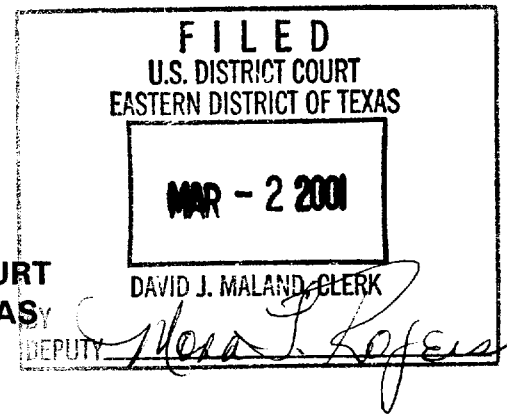


General Order No. 01-4

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



**GENERAL ORDER AMENDING MANAGEMENT PLAN FOR COURT REPORTING
AND RECORDING SERVICES**

It is hereby ORDERED that the following amendments to the Management Plan for Court Reporting and Recording Services for the United States District Court for the Eastern District of Texas, having been approved by the judges of this court, are adopted for immediate implementation.¹

I. **ADOPTION OF PLAN BY COURT**

This Plan for the effective utilization of all court reporters/recorders in the Eastern District of Texas has been adopted by this court subject to final approval by the Fifth Circuit Judicial Council.

II. **INTRODUCTION**

The Court desires through this Plan to achieve effective control and management of the official court reporters. Management of all court reporting services in the court is delegated to the clerk of court working under the direction of the chief judge. The court reporter supervisors in the clerk's office will be responsible for the day-to-day management and supervision of an efficient reporting service within the court and will provide the clerk of the court with all necessary information to enable the clerk of court to ascertain that all provisions of this Plan are followed.

The Plan is specifically designed to:

¹New language appears as underlined text; deleted language appears as ~~strikeout~~ text.

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

III. **APPLICABILITY OF PLAN**

This Plan is applicable to all reporters/recorders employed by the court.

IV. **SUPERVISION OF COURT REPORTERS/RECORDERS**

The clerk of court is responsible for the management and supervision of court reporting/recording services. The clerk will designate court reporting supervisors whose duties and responsibilities shall include, but are not necessarily limited to, the following:

1. Assignment and reassignment of reporters/recorders for the purpose of distributing fairly and equitably the workload of all reporters/recorders, minimizing travel and assuring the lowest overall cost to the government.
2. Supervising the relationship between parties and reporters/recorders.
3. Monitoring all transcript/tape orders.

4. 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.
5. Reviewing transcript billings to assure that authorized transcript rates are charged and that billing is in proper form.
6. Determining compliance of all court reporters with the provisions of 28 U.S.C. §753 concerning the transcribing, recording, certifying, and filing of the tapes of all criminal arraignments, pleas, and proceedings in connection with the imposition of sentence.
7. Reviewing the time records of the court reporters/recorders to assure proper maintenance and accuracy.
8. Reviewing the records of the court reporters to assure the timely filing of all reports required by the Judicial Conference of the United States and the Administrative Office of the United States.
9. Providing to the clerk all necessary information relating to the duties set forth above.
10. Ascertaining actual and projected budget needs for contract reporting services and electronic sound recording equipment; preparing the forms for solicitation of bids by the clerk for contract reporting services; scheduling contract court reporter services when needed and emergency substitute court reporters as required; assisting magistrate judges' staffs with transcript orders of electronic sound recordings; and monitoring transcripts for quality and timeliness.
11. Performing such other duties relating to court reporters as shall be directed by the Court.

V. GUIDELINES FOR MANAGING COURT REPORTERS AND RECORDERS

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

transcribing, certifying and filing of transcripts and notes and various administrative duties which are discussed in this Plan. Throughout this Plan all references to “court reporters” are the official staff reporters and additional reporters, both serving the court *en banc*, unless a different type of reporter is specified. All future references to “electronic court recorder operator” shall be made by the use of the acronym ECRO.

1. Types of Court Reporters

There are six types of court reporters who may serve in this district, and they are categorized according to how they are used or employed by the court.

- a. **Official staff reporters** comprise the regular complement of reporters who serve in this District. They are appointed by the court for an indefinite time and are salaried; they serve the Court *en banc*.
- b. **Additional reporters** are authorized in excess of the regular complement of official staff reporters by the Judicial Conference for specific periods. They are salaried and serve the Court *en banc*. An example of an additional reporter is one who is authorized to serve in this district based on a senior judge’s decision to remain active and thus creating the need for additional reporter services.
- c. **Temporary reporters** are those reporters who are appointed with the approval of the Director of the Administrative Office for service not to exceed three months. The use of temporary reporters is to be minimized.
- d. **Contract reporters** serve the court under a formal contract with pay established and set forth in the contract. The contract governs payment of transcripts prepared for a judge as well as fees and travel. Contractual services may be used only after the court reporting supervisor has determined that no court reporter is available because of work assignments. The use of contractors is to be minimized.
- e. Per diem reporters are reporters who serve on an as needed basis but are not under formal contract, i.e., they work under a verbal contract and are paid from contract funds. An oath must be administered to all per diem

court reporters. Per diem court reporters' attendance fees cover only the time they spend in court. Therefore they are allowed payment for transcripts produced when ordered by a judicial officer. The use of per diem court reporters is to be minimized.

- f. **Substitute reporters** are employees of an official staff, additional, or temporary court reporter and are paid by the employing court reporter subject to Chapter X of the Court Reporters' Manual. An oath must be administered to all substitute court reporters. The use of substitutes should be limited to expedited, daily, or hourly transcript work, absence due to illness, leave without pay, vacations, or other reasons beyond the court reporter's control.² The court reporter must obtain advance approval of the use and qualifications of a substitute reporter from the court reporting supervisor or judge before hiring a substitute.

In addition, a court judge may direct a court reporter who is unable to complete transcripts on time to hire a substitute to record proceedings while the reporter works on the backlogged transcripts. If it is necessary for a judge to appoint a substitute, the court reporter may either voluntarily pay the substitute from his/her own funds or be placed on leave without pay and have the court pay the substitute reporter. If the court reporter chooses not to pay the substitute, the Judicial Conference has approved the withholding of salary of the court reporter not to exceed the sum necessary to compensate the substitute reporter until the transcripts are current. The District Court Administration Division of the Administrative Office must be notified to withhold the salary of the court reporter. See Chapter X, Part 3.2, Court Reporters' Manual.

The court reporter who hires a substitute is ultimately responsible for the performance of the substitute including the timely production of transcripts which must meet all Judicial Conference requirements. Any substitute reporter hired by a reporter or appointed by a judge to attend court sessions and record the proceedings shall meet the minimum qualification requirements established by the Judicial Conference for official staff reporters.

²The court pays for contract (as opposed to substitute) court reporters, if needed, to report for court reporters covered by the Leave Act who have enough leave to cover their absences.

2. Appointment and Dismissal of Court Reporters

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

Pursuant to Judicial Conference policy, all initial appointments shall be on a probationary basis. The court has fixed this probationary term to be a period of one year. Court reporters who do not perform in a competent and satisfactory manner or do not comply with requirements of this Plan shall be subject to dismissal.

a. Staffing reductions, layoffs and other circumstances where a court reporter is asked to leave. The Court is entitled to make changes in the reporting staff at will. There is no requirement, moreover, that the Court give preference to a reporter with seniority. See Chapter III, Section 3.8, Court Reporters' Manual.

3. Assignments of Court Reporters and ECROs

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

<u>DIVISION</u>	<u>RESIDENT FULL-TIME JUDICIAL OFFICERS</u>	<u>COURT REPORTERS</u>	<u>ECROs</u>
<u>Tyler</u>	<u>2 judges; 1 senior judge;</u> <u>2 magistrate judges</u>	<u>3³</u>	<u>1</u>
<u>Beaumont</u>	<u>3 judges;</u> <u>2 magistrate judges</u>	<u>3</u>	<u>1</u>
<u>Sherman</u>	<u>1 judge</u> <u>1 magistrate judge</u>	<u>1</u>	<u>0</u>
<u>Marshall</u>	<u>None</u>	<u>0</u>	<u>0</u>
<u>Texarkana</u>	<u>1 judge</u> <u>1 magistrate judge</u>	<u>1</u>	<u>0</u>
<u>Lufkin</u>	<u>None</u>	<u>0</u>	<u>0</u>

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

Court reporters are employed by the court en banc, which controls their assignments. Court reporters are not employed by, nor do they form part of the personal staff of, an individual judge. 28 U.S.C. § 753. Because of the geographical area of the district and the need for judicial officers to travel, as a matter of convenience, court reporters are primarily assigned to one district judge for reporting purposes but are available, when circumstances allow, to be assigned to other judges,

³The Tyler figure includes one additional court reporter for a senior judge that is subject to annual review by the Fifth Circuit.

visiting judges, magistrate judges, or land commissioners within the district. Travel of court reporters shall be minimized as much as possible.

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

4. **Leave Act and Hours of Attendance**

All ECROs are deputy clerks and are therefore subject to the Leave Act. Court reporters may be subject to the Leave Act if they are on a regular tour of duty or may not be subject to the Leave Act if they are not on a regular tour of duty (non-tour). Requirements differ for regular tour and non-tour reporters. A court that places some of its reporters on a regular tour of duty must place all reporters in that location on a regular tour of duty. Currently, the court reporters in Tyler and Beaumont are on regular tours of duty. The court reporters in Texarkana and Sherman are not on regular tours of duty.

- a. **Regular Tour Court Reporters** are designated as full-time employees with a regularly scheduled tour of duty of 40 hours per week, 8:00 a.m. to 5:00 p.m. daily, in the courthouse. This shall entitle the employee to full retirement and leave benefits. Attendance and leave records shall be maintained by the Clerk of Court.

When regular tour court reporters are not needed to record the proceedings of judicial officers during their regular tours of duty, they are

to remain available at the courthouse and may prepare transcripts required by rule or order of court, including transcripts for which they are entitled to collect a fee from a party or the United States.

The court may grant use of annual leave earned by regular tour court reporters at its convenience and in accordance with the Leave Act. Annual leave should be planned for times when no court proceedings would normally be scheduled. Sick leave may be used as needed. The court will pay for a contract court reporter if no official reporter is available.

- b. **Court reporters not covered by the Leave Act (non-tour)** must provide substitutes as needed at their own expense or be placed in a leave without pay status when taking vacations, leave for personal business, or sickness.

Reporters not covered by the Leave Act are considered to be on call every day court is in session, whether or not they are assigned primarily to one judge as a matter of convenience. Nevertheless, if the court needs reporting services for senior judges, visiting judges, magistrate judges or land commissioners, court reporters who are absent for whatever reason are responsible for coverage or providing a substitute at their own expense. Telephone availability will be maintained to ensure that if an emergency arises, the court reporter can be available on short notice. The court reporting supervisor or other designated person shall be responsible for knowing the whereabouts of all reporters at all times.

5. Travel

It is the responsibility of the court reporting supervisor to approve and schedule travel by court reporters and ECROs; therefore, advance arrangements must be made.

Intra-district and inter-district travel by court reporters is discouraged. The court which is visited by a judge has the responsibility to provide reportorial services, preferably from its normal complement of reporters, or through a contractor.

However, in some circumstances, it is less expensive for the visiting judge to take a reporter on assignment than the securing of contractual services in the visited court. If it is less expensive to have reporters travel, authorization can be granted only

when it is performed at the direction of a judge through the court reporting supervisor and is for the purpose of recording court proceedings.

Travel outside the district requires the submission, in advance, of a written request for each assignment along with a certification from the host court of its inability to provide court reporting services. Written requests are submitted to the District Court Administration Division of the Administrative Office. In an emergency, telephone approval should be requested followed by a written request for travel authorization.

6. Private Reporting

Reporting for a grand jury, taking of depositions, and any other reporting activities not related to salaried or statutory duties are considered private reporting.

- a. **Court reporters under the Leave Act (regular tour)** may not perform private reporting work during regularly scheduled working hours.
- b. **Court reporters not under the Leave Act (non-tour)** are permitted to perform private reporting work, but service to the court officials shall take precedence. Court reporters may charge for transcripts provided for grand jury proceedings and depositions at rates agreed to by the U. S. Attorney's office. Maximum rates established by the Judicial Conference do not apply. An official reporter may not hire a substitute reporter to record a proceeding before a judicial officer in order to free the official reporter to report for a grand jury or take a deposition.

7. Transcripts

It is the duty of the court reporter to promptly transcribe any proceedings requested by any party who has agreed to pay the fees established by the Judicial Conference, as well as any ~~and all~~ proceedings a judge or court may ~~request~~ direct, and to transcribe or provide an electronic sound recording to the court for all

arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases.

a. Filing of Original Records

The court reporter (including a per diem reporter) must certify and file promptly with the clerk of the court all original notes and other original records of proceedings the reporter has recorded. (See *Guide to Judiciary Policies and Procedures*, Vol. VI, Ch. I, D, 3 "Certifying and Filing Transcripts and Notes.")

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

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

b. Scheduling of Work

Each court reporter shall advise the court reporting supervisor, by means of a copy of the transcript order form, of each transcript order received from a party, when received, the length of the transcript, the estimated preparation time, and the required delivery date. If a problem develops regarding the delivery deadline, the court reporting supervisor shall take appropriate action to ensure that the transcript is produced when required. The court copy of the transcript shall be delivered to the court reporting supervisor within three days of delivery to the party. The court reporting supervisor shall be furnished a copy of the file-marked title page(s) and the last numbered page.

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

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

Production of daily or hourly transcript is not to be subsidized by the court. If extra reporters are required to provide such transcript, the cost

of such reporters shall be paid by the court reporter out of the earnings derived from the higher transcript rates as established by the Judicial Conference. This provision does not, however, prohibit other official reporters from assisting in producing such transcripts if there are no other official proceedings to record, including those of senior judges and magistrate judges and when no substantial transcript backlog will result. Upon retirement or separation from the court, court reporters are responsible for providing transcripts to ordering parties at the currently established page rate. Court reporters must make every effort to serve the ordering party by producing the transcript according to the delivery schedule established by the Judicial Conference. The court reporting supervisor should assist the retired or separated court reporter in obtaining the notes (which must be retained by the court), and act as liaison between the reporter and ordering party. The retired or separated court reporter will be paid for transcripts ordered by the court at the page rate currently in effect.

c. Fees

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

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

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

d. Billing for Payment

Each court reporter shall prepare an invoice for transcript payment. The court reporter is required to certify on each invoice for official transcripts

that the fee charged and page format used conform to the regulations of the Judicial Conference of the United States. This includes charges for copies.

All invoices to be paid by the federal government are submitted to the court reporting supervisor after the judicial officer has signed the voucher (SF-1034 or CJA-24, as appropriate).

All invoices to be paid by the clerk's office from funds previously deposited with the court by individual parties are to be submitted to the court reporting supervisor or the designated alternate for preparation of vouchers for payment.

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

The court reporting supervisor is charged with the responsibility of promptly advising the clerk of any failure to comply with official transcript rates for all official transcript billings.

e. Appellate Transcripts

All requests for appellate transcripts shall be made on the form prescribed by the United States Court of Appeals for the Fifth Circuit (DKT 13). Upon receipt of a transcript order, a court reporter shall complete the form and distribute copies as provided on the form, with a copy being sent to the court reporting supervisor. The "date of order" of a transcript purchase order shall be the date on which the court reporter certifies that satisfactory financial arrangements were completed between the court reporter and the party requesting the transcript.

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

8. Magistrate Judges

Proceedings before United States magistrate judges may be recorded by tape recording or by a court reporter. The magistrate judge shall determine which

technique is to be used as to each case or hearing, taking into account the provisions of 28 U.S.C. Sections 753(b) and 636(c)(7) or any other applicable authorities. Should a magistrate judge determine that it is necessary that the services of a court reporter are required in a particular case, a request to provide a reporter shall be directed through the court reporting supervisor.

ECROs are primarily assigned to magistrate judges for reporting purposes during their criminal duty months. They are, however, available, when circumstances permit, to be assigned to other judges and magistrate judges within the district.

9. Records and Reports

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

a. Forms Which Must be Completed, Maintained and Submitted

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

Information about these forms is set forth in the "Court Reporters' Manual" furnished to each court reporter. These forms are to be submitted to the court reporting supervisor twenty days after the end of each quarter, except for invoices. See Section 7 (d) above for invoices.

b. Reports Which Must be Prepared and Submitted

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

Due 20 days after the end of each quarter. The form is submitted to the court reporting supervisor for review, signature, and forwarding to the Administrative Office.

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

Due by April 15, of each calendar year. The form is submitted to the court reporting supervisor for review, signature and forwarding to the Administrative Office.

Information about these reports is also contained in the "Court Reporters' Manual." Other reports as may be required from time to time shall be submitted in a timely manner.

c. ECRO Records and Reports

- (1) ECRO audio tapes, along with the detailed log, are to be kept on file in the clerk's office. They are to be placed together in a location to be determined by the court reporting supervisor.
- (2) The ECRO Quarterly Report must be prepared quarterly and submitted to the court reporting supervisor within 20 days after the end of each quarter.

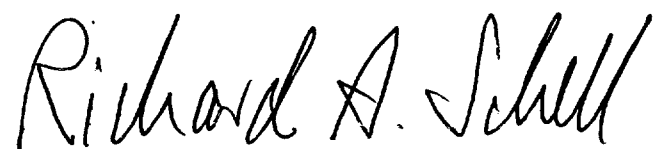
10. **Sanctions**

Any alleged violation of this Plan shall be brought to the attention of the reporter. Thereafter, a conference with the reporter, the court reporting supervisor, and the clerk of court shall be held to discuss the alleged violation. If no resolution can be reached, the alleged violation shall be referred to the chief judge or his designee. The actions taken shall include, but not be limited to, dismissal of the court reporter

or restitution of overcharges whether they arise out of a violation of page rates, page format, or time limits for delivery.

Signed this 2nd day of March, 2001

FOR THE COURT:



RICHARD A. SCHELL
Chief Judge