and

annual leave requests shall be (i) cleared with the reporter's assigned judge and (ii) submitted on by means of the Electronic Leave Management System (ELMO) to the clerk. In the interests of minimizing the costs the court incurs for the use of contract reporting services and consistent with the provisions of the Court Reporting Manual, Chapter IV, Part F(7), court reporters should attempt to schedule their annual leave to coincide with the absences of their assigned judges. The needs of the court take precedence in the granting of leave. Leave will be denied if there are insufficient staff to cover scheduled court. In general, priority will be given to the earliest leave request.

6. Type of, Access to, and Disposition of Reporters' Notes: All court reporters' notes shall be prepared in "note-readable" form. They shall be marked, filed, and maintained within the courthouse so as to be accessible by another reporter in the event of an emergency. The original notes and electronic sound recordings of official reporters shall be maintained in electronic format and stored in the office of the official court reporter. Each official court reporter shall provide a copy of the dictionary which shall be retained as a backup for the court reporter and also allow for another court reporter to transcribe from the electronic notes. The original notes and electronic sound recordings of contract reporters are to be turned over to the clerk within ninety (90) days after the conclusion of the proceeding or within ninety (90) days after the expiration of the contract, whichever comes first. All notes and recordings that are submitted to the clerk shall be packed in standard boxes and identified with adhesive labels available from the clerk. The clerk and all reporters, official and contract, shall comply with the revised records disposition schedule approved by the Judicial Conference.

7. Private Reporting Activities: Private reporting --reporting not required in the discharge of official duties --shall be undertaken only (i) with the specific prior approval of the court; (ii) in the absence of any conflicting requirements for official court reporting services; (iii) during hours that fall outside of the reporters' daily work schedules; and (iv) with private equipment and in private facilities outside the courthouse. Where there is a conflict between official and outside reporting work, the latter must be subordinated to the former. As a matter of policy, official court reporters are prohibited from engaging in outside reporting activities while relying on substitute reporters to perform their official court reporting functions. All income from private reporting work, including attendance fees and charges for transcripts, must be reported on Form *AO 40B, Statement of Earnings of U. S. Court Reporters*.

8. Fees for Transcripts: The clerk shall post on the court's website a schedule of current fees authorized by the Judicial Conference of the United States for regular and expedited transcripts as well as for daily or hourly copy. Such schedule shall (i) list the per-page charge for originals and for copies, (ii) shall explain that a certified copy of each transcript ordered is to be filed with the clerk for the court's use at no expense to the litigants, and (iii) shall note the number of lines to be included on each page for which a full charge is made and the margin requirements for those

lines. The notice shall explain the accelerated transcript schedule. The clerk also shall post notice that any party with reasonable cause to believe that it may have been overcharged by an official or contract reporter may seek a confidential review by the clerk of the transcript and bill to verify the accuracy of the charges.

Where transcripts are to be paid for with government funds – whether under the Criminal Justice Act or otherwise --the clerk on a random basis shall review the transcripts filed and the bill submitted to ensure the correctness of the charges. The clerk also shall post notice listing the sanctions to be imposed for late delivery of transcripts ordered for appeals, as hereinafter described in Section 9 of this plan.

Court reporters are prohibited from routinely apportioning the production costs for accelerated transcripts in criminal cases among the parties.

Court reporters are required, each time they complete a transcript, to provide to the clerk a certified copy of the transcript produced at no charge. The party shall be charged only for the cost of producing the original transcript, and the original should be provided to the ordering party upon full payment of that cost. Transcripts ordered by a judge shall be provided promptly and at no charge to the court.

Court reporters are required to provide to the clerk at no charge certified transcripts of all arraignments, pleas, and other proceedings related to the imposition of sentence in criminal cases. Alternatively, court reporters may generate an electronic sound recording of such proceedings and, at the time the recording device --cassette, reel, etc., has been filled to capacity, file such device and certification with the clerk.

9. Time for Delivery of Transcripts: Court reporters, as a condition of their employment, are responsible for avoiding backlogs of transcript orders and for assuring the prompt delivery of transcripts; their transcripts should reflect an accurate record and quality product. The certified copy for the court should be delivered to the clerk within three (3) working days after delivery to the requesting party. All transcripts ordered for purposes of appeal are to be delivered in criminal matters within thirty (30) days and in civil matters within sixty (60) days of the date upon which they are ordered and satisfactory arrangements are made for payment of the costs of their production in accordance with Fed. R. App. P. 11(b) and the December 1986 Resolution of the Judicial Council of the Tenth Circuit. This time limitation may be extended only by the United States Court of Appeals for the Tenth Circuit. A showing of extreme or unusual circumstances must be submitted to the court of appeals before it will consider granting an extension.

Pursuant to the policies of the Judicial Conference and the December 1986 Resolution of the Judicial Council of the Tenth Circuit, the transcript fees court reporters are authorized to charge must be reduced for (i) any criminal transcript that is not delivered within thirty (30) days of the date on which is ordered, (ii) for any civil transcript that is not delivered within sixty (60) days of the date on which it is ordered, or (iii) within any extension of those periods authorized in advance by the court of appeals. The rate of such reduction shall be in increments of one percent from the total bill for each three full days beyond the due date that the transcript remains undelivered. In the event that such sanctions are imposed, the reporter shall deliver to the clerk a copy of the billing rendered to the ordering party, showing the total original charge, the penalty reduction subtracted from the total, and the net bill to be paid by the ordering party. A copy of each such bill shall be forwarded to the court of appeals after receipt and review by the clerk.

When responding to transcript-production requests from private attorneys or parties, court reporters shall not be required (i) to prepare a typed or printed transcript without payment of an adequate advance deposit, or (ii) to furnish a complete and certified transcript prior to payment in full. Where a transcript order from a private attorney or party is not accompanied or followed promptly by a deposit, court reporters will not be held to the delivery requirements or subjected to the financial penalties noted above in this section. These provisions do not apply to transcripts requested by the court or by Criminal Justice Act panel attorneys appointed by the court in criminal cases where transcript costs are reimbursed by the government.

Certified transcripts of all arraignments, pleas, and proceedings relating to sentencing in criminal cases are to be produced and filed with the clerk as a routine matter within thirty (30) days of the conclusion of the proceeding. Where the reporter has opted to electronically record such proceedings, the certified recordings are to be filed with the clerk when the capacity of the device containing the recordings --reel, cassette, or other --is exhausted.

10. Arraignments, Pleas, and Sentences: Pursuant to the requirements of 28 U.S.C. § 753(b), court reporters are obligated to provide to the clerk certified transcripts or certified electronic recordings of all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases. These are to be produced, certified, and filed by all court reporters, official and contract, as a routine matter and without request on the part of the clerk, the court, or any party.

11. Reports to be Maintained and Filed: Each official court reporter shall complete and maintain the following forms: Form AO 40A and Form AO 40 B, Form AO 37, *Expense Ledger*; Form AO 38, *Attendance Ledger*, and Form 40, *Invoice*. Each reporter also shall complete, certify, provide to the clerk for review and signature, and file on a timely basis with the Administrative

Office the reports listed below. In addition, a copy of each report shall be filed with the clerk not later than five days after the report is due at the Administrative Office. Unless otherwise directed by the court, the clerk shall maintain these copies in strict confidence. The reports include the following:

A. Form AO 40A, *Attendance and Transcripts of United States Court Reporters*, shall be faxed quarterly during each calendar year to the DCAD Court Reporter Program Specialist at 202-502-1133 or entered directly into the ACRA application at <https://jenie.ao.dcn> and completed within the ACRA application.

B. Form AO 40B, *Statement of Earnings of United States Court Reporters*, shall be submitted annually to the DCAD Court Reporter Program Specialist at 202-502-1133 or enter the information directly into the ACRA application at <https://jenie.ao.dcn> and completed within the ACRA application. Following review and signature by the clerk, the report shall be mailed to arrive by April 15 for the prior January through December reporting period.

Pursuant to Judicial Conference policy, absent exceptional circumstances, failure of any official reporters to comply with the Judicial Conference directive under 28 U.S.C. § 753(d) to report annually their financial and attendance data may result in withholding by the Administrative Office of their salaries.

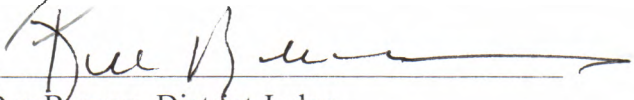
12. Transcript Rates: Rates to be charged by court reporters of this court are established nationally by the Judicial Conference. The conference may adjust the rates from time to time; any such adjustments will be effective in this court on the effective date specified by the conference. No court reporter, whether official or contract, shall charge fees for transcripts of official proceedings that exceed these rates. Each reporter shall certify on each invoice that the fee charged and page format used conform fully to the regulations of the Judicial Conference. The clerk shall ensure that reporters' transcript fees conform to those established by the conference.

13. Realtime Reporting Standards: The court encourages official court reporters to become certified as Realtime Reporters pursuant to the policies of the Judicial Conference. Any official reporter so certified shall comply with the Realtime Reporting Standards which is Attachment B to this plan.


DATED This 17th Day of July, 2012



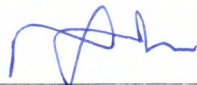
Ted Stewart, Chief Judge



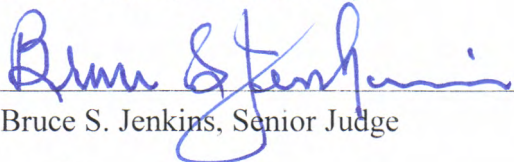
Dee Benson, District Judge



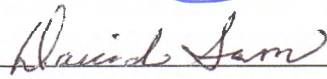
Clark Waddoups, District Judge



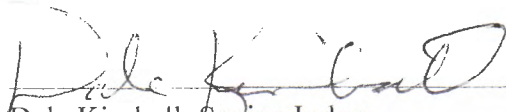
David Nuffer, District Judge



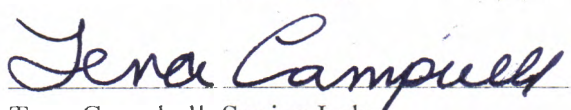
Bruce S. Jenkins, Senior Judge



David Sam, Senior Judge



Dale Kimball, Senior Judge



Tena Campbell, Senior Judge

ATTACHMENT A

RESOLUTION

Judicial Council of the Tenth Circuit December 1986

Pursuant to the March 1982 resolution of the Judicial Conference of the United States, this Council approved Court Reporter Management Plans adopted by district courts in the circuit. These plans are not uniform in providing sanctions for late delivery of transcripts or as to the effect of extensions of time. The Council believes that these should be uniform.

Accordingly, each District Court shall forthwith amend its plan to include the following revisions:

"In criminal cases and cases brought under 28 U.S.C. §§ 2241, 2254, and 2255, all transcripts ordered for purposes of appeal are to be delivered within thirty (30) days of the date on which they are ordered and satisfactory arrangements are made for payment of the costs of their production, in accordance with Fed. R. App. P. 11(b). In all other cases, all transcripts ordered for purposes of appeal are to be delivered within sixty (60) days of the date on which they are ordered and satisfactory arrangements are made for payment of the costs of their production. These time limitations may be extended only by the United States Court of Appeals for the Tenth Circuit.

"If any transcript is not delivered within the specified time, the charge assessable to the ordering party shall be reduced unless the clerk of the court of appeals expressly waives this requirement. The rate of such reduction shall be one percent reduced from the total bill for each three full days that the transcript remains undelivered to the clerk of the district court beyond the due date. Approval of an extension of time by the court of appeals pursuant to Fed. R. App. P. 11(b) does not constitute a waiver of the fee reduction requirements. A showing of extreme or unusual circumstances will be required to obtain a waiver.

"Upon delivery of the transcript, the clerk of the district court shall calculate the sanctions to be imposed and shall notify the court reporter and the court of appeals. This notice shall be deemed a court order that sanctions shall be paid.

"Within ten days of notice that sanctions have been imposed, the reporter shall deliver to the clerk of the district court a copy of the billing rendered to the ordering party, showing the total original charge, the penalty reduction subtracted from the total and the net bill to be paid by the ordering party. A copy of each such bill shall be forwarded to the Court of Appeals after receipt and review by the clerk.

"Nothing contained herein should be construed as approving untimely delivery of transcripts, nor should this provision be considered the only penalty that may be imposed by the court or circuit council."

In addition, it is the policy of the Tenth Circuit Council that, irrespective of the imposition of monetary sanctions, any reporter who is unable to prepare a transcript within 90 days of the date it is ordered, or within the period of any extension beyond 90 days granted by the clerk of the court of appeals which is accompanied by an express waiver of sanctions, shall remove him or herself from the courtroom until the transcript has been filed with the district court clerk and shall provide a substitute at his or her own expense See Court Reporters' Manual, VI Guide to Judiciary Policies and Procedures, Chapter XXI, H.

Court reporters are employed by the court en banc and are not part of the judge's personal staff. ~28 U.S.C. §753 and Court Reporters' Manual, IV Guide to Judiciary Policies and Procedures, Chapter III, C (1). The Model Plan for Management of Court Reporting Services recommended by the Judicial Conference of the United States, and adopted October 19, 1982 by the Judicial Council of the Tenth Circuit, provides alternative methods for assigning court reporters. Pooling of court reporters may, in some instances, be a desirable means of evening distribution of work, if all the judges of the court agree. If, however, reporters are assigned to active judges, great care shall be exercised to equalize the burdens of reporting and transcription by temporary assignment to other judges, to magistrates, or to land commissioners.

Further, in supplementation of the Court Reporter Management Plans adopted by the district courts in the circuit, this Council adopts the Appellate Transcript Management Plan.

ATTACHMENT B

Realtime Reporting Standards

1. General Policy.

The policy of the Judicial Conference effective June 1, 1996 establishes a new category of "realtime unedited transcript". Realtime unedited transcript is defined as "a 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" 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 on diskette delivered during the proceedings or at the end of the day.

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.

As adopted in March 1999, it is the policy of the Judicial Conference that a litigant who orders realtime services will be required to purchase an original certified transcript of the same pages of realtime unedited transcript at the regular rates (ordinary, expedited, daily, or hourly). Likewise, a litigant who orders a copy of a realtime unedited transcript will be required to purchase a certified copy of the same pages of realtime unedited copies at the regular copy rates (ordinary, expedited, daily, or hourly.) Judicial Conference policy on payments for transcripts ordered pursuant to the Criminal Justice Act (CJA) remains in effect.

2. Qualifications of Reporters Who May Charge for Realtime Unedited Transcript.

- a. Judicial Conference Policy.*

Official court reporters who have successfully completed the certified Realtime Reporter examination offered by the National Court Reporters Association (NCRA), or who have passed an equivalent qualifying examination, are recognized as Certified Realtime Reporters. CRRs are permitted, but not required, to sell realtime unedited uncertified transcript on diskette.

b. Equivalent Qualifying Examinations.

The 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, and display, write, cable, and realtime software). Any other qualifying examination must be equivalent to the NCRA examination.

3. Production.

The transcript formal guidelines prescribed by the Judicial Conference apply to realtime unedited transcript with the following exceptions:

- a. 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 the transcript, or a computer-generated watermark on each page stating, "Realtime Unedited Transcript Only".
- b. The realtime unedited transcript should not include an appearance page, an index, or a certification.
- c. The diskette 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".

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.

All parties requesting realtime services shall 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 at no additional charge. The CRR shall provide wiring and data communications connections needed to provide realtime services to these persons. Parties should coordinate and pre-test their equipment with the CRR before official proceedings begin.

4. Distribution.

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.

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.

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. A sample Realtime Unedited Transcript Disclaimer is attached.

C)

SAMPLE

REALTIME UNEDITED TRANSCRIPT DISCLAIMER IN THE MATTER OF

v.

The following transcript(s) of proceedings, or any portion thereof, in the above-entitled matter, taken on any date, is being delivered UNEDITED and UNCERTIFIED by the official court reporter at the request of _____.

The purchaser agrees not to disclose this realtime unedited transcript in any form (written or electronic) to anyone who has no connection to this case. This is an unofficial transcript which should NOT be relied upon for purposes of verbatim citation of testimony.

This transcript has not been checked, proofread or corrected. It is a draft transcript, NOT a certified transcript. As such, 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. Corrections will be made in the preparation of the certified transcript, resulting in differences in content, page and line numbers, punctuation, and formatting.

This realtime unedited transcript contains no appearance page, certificate page, index, or certification.

Signature of Purchaser

Date

Signature of Official Reporter

Date