

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
March 24, 2015

LAWRENCE K. BAERMAN, CLERK

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**

**PLAN FOR THE MANAGEMENT
OF UNITED STATES COURT REPORTERS**

GENERAL ORDER #5



Adopted by the Court on December 9th, 2011

Circuit Council Approval on December 27, 2011

Circuit Council Approval April 3, 2015

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PLAN FOR THE MANAGEMENT OF UNITED STATES COURT REPORTERS

I. ADOPTION AND PURPOSE OF PLAN BY COURT

This Plan for the effective utilization of court reporters in the United States District Court for the Northern District of New York has been adopted by the Court and is subject to final approval by the Second Circuit Judicial Council.

A. Purpose: The Court desires through this Plan to achieve effective management of the official court reporting services (stenographic, computer assisted and electronic sound recording operators hereinafter referred to as ECR operators). By designation of the Chief Judge, the Clerk of Court (Clerk) is fully authorized administratively to supervise and control the combined court reporting operations of the court.

The Plan is designed to:

1. obtain effective management of the court reporting and recording operations by proper supervision and control, which ensures reporting services for active judges, including visiting, senior judges and magistrate judges;
2. make clear that the court reporters and ECR operators serve the court *en banc* and not a particular judge;
3. ensure that court reporters fulfill their statutory duties and adhere to judicial conference requirements;
4. obtain the most effective utilization of both the services of the court reporters and ECR operators by equitable distribution of the workload;
5. supervising the relationship between the parties and court reporters by monitoring transcript orders, delivery, billings, format, and rates charged by court reporters and transcribers;
6. state the procedures for accepting transcript orders, delivery and billings and avoiding backlogs of transcripts and assuring prompt delivery of high quality transcripts, particularly for cases pending on appeal to the court of appeals;
7. state the court's policy on reporters engaging in private work, including taking depositions and reporting for grand juries;
8. delineating the number and type of court reporters and ECR operators required to cover all of the court's reporting needs, including the need for combined-position or temporary court reporters, delineating the need for contract and per-diem reporter services and utilize electronic sound recording for cost efficiency;

9. assure appointment and retention of fully-qualified court reporters, and dismissal of court reporters and ECR operators who are no longer performing in a satisfactory manner and stating the terms of the probationary period for newly appointed court reporters;
10. minimizing travel of the court reporters and outside reporters hired to cover court;
11. prohibiting the routine apportionment of accelerated transcript costs among parties in criminal cases;
12. stating when reporters are to deliver the file copy of the transcript, audiosync file, or the electronic sound recording for filing with the clerk, stating that the reporter should file a transcript of arraignments, pleas, and sentencings within 30 days of the close of the proceeding unless they were recorded on the court's electronic sound recording equipment - FTR Gold, in which case the electronic recording is automatically backed up to the courts server and maintained indefinitely, or, unless the court reporter enables the audiosync function on their software and uploads the audiosync file of arraignment, pleas, or sentencings on a weekly basis.
13. stating that the court reporting supervisor (Clerk) or other court official so designated by the Clerk is to certify that forms AO 40A¹, Attendance and Transcripts of United States Court Reporters and AO 40B, Statement of Earnings of United States Court Reporters, have been reviewed prior to submission to the Administrative Office;
14. ensuring that records and reports are submitted in a timely manner;
15. stating that reporters are assigned a regular tour of duty, specifying the regular hours of attendance and that the court reporting supervisor (Clerk) is responsible for ensuring compliance with the court's time and attendance policy;
16. stating how records for an electronic sound recording system (FTR Gold) are to be stored and retrieved, and how transcript quality and timeliness from such a system are to be monitored, and stating how the electronic notes and audiosync files of Court Reporters are to be stored on the Court's servers.
17. promote competency, loyalty, and dignity among the court reporting staff;
18. enhance the efficient operation of the court and further its mission.

¹ All Official Court Reporters must use the ACRA reporting system to file their AO40A and AO40B forms with the Clerk.

II. APPLICABILITY OF PLAN

This Plan is applicable to all court reporters employed by the Court, including contract and per-diem reporters.

III. SUPERVISION OF COURT REPORTERS

The Clerk of Court will serve as the Supervisor of the Court Reporters. The Clerk shall have the authority to redelegate day-to-day supervision. Duties and responsibilities shall include, but are not necessarily limited to, the following:

1. Assignment and reassignment of reporters for the purpose of fairly and equitably distributing the workload of all reporters with respect to hours in court.
2. Supervising the relationship between litigants and reporters.
3. Reviewing transcripts to assure full compliance with format requirements of the Administrative Office of the United States Courts and the Judicial Conference of the United States.
4. Reviewing transcript billings to assure that authorized transcript rates are charged and that billing is done correctly.
5. Determining compliance by all court reporters with the provisions of 28 U.S.C. Section 753 concerning the recording, certifying, and filing of transcripts, electronic notes, audiosync files or tapes of all criminal arraignments, pleas, and proceedings in connection with the imposition of sentence.
6. Reviewing time records of the court reporters to ensure proper maintenance and accuracy.
7. Ensure the timely filing of all reports required by the Administrative Office of the United States Courts and the Judicial Conference of the United States.
8. Acting as liaison to the Court of Appeals regarding matters pertinent to court reporters and transcript production.
9. Scheduling meetings on an as-needed basis to discuss any matters involving court reporters.
10. Performing other duties relating to court reporting services as shall be directed by the Court.

IV. EMPLOYMENT OF COURT REPORTERS

The Court is presently authorized one official court reporter for each active judgeship and additional positions allocated by formula for our Senior Judges. Court reporters are employed by the Court and serve the Court *en banc*. Official court reporters must meet the current judiciary standards for Official Court Reporters. The Court requires that all reporters provide realtime reporting to the Judges. It is preferred that reporters have the realtime certification so that realtime services can be provided not only to the Judges, but also to the parties. The Clerk shall also provide an ECR operator(s) for Judges who wish to use electronic sound recording for court proceedings.

The Court shall appoint and dismiss court reporters, and in connection therewith, the Court shall consider the recommendations of the Clerk. Court reporters shall be appointed in accordance with the provisions of the Court Reporter Act, 28 U.S.C. Section 753, the Policies and Procedures of the Administrative Office of the United States Courts, and the Policies and Procedures of the Judicial Conference of the United States. Only fully-qualified reporters shall be appointed as court reporters of this Court. All newly-appointed court reporters shall serve a probationary period as set forth in the NDNY Personnel, Policy and Orientation Manual. Court reporters who do not perform in a competent and satisfactory manner shall be subject to dismissal. Contract or Per-Diem reporters are utilized pursuant to 28 U.S.C. Section 753(g) when there is a temporary need for additional court reporting service for active Judges, Senior Judges, and Magistrate Judges.

Court reporters are employed by the Court *en banc* and shall retain employment at the will of the Court, regardless of the death, resignation or retirement of an individual active Judge or other reason for creating a new judgeship vacancy. Upon the death, resignation, or retirement of an active Judge, the assigned reporter shall serve wherever needed until such time as another Judge is appointed.

If at any time the overall work volume of the Court does not justify retention of the full complement of court reporters, a reduction shall be accomplished through relocation, attrition, or by giving a reasonable notice for termination of the appointment. The Court *en banc* shall decide which reporter is to be terminated, and the Administrative Office will be contacted to determine whether other districts might be seeking a staff reporter.

The Northern District of New York has five staffed Court locations, Albany, Binghamton, Syracuse, Utica and Plattsburgh. The Court will determine the duty station for each court reporter. The duty station of a reporter is subject to change at the discretion of the Court.

Although employees of the federal courts, official court reporters have a unique status. In addition to receiving a salary for performance of work in support of the Court, official court reporters are permitted to charge and collect fees from parties ordering official transcripts of Court proceedings. In recognition of this entrepreneurial aspect of the court reporter's employment, 28 U.S.C. Section 753(e) requires that "all supplies shall be furnished by the reporter at his/her own expense."

The preparation of transcripts 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 not on a tour of duty, or be on approved annual leave if on a tour of duty. There is no provision in the Leave Act, 5 U.S.C. Section 6301 et seq., for hiring substitutes to cover any absence. Compensatory time is not available for the purpose of preparing transcripts.

Court reporters shall be appointed in accordance with the provisions of 28 U.S.C. Section 753 of the United States Code and the policies and procedures of the Administrative Office of the United States Courts and the Judicial Conference of the United States. Only fully qualified reporters pursuant to 28 U.S.C. Section 753 shall be appointed.

The Clerk of Court shall:

1. Maintain a file of applicants during the hiring phase.
2. Interview applicants, check references, confirm qualifications, administer a test, and select the best qualified applicant, in consultation with the Court.
3. Assume responsibility for the general orientation of new reporters by fully explaining and interpreting all pertinent rules and practices. Administrative Office reports and forms, leave records, and other necessary keeping.
4. Fully investigate and make recommendations to the Court regarding complaints with respect to any aspect of a reporter's performance.
5. Make recommendations for disciplinary action, including the discharge of a permanent official court reporter, upon consultation with the Chief Judge.

V. ASSIGNMENT OF COURT REPORTERS

Court reporters serve the court *en banc*; therefore, it is within the discretion of the Clerk or the Clerk's designee to reassign court reporters to active Judges, Senior Judges, visiting District Judges, and Magistrate Judges in a manner designed to equally distribute the total court reporting workload efficiently and cost effectively. In court locations with multiple judicial officers, the court reporters should be rotated weekly or by trial to equalize the workload and prevent the backlog of outstanding transcript requests. To achieve this balance, it will be necessary for the quarterly workload reports to be reviewed by the Clerk or the Clerk's designee. Proper rotation of the court reporter staff will reduce the need for additional contract reporters as it equalizes the case loads and minimizes the costs.

Daily copy cases will be routinely rotated among all court reporters in order to balance the assignment of these cases.

The use of contract or per-diem reporters shall be kept to an absolute minimum. The use of ECR operators shall be expanded as much as possible to augment court reporting resources.

Travel of court reporters and ECR operators shall be kept to a minimum. Where possible, official proceedings held at the offices in Albany, Syracuse, Utica & Binghamton shall be recorded by court reporters whose official duty station coincides with the location of the proceedings. Court proceedings in Watertown, Auburn, Plattsburgh, or other places which are designated by the Court shall be recorded by official reporters under the following conditions:

- i) Due to the geographic nature of the Northern District court reporters are often called upon to cover Court locations where there is no official court reporter stationed, or there are more judicial officers present at a Court location than official court reporters. When a proceeding is scheduled which would require that an official court reporter travel, consideration should be given to the cost of mileage and per-diem for the official reporter to travel to the court location.
- ii) If the proceeding can be covered by a qualified contract or per-diem reporter for less than it would cost the government for the official reporter to travel, the official reporter shall secure the services of a contract or per-diem reporter for the proceeding. The justification for the hiring of a contract or per-diem reporter shall be recorded on the approved form (**Appendix #1**) and submitted to the Clerk or Chief Deputy for payment.

Communication between the court reporters and the courtroom deputies is essential in order to properly utilize the court reporter resources. In this regard, communication between the court reporters and courtroom deputies should occur on a daily basis as the Court's schedule often changes. Proper communication will enable the Court to minimize the use of contract and per-diem reporter services when official reporters are available to cover proceedings due to cancellations in a Judges calendar. All court reporters will be individually assigned to active Judges by the Clerk of Court or his/her designee in whatever manner best meets the goals of equitable work distribution and the needs of the Court as a whole.

When a reporter who is assigned to a Judge is not engaged in reporting duties, that reporter shall be utilized to cover active Judges, Senior Judges, Visiting Judges and Magistrate Judges, or any other hearings that may arise.

Daily assignments will be made by the Clerk of Court or his/her designee. The Clerk will assign responsibilities for coordinating assignments to two of the senior court reporters. Changes cannot be made with regard to daily assignments without prior approval from the scheduling Supervisor.

All court reporters are required to call or email the scheduling Supervisor when their court calendar changes during the day.

VI. HOURS OF EMPLOYMENT AND LEAVE POLICY

Court reporters are required to work a “regular 40 hour per week tour of duty.” In this regard, court reporters shall adhere to the policy as set forth in the NDNY Personnel, Policy and Orientation Manual. At the discretion of the Clerk of Court, reporters may utilize flex time to a reasonable degree in determining their 40 hour per week tour of duty. All court reporters must be in their offices, ready for assignment, by 8:30 a.m., and remain available until 5:00 p.m., unless excused by their supervisor. All court reporters are required to use the Clerk’s automated time and attendance program.

Upon assignment to a regular tour of duty, official court reporters shall accrue annual and sick leave pursuant to the provisions of the Leave Act, 5 U.S.C., Section 6301.

Leave records for official court reporters shall be maintained in the same manner as those maintained for deputy clerks employed in the Clerk’s Office. All requests for annual and planned sick leave shall be submitted in advance through the automated time and attendance program and must be approved by the reporter’s direct supervisor.

All annual leave and planned sick leave (e.g., appointments, treatments, etc.) must be requested far enough in advance to permit the scheduling of an alternate reporter.

If a reporter is sick or has an emergency, he/she is required to call the reporter’s supervisor no later than 7:00 a.m. In the event a reporter has been absent on a particular day, he/she is required to call their supervisor no later than 2:00 p.m. to indicate if he/she will be at work the next business day.

Other provisions governing use of annual and sick leave are contained in the Clerk's Office Personnel Manual. Compensatory time for court reporters is also covered in the Northern District Personnel Manual.

VII. FREELANCE REPORTING

Court reporters placed under the Leave Act are not permitted to perform any private freelance court reporting work of any kind during their normal tour of duty. Court reporters are permitted to engage in the performance of private reporting activities after the normal workday, on weekends or holidays as long as the work does not conflict with or impact the performance of their official duties with the Northern District of New York. Court reporters are reminded that any freelance work performed outside of their tour of duty should never impact the preparation of transcripts for cases either before the District Court or for cases on appeal.

Grand Jury reporting, taking of depositions, and any other reporting activities not related to salaried or statutory duties are considered private reporting. Activities not related to recording Court sessions and preparing official transcripts for court sessions are considered private reporting.

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 for private reporting work are to be provided at the court reporter's expense and used outside the courthouse. Furthermore, court reporters may not use their addresses in government-owned or leased buildings when advertising for private reporting work.

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

VIII. REPORTING SERVICES FOR MAGISTRATE JUDGES

Proceedings conducted before a Magistrate Judge in a Magistrate Judge's courtroom may be recorded by electronic sound recording equipment. Magistrate Judges may request a reporter for hearings, civil jury trials, misdemeanor trials, or any other proceedings as long as the official reporters are not engaged before District Court Judges.

IX. CONTRACT OR PER DIEM COURT REPORTERS

Contract or Per Diem reporters may be utilized only when all official court reporters are occupied in court reporting proceedings pursuant to the policies of the Administrative Office of the United States Courts and the Judicial Conference of the United States. Contract court reporters will not be paid by the Court when official reporters are relieved of their courtroom duties to work on transcript backlogs or when official reporters displace themselves to assist on daily copy trials. Costs associated with such contract reporting services shall be paid by the official reporter so relieved or the official court reporter who has displaced him or herself to work on daily copy.

Contract or per diem reporters in the Northern District of New York are paid by the United States District Court Clerk in the Syracuse Office. Whenever a contract or per diem reporter is hired for a Court proceeding, the court reporter who arranged for the contract or per diem reporter shall complete the form prescribed by the Clerk (**Appendix #1**) and forward it with the invoice to the Clerk in Syracuse. The payment voucher and invoice shall then be forwarded to the attention of the financial office in Syracuse for payment processing. All invoices and vouchers shall be submitted to the Clerk for payment within 48 hours of receipt.

Two court reporters shall be designated by the Clerk and shall be responsible for overseeing the scheduling of contract or per diem reporters. The designated court reporters shall ensure that each of the court's official reporters is actually recording, or scheduled to record, proceedings in Court or chambers before calling in a contract or per diem reporter. When the Court's regular complement of court reporters is insufficient to meet the needs of Active Judges, Visiting Judges, Senior Judges, and Magistrate Judges, contract or per diem court reporting services may be obtained. The supervising reporter shall take into consideration the travel costs for coverage as outlined in *Section V* of this Plan.

Contract and per diem reporters shall be utilized only pursuant to the policies and procedures of the Administrative Office of the United States Courts and Judicial Conference and 28 U.S.C. Section 753. The official court reporter(s) at each division within the Northern District of New York are responsible for ascertaining that the contractor certifies the original notes² and files them with the Clerk of Court, fulfills the Judicial Conference requirements for transcript format, properly bills the parties for transcripts, and produces transcript within the guidelines of the Judicial Conference and this management plan.

Contractual or per diem services paid for by the Courts may not be used to assist the court's reporters in the production of expedited, daily, or hourly transcript and not to replace the court's reporters to allow them to engage in transcript production or in private reporting work.

Where possible the use of electronic court recording equipment and ECR operators shall be utilized to supplement the services of official court reporters. Contract or per-diem reporters shall file with the official court reporter a form of oath which will be supplied to them by the official court reporter. (**Appendix #2**)

X. TRANSCRIPTS

The Format: All official court reporters have been furnished herein format requirements adopted by the Judicial Conference in accordance with §520 of the Guide to Judiciary Policies and Procedure. The Clerk or the Clerk's designee will monitor transcripts to ensure compliance with format standards. Contract or per diem reporters shall be provided format information by the official court reporter who secured the services of the contract or per diem reporter.

Arrangements for orders of transcript(s) shall be made through the court reporters. A CJA 24 - Authorization and Voucher for Payment of Transcript shall also be used when the transcript is requested by a defendant or defendant's counsel under the Criminal Justice

² Including audiosync files, and electronic versions of the official notes, which are to be uploaded to the Court's servers for archival purposes.

Act.³ Orders for transcript produced by ECR operators shall be accomplished through the use of a Transcript Order Form and orders for tapes produced by ECR operators shall be accomplished by means of a FTR/ Tape Order form (**Appendix #3**).

First priority shall be given to the production of transcript which involves incarcerated defendants, especially those cases which challenge the imposition of the death penalty, and to cases on appeal. Transcripts in civil cases generally should be prepared in the order in which requests for them are received. Preparation of criminal transcripts generally shall take precedence over preparation of civil transcripts.

Transcripts for criminal appeals which challenge sentences imposed under the sentencing guidelines issued by the U.S. Sentencing Commission pursuant to 18 U.S. C. Section 3742, shall be given utmost priority.

All official court reporters will submit to the Clerk or the Clerk's designee the names and qualifications of any typists or scopists employed to prepare transcripts. These typists will be administered an oath of secrecy similar to the one given to court reporters, which oath will remain on file with the court reporters office. (**Appendix #2**)

Court reporters are required to upload transcripts to CM/ECF.

XI. HOURLY/DAILY TRANSCRIPTS

Production of hourly or daily transcripts will not be subsidized by the Court. The assigned reporter will be responsible for organizing and managing all hearings/trials involving production of hourly or daily copy transcripts. The following procedures are to be followed:

1. All court reporters will notify the Court Reporting Supervisor by *e:mail* of all daily copy and lengthy expedited trials.
2. There will be a meeting regarding coverage of such trials with the reporter involved and the Court Reporting Supervisor.
3. The Court Reporting Supervisor will make the decision as to the appropriate method for coverage.

When an official court reporter elects to displace him or herself from his/her regular assignment to assist on hourly, daily, or expedited copy, he/she is required to hire a substitute reporter at their own personal expense. The Court must be advised and approve of the displacement.

³ See also, Vol. 6, §550.40.30 of the Guide to Judiciary Policy.

Hourly / Daily Rates charged must be in accordance with the Judicial Conference Approved Rate schedule. The schedule is available on the Court's website at www.nynd.uscourts.gov.

In upstate New York, which is primarily a rural area, where the court reporters may need to hire federally qualified 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.

XII. FEES FOR TRANSCRIPTS OF OFFICIAL PROCEEDINGS

All transcripts shall be produced in compliance with the format required by the Administrative Office of the United States and the Judicial Conference of the United States.

Transcript Rates are published on the court website at www.nynd.uscourts.gov. A schedule of the prescribed fees shall also be available upon request in the Clerk's Office at each Courthouse - Albany, Binghamton, Utica, Syracuse and Plattsburgh.

No court reporter employed by this Court shall charge fees for transcripts of official proceedings which exceed those recommended by the Administrative Office of the United States or the Judicial Conference of the United States.

Advance deposits: Upon receipt of a request for a transcript an estimate of charges will be furnished to the attorney/litigant, which, when paid, will serve as a deposit against final costs. Transcript preparation will not commence until the deposit is received by the court reporter or the CJA-24 is signed by the trial Judge. Deposit checks will be made payable to the individual court reporter, who will prepare the transcript or who furnished the estimate of cost. For cases on appeal the deposit should be made promptly, but must be made no later than ten (**10**) days from the date the estimate is furnished.

Invoice preparation: The invoice accompanying the transcript will reflect deposits made, any necessary discount adjustments and either refund or balance due. An invoice reflecting a refund will be accompanied by a refund check in the appropriate amount.

Each court reporter shall maintain and furnish upon request to the Clerk or Clerk's designee, a copy of each billing for official transcripts. The Court's free copy of the transcript shall be uploaded to the Court's CM/ECF electronic filing system in accordance with **Appendix #4** of this manual. (See **Appendix #5** for information required on all billings.) The term "official transcript" shall be deemed to be any transcript of any

proceeding before a Judge or Magistrate Judge of this Court, whether conducted in chambers or in open Court and regardless of the reason the transcript may be produced.

Each court reporter is required to *certify on each invoice* that the fees charged and page format used conform to the regulations of the Administrative Office of the United States and the Judicial Conference of the United States. Each invoice shall contain the following statement:

" I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States."

(Appendix #5)

XIII. CJA TRANSCRIPTS

All transcripts produced for criminal defendants represented under the terms of the Criminal Justice Act shall be billed on Form CJA 24 for panel attorneys and Form AO 44 for the Federal Public Defender's Office.

The apportionment of accelerated transcript costs among parties in criminal cases is prohibited.

In multi-defendant cases involving CJA defendants, whenever more than one (1) transcript is ordered from the reporter on behalf of the CJA defendants, copies are to be provided in accordance with **General Order #3**, which is available on the Court's website at www.nynd.uscourts.gov. See also, §550.40.30 of the *Guide to Judiciary Policy*.

XIV. TIME LIMITS FOR DELIVERY OF TRANSCRIPTS

Transcripts ordered for District Court purposes shall be delivered within thirty (30) days. If an extension of time is necessary, the court reporter shall request the extension of time through the presiding judicial officer. The extension of time, if granted, will not exceed fifteen (15) days, unless extraordinary circumstances exist as determined by the presiding judicial officer.

The Court's copy of a transcript is to be filed with the court within three (3) days from the date that the original transcript is delivered to the requesting party.

Transcripts not delivered within the specified time periods prescribed by the court may be subject to fee discount provisions as follows.

Transcripts ordered for appeal purposes shall be delivered within thirty (30) days unless

an extension of time for the delivery of transcript has been granted by the Clerk of the Court of Appeals in accordance with Rule 11(b) of the Rules of Appellate Procedure. Reporters who do not deliver transcripts within thirty (30) days may charge only 90% of the prescribed fee; reporters who do not deliver transcript within sixty (60) days may charge only 80% of the prescribed fee, unless a waiver of the sanction provisions has been granted by the Clerk of the Court of Appeals. Neither the schedule for completion of a transcript in a case on appeal nor the schedule for a transcript of proceedings requested by a judicial officer, shall be modified except by order of the Judge requesting the transcript or the Clerk of Court of the Court of Appeals.

Reporters and ECR transcribers who are consistently delinquent in delivery of transcripts, filing of original notes and tapes, and/or submission of required reports, may be subject to disciplinary action as determined by the Court upon recommendation of the Clerk.

Reporters who are found to be overcharging for transcripts by virtue of violations in page format, line format, or reduction in pitch, or allowable realtime charges, will be required to make immediate restitution.

XV. TRANSCRIPT BACKLOGS

The Clerk, upon consultation with the Court, is authorized to take necessary steps to reduce or eliminate transcript backlogs or production delays. Such steps may include, but are not necessarily limited to, the following:

1. Reassigning or rotating official court reporters, upon consultation with the judges to whom the court reporters are assigned.
2. Requiring the official reporter(s) who is backlogged to hire substitutes at his/her own expense.
3. Instituting progressive disciplinary action as provided for in the Clerk's Office Personnel Manual.

A detailed report of transcript backlog must be filed bi-monthly. The report will include the case number, date transcript was ordered, number of days overdue, number of pages overdue, date that the presiding judge or Clerk of Court of Appeals granted an extension beyond thirty (30) days. (**Appendix #6**)

XVI. FILING OF SHORTHAND NOTES AND TAPE RECORDINGS

The shorthand notes and tapes prepared by official court reporters will be turned over to the Clerk of Court for filing and disposition in accordance with 28 U.S.C., Section 753(b). The marking, filing and storing of reporters' notes shall be in accordance with the note

storage procedures approved by this court as outlined in **Appendix #7** of this plan, including the storage of electronic notes and audiosync files.

A copy of the court reporter's dictionary shall be filed in the court reporter note storage area on the file server and updated every six months. See Vol. 6, §290.20.30(f) of the Guide to Judiciary Policy.

Pursuant to the provisions of 28 U.S.C. Section 753, court reporters must transcribe and certify all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording equipment and such recording was backed up to the Court's network. The docket shall reflect that the proceeding was recorded by the Court's digital recording system.

XVII. REPORTS REQUIRED TO BE FILED WITH THE CLERK⁴

The following reports shall be prepared by each official court reporter according to the schedule below using the ACRA reporting system provided to the Clerk. The Clerk will forward required national reports to the Administrative Office of the United States Courts.

The report of Attendance and Transcripts of the United States Court Reporters (**AO 40A**), reviewed and signed by the Clerk, shall be prepared quarterly using the ACRA reporting system. The quarterly reports are required to be completed in ACRA delivered to the Clerk no later than the tenth day of each month they are due (**April 10, July 10, October 10, January 10**).

A report for each calendar quarter shall be submitted by the Clerk through ACRA so that it reaches the office within twenty (20) days after the end of the quarter. The Statement of Earnings of United States Court Reporters (**AO40B**) annual report is to be completed in ACRA and submitted to the Clerk on or before **April 1** and filed with the AO by **April 15**.

A detailed report of transcript backlog must be filed bi-monthly. The report will include the case number, date transcript was ordered, number of days overdue, number of pages overdue, date that the presiding judge or Clerk of Court of Appeals granted an extension beyond 30 days. (**See Appendix #6**)

XVIII. SUBSTITUTE COURT REPORTERS

All substitute court reporters, for all purposes, shall be fully qualified for Federal Court. A reporter shall not use a substitute reporter without the prior approval of the Court or Clerk.

⁴ All Official Court Reporters must use the ACRA reporting system to file their AO40A and AO40B forms with the Clerk, pursuant to Vol. 6, § 290.40.30 of the Guide to Judiciary Policy.

In the event it is determined that a reporter has overdue transcript(s), said reporter may be required to hire and pay substitute reporter(s) until such time as the overdue transcripts have been prepared.

XIX. RECORDS TO BE MAINTAINED BY COURT REPORTERS

To permit the routine audit and inspection of records, official reporters must maintain accurate, legible, and up-to-date records of their expenses, attendance in Court, transcript orders, and invoices. Such records shall be maintained on forms prescribed by the Administrative Office of the United States Courts and the Judicial Conference of the United States and shall include, but are not limited to, the following:

1. AO 37 - Expense Ledger
2. AO 38 - Attendance Ledger
3. AO 39 - Transcript Order/Collections Ledger
4. AO 44 - Invoice

If a reporter chooses to use automated forms, the forms shall include the information contained in the AO forms noted above.

XX. REALTIME REPORTING

Realtime reporting technologies allow the record to be electronically transcribed in the courtroom using software that translates the shorthand instantaneously and displays it on a monitor in front of the reporter, Judge, and attorneys.

All parties requesting realtime services shall be responsible for providing their own personal computers and monitors. The court reporter shall provide wiring and data communication connections needed to provide realtime services to these persons. Parties should coordinate and pre-test their equipment with the court reporter before official proceedings begin. (***See Appendix #8 for Realtime Reporting Standards***).

XXI. MISCELLANEOUS PROVISIONS

Discipline or sanctions of reporters shall be pursuant to the provisions of this Plan and the Clerk's Office Personnel Manual.

All official court reporters, upon termination, separation, or retirement, shall certify in writing the full extent of any existing transcript orders, including the due date and completion date with respect to such orders. Until all ordered transcripts are completed and all notes or tapes or both are appropriately filed, including the uploading to the Court's servers of all electronic notes and audiosync files, the court reporter will not be released by the Clerk of

the Court from his or her responsibilities.

Telephone Service: Court reporters have two needs for telephones; to communicate with court officials about assignments and to communicate with parties about transcript orders. The Northern District has authorized Court-installed telephones so that Court officials can communicate assignments to court reporters. Such equipment, however, may not be used for private purposes. Court reporters must use a calling card, or non government line for conducting any business associated with transcript orders.

Access to the Judiciary Data Communications Network (DCN): Official court reporters in the Northern District are authorized access to the DCN for the purpose of accessing judiciary electronic mail, the J-Net, on-line queries of case management/docketing systems, uploading transcripts to the Court's CM/ECF docketing system, on-line calendaring systems used by the Courts, the automated travel voucher system, and automated forms including the ACRA reporting system. Access to the DCN must be through government-owned equipment. 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, per diem court reporters and typists and scopists must not be allowed access to the DCN at any time. It shall be the responsibility of the reporter that hires a contract or per diem reporter to properly upload their transcripts to CM/ECF, as well as uploading all electronic notes and audiosync files to the Court's servers.

XXII. DUTIES OF THE CLERK

The duties and responsibilities of the Clerk or the Clerk's designee shall include, but shall not be limited to:

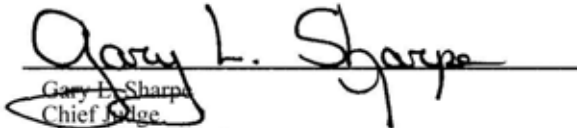
- a. assignment and reassignment of official court reporters and ECR operators for the purpose of distributing fairly and equitably the workload of all reporters and assuring the best utilization of all reporting personnel;
- b. reviewing transcripts to assure full compliance with format requirements of the Administrative Office of the United States Courts and the Judicial Conference of the United States;
- c. reviewing transcript billing to assure that authorized transcript rates are charged and that billing is in the proper form; this will be accomplished by the use of an annual sampling of transcript rates for various case reviews;
- d. reviewing the records of the court reporters to assure the timely filing of all reports required by the Administrative Office of the United States Courts and the Judicial Conference of the United States;
- e. performing such other duties relating to court reporters as shall be

directed by the Court.

- f. the Clerk shall administer this Plan on behalf of the Court, and the Clerk is fully authorized and empowered to implement and carry out the terms of this Plan. The Clerk or the Clerk's designee on a day-to-day basis shall be responsible for the supervision of the work of the court reporters.

Any violation of this Plan shall be referred to the Chief Judge by the Clerk for appropriate action.

This plan supersedes all prior versions of the Court Reporter Management Plan. Duly adopted, and approved the 24th day of March, 2015.


Gary L. Sharpa
Chief Judge
U.S. District Court

Second Circuit Judicial Council Approved Date: April 3, 2015

Appendix #1

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

PAYMENT VOUCHER FOR CONTRACT & PER-DIEM REPORTERS

FROM (U.S. COURT REPORTER) : _____

BOC: 2531

DUTY STATION: _____

INVOICE NO: _____

DATE INVOICE RECEIVED: ____/____/____

PAYEE: _____

TELEPHONE NUMBER: (____) _____ Email Address: _____

REPORTING SERVICES FOR JUDGE: _____

DATE(S): _____
CITY: _____

PROCEEDING(S): _____

REASON FOR CONTRACT / PER-DIEM REPORTER: _____

HALF DAY: _____ (RATE) _____ FULL DAY: _____ (RATE) _____

TOTAL DUE: _____

REVIEWED BY: _____ DATE: ____/____/____

Notes (including electronic notes and audiosync files) of the Contract Reporter have been filed with the Clerk at _____, with _____ Official U.S. Court Reporter. The per diem Reporter must Complete the Oath form (Appendix #2) and provide it to the Clerk of Court.

Appendix #2

FORM OF OATH FOR CONTRACT/PER-DIEM REPORTERS AND TYPISTS / SCOPISTS

I _____ do solemnly swear (affirm) that I will well and truly take and record the evidence about to be presented to this Court; That I will translate such testimony as required; And that I will keep secret all information received by me that has been placed under seal by the Court.

So help me God.

(Under the penalties of perjury)

Dated: _____

ORIGINAL OATH IS TO BE FILED WITH THE CLERK OF COURT
AND A COPY IS TO BE KEPT ON FILE BY THE U.S. COURT REPORTERS

Appendix #3

The Forms referenced below are available on the
Courts website at www.nynd.uscourts.gov

NDNY Payment Voucher for Official Court Reporters acting as
Transcribers (FTR and Tape Recorded Proceedings)

AO - FORM 435 - Transcript Order

AO - FORM 436 - Tape Order

Appendix #4

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

NOTICE TO MEMBERS OF THE NORTHERN DISTRICT BAR REGARDING ELECTRONIC AVAILABILITY OF CIVIL AND CRIMINAL TRANSCRIPTS

Electronic availability of civil and criminal transcripts: This court will follow the Judicial Conference policy on electronic availability of transcripts of court proceedings before making official transcripts of court proceedings electronically available to the public.

EFFECTIVE DATE

This will apply to all transcripts of proceedings or parts of proceedings ordered on or after **February 13, 2006** regardless of when the proceeding took place.

PLEASE READ THIS POLICY CAREFULLY

The policy establishes a procedure for counsel to request the redaction from the transcript of specific personal data identifiers before the transcript is made electronically available to the general public. The party who calls a witness to the stand, or referred to and read from a document submitted in evidence, is responsible for requesting redaction. If a judge asks a question requiring later redaction, the party who called the witness remains responsible for the redaction.

- ✓ A party must file a **Notice of Intent to Request Redaction** within **five (5)** business days of the filing of the official transcript by the court reporter. **NOTE:** If a party fails to request redaction within this time frame, the transcript may be made electronically available without redaction. A copy of the officially filed transcript will be available for review or purchase from the clerk's office or for purchase from the court reporter during this five-day period. This copy of the transcript(s) may be in paper, disk or CDROM form. **Reference:** A Notice of Intent to Request Redaction form is available on the court's website at www.nynd.uscourts.gov.
- ✓ If a party files a Notice of Intent To Request Redaction, the transcript will not be made remotely electronically available to the general public until the redactions are performed. **NOTE:** A copy of the officially filed transcript will be available for review or purchase from the court reporter / transcriber or the clerk's office during this time.

- ✓ Following the filing of a Notice of Intent to Request Redaction, the parties have **twenty-one (21)** calendar days from the filing of the transcript with the clerk, or longer if ordered by the court, **to the court reporter or transcriber a Redaction Request indicating where the personal identifiers appear in the transcript by page and line and how they are to be redacted.** For example, if a party wanted to redact the Social Security number 123-45-6789 appearing on page 12, line 9 of the transcript, the statement would read: “Redact the Social Security number on page 12, line 9 to read xxx-xx-6789.” A party is only responsible for reviewing and indicating the redactions in the testimony of the witnesses it called and its own statements (e.g. opening statements and closing arguments). **Only the personal identifiers listed in the Judicial Conference Policy on the Electronic Availability of Transcripts may be automatically redacted.** If a party wants to redact other information, that party should move the court for further redaction by separate motion served on all parties and the court reporter or transcriber within the twenty-one (21) day period. **NOTE:** Counsel appointed pursuant to the Criminal Justice Act may claim compensation, at the applicable rate, for the time spent reviewing the transcript and preparing the request for redaction, as well as for costs associated with obtaining a copy of the transcript.

NOTE: If a party fails to file a Redaction Request within this time frame, the transcript will be made remotely electronically available to the general public without redaction.

REQUESTS FOR TRANSCRIPTS

Any party ordering a transcript shall serve a copy of the Request for Transcript form on all other parties. A request for Transcript form is available on the court’s website at www.nynd.uscourts.gov.

Appendix #5

INFORMATION REQUIRED TO BE INCLUDED ON ALL BILLINGS

1. Name of client
2. Criminal or civil
3. Date ordered
4. Date delivered
5. In the matter of
6. Number of pages
7. Number of copies
8. Type of delivery schedule
9. Discount
10. Refunds
11. Total due
12. Certification of Reporter of Compliance with Fee and Transcript Format Prescribed by the Judicial Conference

“ I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.”

Form AO 44, Invoice, is available (free of charge) from the Administrative Office of the United States Courts for use by court reporters.

Appendix #6

Northern District of New York Transcript Backlog Report

Court Reporter: _____

Civil Case Number(s): _____

Criminal Case Number(s): _____

Are any of the above cases on Appeal? Yes ___ No___

If yes, which cases are on appeal? _____

Date Transcript was Ordered: _____

(List dates for all case numbers noted above)

Number of pages overdue: _____

Note Case Number along with number of pages overdue for each case

Did the Presiding Judge grant an extension of time beyond 30 days? Yes ___ No___

If the case is on appeal, did you receive an extension from the Clerk of the Court Appeals? Yes___ No___

By what date do you anticipate having the backlog completed? _____

File this Report Bi-monthly with the Clerk of Court

Transcript delivery dates are computed from:

1. The date on which satisfactory financial arrangements are made, except for transcripts to be paid for by the United States or free copies ordered by the Court;
2. The date on which the appropriate Transcript Order or CJA 24 form is received by the reporter/transcriber when the transcript is to be paid for by the United States;
3. The date on which the court order is provided to the reporter/transcriber when a transcript has been ordered by a judicial officer.

All original notes and tapes are to be relegated to the Clerk of Court "within 90 days after the conclusion of the proceeding ... If transcript is 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." (Vol. 6, §290.20.30(c) of the Guide to Judiciary Policy)

Procedure for Storage of Original Notes

1. All notes are to be chronologically filed and placed in FRC boxes which can be obtained from the Clerk's Office.
2. The outside of the box should be marked with a label indicating the court reporter's name and the calendar year, month and dates of the notes contained within.
(For example: Jones - Box 85-1- January 1 to 31, 2009)
3. If the notes for a particular month are too voluminous to be stored in one box, use as many boxes as necessary and identify them in sequence. e.g. ,Box 85-1(a) Box 85-1 (b), etc. would all contain notes for January, 2007. Conversely, if the notes for a particular month do not fill one box, several months's notes may be stored in that box as long as it is identified as follows: Box 85-1, 85-2, 85-3.
4. Each packet of notes is to be certified and should include the case number, case caption, presiding Judge, date of proceeding and court reporter's name.
5. Each box of notes must contain a Filing Certification Form for Original Notes, (see attached certification), accompanied by calendars which are to be attached to the notes for reference. In order to maintain the security of the original notes, it is recommended that each reporter place his/her notes in packets on a daily basis and secure at the end of the day within his/her office.
6. Each Court Reporter is to save to the Court's network an audio (WAV) file of all arraignments, pleas and sentencing as well as a copy of their electronic steno notes. This shall be accomplished by using the "Audiosync"⁵ file which is available with your court reporting software.

These saved audio files are then to be uploaded preferably weekly; not longer than monthly to our network server. Each Court Reporter will have a folder within the network drive that will only be accessible by that Court Reporter and by the Systems staff for administration purposes - i.e.: creating backups of the information on the network drive.

7. A copy of the court reporter's dictionary shall be filed in the court reporter note storage area on the file server and updated every six months.
It will be the responsibility of each court reporter to create folders for each month of each calendar year to house both the audiosync files and the electronic version of your steno notes.

⁵ Audiosync is a recording program included within most current, updated court reporting software programs which allows the court reporter to record the proceedings within your realtime file and synch the audio with the realtime output from your machine. It can be toggled on within your software program and will run until you stop translation to your laptop. It creates a separate .wav file which can then be exported for storage purposes.

Please also upload a .pdf version of certification form with your notes and audio files. A .pdf fillable form has been created by the Systems staff and is available on the Court's internal website.

To transfer the recordings from your personal laptops to the network, please follow this procedure:

1. Plug your USB drive into your personal laptop. (If you don't have a court-issued thumb drive, we will supply one for this express purpose.)
2. Transfer the recording to your USB thumb drive.
3. Remove your USB from your personal laptop and plug it into your court-issued PC.
4. Transfer the recording from your thumb drive into the appropriate location on your K drive.

Network Backups of this information:

The Systems staff will archive the information on your K drives to a CD, and then remove the archived files from the server on a quarterly basis. The systems staff will make at least two archive CDs, with one copy each stored in the IT media vaults in both Albany and Syracuse. These CDs will be kept as permanent records.

Procedure for Storage of Original Tape Recordings

In accordance with 28 U.S.C. Section 753(b), court reporters are required to file with the Clerk of Court either a transcript or an electronic sound recording of all arraignments, pleas, sentences, and other proceedings required by the Court. Accordingly, all tape recordings of official proceedings are to be turned over to the Clerk or Court within 90 days after the conclusion of a proceeding. Each tape, or series of tapes if they pertain to one trial, must be accompanied by a Filing Certification Form for Tape Recordings (see attached certification).

For proceedings recorded on **FTR GOLD** digital recording system. The system shall be backed up daily to a network server. Each quarter the Network Administrator shall file with the Clerk a certification of all **FTR GOLD** recordings for the prior quarter.

FILING CERTIFICATION FORM FOR ORIGINAL NOTES

In accordance with 28 U.S.C. Section 753, I hereby certify that the original notes tendered herein for filing with the Clerk or Court are the full, true and correct notes taken during oral proceedings in the United States District Court for the Northern District of New York and includes, District, Magistrate and other official hearings held in said district. The daily calendars of proceedings shall be attached to the official notes for storage.

(Date)

(Signature)

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**

FILING CERTIFICATION FORM FOR ORIGINAL TAPE RECORDINGS

I hereby certify that the tape recordings tendered herein for filing with the Clerk of Court are true and correct original recordings of proceedings held in criminal matters on the below indicated dates, that the same were recorded, checked, found to be intelligible, and may be replayed on _____ recorder and transcribed without undue difficulty.

DATES

JUDGE/MAGISTRATE JUDGE

CASE NO.

DATES

JUDGE/MAGISTRATE JUDGE

CASE NO.

DATE: _____

(SIGNATURE)

Appendix #8

Realtime Reporting Standards

1. General Policy

As adopted in March 1996, it is the policy of the Judicial Conference that effective June 1, 1996, a new category of “realtime unedited transcript” has been established. 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 ability 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 translation and appended notes delivered electronically 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.

At its September 2011 session, the Judicial 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. (JCUS-SEP 11)

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.

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 in electronic format.

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. 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 format guidelines prescribed by the Judicial Conference apply to realtime unedited transcript with the following exceptions:

- a. Realtime translation 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".
- b. The realtime transcript should not include an appearance page, an index, or a certification.
- c. If applicable, the electronic media label should be a different color than the color used on electronic media containing the text of certified transcript and should be marked with the words, "Realtime Unedited Transcript Only".
- d. Electronic files 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 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 non-participants. 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.

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