

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
JUDICIAL COUNCIL

In the Matter of the Review of
Amendments to the Court Reporter
Management Plan Submitted by the
United States District Court for the
District of South Carolina

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No. 242

ORDER

The Court Reporter Management Plan of the United States District Court for the District of South Carolina is hereby modified by the amendment of the Court filed June 27, 2008, a copy of which is attached hereto, and it is so ORDERED.

FOR THE COUNCIL

A handwritten signature in black ink, appearing to read "Samuel W. Phillips", written over a horizontal line.

Samuel W. Phillips, Secretary

Date: August 20, 2008



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In the matter of the	)	
	)	
Court Reporter Management Plan for	)	Misc. No. <u>3 : 08mc5004</u>
the District of South Carolina	)	
	)	
Supersedes Misc. Order 3:03-5012	)	

The Court Reporter Management Plan promulgated in Miscellaneous Order 3:03-5012 is vacated and the following plan is substituted as the Plan for the District of South Carolina. Pursuant to the requirement of the Judicial Conference of the United States that each District Court have a Court Reporter Management Plan, the Court adopts the following provisions regarding court reporters in the district:

Employment of Reporters

- 1.1 Official reporters are members of the Clerk's staff employed by and for the benefit of the court en banc and not by or for a particular judge or magistrate judge. Employment of official reporters will not be affected by the death, resignation or retirement of an individual judge.

- 1.2 In the event the overall work volume of the court does not justify retention of the full complement of court reporters, a reduction will be accomplished, if possible, through relocation or attrition, or by giving reasonable notice of termination.
- 1.3 Court reporters shall be appointed in accordance with the provisions of 28 U.S.C § 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. § 753 shall be appointed. Pursuant to Judicial Conference policy, all initial appointments shall be on a probationary basis for a period of one year. Court reporters who do not perform in a competent and satisfactory manner or do not comply with the requirements of this plan shall be subject to dismissal.

Supervision

- 2.1 The Clerk of Court or his designee shall have supervisory and managerial authority over court reporters including fees charged, format adherence and delivery schedules. The Clerk shall hire and fire reporters with the advice and consent of the Court.

2.2 The Clerk will designate a Court Reporter Supervisor whose duties and responsibilities shall include, but are not limited to the following:

- Periodic review of 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.
- Review of transcript billings to assure that authorized transcript rates are charged and that billing is in proper form.
- Determine compliance by all court reporters with the provisions of 28 U.S.C. §753 concerning the recording, certifying and filing of recordings or transcripts of all criminal arraignments, pleas, and proceedings in connection with the imposition of sentence.
- Review 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. Certify that Attendance and Transcripts of United States Court Reporters (AO 40A) and Statements of Earnings of United States Court Reporters (AO 40B) have been reviewed prior to submission to the Administrative Office.

- Act as liaison to the Court of Appeals as to matters pertinent to court reporters and transcript production.
 - Meet with each court reporter at the time of separation to ensure that (a) all notes, electronic or paper, as well as audio recordings have been filed in accordance with Title 28 U.S.C. §753 and (b) the court reporter understands his/her responsibility for preparing any transcripts currently ordered but not yet filed or which might be ordered after separation and to properly execute a certification in this regard. (Appendix A)
- In divisional offices the division manager may perform this function with agreement of the Court Reporter Supervisor.

Assignment of Court Reporters

- 3.1 The Clerk's designee(s) will assign official reporters among judicial officers on a rotational basis where practicable for the purpose of distributing fairly and equitably the work load of reporters at a location while at the same time minimizing the need to expend government funds for travel.

- 3.2 Transcript production by court reporters is considered outside work for which additional remuneration is received and therefore it is not considered in the assignment of individual reporters.
- 3.3 Court reporters shall earn annual and sick leave pursuant to the Leave Act, 5 U.S.C §6301, et seq. Guidelines for the administration of leave are addressed in the Personnel Manual for the District of South Carolina.

Hours of Employment

- 4.1 Court reporters may choose a fixed schedule, exclusive of a lunch break, which may start at 8:30 a.m. but no later than 9:00 a.m. and ending no earlier than 5:00 p.m. The hours of 9:00 a.m. to 5:30 p.m. are considered core court reporting hours and therefore compensatory time may not begin to accrue before 5:30 p.m.
- 4.2 Court reporters may generate transcripts during their regular tours of duty but may not perform any private reporting or transcribing activities or other private business of any kind during their regular tour of duty as they earn leave in accordance with the Leave Act, 5 U.S.C § 6301 et seq.

- 4.3 Time and attendance certification for court reporters is performed by the Court Reporter Supervisor for Columbia and Divisional Managers where the reporters' offices are maintained.

Reporting Services to United States Magistrate Judges

Proceedings conducted before a United States magistrate judge may be recorded by electronic sound recording or by a court reporter. Official court reporters, if not otherwise reporting for a district court judge, may be used for proceedings before a magistrate judge.

Contract/Freelance Court Reporters

- 6.1 Contract/freelance reporters may be used only when all official court reporters are occupied in court reporting proceedings pursuant to the policies of the Judicial Conference of the United States.
- 6.2 Contract/freelance reporters may be used in place of official reporters on authorized leave pursuant to the terms of the Leave Act when no official reporter is available to replace the reporter on such leave.
- 6.3 Contract/freelance court reporters will not be paid by the court when official reporters are relieved of their courtroom duties to work on transcript backlogs. Costs associated with such contract/freelance reporting services shall be paid by the official reporter so relieved.

- 6.4 Travel of contract/freelance reporters within the district shall be limited to those occasions when no official reporter is available to travel to the location requiring reporting services or when such use of a contract/freelance reporter would be less costly to the government overall than using an official reporter in travel status.

Transcripts

- 7.1 Requests for transcripts for which fees are paid must be in writing to the court reporter who reported the proceeding. All transcripts, whether requested by a party or the judge, must be certified and filed with the court.
- 7.2 Transcripts must be produced in the format required by the Judicial Conference of the United States as outlined in the Court Reporters' Manual, Guide to Judiciary Policies and Procedures.
- 7.3 Pursuant to the provisions of 28 U.S.C. § 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 and such recording has been certified and is maintained in the office of the Clerk of Court or approved filing area maintained by the court

reporter. Reporters shall file a transcript of all such proceedings within 30 days of the close of the proceeding unless it was recorded on electronic sound recording equipment by the court reporter, in which event, the electronic recording must be filed accompanied by a certification of the reporter. Court reporters are allowed to charge parties for transcripts produced of arraignments, changes of plea, or proceedings in connection with the imposition of sentence when an electronic recording of the proceeding has been filed with the court in lieu of a written transcript (Report of the Proceedings of the Judicial Conference of the United States, March 1996).

- 7.4 Court reporters are required to redact transcripts in accordance with the E-Government Act of 2002 (as amended) and Judicial Conference's policy to make transcripts of court proceedings available electronically. Juror names are to remain non public in accordance with Administrative Office of the U.S. Courts policy. If a transcript includes voir dire or other juror information that does not fall within the responsibilities of either party, any such portion is to be treated as a separate volume of the transcript which will not be available to the public.

- 7.5 No court reporter employed by this district may charge fees for transcripts of official proceedings which exceed those fees recommended by the Judicial Conference of the United States. For a transcript ordered by a judge, the court reporter may charge only the copy rate for a purchased copy.
- 7.6 The Clerk of Court will prominently post a current schedule of the prescribed fees.
- 7.7 Each court reporter shall furnish to the Court Reporter Supervisor a copy of each billing for official transcripts. 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 is produced. Each invoice is to contain all of the information required by the Administrative Office of the United States Courts and a certification that the fees charged and page format used conform to the regulations of the Judicial Conference of the United States. Failure to comply with Judicial Conference regulations on charges and format shall result in a refund. (Appendix B)

7.8 If a transcript is not delivered within 60 days of the date ordered and payment received or assured, or within such other time as may be set by the Circuit Council, the reporter may charge only 90% of the prescribed fee. If a transcript is not delivered within 90 days of the date ordered and payment received, or within such other time as may be set by the Circuit Council, the reporter may charge only 80% of the prescribed fee. The Court Reporter Supervisor shall monitor delivery dates by randomly checking transcripts and ascertaining from customers the time between the order and delivery. (Appendix C)

For transcripts subject to Rule 11(b), Federal Rules of Appellate Procedure, a fee reduction may be excused by the Clerk of the Court of Appeals for good cause shown. In all other cases, the Clerk of the District Court is authorized to excuse fee reduction but only for good cause shown.

The District Court or Circuit Council may take any reasonable step to ensure the timely delivery of a transcript, including, but not limited to, requiring the reporter to furnish a courtroom substitute while the offending reporter prepares the overdue transcript. Nothing contained herein should be construed as sanctioning untimely delivery nor

should this provision be considered the only penalty to be imposed by the Court or Circuit Council for untimely delivery.

- 7.9 Production of hourly or daily transcripts as well as expedited transcripts will not be subsidized by the court. If extra court reporters are required to produce hourly or daily transcripts, the cost of such reporters shall be paid by the official court reporter. This provision does not prohibit other official reporters from assisting in producing such transcripts if there are no other proceedings to report and when no transcript backlog will result for the court reporter(s) providing such assistance. Any court reporters used must receive a security clearance prior to reporting.

Criminal Justice Act Transcripts

- 8.1 All transcripts produced under the terms of the Criminal Justice Act (CJA) shall be billed on form CJA 24. The ordering party may be assisted in the proper preparation of form CJA 24 by the Clerk's Office.
- 8.2 The routine apportionment of accelerated transcript costs among parties in criminal cases is prohibited.

8.3 In multi-defendant cases involving CJA defendants, no more than one (1) transcript should be purchased from the reporter on behalf of CJA defendants. The court reporter, or one of the appointed counsel, or the Clerk of Court should arrange for the duplication, at commercially competitive rates as determined by the Clerk of Court, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be charged to the CJA appropriation.

Realtime Reporting and Transcripts

As adopted in March 1996, the Judicial Conference established a new category of “realtime unedited transcript” which became effective June 1, 1996.

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.

- 9.1 Only a Certified Realtime Reporter (CRR) may report a proceeding in which a party to a case has requested realtime service. The CRR may charge and collect fees as approved by the Judicial Conference of the United States for realtime unedited transcripts. 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.
- 9.2 CRRs may not sell a realtime unedited transcript to anyone who is not a party to the case without the prior approval of the presiding judge. Each CRR shall have the ordering party sign a disclaimer which acknowledges receipt of the realtime unedited transcript and states the party is aware that the realtime unedited transcript is not an official record of the court proceedings. (Appendix D)
- 9.3 Realtime unedited transcripts must conform to the transcript guidelines prescribed by the Judicial Conference. Each page must be clearly marked by header, footer or watermark as “Realtime Unedited Transcript Only.” The transcript is not to include an appearance page,

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

Substitute Court Reporters

If 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. The Court Reporter Supervisor must approve the substitute and a security clearance must be received by the substitute prior to reporting. The official reporter shall have the responsibility for the transcript production and retrieval of all notes/recordings of any hired substitute reporter.

Records to Be Maintained by Court Reporters

In order 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 Judicial Conference of the United States.

Records Disposition

- 12.1 All notes and recordings of all arraignments pleas and sentences must be certified in accordance with the certification forms specified by the Administrative Office of the United States Courts in its Court Reporters Manual. (Appendix E)
- 12.2 Court reporters are required to maintain backup recordings of all proceedings they report. The backup recordings must be turned over to the court at the same time notes are filed so that the notes, which are not universally readable, may be read, if necessary, by another reporter with the aid of the audio backup. Audio from the court reporter's computer software is acceptable as a back up if it is of sufficient quality to aid in transcription in the event of an emergency.
- 12.3 The marking, filing and storing of all notes, tapes and paperless notes shall be in accordance with the note storage procedures outlined in this Plan. (Appendices F-H)

APPROVED THIS 27th day of June, 2008.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
CHIEF UNITED STATES DISTRICT JUDGE

Appendix A

CERTIFICATION OF COURT REPORTER UPON SEPARATION

NAME _____ DATE OF SEPARATION _____

ADDRESS _____

CITY _____ STATE _____ TELEPHONE NO. _____

The following certification is made to the Clerk of Court upon my separation:

1. All of my stenographic notes or tape recordings including backup tape recordings have been filed with the Clerk of Court as well as a copy of my computer generated note file and a copy of my personal dictionary. The software program required is _____.
2. I am responsible for preparing any transcripts currently ordered but not yet filed and any transcripts ordered after my separation.
3. I will immediately inform the Clerk of Court of any change in my address or telephone numbers in order to facilitate the preparation of transcripts.

Court Reporter_____
Date_____
Court Reporter Supervisor or Division Manager
Division Manager_____
Date

Appendix B

INFORMATION REQUIRED ON ALL BILLINGS

All of the below listed elements are contained in Form AO 44, Invoice, which is available without cost from the Administrative Office of the U. S. Courts.

1. Name of Client
2. Type of Case: Civil or Criminal
3. Date Ordered
4. Date Delivered
5. In the Matter of
6. Number of Pages and Page rate
7. Number of Copies
8. Type of Delivery Schedule
9. Deposit
10. Discount
11. Refunds
12. Total Due
13. Certification of Reporter of compliance with fee and transcript format prescribed by the Judicial Conference.

Appendix C

COMPUTATION OF TRANSCRIPT DELIVERY DATES

Transcript delivery dates are computed from:

- a. The date upon which satisfactory financial arrangements are made, except for transcripts to be paid for by the United States or free copies ordered by the court. If the customary practice of the court reporter is not to require prepayment, the computation date is the date of acceptance of the transcript order by the court reporter;
- b. The date upon which the appropriate transcript order or CJA 24 form is received by the reporter when the transcript is to be paid for by the United States;
- c. The date upon which the court order is provided to the reporter when a transcript has been ordered by a judicial officer.

Appendix D

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

Appendix E

CERTIFICATE OF OFFICIAL COURT REPORTER
Arraignments, Pleas and Sentence Proceedings

I, _____, certify that I am a duly appointed official court reporter for the United States District Court for the District of South Carolina and that I was present in the courtroom of said court on _____, 20____, and in the regular course of my profession made an electronic sound recording of the proceedings, including the arraignment, plea and sentence proceedings had in the following cases:

<u>Date</u>	<u>Docket Number</u>	<u>Name of Defendant</u>	<u>Nature of Proceeding</u>

I have played back said recording and certify that it is a true and correct record of the proceedings had, that it is sufficiently intelligible when played on a _____ (Make and model of machine) at normal speed, that it can be transcribed without undue difficulty, and that I have filed the original of said recording in the box in which this certificate is enclosed.

I further certify that I have filed my original notes taken of these proceedings with the Clerk as required by 28 U.S.C. § 753(b) as amended.

Signature

Date: _____ Location: _____

Appendix F

PROCEDURE FOR STORAGE OF COURT REPORTERS' NOTES AND TAPES

All stenotype notes, back up tapes supporting the notes and tapes required in lieu of transcripts as required by 28 U.S.C. § 753(b) as amended for the previous calendar year are to be available to the Clerk of Court no later than April 1 of the following year for internal audit purposes. The records may be maintained under suitable conditions in the court reporter's office or designated filing area.

Procedures for Storage of Stenotype Notes and Back Up Tapes

1. All notes shall be filed chronologically and placed in FRC boxes which can be obtained from the Clerk's Office.
2. Backup tapes and computer aided transcript diskettes which support notes may be filed with the notes or separately if there is sufficient cross referencing for future retrieval purposes. Backup tapes used to fulfill the requirements of 28 U.S.C. 753 concerning arraignments, pleas and sentences must be readily identifiable so that they may be removed and stored separately if the contents of the box are to be disposed of prior to the twenty (20) year disposition schedule for recordings of such criminal proceedings.
3. The outside of the box should be marked with a label indicating the court reporter's full name, calendar year, the period of time for covered by the contents of the box and the date the contents may be destroyed. The box must contain supporting documentation of the contents (Appendices G, H or other documentation which contains certification of the contents of the box and identification of contents).
4. If the notes for a particular month are too voluminous to be stored in one box, the reporter shall use as many boxes as necessary and identify them in sequence, e.g., Box 03-1(A), Box 03-1(B), Box 03-1(C) would all contain notes for January 2003. Conversely, if the notes for a particular month do not fill one box, the notes for several months may be stored in one box as long as it is identified as follows: Box 03-1, 03-2, 03-3.
5. Each packet of notes shall either include the case number, case caption, presiding judge, date of proceedings, type of proceeding and court reporter's full name or reference to a document which contains the information. One certification for the contents of the entire box is acceptable. Backup tapes must be identified so they are easily retrievable for transcript purposes. (Appendix G)

Procedure for Storage of Original Tape Recordings

In accordance with 28 U.S.C § 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. Tape recordings of official proceedings in this section are to be maintained by the court reporter in an approved filing area and be available for internal audit if required by the Clerk of Court. Each tape, or series of tapes if they pertain to one case, must be accompanied by a Certificate of Official Court Reporter Arraignments, Pleas and Sentence Proceedings. If the tape contains more than one proceeding the certification may cover all proceedings on the tape. The recording must be certified within 30 days of the date of the proceeding. If a tape cannot be certified that it is intelligible and that a transcript may be produced, the court reporter must produce a transcript as required by 28 U.S.C. § 753(b) which is to then be filed with the Court. The disposition schedule for these tapes is 20 years. (Appendix E)

Procedures for Storage of Court Reporters' Paperless Notes

Court reporters who use paperless stenograph machines must provide the court with computer files of the steno notes rather than paper steno notes. To ensure that the notes are accessible to the court, standards relative to the file format, file name, file organization and media are included in the following general procedures for the handling of paperless steno notes.

Copying directly from the notes files created by the steno machine, the steno notes will be stored on one of the district's network servers, ensuring that there is an off-site copy of the notes available while also providing data redundancy. The steno notes files will also be copied to the court reporter's personal computer to a folder named with the current month and year. Using the paperless steno machine's accompanying software, the court reporter will print the steno notes to an Adobe Acrobat PDF file, a recognized and accepted industry standard for document images, named with the date or date range of proceedings. At the end of each month, the court reporter will copy that month's PDF files and raw steno notes to a compact disk (CD) which is to be clearly labeled as to its contents and stored in the office of the court reporter.

Standards

1. Stored Notes on a Network Server: The paperless stenograph machines write the notes to an electronic storage device. At least weekly, the court reporter will copy the files from the electronic storage to the designated district network folder. Under a shared network folder, each court reporter will have a folder named with the court reporter's name. The court reporter will create a sub-folder under his/her named folder with the date range of the notes it will contain. The naming convention of "ddmmyy-ddmmyy" is to be used for the folder names. The court reporter will then copy the notes files from the electronic storage device to that folder. Each subsequent addition will be set up and named accordingly.
2. File Format for the Printed Image: Print each set of notes to an Adobe PDF file. The notes print to the PDF File in three columns set at 8½ x 11 inches, and each column of notes is identical in appearance to a fold of notes on regular steno paper.
3. Folder Names for Steno Notes and PDF Files on the Court Reporter's PC: The raw notes files and the PDF files will be stored in a folder on the court reporter's computer, with a sub-folder created for each month and year. For example, if the main steno note folder is C:\StenoNotes, then the folders for each month would be c:\stenonotes\jan2008, etc. The court reporter will print the steno notes to PDF and save the PDF files, along with the raw steno notes files, in the appropriate month/year folder.
4. Steno Notes and PDF File Names: Adobe PDF files created from steno notes shall be named with the date or date range of the proceedings plus a dash character "-" plus the court reporter's initials (first-middle-last), in the format:ddmmyy-fml.pdf or ddmmyy-

ddmmyy-fml.pdf. Steno notes files should follow this date-name convention, with the exception that the file extension will be the extension employed for steno notes created by the court reporter's particular CAT software.

5. Creating Archive CD/DVDs: All steno notes files plus all text .WAV files for each month for each court reporter will be written to compact disk (CD/DVD). The court reporter will create DC/DVD labels to adhere to the month's CV/DVD which will contain the certification language as well as lines on which to provide the dates of the notes and the court reporter's signature.
6. CD/DVD Storage: Within thirty (30) days following the close of a month. the court reporter will file the previous month's CD/DVD in their storage area which is subject to random audit for compliance.

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

FILING CERTIFICATION FORM FOR ORIGINAL NOTES

In accordance with 28 U.S.C § 753(b), I certify that these original notes are a true and correct record of proceedings held in the United States District Court for the District of South Carolina on _____ pertaining to the following:

<u>Case No</u>	<u>Case Caption</u>	<u>Type of Proceeding</u>	<u>Judicial Officer</u>
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By _____
Signature of Court Reporter

COURT REPORTER'S NOTES

Court Reporter's Full Name _____ Calendar Year _____

[illegible]