

***APPELLATE TRANSCRIPT MANAGEMENT PRACTICES
FOR THE FIFTH CIRCUIT***

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Introduction

When parties file a notice of appeal under Federal Rule of Appellate Procedure (FED. R. APP. P.) 3, this court, the district court, you (the court reporter), and the appellant all assume different responsibilities. All must work together to meet the time lines established in FED. R. APP. P. 10 to get the case ready for appellate review. The appellant must prepare the notice of appeal, pay the required filing fees, order all necessary transcripts, and make satisfactory financial arrangements, see FED. R. APP. P. 3, 4, and 10. The district court clerk must file the notice of appeal, collect fees, serve the notice, notify us of the appeal and transmit the docket entries, see FED. R. APP. P. 4. When the district court files the notice of appeal, our processing times begin to run, and **THIS COURT**, not the district court, is responsible for managing the case to its ultimate appellate disposition. This includes directing your timely preparation of transcripts. You have specific responsibilities and time lines under FED. R. APP. P. 11(b) and our local rules that you must meet. From our perspective, you have the most important part of the initial processing of the case - producing necessary transcripts. Without them, we cannot decide the case. A major delay in the appellate process is the time it takes to prepare the transcripts. Understandably, we are most concerned about this aspect of your job.

We recognize that you must respond to your district court judges' needs. However, to establish the proper priorities, each district court adopted a **Court Reporter Management Plan** that the **Judicial Council of the Fifth Circuit** approved. To the extent these plans govern your appellate transcript preparation responsibilities, they are incorporated and made part of these practices.

District Court Reporter Coordinators

_____ Each district court has a court reporter coordinator or a management official, who is responsible for:

- a) monitoring your preparation and filing of transcripts, supervision and compliance with your district's plan, and Judicial Conference policies,
- b) bringing violations of this plan to our attention, when you cannot resolve them locally, and
- c) ensuring communications are forwarded to and received by the appropriate parties.

Transcript Orders

_____ Generally, we do not calculate your transcript delivery and discount dates until you notify us you have received the order form and have obtained satisfactory financial arrangements. You are responsible for completing the forms timely and forwarding them to us. The Fifth Circuit transcript order form contains your certification that parties have arranged for payment. Unless you notify us to the contrary, we assume you received the order form on approximately the same date we did. **WE WILL CALCULATE YOUR DELIVERY AND DISCOUNT DATES BASED ON THAT DATE.**

District court clerks have a supply of the transcript order forms. We have asked them to give a copy of the form to the appellants when they file the notice of appeal. The appellant must complete and deliver the form to you and must list the portions of the proceedings with specificity, including court dates, he or she wishes transcribed. If a transcript order form is incomplete or inaccurate, you must give the ordering party written notice of the deficiency and provide us a copy of the notice. If

the ordering party fails to pay the transcript fees, you must notify us in writing, as soon possible. Please include copies of any correspondence you sent requesting payment. We will help enforce your legitimate requests for payment, **but you do not have the authority to delay the appellate process by NOT delivering the transcript.**

If you do not file your transcripts timely, the district court clerk must audit your vouchers for compliance with these rules, and make appropriate notation when imposing the Judicial Council's 30/60 day discount provisions. You are to file transcripts within 30 days from the date financial arrangements are made to avoid a discount. If you file the transcript after the 30 day discount date, a 10% discount applies, and if you do not file the transcript within 60 days, the mandatory discount rises to 20%. Sample notification letters are included in Addendum A.

Occasionally, counsel may ask you to suspend production of an appellate transcript. You may do so only if we give you a written order. The party ordering the transcript is responsible for requesting and receiving this court's permission to suspend transcript preparation.

Extensions of Time and Fee Reduction

_____Any request to extend your time to file the transcript does not waive the mandatory fee reduction. To obtain a fee reduction waiver, you must separately request and justify the need for it.

We must receive your requests for extensions and waivers in the clerk's office 7 calendar days before the 30 day discount date expires, or we will automatically deny your request.

_____The Judicial Conference of the United States recommended 30 and 60 days as discount times for the untimely delivery of transcripts. The Judicial Council of the Fifth Circuit fully adopts this recommendation. Each district court plan is to include these times in the implementation of the discount. This court may waive the mandatory fee reduction in specific cases, for good cause shown.

Some circumstances that may result in granting an extension of filing time for the transcript, or for fee reduction waiver are:

a) Illness or Incapacity of the Reporter

_____ If you request an extension or fee reduction waiver due to illness or other incapacity, you must provide a letter from the district court reporter coordinator verifying the nature and expected duration of the illness or other incapacity. You must attach this certification to your request. We will keep the information confidential. The request must include the date by which the transcript will be completed.

b) Planned Vacation

You must submit a vacation schedule approved by the trial judge or the court reporter coordinator, as appropriate. The request must include the date by which the transcript will be completed.

c) Lengthy or Complex Litigation and/or Excessive Pages _____

When a transcript will require additional time, you must provide a certification from the district court judge stating the reasons why you need more time. When we receive multiple orders for several cases, you may request an extension in all cases, but must provide copies of the orders and the estimated length of the transcripts involved. The request must include the date by which each transcript will be completed.

Forms for requesting an extension of time and/or waivers are in Addendum B.

By Judicial Conference policy, we grant filing extensions and fee reduction waivers “**SPARINGLY**,” see Vol. VI, Guide to Judiciary Policies and Procedures, Chap. XX. **Accordingly**,

we generally will not grant extensions of time merely because of a backlog of transcripts. The busyness of a reporter alone is not grounds for an extension of time beyond the 30 day discount period. The district court reporter management plans are designed to take care of problems resulting from judges' schedules, extended trials, short term illnesses, etc. You are responsible for making other arrangements to avoid extensions, particularly when backlogs develop. Pursuant to 28 U.S.C. §753(f), transcript production is compensated by transcript fees. As such, we expect you to hire note readers, scopists, or substitutes, when you cannot complete transcripts within the required times.

Alternative Sources of Assistance When Delinquent

We expect you and your designated coordinator/manager will avail yourselves of schedule modification, internal relief reporters, or hire substitutes, when you are unable to complete transcripts on time. If you cannot file a transcript before the 60th day after parties make financial arrangements, you and your designated coordinator/manager should implement an alternative method of assuring courtroom coverage and immediate transcript completion. You are responsible for transcript production by whatever method selected.

Multiple Reporters

Where there are several reporters responsible for multiple transcript orders, **EITHER THE DISTRICT COURT REPORTER COORDINATOR, DESIGNATED MANAGEMENT OFFICIAL, OR ONE COURT REPORTER MUST TAKE THE "LEAD."** When parties are paying for a transcript under the Criminal Justice Act(CJA), the responsible "lead" must help obtain the district judge's signature on the completed CJA form. If a transcript order form is incomplete or inaccurate, the "lead" must contact the ordering party, document the deficiency, and provide us a copy of all communications.

Transcripts Prepared at Government Expense

Litigants granted leave to proceed on appeal *in forma pauperis* (IFP) under 28 U.S.C. §1915 or FED. R. APP. P. 24 often assume that IFP status entitles them to have a transcript prepared at government expense. This is not so. Court rules excuse litigants proceeding IFP from prepayment of fees and court costs, but do not entitle them to free transcripts unless a district or appellate judge specifically orders a transcript under 28 U.S.C. §753(f), and certifies the appeal is not frivolous. Where a court order directs a transcript prepared at the expense of the United States, you do not need to wait for Administrative Office approval before preparing the transcript. The 30 day period to prepare the transcript begins to run from the date you receive the court's order authorizing a transcript.

In CJA cases, a party automatically is entitled to a transcript at government expense under 28 U.S.C. §753(f). Thus, you should start preparing the transcript when you receive a purchase order.

Supplemental Transcripts

_____ You should expedite work on supplemental transcripts orders because they usually come after you have filed the original transcript, and frequently after we have set a briefing schedule. Until you complete the supplemental transcripts, the appeal is delayed.

Reports

_____ We generate reports from statistical information obtained from purchase orders and court reporter acknowledgments. Before we issue the report, we furnish our staff a copy for verification. On occasion, we will call you or the district court designee to see if you have filed the transcripts before we generate the report. We check because we may show transcripts as overdue when you

have actually filed them. If you wish to have a case removed from the list because you have filed the transcript, you should call us and report the filing before the end of the month. To keep everyone in the district informed of overdue transcripts, we distribute the reports to each district judge, all district clerks and divisional offices, and all court reporters. We ask you to notify us of any discrepancies in the information.

Court Reporter's Manual

_____The Court Reporters' Manual, Volume VI of the Guide to Judiciary Policies and Procedures, is incorporated into these practices. We expect you to know and abide by the rules, regulations and policies contained in it.

Pagination of Transcripts

The court prefers you to paginate a transcript in a single series of consecutive numbers for each proceeding, despite the number of days involved. However, we also recognize that occasionally multiple reporters may transcribe different days or portions of a case. When this occurs, each reporter must prepare his or her transcript in a consecutively numbered volume(s). However, when multiple reporters prepare a transcript, it DOES NOT need to be consecutively paginated.

Sanctions

The Chief Judge of the Fifth Circuit has designated a judge of the court to assist the clerk when difficulties arise with court reporters for their failure to: (1) timely acknowledge purchase orders; (2) monitor their outstanding workload; or (3) timely file transcripts. If we cannot resolve the problem with you, your court reporter coordinator or designated management official will refer the matter to the judge for appropriate action. **THIS MAY INCLUDE PERSONAL CONTACT WITH THE DISTRICT JUDGE, A SHOW CAUSE ORDER TO YOU, OR YOUR**

**INVOLUNTARY REMOVAL FROM COURTROOM DUTIES UNTIL YOU FILE
OVERDUE TRANSCRIPTS.**

Conclusion

The judges of this court and the clerk's office are committed to working with you to eliminate all obstacles to the timely production of transcripts. We encourage district judges, court reporters, and district court clerk staff to make suggestions, ask questions, and identify problems encountered in the transcript process so they can be corrected and procedures adopted to avoid future problems.

ADDENDUM A

(Sample letters)

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK OF COURT

TEL. 504-310-7654
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

DATE

*Name and address of counsel who submitted the transcript order form.

*Re: USCA No.##-#####
(USDC No.#####)

Dear Counsel:

The Judicial Council of the Fifth Circuit requires court reporters to file transcripts within 30 days or suffer a discount penalty. The 30-day discount period expired on ****DATE****, and, to date, the court reporter has not filed the transcript. Therefore, your transcript cost will be reduced by 10%.

If the court reporter does not file the transcript by ****DATE****, your transcript cost will be reduced by 20%, and you may receive a refund if your deposit was larger than your final bill.

The discount policy is mandatory. The reporter does not have the right to receive full payment and you must not offer to waive the discount fees if the transcript is not produced timely.

Sincerely,

Chief Deputy Clerk

XXX/xxx

cc: *Opposing Counsel
*Clerk, District Court
*Court Reporter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK OF COURT

TEL. 504-310-7654
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

DATE

*Name and address of District Court Clerk

*Re: USCA No.##-#####
(USDC No.#####)

Dear _____:

The 30-day transcript discount period expired on ****DATE****, and to date, the court reporter has not filed the transcript. Therefore, the transcript fee must be discounted by 10%. Additionally, in accordance with the Fifth Circuit practice, if the transcript is not filed by ****DATE****, we will implement a 20% discount **without further notice**.

Sincerely,

Chief Deputy Clerk

XXX/xxx

cc: *Counsel of Record
*Court Reporter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK OF COURT

TEL. 504-310-7654
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

DATE

*Name and address of Court Reporter

*Re: USCA No.##-#####
(USDC No.#####)

Dear _____:

On ****DATE****, we advised you that we were implementing the 10% discount on the transcript fee, and if you did not file the transcript by ****DATE****, we would apply the 20% discount. These dates have passed, yet you have not filed the transcript.

Accordingly, we ask you to provide a detailed written explanation, or to file the transcript immediately. If you do not comply with this request promptly, we will refer this matter to our court for appropriate action.

Please do not disregard this notice or speculate that no further action will be taken.

Sincerely,

Chief Deputy Clerk

XXX/xxx

cc: *District Court Judge
*Counsel of Record
*District Court Clerk

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK OF COURT

TEL. 504-310-7654
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

DATE

*Name and address of Court Reporter

*Re: USCA No.##-#####
(USDC No.#####)

Dear _____:

_____ of this office spoke with you today regarding your delinquency in filing the transcript in this case. According to the transcript order form you signed, the estimated completion date was _____. We wrote you on _____, and again on _____, attempting prompt completion of the transcript. As of today's date the transcript remains delinquent, but you have verbally indicated you will file it no later than _____.

We have copied Judge _____, the Circuit's Clerk's Office Proctor, and the District Judge who heard the case to notify them of your delinquency, as well as your confirmed obligation to produce the completed transcript by the above date.

Sincerely,

Chief Deputy Clerk

XXX/xxx

cc: *Circuit's Clerk's Office Proctor
*District Court Judge
*Counsel of Record

ADDENDUM B
(Samples of Extension Requests)

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Court of Appeals Docket Number(s): _____

Short Title: _____

District Court Docket Number(s): _____

REQUEST FOR EXTENSION OF TIME TO FILE TRANSCRIPT

I _____ request an extension of time to file the transcript in the above referenced case(s) until _____. The extension is necessary because

_____.

The status (such as number of outstanding transcripts and page backlog volume) of pending transcripts is/are _____

_____.

Signature: _____ _____
 Official Court Reporter Date

Signature: _____ _____
 United States District Judge Date

Attach a supportive letter from the court reporter coordinator or designated management official.
Granting of an extension does not waive the mandatory reduction.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Court of Appeals Docket Number(s): _____

Short Title: _____

District Court Docket Number(s): _____

REQUEST FOR WAIVER OF MANDATORY FEE REDUCTION

I _____ request a waiver of the mandatory fee reduction based upon:

_____ Illness or other incapacity. The required certification is attached.

_____ Planned vacation. The required certification is attached.

_____ Lengthy or complex litigation or excessive pages ordered. The required certification is attached.

Signature _____
Official Court Reporter

Date

Signature _____
United States District Judge

Date

Attach proof of service on all counsel as appropriate.