

## GUIDELINES FOR PREPARATION OF APPELLATE TRANSCRIPTS IN THE FOURTH CIRCUIT

### I. INTRODUCTION

#### A. PURPOSE

These guidelines set forth in detail the following:

1. Duties of the district court clerk's office, appellant and appellee in ordering the transcript;
2. Responsibilities of the court reporter for preparing and timely filing the transcript;
3. Duties of the court of appeals for acknowledging transcript orders and monitoring the timeliness of the filing of transcripts;
4. Procedures for court reporters to follow in requesting extensions of time and waivers of fee sanctions;
5. Criteria to be used by the court of appeals in acting on requests for extensions and waivers;
6. Common problems that have been encountered by court reporters and the court of appeals in the ordering, preparation and filing of transcripts; and
7. Provisions for supplementation of these guidelines by local procedures adopted by a district court.

#### B. RELATION TO FEDERAL RULES OF APPELLATE PROCEDURE

Although Rule 11(b), Federal Rules of Appellate Procedure, requires transcripts to be filed within 30 days of the purchase order date, the court of appeals will use the time limits set forth in the district court reporter management plans governing the application of fee sanctions as the time periods within which transcripts will be due. All of the plans establish a 60-day period for preparation of transcripts without financial penalty. Exceptions are:

1. Special provisions adopted by the Fourth Circuit Judicial Council for appeals by incarcerated criminal defendants;
2. Special circumstances, such as
  - (a) bail appeals,
  - (b) death penalty cases,
  - (c) expedited sentencing appeals,
  - (d) recalcitrant witness appeals, or
  - (e) other expedited procedures.

The Table on the next page sets forth the time requirements in detail.

TABLE OF TRANSCRIPT DUE DATES AND APPLICABLE SANCTIONS

NATURE OF CASE	LENGTH OF TRANSCRIPT	TRANSCRIPT DUE	10% FEE SANCTION	20% FEE SANCTION
Direct criminal appeals, appellant incarcerated	1000 pages or less	within 30 days of transcript order or judgment and commitment order, whichever is later	if filed after 30th day	if filed after 60th day
	more than 1000 pages	as ordered by clerk after consultation with reporter and parties	if due date missed	if due date missed by more than 30 days
All other cases, in other than exceptional circumstances	any length	within 60 days of transcript order or judgment and commitment order, whichever is later	if filed after 60th day	if filed after 90th day
Exceptional circumstances (e.g., bail appeals, death penalty cases, expedited sentencing appeals, etc.)	any length	as ordered by clerk after consultation with reporter and parties	*	*

\* Twenty percent fee sanction automatically imposed if due date missed. Letter to chief district judge, after consultation with chief circuit judge requiring immediate preparation of the transcript.

### C. EFFECTIVE DATE

These guidelines will take effect on June 1, 1986, and will apply to all Fourth Circuit cases subject to F.R.A.P. 11(b) in which the transcript is ordered after that date.

### D. DEFINITIONS

For purposes of these guidelines, references to appellant-appellee will refer to counsel for appellant-appellee unless appellant-appellee is proceeding pro se, in which case all duties and responsibilities are those of appellant-appellee individually.

## II. ORDERING AND ACKNOWLEDGING TRANSCRIPTS

### A. DUTIES OF DISTRICT COURT CLERK'S OFFICE

1. When a notice of appeal is filed, the district court clerk's office will notify appellant of the availability of appellate forms from the court of appeals, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov).
2. Upon entry of an order authorizing preparation of a transcript at government expense pursuant to the Criminal Justice Act or 28 U.S.C. § 753(f), the district court reporter coordinator or appeals deputy will notify the court of appeals of the date on which the order was entered.
3. When substitute reporters or contract reporters are used, the district court reporter coordinator or district court appeals deputy will furnish them with copies of these guidelines and explain the procedures to be followed in preparing appellate transcripts.
4. When the transcript is filed, the district court clerk's office will transmit notice of the filing to the court of appeals through CM/ECF.

### B. DUTIES OF APPELLANT

1. Within 14 days after filing the notice of appeal, the appellant is required by F.R.A.P. 10(b)(1) to order from the court reporter such transcript of the proceedings as the appellant deems necessary. The notice of docketing issued by the court of appeals shall inform the appellant that the docketing statement and transcript order must be filed in the court of appeals within 14 days of the docketing notice.
2. By service of a copy of the docketing statement, appellant will notify appellee(s) that (a) a transcript is not needed for the appeal, (b) a transcript is already on file in the district court, or (c) less than the complete transcript will be ordered. The statement of issues in the docketing statement will satisfy the requirement of F.R.A.P. 10(b)(3).

3. Before a transcript can be ordered, the appellant must obtain from the court reporter an estimate of the length of the transcript and make appropriate financial arrangements with the reporter by immediate payment in full or by another payment arrangement acceptable to the reporter, such as filing a CJA 24 form with the district court for authorization of transcript in a criminal case pursuant to the Criminal Justice Act. [Local Rule 10(c)(1)]. Payment or other financial arrangements satisfactory to the reporter must accompany the court reporter's copy of the transcript order. [F.R.A.P. 10(b)(4)].

4. In criminal cases, counsel may seek authorization from the district court to order transcript after entry of verdict but prior to sentencing. The district court may authorize the early ordering of transcript if it determines that defense counsel has informed the defendant of the right to appeal and the defendant has instructed counsel to appeal regardless of the nature or length of the sentence imposed. The time requirements for the preparation of transcripts that are ordered before sentencing shall not begin to run until after entry of the judgment and commitment order.

5. To order a transcript, the appellant completes the transcript order form (and submits a CJA AUTH-24 request in the district eVoucher system as needed) and distributes copies to the court reporter, the district court, the court of appeals (attached to docketing statement) and opposing counsel (attached to docketing statement).

A separate transcript order must be prepared for each court reporter from whom a transcript is requested.

6. Failure by the appellant to timely order a transcript, failure to make satisfactory financial arrangements with the court reporter, or failure to specify in adequate detail those proceedings to be transcribed may subject the appeal to dismissal by the clerk of the court of appeals for want of prosecution pursuant to Local Rule 45 or Local Rule 46(g) for criminal cases with appointed counsel.

7. When supplemental transcripts are requested, appellant must complete another transcript order form, make satisfactory financial arrangements with the reporter, and distribute copies to the same persons to whom the original transcript order was sent.

8. If payment is waived by the reporter at the time of ordering the transcript, the appellant must make full payment upon receipt of the reporter's invoice. If payment is not made within a reasonable period of time, the appeal may be subject to dismissal by the clerk of the court of appeals pursuant to Local Rule 45 or Local Rule 46(g) for criminal cases with appointed counsel.

9. Transcripts ordered under the Criminal Justice Act do not include opening and closing statements, voir dire, or jury instructions unless prior special authorization has been received by appellant. In multi-defendant cases involving CJA defendants, only original transcripts should be ordered from the court reporter(s). Requests for copies will be arranged by the district court or appointed counsel at commercially competitive rates. Contact the district court reporter coordinator or district court clerk's office for further instructions.

10. When an appellant has ordered a transcript, he or she is obligated to pay the reporter for it. If the appeal is dismissed voluntarily, the appellant is nonetheless responsible to the reporter for the cost of transcript prepared prior to the reporter's receipt of notification from the appellant of the appeal's dismissal.

11. Appellant is required to review the transcript upon filing in the district court and provide the court reporter with a statement of the personal data identifiers, including the page number, line number, and text to be redacted, in accordance with the Judicial Conference Policy on Privacy and Public Access to Electronic Case Files.

### C. DUTIES OF APPELLEE

1. If the appellee deems a transcript of other parts of the proceedings to be necessary, he or she is required by F.R.A.P. 10(b)(3), within 14 days after service of the docketing statement by the appellant, to file and serve on the appellant a designation of additional parts to be included. Unless within 14 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move the district court for an order requiring the appellant to do so.
2. If the appellee wishes to obtain a copy of the transcript which has been ordered by the appellant, he or she may do so by ordering the copy directly from the court reporter. Satisfactory financial arrangements must be completed with the reporter before obtaining the copy. It is not appellant's responsibility to order and pay for a copy of the transcript for appellee.
3. Appellee is required to review the transcript upon filing in the district court and provide the court reporter with a statement of the personal data identifiers, including the page number, line number, and text to be redacted, in accordance with the Judicial Conference Policy on Privacy and Public Access to Electronic Case Files.

### D. DUTIES OF THE COURT REPORTER

1. Upon receipt of the transcript order form and completion of satisfactory financial arrangements, the reporter must prepare the required transcript within the time set forth in the applicable district court reporter management plan.
2. The appellant attaches copies of the transcript order to the docketing statement filed with the court of appeals. Upon receiving the transcript order, the court of appeals will complete and send to the reporter, and to the court reporter coordinator and the district court, a transcript order acknowledgment form to verify the transcript order. The acknowledgment will include a copy of the transcript order and will show the date by which the transcript must be filed to avoid sanctions. The due date is computed from issuance of the transcript order acknowledgment in accordance with the time specified in the district court reporter management plans. Seven days are added to the applicable time period to permit confirmation of financial arrangements, including approval by the district court of the CJA AUTH-24 request submitted in the district eVoucher system. If the transcript order form is complete and accurate and financial arrangements are satisfactory, no response is required from the court reporter to the transcript order form or the transcript acknowledgment form.
3. If there is a problem with financial arrangements, with identification of the transcript ordered, with proper designation of the court reporters involved in the case, or with any other aspect of the transcript order, the court reporter must complete and file a transcript order deficiency notice with the court of appeals within 14 days of issuance of the transcript order acknowledgment (time may be extended for vacation, serious illness or other unusual circumstances). The deficiency notice is served on the parties and the district court reporter coordinator through CM/ECF. The court reporter need not inform the court of appeals if he or she in fact received the transcript order early. The court reporter may use any additional time so created for preparation of the transcript without fear of incurring a sanction for late filing. The court of appeals' acknowledgment constitutes an implied fee sanction waiver to the due date set forth on the form.

4. The deadline for completion of the transcript will be rescinded or extended upon filing of the transcript order deficiency notice, indicating a problem with the terms of the order, for whatever reasonable period of time is required for the reporter or district court reporter coordinator to resolve the problem with the appellant. The court of appeals transcript coordinator will be in touch with the reporter or district court reporter coordinator upon receipt of the transcript order deficiency notice to offer assistance, such as notification to the appellant that the appeal may be dismissed if the problem is not remedied promptly (Local Rule 46(g) for criminal cases with appointed counsel).
5. The court of appeals will send a revised transcript order acknowledgment or transcript extension order setting forth a new transcript filing date reflecting the delay caused by the problem with the original transcript order.
6. Unless the court of appeals is notified of a problem with the transcript order, or of some other reason why the information on the transcript order acknowledgment form prepared by the court of appeals is incorrect, the reporter will be held to the schedule set forth therein absent the granting of an extension of time. It is the court reporter's responsibility to notify the court of appeals of any problem.
7. If the transcript is estimated to be more than 1000 pages and is ordered in a criminal appeal in which the appellant is incarcerated, the reporter will receive an acknowledgment form with a due date which will be established by the court of appeals.
8. Transcript provided to counsel for use on appeal shall comply with appellate requirements for full-sized, rather than condensed, transcript and for identification of the testifying witness and type of testimony (e.g., direct, cross, deposition) at the top of each page of in-court and deposition testimony.
9. When the transcript has been completed and the court copy filed in the district court, notice of the filing must be sent to the court of appeals through CM/ECF. If the transcript was filed late, the court reporter must file a transcript certification form in the court of appeals showing that the proper fee reduction sanction was taken. A copy of the certification is served on the parties and the district court reporter coordinator through CM/ECF.
10. The court reporter must make any requested redactions to the transcript and file a redacted version of the transcript in the district court in accordance with the Judicial Conference Policy on Privacy and Public Access to Electronic Case Files. Notice of filing of the redacted version of the transcript must be sent to the court of appeals through CM/ECF.
11. Unless a written motion is filed by the appellant with the court of appeals, and an extension granted by the clerk of the court of appeals, requests by an appellant that a reporter suspend or delay preparation of a transcript that has been ordered will have no effect on the date the transcript is due, or on the appellant's obligation to pay for it when it is prepared. The only exception is when a motion for voluntary dismissal of the appeal has been granted; in that instance the appellant is responsible for paying only for that portion of the transcript completed prior to the reporter's receipt of notification from the appellant of the appeal's dismissal.

#### E. DUTIES OF COURT OF APPEALS

1. F.R.A.P. 10(b)(1) requires the appellant to order the transcript within 14 days after filing the notice of appeal. If the completed form is not received by the court of appeals within 14 days of the court's notice of docketing of the appeal, the court of appeals will notify the appellant that no order has been received and that failure to comply with F.R.A.P. 10(b)(1) may subject the appeal

to dismissal by the clerk for want of prosecution pursuant to Local Rule 45 or Local Rule 46(g) for criminal cases with appointed counsel.

2. When the court of appeals receives the transcript order form, it will be reviewed for any obvious defects (e.g., multiple reporters on one form, or incompleteness as far as nature of proceedings requested or certification of satisfaction of financial requirements). If it appears to be in order, the court of appeals will prepare for the reporter a transcript order acknowledgment which will include the transcript order and will show the due date, computed in accordance with the time limits set forth in the applicable district court reporter management plan. The court of appeals clerk's office will work together with reporters and parties to remedy any deficiencies in the transcript order that are brought to its attention by the reporter. (See Sections D.3 - 8 for full description of procedures.)

### III. REPORTS

Reports on outstanding transcripts will be generated monthly and will be distributed to the court reporters involved, as well as to the district court clerks or their court reporter coordinators. If the report shows a transcript outstanding when it has actually been filed, the reporter or district court reporter coordinator should notify the court of appeals and report the date of filing. If everything in the report is correct and none of the transcripts are overdue, no response is required from the reporter.

### IV. TIME LIMITS FOR FILING TRANSCRIPTS--FEE REDUCTION SANCTIONS

#### A. Requests for Extensions of Time

As set forth in the district court reporter management plans, all requests for extensions of time for the filing of appellate transcripts (F.R.A.P. 11(b) transcripts) are submitted to the clerk of the court of appeals. They should be in writing, on the designated form. They are served on counsel through CM/ECF. A request for an extension of time will automatically constitute a corresponding request for a waiver of any applicable fee reduction sanction. Requests for extensions must be filed 10 days in advance of the deadline from which relief is sought, unless unforeseen circumstances make later requests necessary, in which case the reasons will be set out by the reporter in the request.

When requesting an extension, the information furnished should be very specific. Failure to submit complete information will delay action on the request and lead to additional paperwork for the reporter. After reviewing the request for extension, the court of appeals will issue an order granting, granting in part, or denying the request, which will set forth the resulting time frames for purposes of fee sanction imposition. Counsel, the district court reporter coordinator, and the district court clerk will also receive copies of this order.

#### B. GROUND FOR EXTENSIONS OF TIME

1. Excessive burden of transcript, considering length and complexity of the proceedings ordered within a short period of time. District court reporter coordinators are expected to make court reporter assignments within a district so as to anticipate and to avoid to the extent possible the imposition of excessive transcript loads on individual reporters. When these efforts are unsuccessful, reporters may apply for relief from applicable fee sanctions and have the court of

appeals assign the relative priority to be given to competing appellate transcript orders. The fact that a reporter has accumulated orders for more than 3000 pages within three months will be presumed to establish the existence of an "excessive burden." The existence of outstanding overdue transcripts may or may not be grounds for extending the time for subsequently ordered transcripts. In computing the amount of transcript for purposes of demonstrating excessive burden, the reporter can include all transcripts ordered within ninety days of the request for extension. The reporter may include transcript obligations for the district court as well as those ordered for appellate purposes. However, the orders must be "firm orders". A "firm order" for an appellate transcript is one for which the court of appeals has received a transcript order from the appellant. For a district court transcript it is an order communicated by a judge or a party; it cannot be a reporter's speculation that an order will be forthcoming.

2. Vacation. A reporter can plan to take reasonable vacations, as authorized by the district court, and obtain extensions of deadlines that would fall within those periods or become impossible to meet in light of them.

3. Unavoidable, excessive time required for attendance in court. It is the responsibility of the district court reporter coordinator to adjust reporter assignments to ensure that the needs of the trial and appellate courts can be met. Occasions may arise, nonetheless, when a court reporter's courtroom obligations, including official travel required to reach the courtroom, prevent his or her meeting transcript obligations. Reasonable extensions of time will be given in such instances.

4. Incapacitation or serious illness. A reporter may certify to the clerk of the court of appeals that he or she has become temporarily incapacitated or seriously ill and obtain reasonable relief from pending deadlines. This ground does not include common colds or other ailments that would not prevent attendance in court.

5. Unforeseen emergencies. Reporters may seek extensions for any other good cause which makes the completion of a transcript within the allotted time impossible.

## V. SANCTIONS

### A. FEE REDUCTION SANCTIONS

An official court reporter will be required to deduct from his or her charges for a completed transcript not timely filed with the district court the amount of any fee reduction sanction applicable by the terms of a district court reporter management plan.

### B. REMOVAL FROM COURTROOM AND REQUEST FOR SUBSTITUTE REPORTER

The chief judge of the court of appeals, following consultation with the chief judge of the district court, may order a reporter to remain out of the courtroom, and pay the costs of a satisfactory substitute reporter, if a transcript is ninety days overdue.

## VI. MONITORING OF TRANSCRIPT FILING

The clerk of the court of appeals will monitor the filing of all appellate transcripts and the fees charged by reporters when a transcript is filed untimely. The fee sanction mechanism exists by



virtue of the district court reporter management plans which require reporters to take fee reductions if a transcript is not filed on time. Therefore, the court of appeals will not issue a sanction order. It is the reporter's duty to abide by the provisions of his or her district court reporter management plan and to take a fee reduction if one is applicable.

The court of appeals will take no action if the transcript is filed on time or, if not filed on time, the appropriate fee reduction has been taken as shown by the transcript certification form that the reporter submitted to the court of appeals when the transcript was filed. If a fee reduction was applicable and was not taken by the reporter, the court of appeals will send notice to the reporter setting forth the fee reduction that should have been taken. Copies of this notice will be sent to counsel, the district court reporter coordinator (if any) and the judge to whom the reporter reports or the chief district judge. If the certification is not submitted within a reasonable period after the filing of the transcript, the reporter will be requested to submit a copy of his or her invoice.

The court of appeals will also send a letter to the chief district judge when a transcript is sixty days overdue. The letter will identify the particular transcript involved and the date of the order. Copies of the letter will be sent to the judge (if any) to whom the reporter reports, the district court reporter coordinator, the district court clerk, and the reporter. The letter will alert the chief judge of the district court to the possibility that the reporter may be required to remain out of the courtroom, paying for a substitute reporter, until the transcript is completed, if the transcript becomes ninety days overdue.

## VII. COMMON PROBLEMS

### A. TRANSCRIPTS PREPARED AT GOVERNMENT EXPENSE

1. Criminal Justice Act [18 U.S.C. § 3006A]. When the reporter receives the approved notice through the district court eVoucher program, preparation of the transcript should begin immediately. To allow time for the district court to act, the court of appeals adds 7 days to the transcript deadline. If the district court does not provide approval of counsel's submitted CJA Auth-24 in eVoucher within 7 days, the court reporter may request rescission or extension of the deadline using the transcript order deficiency notice.

Pursuant to the Guidelines for the Administration of the Criminal Justice Act, in multi-defendant cases involving CJA defendants, no more than one original transcript should be purchased from the court reporter on behalf of CJA defendants. One of the appointed counsel or the district court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript(s) for each of the CJA defendants for whom a transcript has been approved.

2. In Forma Pauperis Litigants [28 U.S.C. § 753(f)]. When an order is entered directing preparation of a transcript at government expense pursuant to 28 U.S.C. § 753(f), the transcript order date is the date the reporter receives the court's order authorizing preparation of the transcript.

### B. SUPPLEMENTAL TRANSCRIPTS

Supplemental transcripts are usually ordered after the original transcript has been filed and a briefing schedule established by the court of appeals. Therefore, these transcripts should be expedited. Counsel is under an obligation to notify the court of appeals that a supplemental transcript has been ordered. The court of appeals will then send the transcript order acknowledgment form to the reporter with the request that the reporter prepare these transcripts as quickly as possible.

### C. EXPEDITED PROCEEDINGS

When a transcript is requested for an expedited proceeding, the due date for filing the transcript is established by the court of appeals. If an expedited transcript is requested and prepared within 7 days after receipt or notification of the order, the court reporter may charge the higher rates for expedited transcripts.

Transcripts for appeals arising from a criminal sentence imposed under 18 U.S.C. § 3742 will only be expedited if a motion for expedited review of criminal sentence is granted by the court of appeals. Only those portions of the transcript pertinent to the appeal must be prepared on an expedited basis. The court reporter will be notified by the court of appeals when a motion to expedite has been granted.

In bail appeals, only the portion of the transcript dealing with the bail issue should be ordered on a rush basis. Even though there may be other portions of the transcript that the appellant has ordered, the portion dealing with the bail issue should be prepared first.

In expedited proceedings, a twenty percent fee sanction from the regular transcript rate will be imposed if the due date is missed. At the same time, a letter will be sent to the chief judge of the district court, advising of the delinquency and warning that the chief judge of the court of appeals may order the reporter to remain out of the courtroom, and pay the costs of a satisfactory substitute reporter, if the transcript is not filed immediately. IF THE COURT REPORTER ANTICIPATES A PROBLEM WITH PROMPT PREPARATION OF AN EXPEDITED TRANSCRIPT, THE DISTRICT COURT REPORTER COORDINATOR AND THE COURT OF APPEALS SHOULD BE NOTIFIED IMMEDIATELY.

### D. PAYMENT FOR TRANSCRIPT

The court of appeals approves of reporters' demanding a substantial deposit or full payment in advance for preparation of a transcript. In those instances where a reporter does not demand full payment in advance, and upon transcript completion has not been paid fully by the appellant, the following procedures should be followed:

1. Timely file the court copy of the transcript with the district court clerk's office.
2. Contact the court of appeals immediately and a letter may be sent to the appellant stating that if full payment is not made to the court reporter within fifteen days of the date of the letter, the appeal may be subject to dismissal by the clerk of the court of appeals for want of prosecution pursuant to Local Rule 45 or Local Rule 46(g) for criminal cases with appointed counsel.

Fee reduction sanctions will be applicable if the court copy of the transcript is not timely filed. Problems with payment for the transcript after its completion will have no effect on the established due date.

#### E. SUBSTITUTE REPORTERS

When an official court reporter hires a substitute, the official reporter still retains responsibility for the timely filing of the transcript. All provisions applicable to an official court reporter will be applicable to the substitute. If there is a problem with the filing of a transcript, the official court reporter will be notified as well as the substitute reporter. All correspondence and orders by the court of appeals will be sent to both reporters. The substitute can request extensions of time and waivers of applicable fee sanctions from the court of appeals. However, all guidelines applicable to the official reporter will be applicable to the substitute reporter and the proper procedures for requesting extensions must be followed.

#### F. CONTRACT REPORTERS

Contractual reporting services in district courts are provided as supplements to the services of official staff. Contractual services are used after the district court reporter coordinator has determined that no official court reporter is available. Contract reporters must follow the procedures set out below.

1. All contractors are subject to the terms and conditions of their contacts with the district courts. Standard contract terms for delinquent transcript provide that the contract reporter may charge only 90% of the prescribed fee for transcript not delivered within 30 days of the date ordered (with payment arrangements made) and may charge only 80% of the prescribed fee for transcript not delivered within 60 days of the date ordered (with payment arrangements made).
2. Extensions of time for filing transcripts for F.R.A.P. 11(b) cases may be requested in writing following the procedures set forth in these guidelines. However, the court of appeals cannot waive the fee sanctions for contract reporters. A waiver of applicable fee reduction sanctions may be requested, in writing, from the contracting officer. A copy of the letter requesting a waiver of fee sanctions should be sent to the court of appeals.

#### G. FILING OF TRANSCRIPTS WITH THE DISTRICT COURT

When the proceedings that are transcribed have been taken in another division of the district court, the reporter may file the court copy of the transcript in the district in which his or her office is located. That division will file stamp the copy and forward it to the appropriate division for inclusion in the record to be transmitted to the court of appeals.

### VIII. ADDITIONAL LOCAL PROCEDURES

Following prior consultation with the clerk of the court of appeals, a district court may institute supplemental local procedures designed to adapt these guidelines to the structure of court reporting services in place in that district.

TRANSCRIPT ORDER FORM - [Transcript Order Form](#)