

GENERAL ORDER 13-16

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

GENERAL ORDER REGARDING USE OF CONTRACT COURT REPORTERS

As a cost containment measure, it is ORDERED that this court will hire contract court reporters in cases presided over by magistrate judges only for evidentiary hearings, *Markman* hearings, bench trials and jury trials, unless otherwise ordered by the court. See Volume 6, *Guide to Judiciary Policies and Procedures* (the “Court Reporter Manual”); §§ 410.30.20 and 410.30.30 of the *Digital Recording and Reporting Guide for Magistrate Judges for the Eastern District of Texas* (attached). If available and cost effective, a court reporter employed by the court will be used to create the record for the proceedings listed above. In cases handled by magistrate judges in the Eastern District of Texas, the digital audio recording of court proceedings is deemed to be the official record, unless the record is taken by an official court reporter or the court permits an alternate arrangement.

If the parties or counsel of record request the court’s digital audio recording, it will be docketed in the CM/ECF database and made available for download.

Signed this 17 day of September, 2013.

FOR THE COURT:

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

LEONARD DAVIS
Chief Judge

United States District Court

Eastern District of Texas

NOTICE REGARDING RECORDED PROCEEDINGS

Notice to attorneys

Beginning August 8, 2013, in the United States District Court for the Eastern District of Texas, the official record of the proceeding may be taken by electronic sound (digital audio) recording.

On the record

When speaking on the record, talk directly into the microphone. At the beginning of the proceeding, identify yourself and spell your name for the record. When you call a witness, ask them to identify themselves and spell their name. Verify verbal responses are elicited from all witnesses or some audible indication is made through the microphone. If any of your witnesses present testimony containing unusual names or technical vocabulary, request the spelling of such names or terms.

Off the record

Whispered comments may be recorded. Mute the microphone(s) and back away from the counsel table when speaking to one another off the record.

Limiting personal information

If personal information is stated on the record, it will be available in the audio files this court makes available. Since counsel and the parties are solely responsible for guaranteeing that pleadings and testimony comply with the court's rules requiring redaction of personal data identifiers, the better practice is to avoid introducing personal data identifiers and other sensitive information into the record, unless absolutely necessary to prove an element of the case. Please be advised that courtroom deputies cannot redact audio files and take this into account when questioning witnesses or making other statements in court. If private information is mentioned during a hearing or trial, you may move the court to seal the proceeding. When possible, alert the court in advance of the need to seal the proceeding.

Privacy Policy

The judiciary's privacy policy¹ restricts the publication of certain personal data in documents filed with the court. The policy requires limiting the disclosure of Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. For criminal cases, home addresses are limited to city and state. However, if such information is elicited during testimony or other court proceedings, it will become available to the public.

Obtaining a Recorded Proceeding or Transcript

To minimize the cost of litigation when proceedings are recorded as the official record by electronic sound recording equipment, the digital audio file will be docketed to the case upon request and will be available via PACER. Alternatively, you may purchase a copy of the digital audio recording for your own use from the clerk, at the prevailing rate prescribed by the miscellaneous fee schedule in effect, in lieu of a transcript by filing a completed CD request form (AO 436). Written citations to the record must reference a filed transcript (docket entry and page number) and shall not reference an audio record. You may obtain a transcript of the proceeding, at the transcript rates established by the Judicial Conference, by filing a completed transcript request form (AO 435).

¹See Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1.

Digital Recording and Reporting Guide for Magistrate Judges

United States District Court for the Eastern District of Texas

August 8, 2013

Official Policy

This document is intended to summarize the policy set forth in *Volume 6: Court Reporting Guide* of the Guide to Judiciary Policy and to establish local policy. The Guide to Judiciary Policy is a repository of the federal judiciary's administrative policies, as determined by the Judicial Conference of the United States or the Director of the Administrative Office (AO), or as mandated by statute or other legal requirement. All citations are from the Guide to Judiciary Policy, Volume 6: Court Reporting.

Background

§ 280.40 Magistrate Judges

1. (a) Both the Congress and the Judicial Conference have expressed concern with the growing cost of the use of court reporters and have encouraged the use of electronic sound recording equipment for recording magistrate judge proceedings. They have also encouraged the use of electronic sound recording tapes, as opposed to written transcripts, by all judges in reviewing the record of proceedings. The need for a court reporter to record proceedings conducted before magistrate judges will vary according to the type of proceedings in issue and individual circumstances. See: Guide, Vol 6, § 410.30.30
2. (b) As a general rule, electronic sound recording equipment should be used to record proceedings conducted before a magistrate judge. Where, however, the magistrate judge determines a court reporter is required by specific rule or statute, or by the particular circumstances of an individual case, the court reporting supervisor should assign one of the official court reporters. See: Guide, Vol 6, § 410.
3. (c) If an official court reporter is not available, the court reporting supervisor may use a contract reporter whose attendance is paid by the court; there can be no charge to the parties for the contract reporter's attendance.

Guidelines

§ 410.30 Guidelines for Recording Court Proceedings

§ 410.30.10 Introduction

Generally, all matters handled by magistrate judges in open court should be recorded. Producing a record encourages dignity in the conduct of the proceedings and provides the basis for an appeal or subsequent review.

§ 410.30.20 Who Determines How Record Will Be Taken

A magistrate judge determines whether the record will be taken by electronic sound recording, by a court reporter, or by other means subject to the court's court reporting management plan. This applies to both civil and criminal proceedings conducted by a magistrate judge.

§ 410.30.30 Determination of Recording Method

While formal guidelines have not been presented to the Judicial Conference for adoption, the following set of guidelines are suggested for making a determination on the method of recording:

- (a) Use an official court reporter, an electronic sound recording system with a dedicated operator, or a contract court reporter for:
 - (1) detention hearings,
 - (2) motion hearings that involve witnesses or many exhibits;
 - (3) all trials and evidentiary hearings, including petty offense and misdemeanor trials; and
 - (4) special master references involving several witnesses and exhibits.
- (b) Use electronic sound recording equipment operated by the courtroom clerk (or clerical assistant) for:
 - (1) misdemeanor, and petty offense cases (except trials);
 - (2) initial court proceedings in felony cases;
 - (3) motion hearings in civil and criminal cases that do not involve witnesses or many exhibits; and
 - (4) civil and criminal conferences held in open court, including initial pretrial, discovery, omnibus, status, and final pretrial conferences.
- (c) The proper method of recording proceedings for which the method is not specified is left to the discretion of the magistrate judge within the guidelines of the court's court reporting management plan.

§ 410.40 Judicial Conference Policy

"[T]hat under-utilized reporters should be made available for the recording of proceedings before magistrate judges, senior judges, visiting judges, and land commissioners to minimize or obviate the need for reportorial services on a contractual basis." JCUS-MAR 80, p. 20.

§ 450.40 Attendance Fees for Contract Court Reporters Not to Be Levied Against Parties

Contractual attendance fees and the cost of court-ordered transcripts cannot be levied against parties.

§ 460 Private Court Reporting Services Hired by Parties

§ 460.10 Court Reporters Act

The Court Reporters Act (28 U.S.C. § 753) was enacted to end the practice of parties hiring private court reporting services. It is the responsibility of the courts to take the official record of court proceedings, and that responsibility should not be delegated to a party, an attorney, or a court reporting service hired by a party or attorney.

§ 460.20 Exceptions

In unique circumstances, where expedited delivery is necessary but not available from the court, it may be appropriate for a judge to allow the attorneys or parties to bring their own private court reporting service for the purpose of creating an unofficial expedited record.

§ 460.20.10 Court's Responsibility to Maintain Official Record

- (a) If the judge allows the attorney or party to bring their own private court reporting service to take a record of the proceedings, it is not advised that the private reporting service be designated as the official court reporter or record keeper.
- (b) The official record must still be created and maintained by the court. If there is a question as to the accuracy of any transcript produced by a court reporting service hired by a party or attorney, the official record produced by the court should be available.
- (c) If the court does designate the private court reporting service hired by a party or attorney as the official record keeper, it becomes the responsibility of the court to compensate the service provider, and the court and service provider must follow all statutory and Judicial Conference policies and procedures, including 28 U.S.C. § 753(g).

§ 460.20.20 Transcripts Produced by Private Court Reporting Service

In some circumstances, after a transcript has been prepared by a court reporter hired by one of the parties or an attorney, the parties in a case may stipulate that the transcript so produced is representative of the proceeding in the case. In instances like this, the presiding judicial officer may determine whether the stipulation is acceptable. This must be done after the conclusion of the proceedings. As discussed under -460.20.10(c), if the stipulation is accepted prior to or during the court

proceedings, it becomes the court's responsibility to record the proceedings and compensate that service provider.

Local Policy

Obtaining a Recorded Proceeding or Transcript

Attorneys may purchase a copy of the digital audio recording for their own use from the clerk, at the prevailing rate prescribed by the miscellaneous fee schedule in effect, in lieu of a transcript by filing a completed CD request form (AO 436). Copies of the digital audio recording may be available via PACER if the proceeding is not sealed. PACER is the preferred method of providing digital audio to the attorneys and the public. Written citations to the record must reference a filed transcript (docket entry and page number) and shall not reference an audio record. Attorneys may obtain a transcript of the proceeding, at the transcript rates established by the Judicial Conference, by filing a completed transcript request form (AO 435).

Privacy Issues

Limiting personal information

If personal information is stated on the record, it will be in the audio files this court makes available. Since counsel and the parties are solely responsible for guaranteeing that pleadings and testimony comply with the court's rules requiring redaction of personal data identifiers, the better practice is to avoid introducing personal data identifiers and other sensitive information into the record, unless absolutely necessary to prove an element of the case. Courtroom deputies cannot redact audio files. If private information is mentioned during a hearing or trial, counsel must move the court to seal the proceeding.

Sample Attorney Notice

The following notice regarding recorded proceedings will be laminated and placed at each counsel table in the courtroom.

United States District Court Eastern District of Texas

NOTICE REGARDING RECORDED PROCEEDINGS

Notice to attorneys

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entry and page number) and shall not reference an audio record. You may obtain a transcript of the proceeding, at the transcript rates established by the Judicial Conference, by filing a completed transcript request form (AO 435).

¹See Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
AUDIO RECORDING ORDER

Read Instructions.

1. NAME		2. PHONE NUMBER	3. EMAIL ADDRESS	
4. MAILING ADDRESS		5. CITY	6. STATE	7. ZIP CODE
8. CASE NUMBER	9. CASE NAME	DATES OF PROCEEDINGS		
		10. FROM	11. TO	
12. PRESIDING JUDGE		LOCATION OF PROCEEDINGS		
		13. CITY	14. STATE	

15. ORDER FOR

<input type="checkbox"/> APPEAL	<input type="checkbox"/> CRIMINAL	<input type="checkbox"/> CRIMINAL JUSTICE ACT	<input type="checkbox"/> BANKRUPTCY
<input type="checkbox"/> NON-APPEAL	<input type="checkbox"/> CIVIL	<input type="checkbox"/> IN FORMA PAUPERIS	<input type="checkbox"/> OTHER (Specify)

16. AUDIO RECORDING REQUESTED (Specify portion(s) and date(s) of proceeding(s) for which duplicate recordings are requested.)

PORTION(S)	DATE(S)	PORTION(S)	DATE(S)
<input type="checkbox"/> VOIR DIRE		<input type="checkbox"/> TESTIMONY (Specify Witness)	
<input type="checkbox"/> OPENING STATEMENT (Plaintiff)			
<input type="checkbox"/> OPENING STATEMENT (Defendant)			
<input type="checkbox"/> CLOSING ARGUMENT (Plaintiff)		<input type="checkbox"/> PRE-TRIAL PROCEEDING (Specify)	
<input type="checkbox"/> CLOSING ARGUMENT (Defendant)			
<input type="checkbox"/> OPINION OF COURT			
<input type="checkbox"/> JURY INSTRUCTIONS		<input type="checkbox"/> OTHER (Specify)	
<input type="checkbox"/> SENTENCING			
<input type="checkbox"/> BAIL HEARING			

17. ORDER

	NO. OF COPIES REQUESTED	COSTS
<input type="checkbox"/> DUPLICATE TAPE(S) FOR PLAYBACK ON A STANDARD CASSETTE RECORDER		
<input type="checkbox"/> RECORDABLE COMPACT DISC - CD		
<input type="checkbox"/> ELECTRONIC FILE (via email, digital download, or other Judicial Conference Approved Media)		
ESTIMATE TOTAL		0.00

CERTIFICATION (18. & 19.) By signing below, I certify that I will pay all charges (deposit plus additional) upon completion of the order.

18. SIGNATURE	19. DATE
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PROCESSED BY				PHONE NUMBER
ORDER RECEIVED	DATE	BY	DEPOSIT PAID	
DEPOSIT PAID			TOTAL CHARGES	0.00
TAPE / CD DUPLICATED (if applicable)			LESS DEPOSIT	0.00
ORDERING PARTY NOTIFIED TO PICK UP TAPE/CD (if applicable)			TOTAL REFUNDED	
PARTY RECEIVED AUDIO RECORDING			TOTAL DUE	0.00

INSTRUCTIONS
GENERAL

Use. Use this form to order duplicate audio recordings of proceedings. Complete a separate order form for each case number for which audio recordings are ordered.

Completion. Complete Items 1-19. Do *not* complete shaded areas which are reserved for the court's use.

Order Copy. Keep a copy for your records.

Mailing or Delivering to the Court. Mail or deliver two copies to the Office of the Clerk of Court.

Deposit Fee. For orders of 20 or more audio recordings, the court will notify you of the amount of the required deposit fee which may be mailed or delivered to the court. Upon receipt of the deposit, the court will process the order.

Delivery Time. Delivery time is computed from the date of receipt of the deposit fee (if requested, otherwise computed from the court's receipt date).

Completion of Order. The court will notify you when the audio recordings are completed.

Balance Due. If the deposit fee was insufficient to cover all charges, the court will notify you of the balance due which must be paid prior to receiving the completed order.

SPECIFIC

Items 1-19. These items should always be completed.

Item 8. Only one case number may be listed per order.

Item 15. Place an "X" in each box that applies.

Item 16. Check specific portion(s) and list specific date(s) of the proceedings for which a copy is requested.

Item 17. Place an "X" in each box that applies. Indicate the number of additional copies ordered.

Item 18. Sign in this space to certify that you will pay all charges upon completion of the order. (This includes the deposit plus any additional charges.)

Item 19. Enter the date of signing.

Shaded Area. Reserved for the court's use.

TRANSCRIPT ORDER

Please Read Instructions:

1. NAME		2. PHONE NUMBER		3. DATE	
4. MAILING ADDRESS		5. CITY		6. STATE	7. ZIP CODE
8. CASE NUMBER	9. JUDGE	DATES OF PROCEEDINGS			
12. CASE NAME		10. FROM	11. TO		
		LOCATION OF PROCEEDINGS			
		13. CITY	14. STATE		
15. ORDER FOR					
<input type="checkbox"/> APPEAL	<input type="checkbox"/> CRIMINAL	<input type="checkbox"/> CRIMINAL JUSTICE ACT	<input type="checkbox"/> BANKRUPTCY		
<input type="checkbox"/> NON-APPEAL	<input type="checkbox"/> CIVIL	<input type="checkbox"/> IN FORMA PAUPERIS	<input type="checkbox"/> OTHER		

16. TRANSCRIPT REQUESTED (Specify portion(s) and date(s) of proceeding(s) for which transcript is requested)

PORTIONS	DATE(S)	PORTION(S)	DATE(S)
<input type="checkbox"/> VOIR DIRE		<input type="checkbox"/> TESTIMONY (Specify Witness)	
<input type="checkbox"/> OPENING STATEMENT (Plaintiff)			
<input type="checkbox"/> OPENING STATEMENT (Defendant)			
<input type="checkbox"/> CLOSING ARGUMENT (Plaintiff)		<input type="checkbox"/> PRE-TRIAL PROCEEDING (Specy)	
<input type="checkbox"/> CLOSING ARGUMENT (Defendant)			
<input type="checkbox"/> OPINION OF COURT			
<input type="checkbox"/> JURY INSTRUCTIONS		<input type="checkbox"/> OTHER (Specify)	
<input type="checkbox"/> SENTENCING			
<input type="checkbox"/> BAIL HEARING			

17. ORDER

CATEGORY	ORIGINAL (Includes Certified Copy to Clerk for Records of the Court)	FIRST COPY	ADDITIONAL COPIES	NO. OF PAGES ESTIMATE	COSTS
ORDINARY	<input type="checkbox"/>	<input type="checkbox"/>	NO. OF COPIES		
14-Day	<input type="checkbox"/>	<input type="checkbox"/>	NO. OF COPIES		
EXPEDITED	<input type="checkbox"/>	<input type="checkbox"/>	NO. OF COPIES		
DAILY	<input type="checkbox"/>	<input type="checkbox"/>	NO. OF COPIES		
HOURLY	<input type="checkbox"/>	<input type="checkbox"/>	NO. OF COPIES		
REALTIME	<input type="checkbox"/>	<input type="checkbox"/>			

CERTIFICATION (18. & 19.)
By signing below, I certify that I will pay all charges
(deposit plus additional).

ESTIMATE TOTAL

0.00

18. SIGNATURE		PROCESSED BY	
19. DATE		PHONE NUMBER	
TRANSCRIPT TO BE PREPARED BY		COURT ADDRESS	
ORDER RECEIVED	DATE	BY	
DEPOSIT PAID		DEPOSIT PAID	
TRANSCRIPT ORDERED		TOTAL CHARGES	0.00
TRANSCRIPT RECEIVED		LESS DEPOSIT	0.00
ORDERING PARTY NOTIFIED TO PICK UP TRANSCRIPT		TOTAL REFUNDED	
PARTY RECEIVED TRANSCRIPT		TOTAL DUE	0.00

INSTRUCTIONS

GENERAL

Use. Use this form to order the transcription of proceedings. Complete a separate order form for each case number for which transcripts are ordered.

Completion. Complete Items 1-19. Do *not* complete shaded areas which are reserved for the court's use.

Order Copy. Keep a copy for your records.

Submitting to the Court. Submit the form in the format required by the court.

Deposit Fee. The court will notify you of the amount of the required deposit fee which may be mailed or delivered to the court. Upon receipt of the deposit, the court will process the order.

Delivery Time. Delivery time is computed from the date of receipt of the deposit fee or for transcripts ordered by the federal government from the date of receipt of the signed order form.

Completion of Order. The court will notify you when the transcript is completed.

Balance Due. If the deposit fee was insufficient to cover all charges, the court will notify you of the balance due which must be paid prior to receiving the completed order.

SPECIFIC

Items 1-19. These items should always be completed.

Item 8. Only one case number may be listed per order.

Item 15. Place an "X" in each box that applies.

Item 16. Place an "X" in the box for each portion requested. List specific date(s) of the proceedings for which transcript is requested. Be sure that the description is clearly written to facilitate processing. Orders may be placed for as few pages of transcript as are needed.

Item 17. *Categories.* There are six (6) categories of transcripts which may be ordered. These are:

Ordinary. A transcript to be delivered within thirty (30) calendar days after receipt of an order. (Order is considered received upon receipt of the deposit.)

14-Day. A transcript to be delivered within fourteen (14) calendar days after receipt of an order.

Expedited. A transcript to be delivered within seven (7) calendar days after receipt of an order.

Daily. A transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day.

Hourly. A transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.

Realtime. A draft unedited transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings or immediately following adjournment.

NOTE: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the 14-day *delivery* rate, and if not completed and delivered within 14 calendar days, payment would be at the ordinary delivery rate.

Ordering. Place an "X" in each box that applies. Indicate the number of additional copies ordered.

Original. Original typing of the transcript. An original must be ordered and prepared prior to the availability of copies. The original fee is charged only once. The fee for the original includes the copy for the records of the court.

First Copy. First copy of the transcript after the original has been prepared. All parties ordering copies must pay this rate for the first copy ordered.

Additional Copies. All other copies of the transcript ordered by the same party.

Item 18. Sign in this space to certify that you will pay all charges. (This includes the deposit plus any additional charges.)

Item 19. Enter the date of signing.

Shaded Area. Reserved for the court's use.