

**THE SOUTH DAKOTA COURT REPORTERS
ASSOCIATION
COURT REPORTER MANUAL**

A manual of rules, guidelines, and procedures
for court reporting in the state of South Dakota.

Updated September 2024
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SOUTH DAKOTA COURT REPORTERS MANUAL (SEPTEMBER 2024)

This manual is intended to provide help and guidance to court reporters practicing in the state of South Dakota. In this manual, we offer suggestions as to reporting practices and procedures and also cite sections from the South Dakota Codified Laws regarding court reporting. In many cases, there will be more than one acceptable way to do things.

This manual is not intended as legal advice. Anyone seeking legal advice should contact an attorney.

To save space, code sections and rules mentioned in this manual may not be quoted in their entirety. All bolding and italics are the editor's. The laws and websites mentioned in this manual were current as of 2/1/18. Over time, laws change and Web pages move. The South Dakota Codified Laws are updated online in January and July. To make sure you have the most up-to-date information available, always double-check the information you get from this manual before quoting it to someone.

Portions of this manual are reprinted from the Iowa Court Reporters Manual, copyright June 2003, with the permission of the authors.

To access this manual online, go to www.southdakotacourtreporters.org. UJS Official Court Reporters may also access the manual on the UJS Intranet. Log in at <https://intranetujs.sd.gov/>

Abbreviations used in this manual:

CAT:	Computer-Aided Transcription
CART:	Communication Access Realtime Translation
COPE:	Committee on Professional Ethics (an NCRA Committee)
CRC:	Certified Realtime Captioner
CRR:	Certified Realtime Reporter
DRR:	Department of Revenue & Regulation (of South Dakota)
FAPR:	Fellow of the Academy of Professional Reporters
FRCP:	Federal Rules of Civil Procedure
NCRA:	National Court Reporters Association
RDR:	Registered Diplomate Reporter
RMR:	Registered Merit Reporter
RPR:	Registered Professional Reporter
SDCL:	South Dakota Codified Laws
SDCRA:	South Dakota Court Reporters Association
TTAB:	Trademark Trial and Appeal Board (regarding patent and trademark reporting)
UJS:	Unified Judicial System (of South Dakota)

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SECTION 1. THE SOUTH DAKOTA COURT REPORTER.

1.1. Certification of court reporters. South Dakota does not license or certify court reporters. A court reporter does not need to be certified in order to work in South Dakota, although the South Dakota Unified Judicial System gives preference to certified court reporters applying for positions as official court reporters with the state. To administer oaths, a court reporter needs to be a notary public. See Sections 1.2 and 2.

UJS Policy 1-SC-09 (rev. 6/09) reads, in part, "Although certification standards for shorthand reporters may be advisable...[t]he Court will not become involved in looking at the concept of an individual board developing proposed rules for certification of shorthand reporters in South Dakota." However, it also states that holding certification as an NCRA Registered Professional Reporter "shall be a hiring preference for UJS Court Reporters," and that "The UJS shall reimburse UJS court reporters for successful completion of certification tests leading to RMR and RDR certifications."

A UJS official court reporter receives a 5% pay differential (increase) for being certified as a Certified Realtime Reporter (CRR).

1.2. Becoming a Notary Public. A court reporter must be a South Dakota notary public in order to administer oaths in the state of South Dakota. To become a South Dakota notary public, the reporter either must be a South Dakota resident or have a business address in South Dakota and reside in an out-of-state county that directly borders South Dakota. For more information, contact the secretary of state, or go online to www.sdsos.gov. See also Section 2.

1.3. Obtaining a sales tax license; charging sales tax. You must charge sales tax on appearance fees and on transcripts delivered within the state of South Dakota. You must charge sales tax on anything (including transcript fees, appearance fees, fees for copying exhibits, even postage and delivery charges) that you bill to a non-tax-exempt client. If you are moving your business into South Dakota from another state, you may also be liable for use tax on equipment and supplies purchased in another state and brought into South Dakota. For more information, see Section 3 and/or contact the South Dakota Department of Revenue at www.dor.sd.gov.

1.4. Joining the South Dakota Court Reporters Association. SDCRA has one of the lowest membership fees in the nation, a free listing in the South Dakota Bar Membership Directory (the place most SD lawyers look first when trying to find a court reporter), and two low-cost continuing education conventions each year.

To be accepted into membership of SDCRA, you must attend an SDCRA business meeting and be sponsored by a court reporter who is an in-state active member of SDCRA. A membership application is available online at the SDCRA website. Membership dues at this writing (September 2024) are \$100 annually, due and payable at the fall meeting each year. A late fee is assessed if dues are not paid by December 31.

SDCRA's website is at <http://www.southdakotacourtreporters.org/>

1.5. Joining the National Court Reporters Association. Membership in NCRA is not required, nor is it necessary to have any of NCRA's certifications in order to work as a court reporter in South Dakota. However, NCRA membership is recommended. To join, call NCRA at 1-800-272-6272 or visit them online at <http://www.NCRA.org>.

1.6. Anticontracting law.

“SDCL 15-6-28(c). Disqualification to take deposition for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

“An employee, as described above, includes a person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

“The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, shall not enter into an agreement for reporting service which does any of the following:

- (1) Requires or allows the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney as required in § 15-6-30(f)(1);
- (2) Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation, or to anyone else who has an interest in the litigation;
- (3) Gives an exclusive monetary or other advantage to any party;
- (4) Compromises the authenticity of the record or the impartiality of the court reporter, or that may result in the appearance that the authenticity of the record or the impartiality of the court reporter has been compromised;
- (5) Allows a person, other than the court reporter or firm, to establish the rates charged by the court reporter or firm;
- (6) Includes the court reporter, entity or firm providing or arranging for court reporting services on any list of preferred providers of court reporting services that is maintained by any person, entity or firm that has entered into an oral or written contractual agreement for more than one case with any attorney, party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in the case;
- (7) Requires the noticing attorney to utilize a specified court reporter, entity or firm, or requires the noticing attorney to act in a manner that may lead to violation of any provision; or
- (8) Restricts said attorney from reimbursement for such court reporting services.

“Contracts for court reporting services for federal, state, or local governments and subdivisions thereof are excluded. Negotiating or bidding reasonable fees, equal to all parties, by the attorneys or the parties, with the court reporter of their choice, on a case-by-case basis is not prohibited.

“These provisions may not be waived by disclosure, agreement, stipulation, or by any other means unless a request for waiver is contained in the notice of deposition.

“Any deposition taken in violation of these provisions shall be considered void.”

1.7. Websites containing rules of procedure and other helpful information

South Dakota Court Reporters Association: <http://www.southdakotacourtreporters.org/>

South Dakota Court Reporters Manual: <http://www.southdakotacourtreporters.org/>

National Court Reporters Association: <http://www.NCRA.org>.

South Dakota Codified Laws: http://sdlegislature.gov/statutes/Codified_Laws/ (there is an underscore between Codified and Laws: Codified Laws)

South Dakota Criminal Justice Directory: <http://atg.sd.gov/ouroffice/departments/dci/home.aspx>, click on the Criminal Justice Directory link from the menu on the right (not in the tabs on top). You can search for spellings of law enforcement personnel, such as county sheriffs, highway patrol personnel, DCI agents, by Searching by Section (you may have to scroll the screen up or down to see the results).

South Dakota Department of Revenue (includes list of city tax rates): <http://dor.sd.gov>

South Dakota Notarial Rules: <http://sdsos.gov>

South Dakota Supreme Court Rules: Go to the UJS website at <http://ujs.sd.gov> and click on Supreme Court at the top of the far left menu, then click on SC rules in the far right menu.

South Dakota Tribal Court contacts (includes names and addresses for tribal judges, ICWA directors, tribal prosecutors): <http://ujs.sd.gov/media/tribalcontactinfo.pdf>

UJS Official Court Reporters may access the UJS Intranet for UJS Policies and the Employee Handbook: <http://ujs.sd.gov/>, click on UJS Intranet, and then use the same user name and password you use to log onto your courthouse computer each morning.

Federal Rules of Civil Procedure may be found at various places online; for example, www.law.cornell.edu/rules/frcp/

Patent and Trademark Rules of Procedure: www.uspto.gov/trademarks/law/tmlaw.pdf

Merriam-Webster Dictionary Online: www.merriam-webster.com

Zip Codes: <https://www.usps.com/zip4>

** note: websites change, move, and disappear over time. These sites were available as of September 2024.

SDCRA MEMBERSHIP APPLICATION FORM
(Complete for Active, Associate, and Out-of-State Membership)

Reporter Status:

- Freelance (stenographer) Freelance (voice writer)
 Official (stenographer) Official (voice writer)
 Associate Out of State

Name: _____

Employer or Name of Firm: _____

Primary Address for Contact Purposes: _____

Work Phone: _____ Home Phone (optional) _____

Fax: _____ Cell Phone (optional) _____

E-Mail Address: _____

For an official reporter who is seeking an **Active Membership**, please provide an emergency e-mail address. (This e-mail will not be listed in the Directory. The purpose is simply to have it on hand for emergency e-voting. It will be retained by the Secretary.) _____

Applying for an Associate Membership (list profession) _____
 (and services provided) _____

Applying for Out-of-State Membership (for court reporters who do no court reporting in the state of South Dakota)

What certifications do you hold?

RPR RMR RDR CRR CRC CBC CLVS

CCP CRI MCRI CPE FAPR RSA TPP

Voice writer certifications: CVR CM RVR RVR-M

Official (list Circuit and Judge Name) _____

CSR (list state) _____

For those persons completing this application to become an Associate or Out-of-State Member, please stop here and submit this portion of the Application Form with the appropriate dues to:

Maxine Risty, SDCRA treasurer
 425 N. Dakota Avenue
 Sioux Falls, SD 57104

(Associate Membership dues, \$50; Out-of-State Membership dues, \$50)

{For those persons completing this application to become an Active Member, please complete the rest of the Application Form.}

Year you began reporting _____

{ } Graduate of an NCRA-accredited court reporting program (list college, college address, and year of graduation) _____

{ } Graduate of an accredited voice writing court reporting program (list college, college address, and year of graduation) _____

Has your license/certification to practice court reporting in this or any other state ever been suspended or revoked? No { } Yes (If you answered "yes," please explain on the back of this form.)

I, _____, hereby affirm that I have no felony criminal conviction of record with any court of jurisdiction, federal or state.

Signature of Applicant Date: _____

To be completed at Business Meeting:

I, _____, am a qualified active member of the South Dakota Court Reporters Association and hereby attest to the qualifications and sponsor the above applicant for membership in SDCRA, which applicant has appeared in person at the regular business meeting of SDCRA on this date.

Signature of Sponsor Date: _____

Please submit this form and \$100 annual dues payment to the Treasurer at the Business Meeting

(FOR OFFICE USE ONLY)

*Send a copy of this Application Form to the website administrator.
Provide emergency e-mail to the secretary.*



SECTION 2. BECOMING A NOTARY; ADMINISTERING AN OATH.

2.1.1 Notary public as public officer. Once a court reporter becomes a notary public, the reporter is considered a public "officer" in the sense that the reporter now holds an "office," or position of responsibility, and is, to quote the website of the secretary of state, "charged with 'special trust and confidence in integrity and ability.'"

****NOTE:** When you certify a transcript, you state, declare, or vouch for its accuracy in writing. This does not require the use of your notarial powers. **DO NOT PLACE YOUR NOTARY STAMP ON YOUR CERTIFICATE OF REPORTER.** It is against the law to notarize your own signature. See Section 6.6.

The South Dakota Secretary of State has an excellent website with Notary Information and forms needed to apply to become a notary public: <http://www.sdsos.gov>

Most court reporters only use their notarial powers to administer oaths. If you perform any other notarial services, it is a good idea (though not required by South Dakota law) to keep a journal that lists what you notarized, for whom and on what date you notarized it, and the means by which you identified the person who signed the document (you must always obtain proof of identification if you notarize something for a person not personally known to you). Be sure to read the Notary Public Handbook you will get when you receive your notary commission. If you have been a notary public for a few years now, you should go to the website <http://www.sdsos.gov> and read what it says so you have the most recent information available.

Here are a few of the South Dakota Codified Law sections regarding notaries public:

- SDCL 18-1-11. Notarizing without appearance by parties as misdemeanor.
- SDCL 18-1-12.1. Acting without commission a violation.
- SDCL 18-1-13. Removal from office if convicted of misdemeanor or felony.
- SDCL 18-3-1. Officers authorized to administer oaths.

2.1.2. Fee not charged for administration of oath by public officer. SDCL 18-3-6 says, "No fee for the administering of oaths shall be charged or taxed as costs against any person by any official authorized to administer oaths when the oath so administered is in connection with some official duty of said officer essential to the administration of his office."

2.2.1. Forms of oath and affirmation. These are two oaths/affirmations set out in the South Dakota Codified Laws:

19-19-603.1 and 19-19-603.2. Form for **oath/affirmation of witness:** "You do solemnly swear [or affirm] that the evidence you shall give relative to the matter in difference now in hearing between _____, plaintiff, and _____, defendant, shall be the truth, the whole truth, and nothing but the truth, [so help you God] [under the pains and penalties of perjury]." (You may want to add "If so, say 'I do.'")

19-19-604. Form for **oath/affirmation of interpreter.** "I, _____, do solemnly swear (or affirm) that I will justly, truly, and impartially interpret, to the best of my skill and judgment, and will make a true interpretation to any party or witness, the oath or affirmation administered in all matters; the questions which may be asked and the answers that shall be given to such questions, and all statements relative to any [court proceedings, probation activities, or any other proceeding] now under consideration in which I am employed to interpret, [so help me God] [under the pains and penalties of perjury]."

If you use different wording when administering an oath/affirmation, the oath or affirmation is still

valid. SDCL 22-29-8 says, “The term oath...includes any affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law. It is no defense [to perjury] that the oath/affirmation was administered or taken in an irregular manner.”

2.2.2. Do not administer an oath/affirmation over the phone. Among the "Dos and Don'ts" listed on the SD Secretary of State's website is this instruction: "Don't attempt to take an acknowledgment or administer an oath over the telephone or without the individual being present." SDCL 18-1-11 says, "Notarizing without appearance by parties as misdemeanor. It is a Class 2 misdemeanor for any notary public to affix his official signature to documents when the parties have not appeared before him." SDCL 18-1-13 says, "Any notary who is convicted of committing an act which is designated as a misdemeanor in this chapter or any felony shall be removed from office by the secretary of state."

If your client is accustomed to stipulating to administering the oath over the phone, remember that attorneys are not allowed to stipulate to something that is illegal, and that it is against the law to administer oaths over the phone in some states. Don't be surprised if an out-of-state attorney refuses to agree to your client's stipulation to swear the witness over the phone.

2.2.3. Administration of oath may be done via teleconference if witness and reporter are in South Dakota. An oath may be administered to a witness appearing by an interactive audiovisual device (ITV, teleconference). SDCL 15-5A-1 says in part, “A judge or any other person authorized by law to administer oaths may administer an oath to a witness who is not personally present but who is appearing by means of the interactive audiovisual device. The provisions of SDCL §22-29-1 [the law that says perjury is a crime] shall apply even though the person taking the oath was not personally present before the person administering the oath, and prosecution for perjury shall take place in the jurisdiction of the tribunal receiving the interactive audiovisual testimony.”

2.3.1. Depositions taken within the United States. SDCL 15-6-28(a) says that “depositions shall be taken before an officer authorized to administer oaths by the laws of this state...or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.” Some reporters read this to mean that if a reporter is named in a deposition notice as the person or officer before whom the deposition will be taken, that confers upon the reporter the power to administer an oath to the witness named in the notice even if the deposition is taken out of state.

A South Dakota notary should not give an oath while physically located in a state other than SD unless it is a SD case and the attorneys stipulate the SD notary can administer the oath. *If it is not a SD case and a SD notary is crossing state lines to a deposition location, a notary from that state needs to administer the oath.* The SD reporter’s standard stipulation (if used) and certificate page should state the name of the notary administering the oath and the state in which they are a notary. This can be inserted as last full paragraph, above the reporter’s date and signature line and digital signature:

“I further attest that the witness was duly sworn by (name of person administering the oath), Notary Public in and for (xxx) County, State of (xxx), prior to the taking of testimony, Notary Expiration, (**their** expiration date).

“Dated this _____ day of _____, 20____. (filled in by reporter)

/s/ digital signature of reporter
TYPED NAME OF COURT REPORTER

South Dakota and virtually every other state adopts the Federal Rules of Civil Procedure. This statute allows attorneys to take their local reporter along on out-of-state depositions. However, this statute does not apply to cases venued in Wyoming, for example, when a South Dakota reporter travels to WY for a deposition. Please see FRCP Rules 28 and 29 as well as SDCL 15-6-28(a) below. Please note that the FRCP and SDCL both contain the “designated by the parties” language.

2.3.2. Depositions in foreign countries. SDCL 15-6-28(b) says, in part, that a deposition intended for use in a South Dakota case may be taken "Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony." It adds that "A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title."

2.3.4. Power/Authority of Officer in Charge of Taking Deposition. The court reporter is sometimes referred to as the officer in charge of the deposition or the officer taking the deposition. All this means is that the court reporter holds an "office," or position of special trust and confidence in integrity and ability, and is charged with the responsibility of preserving and guarding the record, ensuring that a true and accurate record is made of proceedings. This office does not imbue the reporter with judgeliike powers. In other words, a court reporter at a deposition does not have, for example, the power to instruct a witness to answer or to overrule objections, even though once in a while an attorney at a deposition may try to get the reporter to do so.

SECTION 3. COLLECTING AND REPORTING SALES TAX

3.1. Sales tax. You must charge sales tax on appearance fees if the appearance was in the state of South Dakota and on transcripts delivered within the state of South Dakota. ****Note:** the information in this section comes in part from a 2006 email from the DRR, found in Section 15.24.

(a) Getting a license. In order to sell anything in the State of South Dakota, you must have a sales tax license. To get one, go online at <http://dor.sd.gov>; or contact the South Dakota Department of Revenue & Regulation (SD DRR) Business Tax Division, 445 E. Capitol Ave., Pierre, SD 57501-3185 (phone 1-800-829-9188 or 605-773-3311 in the Pierre area).

(b) Use tax on supplies and equipment. If you are moving your business into South Dakota from another state, you may also be liable for use tax on equipment and supplies purchased in another state and brought into South Dakota. Consult the Sales Tax Guide provided by the DRR for more information. It is online at the Department's website under Taxes/Business Taxes/Publications/Sales Taxes.

(c) You must charge tax on everything. Sales tax is charged on everything you bill for, not just the transcript. Tax is charged on appearance fees, fees for photocopied exhibits, long-distance telephone fees for phone depositions done at your office, or anything else, such as delivery fees (*including postage*, according to the Sales Tax Guide issued by the SD DRR), as well. You don't need to set the tax for each item out separately. Add everything up ("bundle" everything together) and figure the sales tax on the total.

(d) No tax is charged to government entities, such as state's attorneys, court-appointed attorneys IF you are billing the state/county and not the attorney directly, tribal authorities, East River/West River Legal Services, school boards, or city councils, to name a few. You will need proof that your payment is being received directly from a governmental body. Be sure to (a) bill the governmental body directly and (b) keep evidence (check stub or envelope with County Auditor's name and address on it, photocopy of check showing it's drawn on school board's account, etc.) to prove you were paid directly by the governmental body in case you are audited, **OR** obtain a properly completed exemption certificate signed by an authorized individual from the governmental entity.

(e) Sales tax is based on where the customer takes possession of the transcript/out-of-state delivery. The municipal sales tax is usually the tax of the city in which the delivery of the transcript is made, not where the proceedings were reported or transcribed. For example, if you report the proceedings in Pierre and send the transcript to an attorney in Huron, you charge the Huron municipal sales tax in addition to state tax. If you report in Pierre and the attorney picks the transcript up at the courthouse in Parker, charge the Parker sales tax even if the attorney is from Huron. If you mail the transcript to an out-of-state address, you do not charge state or municipal sales tax. **A transcript delivered by email is considered delivered to the billing address of the attorney.**

If you are only billing an appearance fee, the municipal sales tax is the tax of the city where the proceedings were conducted. If you reported it in Pierre and no one ordered a transcript, charge the Pierre municipal sales tax in addition to the state tax, even if you are billing an out-of-state attorney.

You can get a list of municipal tax rates at the DRR website. If the city is not in the list, then it doesn't charge a municipal sales tax.

If the transcript is being delivered to an out-of-state address, you do not need to charge sales tax. If the transcript is being delivered to an in-state address, but the bill is being sent to an out-of-state address, you *do* need to charge sales tax, because tax is based on where the transcript is delivered, not where the bill is sent. If the bill is for an appearance fee *only*, charge sales tax even to an out-of-state attorney. Base the municipal tax on the place where you appeared (the place where the service was provided). However, if you are charging the out-of-state attorney for the transcript and appearance fee and delivering it to an out-of-state address, you don't need to charge tax on the appearance fee if it is bundled in with the fee for

the transcript. Sections 3.2, 15.16, and 23.10 show samples of invoices.

According to the Department of Revenue and Regulation, if the bill is for tangible items sent to an out-of-state address, don't charge tax on those tangible items and don't charge tax on fees for services if those fees are bundled in with the bill for the tangible items. The out-of-state attorney may be liable for use tax if the deposition is meant for use in a South Dakota case, but out-of-state attorneys practicing in South Dakota are required to have a tax license, so they are responsible for paying their own use tax. The court reporter does not bill for use tax.

Anyone who purchases anything in South Dakota is subject to South Dakota's sales tax laws.

(f) Charging sales tax on photocopies not made in your office. If you pay to have exhibits photocopied, the copy business will charge you sales tax. If you then charge extra for the copies in addition to the original cost plus tax that the copy business charged, you have to charge sales tax on the amount you're charging your client for the copies. For example: Kinko's in Yankton charged you 10 cents a page for 10 exhibits, which is \$1.00, plus the 4.5% state and 2% municipal tax, so you paid Kinko's \$1.07. If you bill the attorney 15 cents a page for the 10 exhibits, you must also bill the attorney 4.5% state tax on \$1.50 plus whatever the municipal tax is for the city where the exhibits are being delivered.

If you aren't charging the attorney more for the exhibits than the copy business charged you, you can either: (a) charge sales tax on the original-cost-plus-sales-tax because you're bundling all your charges together on the bill; or (b) you can give the copy business a signed Exemption Certificate so they will not charge you sales tax on your copies. This is purchasing your copies as a sale for resale and you will then bill the attorney for sales tax on those exhibits. Contact the DRR for an Exemption Certificate or go to their website at <http://dor.sd.gov> to download a copy of an Exemption Certificate.

Municipal sales taxes change periodically (January 1 and July 1 only), so make sure you read updates the Department of Revenue & Regulation will send you.

3.2. SAMPLE BILL:

A bill to an attorney in Sioux Falls for a deposition reported in Vermillion, SD.

Fee for transcript: 100 pages x \$3.40 is	\$340.00
Appearance fee:	35.00
Exhibits (10 pp x 10 cents/page)	1.00
Postage:	<u>4.05</u>
Pretax subtotal:	\$380.05
SD sales tax (4.5%)	17.10
Sioux Falls municipal sales tax (2%)	<u>7.60</u>
Total bill:	\$404.75

A bill to an attorney in Des Moines for a deposition reported in SD but sent to IA:

Fee for transcript: 100 pages x \$3.40 is	\$340.00
Appearance fee:	35.00
Exhibits (10 pp x 10 cents/page)	1.00
Postage:	<u>4.05</u>
Total bill:	\$380.05
(no sales tax – out-of-state delivery)	

SECTION 4. STANDARD STIPULATION.

At one time there may have been a "standard" or "usual" stipulation included in the court rules, but at this point the standard stipulation is more a custom than a requirement. SDCL 15-6-29 states, "If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions."

4.1. Do not insert stipulation unless instructed to do so. Only insert a stipulation if the attorneys ask you to. If you are asked to "Insert the same stipulation we used last time," get a copy of it and insert it after a parenthetical to the effect of (Stipulation from previous deposition inserted at the request of counsel, as follows:) and then insert it. If the previous stipulation was in colloquy, you may insert it by cutting and pasting that colloquy, making necessary changes (for example, dates and witness names, if applicable) or by paraphrasing it and putting it in paragraph form. An example of a nonstandard stipulation may be found at Section 15.3(b).

4.2. Wording of standard stipulation. If you are asked to insert the "standard" stipulation at the start of the deposition, this is one form that is used by some South Dakota court reporters:

STIPULATION

It is stipulated and agreed, by and between the parties herein, through their counsel of record, that the deposition of _____ may be taken at {address}, at the hour of _____, on {day/date}, before _____, Registered Professional Reporter, Notary Public in and for the State of South Dakota;

That said deposition shall be taken for purposes of discovery and/or for use at the trial, or for each of said purposes, pursuant to statute and the rules of civil procedure; that all objections are reserved until the time of trial, except those as to the form of the question; and that the reading and signing of this deposition **is/is* *not** waived by the parties, through their counsel.

Note 1: Be sure to include in the transcript the colloquy agreeing to the insertion of the standard stipulation. Also be prepared to recite the stipulation or show a copy to counsel if you are asked what your "standard" stipulation is, because the attorney may be unfamiliar with it.

Note 2: The line about reading and signing being waived by the parties, not just by the witness, is in accordance with SDCL 15-6-30(e). If the standard stipulation is inserted into the deposition, you still have to ask the witness if he/she wants to read and sign, but you don't have to ask the parties. Be sure to put any waiver on the record. See also Section 7 re Reading and Signing generally and Section 12.3 re federal depositions.

SECTION 5. CERTIFIED QUESTIONS AND EXCERPTS OF PROCEEDINGS

5.1. What is a certified question? For purposes of this section of the manual, in the context of deposition reporting, a certified question is a question that is excerpted from the deposition and transcribed right away, before the remainder of the deposition, so that an attorney can get an immediate ruling on such things as whether an objection to that question will be sustained or overruled, whether the witness will have to answer the question, or whether that line of questioning will be permitted to go forward. In the days of typewriter transcription, when transcript delivery might take a month or longer, court reporters would be asked to type up and certify individual questions to be presented as soon as possible to a judge. This practice has fallen off since the advent of computers and quicker transcript delivery, but still happens on rare occasions. Another type of “certified question” is a formal request by one court to another court for an opinion on a question of law. That is not what this section of the manual is dealing with.

5.2. How to certify a question. When requested to certify a question, some South Dakota reporters merely indicate the certified questions in the deposition index. However, the purpose of certifying the question is to take it before a judge for prompt ruling, and if the transcript is not going to be delivered within 48 hours, the certified question(s) should be excerpted and transcribed immediately, using the method described below:

Prepare a separate transcript with a title page and appearances as usual, but where you normally indicate “Deposition of” change the phrase to “Certified Question(s) from the Deposition of...”

Some reporters start immediately on page 2 with the portions of the record that are to be certified, others set up the witness as usual, include the Q&A that shows the witness’s name and address, then center three asterisks to indicate skipped material and begin transcribing the certified portions. Whatever method you choose, you should indicate in the transcript both who is taking the deposition and who is conducting the examination from which the question is excerpted, because the rules for cross-examination are different from the rules for direct examination. You should also include any objections that led to the instruction to certify the question so the attorneys don’t have to reconstruct their arguments for the court.

You may need to include a few previous questions and answers so the court has the context of the testimony. If the last question asked was literally “Please explain what you mean by that,” the court will obviously need the context to understand what “that” is.

A sample certified question might look like this:

(The following question from the cross-examination by Mr. Roland of the witness Samuel Franks was certified upon the request of counsel, as follows:)

Q. (By Mr. Roland) In your formulation of the vaccine, did you include antibodies from Pro-Ven?

A. I think that would come under trade secrets.

Q. I’m asking about any, not what specific kinds.

A. I don’t think that’s relevant.

Q. Are you refusing to answer?

MS. JANSÁ: I would object and instruct the witness not to answer. It is a trade secret, and the testimony may be prejudicial to my client’s business.

MR. ROLAND: Even if I’m not asking what or how many?

MS. JANSÁ: Even if.

MR. ROLAND: Certify that last question.

(End of excerpt.)

If you are asked to certify a question, transcribe it immediately and deliver it as soon as possible. The attorney requesting the certified questions gets the original transcript. Deposition transcripts, including excerpts, are no longer to be filed with the clerk unless the court orders otherwise.

When you transcribe the entire deposition, nothing special needs to be done with the certified questions in the body of the transcript, but for counsel's reference you should index the pages on which the requests to certify questions appear.

5.3. Excerpts of Proceedings. If an excerpt of proceedings is requested, it should be transcribed first and delivered before the entire proceedings are transcribed. It should be set up in the same way a certified question is set up. The title page should indicate that it is a transcript of "Excerpt[s] from [the Deposition of _____]".

5.4. Make excerpts available to all counsel. If a certified question or an excerpt is requested, tell the requesting attorney up front that you will be asking opposing counsel if they want copies of the excerpts as well. However, if the requesting attorney then withdraws the request, do NOT mention the request to opposing counsel. If an attorney requests a keyword index (which is not the same as a concordance or "word" index) that request for a keyword index counts as attorney work product and should not be mentioned to opposing counsel. See Section 8.5 for further information about keyword indexing.

According to UJS Policy 3-PJ-10 and NCRA Advisory Opinion 22, if you are asked to provide an excerpt of proceedings, you need to inform the requesting party that you will be offering a copy to the other side. If the requesting party then withdraws the request, do not mention the request to the opposing party. See also Sections 19.1.1 through 19.1.4.

5.5. Portions of proceedings designated confidential or sealed. If a portion or portions of the deposition is/are designated as confidential, the confidential portion(s) may be separated from the main deposition and bound separately (if a paper transcript is requested); a separate PDF or other electronic file should be made also. If there are more than one portion, all confidential portions from the same deposition should be placed together in the same separated transcript. The transcript of the confidential proceedings should indicate "Confidential Portions of the Deposition of" and each page of the transcript containing the confidential portions should have a header reading "Confidential" in all capital letters. Paper original and copies of the transcript of confidential portions should be delivered in a sealed envelope with the word "Confidential" stamped on both sides of the envelope. One side of the envelope should show the title page information. An envelope with a clear window allowing the reader to see the title page saves typing.

In the main transcript, include a parenthetical indicating something to the effect that (Proceedings were held which were designated as confidential and transcribed under separate cover).

If the entire deposition is designated as confidential, it is recommended that a header saying "Confidential" be centered in all capital letters on every page and that the title page indicate "Confidential Deposition of." It is also recommended that the index show the page on which the attorneys agreed that the deposition should be designated as confidential. Seal both the original and copies before delivery.

Electronic files should be named in such a way as to make clear the file is confidential; for example:

020414browndepoCONFIDENTIAL 66CRI09000494_Transcript_SEALED120114

5.6. Attorneys' Eyes Only. If a portion of the proceedings are designated 'Attorneys' Eyes Only,' separate that portion from the remainder of the transcript, use a header that reads 'Attorneys' Eyes Only,' and bind and seal the original and copies of that portion separately. Give the electronic file a name that makes clear it is ATTYEYESONLY. (Note: sources say Attorneys' Eyes, Attorney's Eyes, and Attorney Eyes Only are each correct, so just pick one and be consistent.)

SECTION 6. CERTIFICATE OF REPORTER

6.1. Cases filed in state court. SDCL 15-6-28(c) states "No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action." SDCL 15-6-28(a) states "depositions shall be taken before an officer authorized to administer oaths..." SDCL 15-6-30(f) states "The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness." However, remember that counsel can stipulate to taking the deposition before any person and in any manner, pursuant to SDCL 15-6-29.

The rules do not include a standard form of deposition certificate, but Section 15.8 is a sample of a Certificate of Reporter which incorporates all of the above state court requirements and the requirements of FRCP 30(f) (1) as well. The certificate may be amended as necessary. For example, if the deponent was sworn by someone other than the court reporter, the certificate should show that.

6.2. Sworn by someone other than the court reporter. If the deposition witness testified over the telephone and was sworn by someone besides the reporter, the certificate might read "*was duly sworn by [Name], Notary Public in and for the State of {state}, {Notary's business address}.*"

6.3. Cases filed in federal court. The reporter's certificate for a federal deposition needs to show a statement to the effect that "Before the completion of the deposition, the witness did/did not ask to review the deposition." See also Section 7.2 of this manual.

6.4. Certificate of Transcriber. If you transcribe proceedings you did not personally report, use a Certificate of Transcriber instead of a Certificate of Reporter. See sample in Section 15.9.

6.4.1. Certifying transcription of another reporter's notes. Sometimes a reporter, because of death or disability, is not available to transcribe his or her own notes. In a case where one reporter transcribes the notes of another reporter, the certificate should be titled "Certificate of Transcriber" and indicate the reporter who reported the proceedings and the reason why that reporter was unable to transcribe same.

6.4.2. Certifying transcription of an audio recording. If the reporter transcribes directly from a video or audio recording, as opposed to reporting the proceedings live, the certificate should be changed to read "Certificate of Transcriber," and the wording should be amended to show that it is transcribed to the best of the reporter's knowledge and ability. Some reporters do not believe they should put any certificate on a transcript from a recording if they do not feel they can certify as to its accuracy. However, in some courts, if no certificate is attached to the transcript, the transcriber may be called to testify that he or she was the person who did the transcription and that it was done to the best of the transcriber's ability. The certificate may prevent this hassle. See Section 24.1.

6.5. Signatures on copies of paper transcripts. Some reporters sign their paper transcript copies the same as they do their paper transcript originals, some sign the original transcript only and use /s/ followed by their typewritten name or sometimes simply an /s/ on the signature line of the copies, and some leave the signature line on a copy blank. This manual recommends using your original signature on paper copies as well as paper originals.

If the deposition is to be filed in an out-of-state court, be aware that in some states a copy of a deposition may only be used in court if the deposition copy has an original signature of the court reporter.

Also, in South Dakota workers' compensation cases, according to SDCL 1-26-32.4, "The reporter or agency shall certify the correctness of the original *and all copies* of the transcript," and the

original signature serves as proof that the copies were prepared by the reporter.

On an electronic transcript, in South Dakota you may use /s/ followed by your name on the signature line. Other states may require true electronic digital signatures. These are not the same as a picture of your signature superimposed on the signature line in the PDF document, which can be done via Word and other programs. Software for digital signatures may be purchased online.

In South Dakota, there is not yet a requirement for digital signature on e-transcripts of depositions (PDF versions or otherwise), and at this writing (Jan. 2018) the /s/ followed by the typewritten name of the reporter is all that is required when a transcript is filed in state or federal court. Reporters should no longer file paper transcripts. A PDF full-size (not condensed) transcript should be filed instead. It should include a word index.

6.6. Do not notarize your own signature. SDCL 1-26-32.4 indicates that “The reporter or agency shall certify the correctness of the original and all copies of the transcript.” Neither SDCL 15-6-30(f), which governs reporters’ certificates for depositions, nor SDCL 1-26-32.4, which governs reporters’ certificates on official court transcripts, requires that the reporter place his or her notarial seal on the certificate. According to the Office of the Secretary of State, a reporter who signs a certificate of reporter and then places his or her notarial stamp thereon is effectively notarizing his or her own signature, which is against the law. However, if you administered the oath(s) during the proceedings, it may be a good idea to put the “My commission expires” information in the certificate to indicate your notary commission to administer oaths is still valid.

SECTION 7. READING AND SIGNING.

7.1. Case filed in South Dakota state court.

7.1.1. Asking witness and parties to waive reading and signing. SDCL 15-6-30(e) reads, "Submission to witness - Changes - Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness *and by the parties*." If the attorneys asked for the standard stipulation, it includes a waiver of the reading and signing by the parties (see Section 4.2 and Note 2 of that section). Put the waiver on the record. Note: When a witness or attorneys say that "signature is reserved," that means they are choosing to read and sign. "Reserve" is the opposite of "waive" in this situation.

7.1.2. Any changes in form or substance. SDCL 15-6-30(e) goes on to state that "Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them." This means the witness is not limited to typographical errors. The witness is allowed to completely change answers, and indeed, it is not unheard of for witnesses to change questions. Frequently witnesses neglect to write reasons for their changes. If a witness returns an errata sheet with changes, but without reasons listed, attach the errata sheet as is. The reporter is not required to chase the witness down and force the witness to give reasons. If the errata sheet is not returned, indicate "errata sheet not returned" and sign your name and date it on the sheet you attach to the original. See also Section 7.4. NOTE: Retain copies of errata sheets in case of back orders on the transcript.

Sometimes attorneys tell witnesses that they can only correct typographical errors. Just let it go. The letter you send to the witness about reading and signing will tell them they can make changes to the form and/or substance of the deposition. See Section 15.11, numbered paragraph 1.

7.1.3. Witness gets 15 days to read and sign in South Dakota state court cases. Not 30. It's 15 days in South Dakota state court cases. SDCL 15-6-30(e) says, "The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within *fifteen* days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any given therefor..." A sample letter notifying the witness that the transcript is ready to read and sign is at Section 15.11. A sample notification to counsel that the witness did not come to read and sign within the required time period is at Section 15.12. Examples of other situations requiring notification to the attorneys are contained in Section 15.13.

7.2. Case filed in federal court. Since 1993, witnesses don't need to be asked if they want to read and sign a federal deposition, although many attorneys still don't realize this. Federal Rule of Civil Procedure 30(e) reads, "*On request* by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them." In other words, if the case is filed in federal court, the witness does not need to be asked if he or she wants to read and sign; but witnesses who ask to read and sign, or witnesses who are asked by one of the attorneys or parties present to read and sign, must be given the opportunity to do so.

Also, FRCP 30(e) doesn't require the transcript to be sent to the witness. It says "the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: (A) to *review* the transcript or recording..." You can make the witness come to your office instead of sending the transcript out, never to be seen again. The Notes of Advisory Committee of Rules 1993 Amendment, subdivision (e), indicated that these changes were made because of the extreme difficulties reporters encountered when trying to get transcripts returned.

Although this federal rule change occurred back in 1993, because witnesses need to be asked about reading and signing in South Dakota state court cases, most attorneys ask the witnesses in federal cases also. Nothing in the rules forbids asking witnesses if they want to read and sign. The rules just don't require it. See also Section 12.3.

7.3. Cases filed in other courts. The rules that apply to transcription and filing of depositions are the court rules of the court in which the case is filed. For example, in an Iowa state court case, if the court reporter is an Iowa Certified Shorthand Reporter, witnesses don't have to be asked if they want to read and sign. If the reporter is not an Iowa CSR, then the witness should be asked if he or she wants to waive the reading and signing and gets 30 days to read and sign if the choice is made to read. In Iowa, original transcripts need not be sealed. If you need to know what the rules are for another state, call a reporter from that state.

7.4. Errata sheet. In South Dakota, the standard procedure is to include an errata sheet on which the witness can list any changes to the deposition and the reasons therefor. This way the attorneys can compare the original record with the changes the witness wants to make. FRCP 30(e)(2) provides that the reporter "must attach any changes the deponent makes during the 30-day period." It is a good idea, though not required, to retain a copy of the errata sheet with your notes or electronic media in case there is a back order of the transcript. A sample errata sheet may be found at Section 15.10. See also 7.1.2.

7.5. Errors found in transcript that attorney wants corrected. Sometimes court reporters make mistakes in transcripts. If an attorney believes they are substantive, crucial to the case, the attorney may contact the reporter and ask to have the transcript corrected. For example, a witness may have said, "We sent them two hundred and fifty gallon barrels," and the reporter may have transcribed "We sent them 250 gallon barrels." If the witness waived reading and signing, or if the witness simply did not notice the error, the attorney may want to clear up the record to show that it was not 250 one-gallon barrels that were sent, but rather barrels capable of holding 250 gallons. Or perhaps the court reporter is not familiar with a restaurant named The Cabin in a local tourist area frequented by campers, so whenever someone mentions that a murder was committed at "The Cabin," the reporter may have transcribed "the cabin." Sometimes attorneys will just stipulate that that's what the transcript should read and not bother to contact the reporter for corrections, but once in a while they may ask the court reporter to retranscribe those portions of the transcript that contain errors. Another example might be where a reporter is unfamiliar with the technical terminology in a case. If a witness refers to "porous tuff" in an Army Corps of Engineers hearing, the reporter, unfamiliar with the terminology, might transcribe "porous stuff." Reading and signing is not offered for hearings, so someone from the Corps might contact the reporter to make the correction.

If an attorney calls and asks for corrections to the transcript, don't get irritated or defensive. If you believe the attorney is correct, first send a letter or email to all counsel involved to advise them of the request and tell them that if you don't receive any objections by such-and-such date, say ten days from the date of your letter, you will amend the transcript and send the corrected pages (or even a new transcript, depending upon how many times the error occurs) to everyone who ordered a transcript. Indicate on the title page that this is an Amended Transcript so there is no confusion later.

If you do not believe the attorney is correct, advise counsel that you will not be changing the transcript. The attorney will need to take other steps if he or she believes corrections are necessary.

See a sample letter at Section 15.14.

SECTION 8. MARKING EXHIBITS AND INDEXING TRANSCRIPTS

8.1. Index to Proceedings recommended but not required for depositions. There is nothing in the South Dakota court rules that requires that depositions be indexed. However, attorneys find them handy, not only to see what took place during the deposition, but often to see what did *not* take place as well--for example, was there only direct examination of the witness, or did opposing counsel ask questions as well? Were any exhibits marked, and if so, what were they? It is recommended that an index be placed at the beginning of the transcript instead of at the end, so it can be located quickly, especially if a word index (concordance) is attached at the end. See Sections 15.2, 23.2, and 19.6(6).

8.2. Identifying and indexing exhibits.

****NOTE 1:** The South Dakota Unified Judicial System has gone paperless. Paper exhibits are scanned into a case management system known as Odyssey, and the paper exhibits are then disposed of after 30 days. Red, green, orange, and brown exhibit stickers copy so darkly that exhibit numbers cannot be read on the black-and-white scan the judges have to use. For that reason, this manual recommends using white, yellow, and blue stickers, in case those deposition exhibits end up being offered in court.

****NOTE 2:** Frequently several pages are scanned into the Odyssey system in one group. When a page is brought on screen in Odyssey, viewers see the top half and must scroll down to read the bottom half of the page. It is more efficient to have an exhibit sticker near the top of the page than the bottom, because viewers can see the sticker right away instead of having to scroll down to check whether this is the exhibit they were looking for or whether they need to go to the next page.

8.2.1. Marking exhibits. A deposition exhibit sticker should show the date on which the exhibit was marked, the last name of the deponent, and the initials of the reporter who marked it. Attorneys depend on exhibit stickers and exhibit indexes to help them keep track of what has been marked and when. Putting the witness's name on a sticker helps them quickly locate the transcript in which the exhibit was used if the exhibit gets separated from the transcript. Including exhibit indexes on depositions spares the client the need to search each transcript looking to see if the exhibit they want was marked during that deposition or not. If no exhibits are marked, an exhibit index which declares NO EXHIBITS WERE MARKED HEREIN will save lawyers and their paralegals time.

8.2.2. Indexing exhibits. The exhibit index should list the exhibits in chronological, and then, if applicable, alphabetical order. Each exhibit should be briefly described, and the index should show the page on which the exhibit was marked/described and, if applicable, offered. (Exhibits can be offered during a deposition but can only be received in court). If the reporter does not take custody of one or more of the exhibits, the index should include an indication of who did take custody of them. The description should contain enough information to differentiate one exhibit from another. If no exhibits are marked, the Exhibit Index should say NO EXHIBITS MARKED HEREIN so the attorney knows the reporter didn't neglect to index exhibits.

8.3. Index to Objections recommended, but not required. Freelancers can be of great help to judges and lawyers by indexing page and line numbers where objections are made during depositions. Before a deposition is used in court, the lawyers bring the transcript to the judge so objections can be ruled on. The objections and the objectionable material are then edited out before the deposition is read or, if videotaped, played to a jury. The process goes much more quickly if the deposition contains an index to objections so the lawyers don't have to leaf through 300 pages looking for each one. The index can be in vertical or horizontal format. See an example at Section 15.2.

INDEX TO OBJECTIONS:

Page 15, Line 2

Page 21, Line 20

Page 250, Line 7

INDEX TO OBJECTIONS (Page/Line): 15/2, 21/20, 24/3, 24/25, 250/7

8.4. Indexes to motions/rulings. Indexes to Motions are required in transcripts of official court proceedings, according to the SDCL Appendix of Forms, Form 3 (which, as of Jan. 2018, is found in Volume 10A of the South Dakota Codified Laws, right after SDCL 15-26A-93. See Section 19.6, subsection 6, and also an example at Section 23.2(a) and (b).

8.5. Concordances (word indexes) and keyword indexes. A concordance is an index to most of the words in the transcript (excluding high-frequency words such as "a" or "the" or "it".) Many people refer to this as a "word index." Many reporters automatically attach a word index/concordance to their transcripts.

The Supreme Court prefers a word index on appeal transcripts, though it is not required.

Keyword indexes are indexes to specific words and phrases requested by an attorney to be indexed. Keyword indexes should be provided only when requested. If an attorney gives you a list of words or phrases for a keyword index, only that attorney should receive that keyword index. Do not mention it or offer it to opposing counsel.

8.6. Master indexes. A master index is an index to lengthy proceedings requiring more than one volume of transcript, such as a two-week trial or to a long series of depositions taken over a period of months in the same case. Master indexes for freelance proceedings usually contain

1) an Index to Depositions, listing the name of the witness (and volume number, if applicable) and the date on which that deposition was taken; and

2) a list of all exhibits marked during that series of depositions, identifying each exhibit by the deposition in which it was taken, the number, and a brief description. When attorneys know there will be a long series of depositions in the same case, they often try to number the exhibits chronologically from deposition to deposition.

Keep a master index of exhibits for yourself and bring it with you each time you go to one of these depositions so you have a record of the exhibit number you left off with:

MASTER INDEX TO DEPOSITIONS AND EXHIBITS IN GOODYEAR V. MICHELIN

7-14-15: ROGER JAMES BLUTH

Bluth 1. CV of Dr. Bluth

Bluth 2. Letter of 3-7-99

Bluth 3. Sample of tire tread

7-28-15: PAUL M. GREEN

Green 4. CV of Dr. Green

Green 5. ASME Standard 14.3(b)

9-30-15: C. ANTHONY PARKER

Parker 6. Chart of tread widths

Parker 7. Chart of friction calculations

SECTION 9. FILING AND DISTRIBUTION OF TRANSCRIPT

9.1. Depositions are not filed with the court. Unless the court orders otherwise, depositions are not filed with the clerk of court in South Dakota circuit court cases, pursuant to SDCL 15-6-5(g). If the court orders the deposition filed, 15-6-5(g) states: “Any such filing shall be made electronically in full-size print unless otherwise ordered by the court. Any exhibits to such documents shall be clearly identified and included as a separate electronic file or hyperlinked within the transcript file.” (Underscoring is this editor’s.)

Provide a full-sized PDF or other electronic original to the attorney ordering the original, even if that attorney also wants a condensed transcript. They will need the full-size original for filing. You do not have to mark it “original.” You do not need a handwritten signature. Use /s/ Your Name.

There has been a question raised by a few clerks of court as to whether a freelance transcript can be filed if it bears a stamp labeling the transcript “original” or “copy,” because under the electronic filing rules of state court once a transcript has been scanned into Odyssey (the state electronic filing system) that scan is considered the “original” and the paper transcript gets shredded after 30 days.

Now that transcripts are supposed to be filed electronically, if you are asked to provide a paper transcript, you no longer need to stamp it “original” or “copy,” since the “original” transcript will be the one filed in electronic format.

Note: Reporters don’t file depositions with the court. However, a reporter who subs in court must file any certified transcript that reporter makes of official court proceedings, even if it is just a 3-page excerpt or a 5-page ruling. If you certify it, in addition to sending an electronic transcript to the attorney, also file it electronically with the clerk of court in the county in which the case is filed.

9.2. Sealing depositions in an envelope. As of February 1, 2018, Federal R.Civ.P. 30(f) (1) still says, “Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked ‘Deposition of [witness’s name]’ and must promptly send it to the attorney who arranged for the transcript.”

The rules have not kept up with the times, and most attorneys no longer want a paper transcript. Also, the federal court system wants transcripts filed electronically. Even if you are asked to make a paper transcript, you should provide an electronic transcript in case the attorney needs to file it later.

Depositions taken in South Dakota state court do not need to be sealed in envelopes.

9.3. Condensed transcripts. Nothing in the rules as of January 2018 states what order the condensed pages must be in. This manual recommends an up-down arrangement: page 1 in the upper left, page 2 in the lower left, page 3 in the upper right, page 4 in the lower right, based on a poll in which the majority of respondents said that’s how they did it.

At the present time, original transcripts of state official court proceedings are still required to be filed in regular size. Justices and judges often read the transcripts on tablets, and the print of a mini-transcript is difficult to read on a screen. Condensed originals may be filed in SD federal court.

9.4. Distribution to third parties. Unless the deposition is filed with the court, it is not considered public record. The issue then arises as to whether it is ethical for a reporter to sell a copy of the deposition transcript to third parties who were not present at the time the deposition was taken and were not involved in the lawsuit in which the deposition was taken. SDCL 15-6-30(f)(2) states that “Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition *to any party or to the deponent.*” NCRA Public Advisory Opinion #9 interprets this to mean that depositions cannot be sold to anyone else without permission of attorneys for the parties and permission of the deponent. See also Section 9.6.

9.5. Grand jury transcripts secret, not distributed by reporter. In federal court, the prosecuting attorney's office is the only one authorized to distribute transcripts of grand jury proceedings. In federal grand jury proceedings, unless the court orders otherwise in writing, the court reporter should never provide a transcript to anyone other than the prosecuting attorney's office.

In state court, different counties have different practices regarding ordering grand jury transcripts. SDCL 23A-5-16 states, in part, that a "[a] stenographer...may disclose matters occurring before the grand jury only if directed by the court..." A court reporter who receives an order for grand jury proceedings from anyone other than the state's attorney should require the person ordering the grand jury transcript to first get a written court order. Alternatively, the reporter could ask the attorney to call the state's attorney's office and have the state's attorney order the transcript and send it to defense counsel, because the reporter is permitted to provide a transcript to the state's attorney without a court order. The bill could still be sent from the reporter directly to defense counsel in that situation, with a notation on the invoice that the transcript was ordered by and provided to the state's attorney's office.

The UJS Clerks Procedure Manual used to say, "Several days after the hearing the court reporter may file a SEALED transcript with the clerk. This transcript is SEALED, without being read, in a manila envelope and labeled, 'Transcript Hearing before the Grand Jury on [date].'" The Clerks Procedure Manual online in Odyssey as of 1/20/2018 says simply that the sealed transcript from the court reporter may be maintained in the grand jury file. Based on this, in some counties the original transcripts are delivered in sealed envelopes to the clerk. Check local practice.

See also Sections 11.1.2, 19.13.2(k), and 21.1(a).

9.6. Statements are not public record. They are considered attorney work product. Statements are not specifically covered in the rules of procedure. However, statements are taken as part of trial preparation and are considered attorney work product; they are not intended for the use of anyone other than the attorney (or other person, such as an insurance agent) who took the statement, and they should not be distributed without the attorney's (or other person's) permission. (See also Section 11.5.)

9.7. Give the client what the client wants. There are so many options for transcript delivery these days: Regular size or condensed, or one of each? Paper transcript or electronic transcript, or both? ASCII format, PDF format, or something else?

Attorneys appreciate being asked what they want. Some attorneys have a hard time reading the smaller print of a condensed transcript. Some attorneys prefer condensed transcripts because they don't take up so much room. Some attorneys want regular in one case but condensed in another. Ask the client what the client prefers, and then deliver the transcript accordingly. A happy client is a repeat client.

A transcript order form can be passed around the table at the start of the deposition so attorneys can place their order more efficiently. A sample transcript order form may be found at Section 15.15.

If you email a transcript, ask the attorney to reply to your email with an indication that the transcript file could be opened and read. If you don't hear back, call the client's office to make sure it was received and that it could be downloaded and read. Don't assume they got it just because you don't get an "undeliverable email" message back. Some law firms have firewalls that put the transcripts on "hold" for up to three days while they check for viruses, and the attorney may be sitting there fuming at the reporter, not realizing the firm's firewall is to blame. A call to the lawyer's office may head off a call from an upset client later.

9.10. Filing electronic deposition transcripts. Original transcripts delivered in electronic format only should be delivered in a format that makes altering the transcript difficult, such as PDF format or in Word format where the document has been password-protected. Attorneys can file electronic originals with the clerk via File-and-Serve.

SECTION 10. RETENTION OF FREELANCE NOTES AND AUDIO RECORDINGS.

10.1. Depositions. The South Dakota Codified Laws do not say anything about how long deposition shorthand notes (paper or electronic) and/or audio/visual recordings must be retained if they have not been filed with the court. The National Court Reporters Association’s Code of Professional Ethics says to “Preserve the shorthand notes in accordance with statute or court order, or otherwise for a period of no less than five (5) years...” This manual recommends retaining your deposition shorthand notes (paper or electronic) for five years from the date of the deposition. See Section 10.6 about retention of deposition exhibits.

10.2. Other proceedings.

10.2.1. Mental Health Hearings and Hearings before the County Review Board for the Developmentally Disabled: According to SDCL 27A-11A-2, all recorded testimony at mental health hearings shall be preserved for at least five years. SDCL 27B-7-39.2 says the record of hearings before the county review boards also shall be preserved at least five years.

10.2.2. Other administrative hearings. “At least five years” is a good standard for administrative hearings generally, including school board hearings, workers' compensation hearings, and hearings before the Board of Pardons and Parole, although the statutes do not specify the length of time notes need to be preserved.

10.2.3. Grand Jury Proceedings: The contract a court reporter signs with the UJS requires freelancers to keep their shorthand notes from grand jury proceedings for ten years. Whether you have signed the contract or not, if you report grand jury proceedings, you should keep those notes for ten years.

10.2.4. Official court proceedings. A freelance reporter who substitutes in court should follow the rules of that court with respect to filing and/or retaining the reporter’s notes taken of official court proceedings. In South Dakota, notes from official state court proceedings need to be retained 15 years after the date of hearing, pursuant to the UJS Records Retention and Destruction Schedule. Freelance reporters are asked to upload their shorthand notes into the UJS computer system, where the state will retain the notes for 15 years. Federal court notes should be retained for ten years.

The UJS Records Retention and Destruction Schedule may be found on the UJS Employee Intranet. Go to General Information/UJS Polices/Retention Policy Circuit Court.

10.3. Reporter death or disability. It is recommended (required for reporters who are employed by or who do contract work for the state) that reporters make arrangements with other reporters so that, should something happen to the reporter, another reporter or scopist will be available who knows where to find and how to read the reporter’s notes in the event a record needs to be made and the original reporter has become unable to transcribe them. Reporters who are employed by or do contract work for the state have to fill out a Court Reporter Guardianship form (see 15.19a and 15.19b). Notes and electronic media should be adequately identified and filed in an organized manner so that an outsider can readily find the necessary notes and files. It is also very important that the reporter’s main CAT dictionary be kept safely where it can be easily found if necessary.

10.4. Keep two backups, each one in a different place. It is recommended that, when backing up files, reporters keep two copies: one at home, and one at the office. If the reporter has a home office, it is recommended that the second backup be stored somewhere else: stored online, for example, or in a bank safety deposit box. This way, if fire, flood, or tornado should destroy the first backup, the second backup may still be safe.

10.5. Keep your equipment, not just your storage media. Be sure you also keep working equipment that may be needed to read your electronic media years down the road. For example, if you still have files stored on floppy disks, keep a floppy disk reader (and a computer that is compatible with that reader) as long as you still have floppy disks. Otherwise you may not be able to find a working floppy disk reader five years down the road when you have a back order. If you have files in Word Perfect format, make sure you still have a computer that will allow you to read Word Perfect files. Not all versions of Windows allow you to read Word Perfect anymore.

Similarly, if you have audio files stored on audio cassette tapes or any kind of disks, make sure you keep a working tape recorder, digital recorder, and/or CD player. Five years from now you may not be able to find a tape recorder when you need it.

It is always a good idea to periodically “migrate” files stored on older-style storage media to modern media so that you can access it years down the road. Migrating means copying the files still on old media, such as floppy disks or CDs, onto new media, such as flash drives or new external backup drives, while you still have the drivers and/or media readers available to do so. Convert files from old CAT systems to whatever upgraded system you buy. Some software programs will automatically convert files from older versions of that same software, but in some cases very old files may need to be sent to the software company for conversion, and the software providers charge for it.

10.6. Retention of exhibits. When exhibits are marked and retained by the reporter, if a transcript is not ordered, the exhibits should be stored with the reporter’s notes. If the transcript is not ordered within six months, the reporter should call the attorneys and ask what to do with the exhibits. Get permission from both sides if giving up custody of the exhibits. Write a letter to all attorneys saying that you are returning the exhibits so you have a record of what happened to them.

There does not appear to be anything in the rules requiring the reporter to keep copies of exhibits after a transcript has been delivered. If a transcript is not ordered and the attorneys do not instruct otherwise, the reporter should, if feasible, keep the exhibits as long as the shorthand notes are retained.

SECTION 11. MISCELLANEOUS PROCEEDINGS

11.1. Grand Jury proceedings. SDCL 23A-5-11.1 says, in part, "The testimony of any witness appearing before a grand jury in any case shall be recorded."

11.1.1. Report everything. In grand jury proceedings, if the state's attorney instructs the reporter to go off the record, it is important that the court reporter include the reason for the off-the-record discussion in the transcript so that no one raises the suspicion later that testimony was presented that was not reported. At least one grand jury indictment in 2005 was dismissed because the reporter's parenthetical (Off-the-record discussion held) was objected to by defense counsel as potential evidence that the grand jurors may have heard and considered something that was not put on the record.

Instead of the basic parenthetical (Off-the-record discussion), indicate (Off-the-record discussion re grand juror's need to call a baby-sitter) or (Off-the-record discussion between state's attorney and witness, out of the hearing of the grand jurors), for example, so it is clear that whatever was said off the record was not something the grand jurors considered during their deliberations.

11.1.2. Grand Jury (state and federal) proceedings are confidential. Grand jury proceedings should not be discussed with anyone outside the grand jury room. To avoid even the appearance of impropriety, the court reporter should at all times refrain from discussing anything about grand jury proceedings. According to SDCL 23A-5-16, the reporter is not allowed to tell anyone what occurred or was said during grand jury proceedings, unless directed to do so by the court.

11.1.3. Grand jurors not identified by name in colloquy. If any of the grand jurors speak or ask questions on the record, they are not identified in the transcript by name. The designation A GRAND JUROR or simply GRAND JUROR may be used in colloquy. After the prosecuting attorney examines a witness, he or she may open questioning up for the grand jurors. Examination by the grand jurors is usually transcribed in colloquy format. If there are only a few questions by grand jurors, it is not necessary to use an EXAMINATION setup. See sample at Section 15.6.

11.1.4. Billing for state grand jury work. Submit your bill to the state's attorney, who will approve it and forward it to the county auditor for payment. Some counties now require you to itemize your bill, showing each case and the amount attributable to that case alone.

11.2. Records depositions.

11.2.1. A deposition upon written interrogatories is a deposition where the attorney writes out questions and sends them to the reporter to read to the witness and record the answers given. SDCL 15-6-31(b) reads, in part, "A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by §§ 15-6-30(c), 15-6-30(e), and 15-6-30(f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer." A **records deposition** is a deposition taken for the purpose of getting the records of a company, hospital, doctor's office, etc. They often are depositions upon written interrogatories and only last a few minutes, although on occasion they may go much longer. A **30(b)(6) deposition** in federal court is basically a records deposition.

11.2.2. Reporter should not interpret or explain written interrogatories. A reporter who conducts a deposition upon written interrogatories should not presume to interpret the questions the attorney provides. The reporter should read the questions as provided and not attempt to explain or enlarge upon them. If the witness wants more of an explanation, the reporter should tell the witness to answer to the best of the witness's ability, and if the witness says he or she cannot answer because the question is vague or confusing or doesn't make sense, then that is the answer the reporter should put

down.

11.2.3. Questions should be numbered in transcript. When the deposition upon written interrogatories is transcribed, usual and customary practice is to number the questions so that the attorney can easily compare them to the original interrogatories provided to the reporter. Most CAT softwares have the ability to number questions, because a few state and military courts also require that questions be individually numbered. See sample at Section 15.7.

11.2.4. Attach a copy of the notice with the interrogatories to the transcript. A copy of the notice containing the written interrogatories should be attached to the transcript for easy reference in case someone wants to make sure the correct questions were asked.

11.3. Workers' compensation proceedings. *[Note: The state statutes use the form **workers'**, not **worker's**, compensation. Plural, apostrophe.]*

11.3.1. Workers' compensation depositions are treated the same way as depositions taken in civil matters. SDCL 1-26-19.2 says depositions in work comp cases are to be conducted "in like manner that depositions of witnesses are taken...in civil actions pending in circuit court." The witness gets 15 days to read and sign, if desired, and the original transcript should be sealed and delivered to the ordering attorney.

11.3.2. Workers' compensation hearings may be reported by a court reporter. According to SDCL 1-26-22, "Whenever a party requests in writing that oral proceedings be transcribed, a verbatim record of all proceedings and testimony shall be kept by the agency," and if transcribed, "a copy of the record shall be furnished to any other party to the hearing at the request and expense of such other party." The original transcript of a work comp hearing should be filed with the Department of Labor UNLESS it is a transcript ordered for appeal purposes, in which case it is filed with the clerk of court for the county where the matter will be heard. The address of the South Dakota Department of Labor is:

Department of Labor
123 W. Missouri Ave.
Pierre, SD 57501
(phone 605.773.3101 or 605.773.3681)

Orders for transcripts on appeal from work comp cases are supposed to be made in the same manner as with civil court cases; that is, within ten days after the filing of the notice of appeal, the appellant shall, in writing, order from the reporter the written transcript or such parts the appellant deems necessary to the appeal (see SDCL 1-26-32.2).

The ordering party must, at the time of ordering the transcript on appeal, make arrangements with the reporter for the payment of the costs of the original and all necessary copies, including the copies for the other parties; the reporter shall acknowledge at the foot of the order receipt of the request for the transcript and transmit the order to the clerk of the circuit court; and the reporter has to ask the court for an extension of time if the transcript cannot be completed within 30 days (see SDCL 1-26-32.3).

According to SDCL 1-26-32.4, the original transcript ordered on appeal will be filed with the clerk of the circuit court and copies transmitted to each party to the appeal separately represented and directly to any parties not represented; the reporter shall certify the correctness of the original and all copies (which means a signed certificate must be attached to the copies as well as the original); and the reporter shall notify the clerk of the circuit court in writing that the original transcript has been filed and copies transmitted.

11.4. Mental Health hearings. SDCL 27A-11A-2 reads, "Stenographic record of proceedings--Certified transcript or tape requested by patient--Expense. A court reporter shall attend all hearings of the

county board of mental illness and keep a stenographic record of all proceedings; or a record of all hearings shall be recorded by tape recorder or other sound-reproducing equipment. If a tape recorder or other sound reproducing equipment is used, the equipment shall be of such quality that each word of the testimony and rulings made with reference thereto can be clearly heard and understood. All recorded testimony shall be preserved for at least five years. A person who has been committed may request a certified transcript or, if a tape recorder is utilized, a copy of the taped testimony of the hearing. To obtain a copy the patient shall pay for a transcript or copy of the tape recorded testimony or shall file an affidavit that he is without means to pay for such transcript or tape recording. If the affidavit is found true by the board of mental illness, the expense of the transcript or copy of the tape-recorded testimony is a charge upon the county of residence of the patient." See also Sections 10.2.1 and 13.2 of this manual for more information on reporting mental health hearings. Mental Health hearings are confidential and should not be discussed with anyone.

11.5. Statements. Statements are essentially an interview by an attorney of a potential witness to a case. They are conducted like depositions, except usually only one side of the case is present and represented. Sometimes insurance companies hire court reporters when an insurance agent is taking a client's statement. Statements are not public record. They are considered the work product of the attorney, insurance agent, or party conducting the statement and should not be filed; nor should they be disseminated by the court reporter without permission; the reporter should not even talk about the fact the statement was taken. See also Section 9.6.

11.6. Patent and Trademark depositions.

On 7/21/17, the U.S. Trademark Law Rules of Practice & Federal Statutes could be found online at www.uspto.gov/sites/default/files/documents/trademark_rules_statutes_2017-7-21.pdf

(At this writing, the part relating to reporting depositions starts on page 77 of the online PDF that comes up.) Here are some of the rules court reporters must follow when reporting and transcribing depositions in patent and trademark cases.

11.6.1. Format requirements. According to US Patent and Trademark Court Rule 2.123(g)(1), the pages of each deposition must be numbered consecutively, **and the name of the witness plainly and conspicuously written at the top of each page.** A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer. **The deposition must be submitted in full-size format** (one page per sheet), not condensed (multiple pages per sheet).

11.6.2. Rule 2.123(g)(2) says **Exhibits** must be numbered or lettered consecutively and each must be **marked with the number and title of the case and the name of the party offering the exhibit.** *Entry and consideration may be refused to improperly marked exhibits.* (Editor's note: Experienced P&T attorneys will bring exhibit stickers with the number and title of the case already on the sticker.)

11.6.3. Indexing. Rule 2.123(g)(2) says "Each deposition **must contain a word index and an index of the names of the witnesses**, giving the pages where the words appear in the deposition and where witness examination and cross-examination begin, **and an index of the exhibits**, briefly describing their nature and giving the pages at which they are introduced and offered in evidence."

11.6.4. Reporter's Certificate. According to US Patent and Trademark Court Rule 2.123(f)(1), the reporter's certificate must show:

- (i) Due administration of the oath by the officer to the witness before the commencement of his or her deposition;
- (ii) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his presence;
- (iii) **The presence or absence of the adverse party;**
- (iv) The place, day, and hour of commencing and taking the deposition;
- (v) **The fact that the officer was not disqualified as specified in Rule 28 of the**

Federal Rules of Civil Procedure.

Patent and Trademark Court Rule 2.123 (f)(2) says, in part, "**If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state.** The officer shall sign the certificate and affix thereto his or her seal of office, if he or she has such a seal."

11.6.5. Filing the deposition: PTCR 2.123 (f)(2) also says, "**The party taking the deposition, or its attorney** or other authorized representative, shall then promptly file the transcript and exhibits in electronic form using ESTTA. If the nature of an exhibit precludes electronic transmission via ESTTA, it shall be submitted by mail by the party taking the deposition, or its attorney or other authorized representative."

In other words, the reporter is not the one responsible for filing the deposition.

11.7. Debtor's Examinations. A debtor's examination is a special proceeding used by creditors who are trying to figure out how to collect a judgment against a debtor who doesn't have enough money to pay off a very large debt. It is technically a court proceeding, even though in South Dakota a debtor's exam is often conducted as if it were a deposition.

SDCL15-20-7 states "Witnesses may be required to appear and testify on any proceeding under this chapter, in the same manner as upon the trial of any issue. The party or witness may be required to attend before the judge or a referee appointed by the court or judge. If the examination is taken before a referee, it shall be certified by such referee to the judge."

Because it is technically a court proceeding and not a deposition, there is no need to ask the witness to read and sign, and the original transcript should be filed with the clerk of court even if there was no judge or referee present. Do not use the word "Deposition" on the title page. Refer to the proceedings as a Debtor's Examination instead.

SECTION 12. DEPOSITIONS/REPORTING IN FEDERAL DISTRICT COURT

12.1. Page format for Federal transcripts of official court proceedings. As of 2/15/18, the federal court transcript format may be found at www.uscourts.gov/sites/default/files/guide_vol06.pdf. See pages 103-116 of that document, Section 520, “Transcript Format.” (These requirements apply to official court proceedings, not depositions). Here are some of the requirements (found at Section 520.23 and continuing):

1. Paper size is to be 8 1/2 by 11 inches.
2. The use of preprinted solid left and right marginal lines is required. The use of preprinted top and bottom marginal lines is optional. All preprinted lines must be placed on the page so that text actually begins 1 3/4 inches from the left side of the page and ends 3/8 inch from the right side of the page. Typing is to begin at the 1-3/4-inch left margin and continue to the 3/8-inch right margin. Lines are to be double-spaced. Format of an electronically filed original should be full-size pages.
3. The letter character size is to be 10 letters to the inch. This provides for approximately 63 characters to each line.
4. Each page of transcription is to contain 25 lines of text. The last page may contain fewer lines if it is less than a full page of transcription. Page numbers or notations such as headers and footers are not considered part of the 25 lines. An exception is allowed (1) when a next-day (daily) or 2-hour (hourly) transcript of jury trials is produced and the exception is approved by the presiding judicial officer; (2) allows a page break before and after sidebar conferences, bench conferences, and hearings on motions; (3) Court reporters are required to reduce the page count for billing purposes by one-half page for every page of transcript that includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break; (4) this exception as defined above will make it easier for a judge to provide portions of a transcript to a jury for review JCUS-MAR 1996, pp. 26-27.
5. All Q and A designations shall begin at the left margin. A period following the Q and A is optional. The statement following the Q and A shall begin on the fifth space from the left margin. Subsequent lines shall begin at the left margin.
6. Colloquy/speaker identification shall begin on the tenth space from the left margin followed directly by a colon. The statement shall begin on the third space after the colon. Subsequent lines shall begin at the left margin.
7. Time of day is to be indicated in parentheticals where appropriate; for example:
 - (Recess at 12:30 p.m. until 1:30 p.m.)
 - (Proceedings concluded at 5 p.m.)
 - (Jury out at 10:35 a.m.)
8. It is the responsibility of the attorneys, as well as the judge in some instances, to note for the record any significant nonverbal behavior; i.e., physical gestures and lengthy pauses on the part of the witness. If counsel or the court refers to the witness's affirmative or negative gesture, parenthetical phrases may be used to indicate physical gestures. Examples [taken from the Federal manual]:
 - (Nods head up and down)
 - (Shakes head from side to side)
 - (Indicating)

9. Indexes are required.

12.2. Depositions reported for federal court. There is no statutory page format for depositions taken for federal court cases, but there are some special requirements for federal depositions.

12.2.1. Put the date on the title page and/or cover page. The federal court clerk’s office wants the date the deposition was taken to appear on the front page of the transcript. If you do a cover page that simply gives the name of the witness, please include the date the deposition was taken below the witness’s name. See Section 15.1(c).

12.2.2. Officer’s on-the-record statement when deposition is videotaped. (EDITOR’S NOTE: This section contains information regarding videotaped depositions in state court as well.)

Federal Rule of Civil Procedure 30(b)(5)(A) says, “Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes (i) the officer’s name and business address; (ii) the date, time and place of the deposition; (iii) the deponent’s name; (iv) the administration of the oath or affirmation to the deponent; and (v) the identity of all persons present.” SDCL 15-6-30(b)(4) requires the same. See Section 15.4.

FRCP 30(b)(5)(B) and SDCL 15-6-30(b)(4) add that if the deposition is recorded other than stenographically—for example, by videotape—these items must be repeated at the beginning of each unit of the recording medium.

FRCP 30(b)(4)(C) says, “At the end of the deposition, the officer must state on the record that the deposition is complete and must set forth any stipulations made by the attorneys about the custody of the transcript or recording and the exhibits, or about other pertinent matters.” See Section 15.4(b).

12.2.3. At a deposition that is not videotaped, the "statement by the officer" mentioned above is not read aloud unless the deposition is videotaped. Typing it into the transcript suffices, just as it does when attorneys say “Insert the same stipulation we used last week” instead of taking the time to repeat that stipulation aloud before starting the questioning. NCRA, in their Certified Legal Video Specialist program, recommends that when a deposition is videotaped, the reporter or videographer should repeat the items listed in Section 12.2.2 at the beginning of each unit of recorded tape or other recording medium whether a stenographic record is made or not. No statement needs to be made at the end of a deposition if it is not videotaped. (If videotaped, see 12.2.4.)

Lawyers do not always advise reporters when a deposition is going to be videotaped, so it is a good idea to bring a generic form of the statement with you in case you need it, with blanks for all necessary information that you can fill in so it can be read onto the videotape. See Section 15.4 for a blank form.

12.2.4. Videotaped proceedings generally. When proceedings are videotaped, the appearance, voice, or demeanor of the participants should not be distorted through camera or sound-recording techniques. A statement should be read at the beginning of each unit of the recording medium stating the name of the court reporter and videographer and their respective business addresses; the date, time, and place of the proceedings; the name of the deponent; and the identity of all persons present. These statements should also be typed into the transcript.

FRCP 30(b)(5)(C) says, “At the end of the deposition, the officer must state on the record that the deposition is complete and must set forth any stipulations made by the attorneys about the custody of the transcript or recording and the exhibits, or about other pertinent matters.” This is a good practice to follow for depositions filed in other courts as well.

12.2.5. Telephone depositions. FRCP 30(b)(4) reads, in part, “...the deposition takes place

where the deponent answers the questions.” In other words, the deposition is considered taken at the place where the witness is physically present, regardless of where the attorneys are and regardless of where the case is filed. A notary public in South Dakota is not supposed to administer the oath over the telephone, although the notary may administer the oath over an audiovisual feed where the notary is able to see the deponent. See also Section 2.2.2.

Here is one way of showing on the title page the location of various parties and counsel appearing by telephone:

TELEPHONIC SWORN DEPOSITION OF {^|witname"witname}, taken on behalf of the {^"taker} herein, on {^"deptime}, commencing at the hour of {^|time1"time1} Central Time, before Reporter Name, Registered Professional Reporter, and Notary Public in and for the State of South Dakota, of Topp Court Reporting, 705 Douglas Street, Sioux Falls, South Dakota. The witness and court reporter were at 1234 Green Street, Sioux Falls, South Dakota. Mr. Jones appeared telephonically from his office in Chicago, Illinois. Ms. Smith appeared telephonically from her office in Minneapolis, Minnesota. Mr. John Doe and Ms. Susan Roe were also present by telephone.

12.3. Reading and signing. In federal cases, it is not necessary to ask whether a witness wants to read and sign. The witness or a party must ask before completion of the deposition. If the witness does want to read and sign, the reporter is not required to send the transcript to the witness. According to the rule, if reading and signing is requested, the deponent has 30 days *after being notified that the deposition is available* for reading and signing.

Federal Rule of Civil Procedure 30(e) reads, “*On request* by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.” In other words, if the case is filed in federal court, the witness does not need to be asked if he or she wants to read and sign; but witnesses who ask of their own accord for the right to read, or witnesses who are asked by one of the attorneys or parties present to read and sign, must be given the opportunity to do so.

12.4. Reporter’s certificate. FRCP 30(f)(1) states, “The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness’s testimony. The certificate must accompany the record of the deposition.” In addition, FRCP 30(e)(2) states, “The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.” See Section 15.8 for a sample certificate.

12.5. Filing by Officer; Exhibits; Copies; Notices of Filing. Federal R.Civ.P. 30(f) says, “Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked “Deposition of [witness’s name]” and must promptly send it to the attorney who arranged for the transcript.” The rules have not kept up with the times. The courts want electronically filed full-size pages. Even if the attorney orders a paper transcript and/or the condensed version, provide a full-size electronic transcript in case it needs to be filed later. Make sure that the date on which the proceedings were held show on the title page and/or cover page of the transcript. An /s/ Your Name signature is satisfactory. No need yet for an electronic digital signature on the certificate.

Condensed originals have been approved for filing purposes in all federal district courts in South Dakota, but court administration has advised they prefer full-size pages if at all possible.

In bankruptcy court all originals, including original depositions and exhibits, must be filed electronically. If a reporter is not set up to file electronically with the bankruptcy court, they need to contact the clerk to get the necessary information to log into their system.

12.6. Retention of shorthand notes. FRCP 30(f)(3) says, “Unless otherwise stipulated or ordered by the

court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method.” The length of time for which the officer must retain the notes or recordings is not specified, but notes of federal official court proceedings need to be retained for at least 10 years.

12.7. Compensation for reporting federal criminal depositions. Freelance court reporters may not realize that depositions reported for *court-appointed* attorneys in federal court cases are subject to the Maximum Transcript Rates authorized by the United States Judicial Conference. If you are planning on charging more than the conference rates, you should advise the attorney of that beforehand, because it is certain the attorney will not be expecting to pay anything out of pocket for the transcripts and may want to look elsewhere for a reporter.

If the Certificate of Reporter is the only thing on the page, a court reporter is not supposed to charge for that page. However, if there is at least one line of the actual reported proceedings on the page, the reporter may charge for that page.

12.8. US Judicial Conference Maximum Transcript Rates - All Parties (Per Page) found online at <http://www.uscourts.gov> (search for “Maximum Transcript Rates”). Rates effective October 1, 2023.

	<u>Original</u>	<u>1st Copy to each party</u>	<u>Each add'l copy to the same party</u>
<u>Ordinary Transcript</u> -- a transcript delivered within 30 calendar days after receipt of an order	4.00	1.00	.70
<u>Fourteen-Day Transcript</u> –delivered within fourteen calendar days after receipt of an order	4.70	1.00	.70
<u>Expedited (7-day) Transcript</u> –delivered within seven calendar days after receipt of an order	5.35	1.00	.70
<u>3-Day Transcript</u> – delivered within three calendar Days after receipt of an order	6.00	1.20	.85
<u>Daily Transcript</u> --a transcript delivered On the calendar day following receipt of the order (regardless of whether the calendar day is a weekend or holiday), prior to the normal opening hour of the clerk’s office.	6.70	1.35	1.00
<u>Hourly Transcript</u> --a transcript of proceedings to be delivered within two hours from receipt of the order. within two (2) hours.	8.00	1.35	1.00

Realtime Transcript --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 after receipt of an order: One feed**, 3.40/page; two to four feeds, 2.35/page; five or more feeds, 1.65/page.

**A realtime “feed” is the electronic data flow from the court reporter to the computer of each person or party ordering and receiving the realtime transcription in the courtroom.

12.10. Transcripts of change of plea and sentencing hearings in federal court. Effective January 1, 2017, Standing Order 16-04 in the US District Court/District of South Dakota seeks “to make it impossible to determine from examining the record whether a defendant did or did not cooperate with the government and to limit access to sealed or restricted criminal documents and transcripts.”

If you report in federal court and are asked to prepare a transcript of a change of plea or sentencing hearing, you must now prepare two versions: a restricted transcript and a public transcript. The restricted transcript will be the unredacted transcript containing the confidential section or reference thereto where cooperation or lack thereof may be discussed. Only the government and counsel for the defendant will have access to restricted transcripts. The public transcript will have those sections redacted and will contain the following reference: “Pursuant to Standing Order 16-04, portions of all change of plea and sentencing transcripts are restricted.”

If a pro se criminal defendant or a criminal defendant’s family asks you for a transcript of a change of plea and/or sentencing hearing, you should contact a federal court reporter or the federal court administrator’s office for guidance as to whether and how to provide that transcript.

Only the public transcript is subject to the redaction requirements, and therefore you file Notice of Filing of Public Transcript for Redaction Purposes instead of the Notice of Filing Official Transcript described in section 12.9 above.

Any questions about how to do these transcripts, billing issues, notice issues, etc., please contact a federal court reporter.

Below is an example of a Notice of Filing of Public Transcript, filed by an example of a title page for a Public Transcript.

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA _____ DISTRICT		
XX,)	
)	Case No:
Plaintiff,)	Notice of Filing
)	of
vs.)	Public Transcript
)	
XX,)	
)	
Defendant.)	

Notice is hereby given that a public transcript of a proceeding has been filed by the court reporter in the above-captioned matter. The parties have twenty-one (21) calendar days to file a Redaction Request of this transcript. If no Redaction Request is filed, the transcript may be made remotely electronically available to the public without redaction after ninety (90) calendar days.

Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the public terminal located at the Office of the Clerk.

/s/ _____
Court Reporter Name and Address _____

Certificate of Service

I hereby certify that on the above date, I electronically served the foregoing on parties in this matter using the CM/ECF system, which will send notification to the following: [list names here]

/s/ _____
Court Reporter Name and Address _____

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

* * * * *
*
UNITED STATES OF AMERICA, * CR. 09-4011 [REDACTED]
*
Plaintiff, *
* Sioux Falls, South Dakota
-vs- *
*
[REDACTED] * August 11, 2016
*
Defendant. *
*
* * * * *

PUBLIC TRANSCRIPT OF
SENTENCING
(PURSUANT TO STANDING ORDER 16-04, PORTIONS OF ALL
CHANGE OF PLEA AND SENTENCING TRANSCRIPTS ARE RESTRICTED)

BEFORE THE HONORABLE KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

* * * * *

APPEARANCES:

Counsel for Plaintiff: MR. JOHN E. HAAK
Deputy Criminal Chief
United States Attorney's Office
Post Office Box 2638
Sioux Falls, South Dakota 57101

Counsel for Defendant: MR. JAMES A. EIRINBERG
300 N. Dakota Avenue, Suite 509
Sioux Falls, South Dakota 57104

SECTION 13. BILLING PROCEDURES.

** This section is not going to tell you how much to charge for freelance work. That is your business decision.

13.1. Contracting for the state. The UJS contracts with freelance reporters to do substitute reporting in official court. The contracts are sent out for renewal in June of each year, and the terms are subject to change. Check your contract for the current rates. Send your bill to the circuit court administrator of the circuit in which you did the work. You will need to itemize your bill. Some court administrators ask you to put your exact times for travel time (time you left home and time you get back), start and end times for the court proceeding, mileage, and meals. No tax is charged because it's billed to the state.

13.2. Mental Health hearings. Appearance fees for mental health hearings are charged to the county the patient is from. At the beginning of the hearing, the hearing officer should put on the record the patient's county of residence. The bill should be directed to the county auditor. Technically your bill should be submitted on a county voucher, but many counties will accept your regular bill even if you don't attach it to a county voucher. If you do need to fill out a county voucher, simply put the same information as you would on a regular invoice, sign the voucher in the appropriate spot, and submit it to the county auditor. If you have a court order for a transcript, attach that too. No sales tax should be charged to the county. If there is more than one patient's hearing being billed, each hearing should be itemized. If transcripts are ordered, the original transcript is filed with the clerk of court of the patient's county of residence.

13.3. Who to bill for transcripts of official court proceedings. See Section 19.13.2.

13.4. What is a page? A page of transcript is not a sheet of paper. A page of transcript may contain up to 25 double-spaced lines of text, each line of which may contain up to approximately 60 characters. Court reporters do not charge by the sheet of paper. They charge by the amount of work that goes into creating a transcript page. If four mini pages are put on one sheet of paper, that is still four pages of transcript. If the pages are produced in electronic form and not on paper, they are still pages.

13.5. Who is responsible for the court reporter's bill? If the lawyer directly hires the court reporter and/or directly orders the transcript from the court reporter, the lawyer is responsible for the court reporter's bill, pursuant to the South Dakota Bar Association's Ethics Opinion 80-6 (See Section 15.22). Sometimes a client will call the reporter and hire the reporter directly and/or order the transcript directly. Even if the client instructs you to send the transcript to the lawyer, if the client is the one ordering the transcript, the client is directly responsible for the bill. You are within your rights to ask for your money up front anytime you get a transcript order from someone you aren't sure will pay, whether layperson or lawyer. Most lawyers pay within 30 days, but if they are working for an insurance company it can take up to nine months. If you are having trouble collecting payment, first call the attorney to find out what the problem is, or write a reminder letter such as the one found at Section 15.23.

13.6. An attorney is not required to order a transcript. There are times when the attorney who requested the deposition decides not to order the transcript and just pays the reporter's appearance fee. The opposing side has the option to then order the transcript and pay the transcription fee. If the second attorney orders the original, sometimes the first attorney will then order a copy of the transcript. An argument may then ensue between counsel as to whether the first attorney has to pay for the original after all.

Counsel should not try to put the reporter in the middle of this fight, but if they do, the reporter can refer them to the following: The South Dakota Bar Association's Ethics Opinion 80-6 (see Section 15.23) states that a lawyer who directly orders the transcript from the court reporter is responsible for paying for the transcript. Also, SDCL 15-6-30(c) states, in part, "If requested by one of the parties, the

testimony shall be transcribed,” but it does not say that it has to be the taking party who orders it, and indeed does not require that a transcript be made at all. So the bill for the transcription goes to the person who orders the transcript. If counsel disagree, they can go in front of a judge to make their argument, but in the meantime the attorney who orders the original has to pay the reporter for the original.

It is a good idea to get prepayment in a situation like this.

13.7. W9s, Social Security Numbers, and Tax Identification Numbers (EIN). More and more law firms are starting to request a W9 form (Request for Taxpayer Identification Number and Certification) from a court reporter even when the invoice is less than \$600. To avoid delay in payment, the first time you work with a law firm, you may want to include a completed W9.

However, there may also be times when a pro se person requests a transcript that costs at least \$600, requiring you to give them the W9 form, and you may not feel comfortable giving that person your social security number. To avoid having to share your social security number with too many people, you can apply for an Employer Identification Number (EIN) online and receive one almost instantly. You may list yourself as a Sole Proprietor and, when you reach the question about why you are requesting an EIN, click on “Banking Purposes.” After you finish the application, you will receive your EIN almost immediately and can use it as your Taxpayer ID number on the W9. You can also put your EIN on your invoices under your name and address where attorneys can see it, and this may save you having to fill out W9s in order to get paid for smaller amounts.

13.8. Charging interest. If you are going to charge interest, you must include on your invoice a statement to the effect that “Interest at the rate of x.x% will be charged on balances over 30 days.” If you do not put this statement on the bill, by law you cannot go back later and charge interest. This blurb is helpful in collecting overdue balances, even if you do not actually get the interest.

SECTION 14. FREQUENTLY ASKED QUESTIONS.

14.1. Is there a statutory page format for depositions in South Dakota? No. There is a statutory page format for official transcripts in South Dakota state court (see Section 19.6) and a different statutory page format for official transcripts of federal court proceedings (see Section 12.1), but there is no required format for depositions.

There are some things that attorneys, judges and court clerks have mentioned they would like to see freelance reporters do, however. For example, it is important that the cover page (if any) and title page show the date on which the deposition or other proceeding took place (see Section 15.1 for a sample title page). Judges especially like indexes to objections; it saves a lot of time pretrial (see Section 15.2 for sample indexes).

This is the page format recommended by NCRA:

1. No fewer than twenty-five typed lines on 8 1/2 x 11 paper.
2. No fewer than 9 or 10 characters to the typed inch.
3. Left-hand margin to be set at no more than 1-3/4 inches.
4. Right-hand margin to be set at no more than 3/8 inch.
5. Each question and answer to begin on a separate line.
6. Each question and answer to begin no more than five spaces from the left-hand margin with no more than five spaces from the Q and A to the text. *[Editor's Note: periods after the Q or A are optional.]*
7. Carryover Q and A lines to begin at the left-hand margin.
8. Colloquy material to begin no more than 15 spaces from the left-hand margin, with carryover colloquy to the left-hand margin.
9. Quoted material to begin no more than 15 spaces from the left-hand margin, with carryover lines to begin no more than 10 spaces from the left-hand margin.
10. Parentheticals and exhibit markings to begin no more than 15 spaces from the left-hand margin, with carryover lines to begin no more than 15 spaces from the left-hand margin. (In those states or jurisdictions with transcript format guidelines recommended or established by court or other applicable rule, such guidelines shall be observed.)

14.2. Do we file the originals of depositions? See Sections 9.1 and 12.5.

14.3. Why do we have to seal the original if we're delivering the deposition to the attorney? Because the rules have not kept up with advancements in technology. See Sections 9.1, 9.2, and 12.5.

14.4. Do deponents in a trial or evidentiary deposition have the right to read and sign? Yes. The rules regarding reading and signing do not differentiate between discovery and evidentiary or trial depositions. The witness has the right to read and sign, but may choose to waive that right. The attorneys may agree to waive it, but if the witness asks to read and sign and doesn't waive the right, the witness still has the right. In federal cases, FRCP 30(e) says the witness doesn't have to be asked, so if you're lucky, no one will bring it up. But if the witness *does* ask, the witness gets the right. Even in states where you don't have to ask the witness about reading and signing, if the witness asks, the witness receives the right. See also Section 7 and Section 12.3.

14.5. Do we charge sales tax to out-of-state attorneys? See Section 3.1(e).

14.6. Do we really have to charge sales tax on postage? Yes. See Sections 3.1(c), 3.2, and the sample bill at Section 15.16.

14.7. Do we have to use the South Dakota statutory format? The South Dakota statutory page

format is not required for depositions. The format for appeal transcripts is set out in SDCL 15-26A-93, Appendix of Forms, Form 3, Appeal Transcripts, and that format is required for all official court proceedings, even if it is a freelance court reporter making the transcript. See also Section 19.6.

14.8. Isn't the attorney taking the deposition really doing cross-examination? What examination format should I use? Sometimes depositions are taken for evidentiary purposes, in which case the attorney taking the deposition is conducting direct examination. Sometimes depositions are taken for discovery purposes, in which case some people argue that technically the attorney taking the deposition is conducting a form of cross-examination.

The rules for conducting each type of examination are different; however, depositions are not as formal as court proceedings and a lot of leeway is permitted. For this reason, many reporters simply use EXAMINATION and FURTHER EXAMINATION. It all gets sorted out in court, so just pick one style and stick with it:

	EXAMINATION
BY COUNSEL ONE:	
	EXAMINATION
BY COUNSEL TWO:	
	FURTHER EXAMINATION
BY COUNSEL ONE:	
	FURTHER EXAMINATION
BY COUNSEL TWO:	

See also Sections 15.5 and 17.11.8.

14.9. Do I have to give an attorney my audio backup? No, nor does a reporter have to turn over the reporter's notes or dope sheets or other work product. This is also in accordance with NCRA Advisory Opinion 38.

14.10. Should I still put an "original" stamp on my original paper transcript?
See Section 9.1.

SECTION 15: FREELANCE SAMPLE PAGES AND FORMS

- 15.1. Deposition title page and cover page examples
- 15.2. Index examples:
 - (a) Index to deposition one way
 - (b) Index to deposition another way
- 15.3. Stipulation:
 - (a) Standard stipulation
 - (b) Paraphrased stipulation inserted into the record.
- 15.4.
 - (a) Statement on the record for videotaped depositions
 - (b) Statement on the record at the end of a videotaped deposition
 - (c) Introductory statement for nonvideotaped deposition
- 15.5. Examination setups
- 15.6. Grand Jury testimony example
- 15.7. Deposition upon written interrogatories: example of numbered questions
- 15.8. Deposition certificate
- 15.9.
 - (a) Certificate of Transcriber and Transcriber's explanatory notes
 - (b) Certificate of Transcriber of Another Reporter's Notes
- 15.10. Errata sheet
- 15.11. Letter to witness to read and sign
- 15.12. Notice of Delivery of Transcript after witness did not come to read/sign
- 15.13. Letters showing other notifications to counsel (re exhibits, etc.)
- 15.14. Letter to attorneys for errors found after transcript is delivered
- 15.15. Sample transcript order form
- 15.16. Sample invoices
- 15.17. Email proposal re charges for realtime and/or daily copy
- 15.18. Realtime disclaimer (see also Section 20.6)
- 15.19. Court Reporter Guardian form and instructions
- 15.20. Sample state contract
- 15.21. Transcript pages using (a) NCRA format (b) federal format; [SD format at Section 23.5]
- 15.22. Ethics Opinion re attorney's obligation to pay bill
- 15.23. Collection letters
- 15.24. 2006 email from Department of Revenue re collecting sales tax

**There is more than one correct way to do title pages, indexes, appearances, etc. Only a few are included in this manual, for reasons of space. The important thing is to include the necessary information as required by the rules.

Sample 15.1(a). Deposition title page – one example

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS
 2 FOR THE COUNTY OF YANKTON) FIRST JUDICIAL CIRCUIT

 3
 4 MYLEGGGA S. BROKEN,)
)
 5 Plaintiff,) Civ. No. 15-1234
)
 6 vs.) DEPOSITION OF:
) IONA CADDY
 7 TABBY CAT,)
)
 8 Defendant.)

 9 DATE: January 8, 2015, at 8:56 a.m.
 10 PLACE: Justice For All Law Firm
 555 Mercy Boulevard
 11 Rapid City, SD 57702
 12 APPEARANCES:
 13 Representing the Plaintiff:
 14 MR. JOHN N. CENSED
 Justice For All Law Firm
 15 Attorneys at Law
 555 Mercy Boulevard
 16 Rapid City, SD 57702
 17 Representing the Defendant:
 18 MS. IMA FIDDER
 Fidder, Fidder & Stubborn
 19 Attorneys at Law
 888 Main Street
 20 Rapid City, SD 57701
 21
 22 Reported By: Jane J. Jiggy
 Registered Professional Reporter
 23 Best of the West Court Reporting
 666 Fifth Street
 24 Rapid City, SD 57701
 605.721.2600
 25

15.1(c). If you use a cover page on your condensed transcripts, be sure to include THE DATE.

**Turner County CIV 15-XXX
Plaintiff Name vs. Defendant Name**

DEPOSITION OF WITNESS NAME

February 2, 2015

Sample 15.2 (a). One style of deposition index

1	INDEX TO PROCEEDINGS	
2	HONEY BEAR	
3	Examination by Mr. Lawyer at 9:55 a.m., 3-12-15.....	3
4	Stipulation re Deposition Exhibit 1.....	23
5	Question certified.....	71
6	Examination by Ms. Attorney at 1:12 p.m.....	100
7	Further Examination by Mr. Lawyer at 1:34 p.m.....	114
8	End of Deposition at 1:43 p.m., 3-12-15.....	120

9 * * *

10 INDEX TO EXHIBITS

11	Number and Description	Marked
12	1. Medical records	16
13	2. List of surgeries	22
14	3. Drawing of accident scene	30

15 * * *

16 INDEX TO OBJECTIONS

17	Page 22, line 15	
	Page 23, line 9	
18	Page 67, line 22	
	Page 92, line 3	
19	Page 94, line 5	
	Page 111, line 2	
20	Page 115, line 6	

21 * * *

22	REQUESTS FOR PRODUCTION:	Page/Line
23	Copy of insurance policy	52 5

24

25

15.2(b) Another style of deposition index

1 INDEX TO PROCEEDINGS

2 WITNESS: IONA CADDY PAGE

3 EXAMINATION BY MS. FIDDER 3

4 EXAMINATION BY MR. CENSED 43

5 FURTHER EXAMINATION BY MS. FIDDER 60

6 Stipulation re turnover of car keys.....23

7 Question certified.....71

7 * * *

8 INDEX TO EXHIBITS

9 NO EXHIBITS WERE MARKED HEREIN.

10 * * *

11 INDEX TO OBJECTIONS

12 Page/Line: 22/15, 23/9, 67/22, 114/7, 118/21

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15.3.(a). Standard stipulation

S T I P U L A T I O N

It is stipulated and agreed, by and between the parties herein, through their counsel of record, that the deposition of _____ may be taken at {address}, at the hour of _____, on {day/date}, before _____, Registered Professional Reporter, Notary Public in and for the State of South Dakota;

That said deposition shall be taken for purposes of discovery and/or for use at the trial, or for each of said purposes, pursuant to statute and the rules of civil procedure; that all objections are reserved until the time of trial, except those as to the form of the question; and that the reading and signing of this deposition **is/is not** waived by the parties, through their counsel.

****Note:** The Standard Stipulation contains most of the information required by FRCP 30(b)(4) and can take the place of the introductory statement in non-videotaped depositions.

15.3(b). Paraphrased stipulation inserted into the record.

1 MR. LAWYER: The record can reflect this is Thursday, March 3,
 2 2015, and we are here for the deposition of Honey Bear in the
 3 matter captioned Teddy Bear, Plaintiff, vs. Ginger Cat,
 4 Defendant. My name is John Lawyer, and I am appearing for
 5 Teddy Bear. Jane Attorney is present on behalf of the
 6 defendant. Ginger Cat is not present but was notified of
 7 this proceeding and has notified us she is not coming.

8 Ms. Attorney, will you stipulate that this deposition
 9 is being taken pursuant to the South Dakota rules and is
 10 taken for purposes of discovery as well as trial?

11 MS. ATTORNEY: So stipulated.

12 MR. LAWYER: You may swear the witness.

13 HONEY BEAR
 14 was duly sworn and testified as follows:

15 EXAMINATION

16 Q (BY MR. LAWYER) Please state your name.

17 A Honey Bear.

 1 MR. LAWYER: Please insert the same stipulation from last time.
 2 (Stipulation from 10-3-15 deposition of Honey Bear inserted as
 follows:)

3 S T I P U L A T I O N

4 It is stipulated and agreed, by and between the parties herein,
 5 that this deposition is taken pursuant to the South Dakota rules
 6 and is taken for purposes of discovery as well as trial.

7 THOMAS CAT

8 was duly sworn and testified as follows:

15.4 (a). Blank introductory statement for videotaped deposition.

THE VIDEOGRAPHER: This is the oral sworn deposition of [deponent's name], taken on behalf of [plf/dft] in the matter of [plaintiff] vs. [defendant], [case number], on [day and date], at [time], at [location of deposition]. The court reporter is [reporter name] of [firm name/address].

The videographer is [videographer's name] of [videographer's firm]. Present are [pf's attorney],

representing the plaintiff, and [dft's attorney], representing the defendant. Also present is/are [names]. After the attorneys introduce themselves,** the court reporter will administer the oath.

MR. LAWYER: I am John Lawyer, here on behalf of the plaintiff, Teddy Bear.

MS. ATTORNEY: Jane Attorney, on behalf of defendant Ginger Cat.

** The attorneys should introduce themselves by name so that viewers know which voice belongs to whom, because usually the attorneys will not be seen on the videotape.

15.4(b). Example of statement given at close of videotaped deposition

VIDEOGRAPHER: This is the end of the deposition of [deponent's name]. After the deposition is transcribed, Mr. Lawyer will take custody of the original transcript and exhibits. This deposition is concluded at [time and date].

15.4(c). Introductory statement for non-videotaped deposition, pursuant to FRCP 30(b)(4).

ORAL SWORN DEPOSITION of [WITNESS NAME], a defendant herein, taken on behalf of the plaintiff herein, on Tuesday, March 23, 2015, at 705 Pine Street, Greenfield, South Dakota, beginning at 10:30 a.m., before Name O'Reporter, Registered Professional Reporter and Notary Public, of Reporting Firm, Address

NOTE: FRCP 30(b)(4) requires this information to appear at the beginning of a deposition taken in a federal case: (a) deponent's name; (b) date, time, and place of deposition; (c) name and business address of the court reporter; (d) an identification of all persons present; and (e) the fact of the administration of the oath or affirmation to the deponent.

15.5. Examples of Examination Setups (see also Sections 14.8, 17.11.8, and 23.5(a)):

(A) Affirmation instead of oath:

WITNESS NAME
having affirmed that he would tell the truth, testified as follows:

EXAMINATION

Q. (BY MS. ATTORNEY) Would you state your name.

(B) Two witnesses deposed at the same time:

WITNESS NAME and WITNESS NAME
having each been sworn to tell the truth, testified as follows:

EXAMINATION

MR. LAWYER: Please state your names for the record.

JAMES SMITH: James Smith.

LIZZIE SMITH: Lizzie Smith. You can call me Liz.

MR. LAWYER: Now, first I want to lay down a few ground rules...

(C) In the not much better situation where two attorneys representing the same party ask questions, or when transcribing, for example, police interviews where more than one officer is asking questions, put whoever starts the exam as the Q and use colloquy for the other one.

(D) Unsworn witness (it happens!)

WITNESS NAME

testified as follows:

Q. (BY MR. LAWYER) Bobby, how old are you?

A. Five.

Q. Five? And do you know what it means to tell the truth, Bobby?

(E) Voir dire for purposes of objection: If there are only three or four questions, put it in colloquy. If it goes on for more than a page, set it up as follows:

VOIR DIRE

Q (BY MS. ATTORNEY)

When the previous examination resumes, set it up as resuming:

DIRECT EXAMINATION (RESUMED)

Q (BY MR. LAWYER)

15.6. Examination by Grand Jurors : (Note: If it's only one or two questions, you don't need to set it up as an examination. Just treat it like regular colloquy.)

EXAMINATION BY THE GRAND JURORS:

GRAND JUROR: So you weren't worried he might be there?

THE WITNESS: No. I had no clue.

GRAND JUROR: Didn't you see his car parked in your driveway?

THE WITNESS: It wasn't in the drive. It was on the street.

GRAND JUROR: I thought you said it was in your driveway.

GRAND JUROR: No, he said on the street.

GRAND JUROR: Okay, but on the street right in front of your house, right?

THE WITNESS: Right. But there's always cars in front of my house, so I didn't pay no attention.

15.7. Deposition upon written interrogatories, using numbered questions:

WITNESS NAME

being duly sworn to tell the truth, was deposed upon written interrogatories read to her by the court reporter, as follows:

Q1. Please state your name.

A1. Tabby Cat.

Q2. Please state your address.

A2. 1234 Kitty Lane, Greenfield, South Dakota.

Q4. Are you the custodian of the payroll records at Happy Cat Fitness Center?

A4. Yes. I've got the records they subpoenaed right here.

Q5. Are you testifying in response to a subpoena that was served upon you on January 29?

A5. Yes. I just said that. Do you have to read questions I've already answered?

COURT REPORTER: I have to read the questions exactly as given to me.

Q6. Are you the amanuensis of the records hereinbefore described?

A6. What's that even mean?

COURT REPORTER: I am not allowed to interpret or explain the questions.

15.8(b). Another deposition certificate:

C E R T I F I C A T E

I, Jenny Jiggy, Registered Professional Reporter, a notary public in and for the aforesaid county and state, do hereby **attest** that the witness was duly sworn by me prior to the taking of testimony; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability; that the witness WAIVED the review process.

I further assert that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome; that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcription or copies of the transcript, or that requires me to provide any service not made available to all parties to the action.

Dated this 12th day of January, 2017.

/s/ Jenny J. Jiggy
Registered Professional Reporter
Notary Public
My commission expires: May 9, 2020

****EDITOR'S NOTE:** Notarial information was included in the certificate only for purposes of showing the reporter has the authority to administer oaths. If you do this on your certificate, **DO NOT** place your notarial seal on the certificate.

15.9(b) Certificate of Transcriber (for another reporter's notes):

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF _____)

CERTIFICATE OF TRANSCRIBER

I, Reporter Name, Registered Professional Reporter , hereby certify that I transcribed the stenographic notes of Other Reporter's Name of the proceedings described on page 1 of this transcript, and that to the best of my ability, knowledge, and belief, this transcript contains a true and correct transcription of the stenographic notes of the proceedings.

I further certify that I am not related by consanguinity or affinity within the fourth degree to any party, his attorney, or an employee of any of them; that I am not financially interested in this action; and that I am not the attorney or employee of any party.

To all of which I have hereunto set my hand this ____ day of _____, 20__.

Transcriber name, address, phone number

15.11. Letter to witness to read and sign.

Date

Witness name and address

Re: Your deposition in Case Name/Number

Dear Witness Name:

Your deposition is ready for you to read and sign. Rather than risk losing the original in the mail, I have **sent you a file copy to be read and signed** have sent your attorney a copy for you to read and sign request that you call me at [phone number] to make arrangements for a mutually convenient time for you to come read and sign your transcript at my office.

When reading and signing, please follow these instructions:

1. **DO NOT WRITE ON THE TRANSCRIPT ITSELF.** Write only on the Errata Sheet I have provided. Changes you wish to make to the form or substance of the deposition must be written on the Errata Sheet. If you need more room, you may use blank paper.
2. Sign and date the Errata Sheet [in the presence of a notary public], even if you make no changes. If you make no changes, please write “No changes” on the Errata Sheet.
3. Then return the **Errata Sheet** transcript to me in the enclosed, stamped, self-addressed envelope.

If you decide you don't want to read and/or sign the transcript, please let me know that and the reason for your decision. According to the **South Dakota Codified Laws** Federal Rules of Civil Procedure, you have **15/30** days to read and sign. If you have any questions, please call me at [phone number].

Sincerely,

Reporter Name and Address

cc: Attorney Names

15.12. Notice of delivery of deposition after reading/signing or after time has passed.

NOTICE OF DELIVERY OF DEPOSITION

PLEASE ATTACH TO YOUR COPY OF THE DEPOSITION OF
WITNESS NAME, TAKEN [DATE].

Re: Plaintiff Name vs. Defendant Name, Case Number ____.

The original of the above deposition has been delivered to counsel, unsigned, pursuant to provisions of the Rules of Civil Procedure. On [date] said deposition was **[e]mailed to the deponent with instructions to read and sign and return the deposition/** provided to [counsel's name], who had agreed to have the deponent read and sign, and as of this date the time for reading and signing has passed and said deposition remains unsigned.

Dated this ____ day of _____, 20__.

Reporter Name, RPR

15.13. Other examples of things that may require notification of counsel.

- (a) **Sending errata sheet to counsel:** Enclosed is the errata sheet from the deposition of Witness Name taken date for you to attach to your copy of the transcript. The original errata sheet has been attached to the original transcript, which has been delivered to Counsel Name.
- (b) **Witness changed mind about reading/signing:** On [date] Witness Name called my office to say that she had decided not to read and sign her deposition taken [date]. With this letter I am sending the original transcript to Counsel Name. Pursuant to instruction of counsel, the original exhibits were returned to the witness.
- (c) **Exhibits missing/not provided:** For your information, Witness Name has not sent me a copy of his Deposition Exhibit 5, the extra medical records he discussed, to be attached to his deposition transcript. As **15/**30 days have now passed, I am forwarding the original transcript to Counsel Name without Deposition Exhibit 5. If I receive the exhibit, I will forward it on to counsel.
- (d) **Exhibits retained by reporter, but no transcript ordered:** On [date] the deposition of Witness Name was taken on behalf of plaintiff/defendant in the case of Plaintiff v. Defendant, Case No. XX-XXX. A transcript was never ordered, although I was instructed to take custody of Deposition Exhibits A through Z. Over a year has passed since that deposition. What would counsel like me to do with the original exhibits?

15.14. Errors found in transcript by counsel or by reporter.

Counselors:

I have discovered errors in the transcript of the deposition of Witness Name taken [date] in the case of Plaintiff v. Defendant, Case Number XX. On certain pages the word “me” was inadvertently changed to the word “people” and I did not catch the errors before the transcript went out.

Enclosed are corrected pages for you to insert in your copy of the transcript/ Attached to this email is a corrected electronic transcript. I did a word search on the other two depositions taken that date and this error does not occur in them.

Here is a list of the places where the error occurs. In each instance, the word “people” should be changed to “me”:

Page 36, line 16
Page 38, lines 14 and 15
Page 39, line 2
Page 40, lines 19, 24, and 25
Page 41, line 5

I apologize for the inconvenience this has caused.

Counselors:

I have received a letter from Counsel Name advising that he believes there are errors in the transcript of the deposition of Witness Name taken [date] in the case of Plaintiff v. Defendant, Case Number XX-XXX. On certain pages I transcribed the word “solid” which Counsel Name believes should be the word “solvent.”

As counsel is more familiar with the case, and I may have misunderstood the terminology, if I do not receive any objections within ten days from the date of this letter I will make the changes Counsel Name is requesting below and forward **the amended pages/** a corrected electronic transcript to all counsel.

Page 36, line 16
Page 38, lines 14 and 15
Page 39, line 2
Page 40, lines 19, 24, and 25
Page 41, line 5

My apologies for any inconvenience this may cause.

Sincerely,

15.15. Sample Transcript Order Form (Freelance Work)

Caption of Case: _____

Witness Name(s): _____

Deposition Date: _____

Ordering Party Information:

Ordered by: _____

Email: _____

Phone Number: _____

Law Firm: _____

Mailing address: _____

Transcript Format (Check all that are applicable. If you only want an electronic version, DO NOT check “Paper Copy”; if you only want a paper transcript, skip the electronic options):

- Electronic options:
- PDF with linked exhibits
 - exhibits scanned in separate file
 - ASCII format
 - Amicus/Summation format
 - Separately scanned exhibits
 - Full-size format
 - Condensed (4-to-a-side) format

- Paper options:
- Full-size paper transcript
 - Condensed (4-to-a-side) paper transcript
 - hard copy of exhibits

15.16. Sample Invoices.

FANTASTIC REPORTING SERVICE
1234 Fifty-Sixth Avenue
Greenfield, SD 57ZIP
phone number
Tax ID # 12-467895

November 15, 2015

Invoice #113

Attorney Name
 Someplace in South Dakota, ZIP

Re: Case No. XX-XXX, Plaintiff v. Defendant

Deposition of Witness Name taken 11-7-15.
 Original and one condensed copy delivered to you with exhibits.

25 pp x 3.50 is	87.50	
Attendance	30.00	
10 exhibits x .15	1.50	
Postage	1.88	
Pretax subtotal:	120.88	
SD sales tax 4.5%	4.91	City tax [2]%
	2.42	7.33
<i>**Editor's note: city tax varies by city</i>		
Total due and owing:	\$128.21	

Please include copy of statement with payment. Thank you!

November 15, 2015

Invoice #111515-1

State's Attorney
 Someplace in South Dakota, ZIP

Re: Case No. XX, Plaintiff v. Defendant

Grand Jury Testimony of Witness Name taken 11-7-15.
 Original transcript and one condensed copy delivered to you.

25 pp x 3.50 is	87.50
Attendance	30.00
No tax charge—government sale	

Total due and owing: \$117.50

Please include copy of statement with payment. Thank you!

15.17. Example of emailed proposal for realtime/daily copy charges (page 1 of 2)

Sent: Wednesday, May 03, 2017 8:30 AM

Counselors, you asked what it would cost to have realtime and daily copy services for the trial in the above case. Here are the rates I would charge:

Realtime: \$x.xx per page

Daily Copy: \$x.xx per page for the original final, certified transcript

\$x.cc per page for the first copy to each side

By agreeing to these rates, you agree that you will be purchasing the original and at least one copy per side of the final, certified transcript.

By ordering realtime, counsel understand and agree:

The realtime transcript is not certified. It is a rough draft. It will have words that will not have translated or will have translated incorrectly, misspellings and other mistakes. The realtime draft can be used only for the purposes of annotating counsel's notes. It is not to be cited in court or in court documents as if it were the certified transcript. Errors will be corrected on the final, certified transcript.

The realtime transcript is for the use of counsel for the parties only. It is not to be disseminated to anyone else, including the media. No one other than counsel and counsel's staff is permitted to receive a realtime feed.

Please email back indicating that by opting for this realtime rough draft service, you have agreed: (1) to purchase the realtime and certified final transcripts at the agreed-upon rates; (2) not to furnish this transcript, either in whole or in part, on disk or hard copy, or by any other means, to anyone else, including any party or counsel to the case or to any media sources.

Because of the length of the trial, I have contacted another court reporter to work with me. He would like a per diem of \$150 per court day, with a provision that if the case is settled within seven days of trial starting, his travel costs unable to be canceled would be covered by you, up to \$500.

I will also need one week's estimated payment in advance each week so that I can pay my support team and other expenses.

If you have any questions, don't hesitate to ask.

Sent: Wednesday, May 03, 2017 2:30 PM

Hi. We definitely want the daily copy and the terms are agreeable. Would we be able to access the realtime transcript in real time on our computer back at our hotel in Sioux City?

15.17 (Continued). Emailed proposal for realtime/daily copy charges (page 2 of 2)

Sent: Wednesday, May 3, 2017 3:41 PM

Counselors, I will be using XXXXX software to send realtime during the trial. This will permit you to receive the realtime transcript anywhere in the world, as long as you have that viewing software on your computer. Free viewing software may be obtained at this website: XXXXXXX.com

At counsel's request I have been providing paper transcripts in regular and condensed size for all motions hearings in this case up to now. Please let me know the following:

For the trial, do you want paper transcripts? If so, please let us know if you want regular-size pages or 4-pages-to-a-sheet (or both).

We can also provide electronic transcript in the following formats. Please let us know which formats you want your electronic transcripts in:

PDF – regular-size pages
PDF – 4-pages-to-a-sheet
Summation regular-size pages
ASCII format regular-size pages

We plan to have the final, certified transcripts delivered no later than 10 pm the day of proceedings.

Rules as to what a court reporter is required to report vary from court to court and state to state. For this case, at the instruction of the judge, we are planning to report and do realtime and daily copy of the jury voir dire, opening statements, and closing arguments, live testimony and videotaped testimony, reading of instructions, and all matters that take place between the Court and counsel both in front of and outside of the jury's presence. We will not be reporting the playing of audio or video exhibits.

When you send deposition transcripts to the judge, please copy me on the emails, and if you have the deps in .txt format that would be great so I can run a phrase list from them.

Thanks!

Court Reporter, CRR

15.18. Realtime Disclaimer.

This realtime transcript of proceedings, or any portion thereof, is being delivered unedited and uncertified by the court reporter. The user agrees not to disclose this realtime, unedited transcription in any form (written or electronic) to anyone who has no connection to this case. This is an unofficial transcription which should not be relied upon for purposes of verbatim citation of testimony.

This transcription has not been proofread. 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 symbols which cannot be deciphered by non-stenotypists. Corrections will be made in the preparation of the certified transcription, resulting in differences in content, page and line numbers, punctuation and formatting.

The user also agrees that upon receipt of the final, certified transcript, this instant, rough-draft form of transcript will be destroyed so that it is not accidentally used in place of the certified transcript.

Page 1 of 3

COURT REPORTER GUARDIAN PROGRAM

Proposed by UJS Court Reporting Committee
Adopted by SD Supreme Court
Effective May 1, 2009

Every UJS official court reporter and any freelance court reporter contracted with the State of South Dakota will be required to submit the name, address, and telephone number of a fellow court reporter with similar equipment and writing theory as his/her "Reporter Guardian."

Each court reporter will be required, upon hire or contract, to complete and return the attached Court Reporter Guardian Program Agreement Form and return it to the State Court Administrator's Office. Thereafter, each reporter will be required to submit an updated completed form annually or sooner if his/her information changes.

In the event that an official court reporter or freelance court reporter contracted with the State should die, become incapacitated, or otherwise become unavailable, the "Reporter Guardian" will be responsible for that reporter's notes. The "Reporter Guardian" will be required to transcribe the reporter's notes upon request by the UJS.

Any official court reporter or freelance court reporter contracted with the State who is on computer is also required to provide a copy of his/her dictionary to the "Reporter Guardian" or provide the "Reporter Guardian" computer password access within 30 days of signing the Agreement Form. The official or freelance reporter is required to update his/her dictionary information and/or computer password access with the "Reporter Guardian" not less than annually.

South Dakota Unified Judicial System

Court Reporter Guardian Program Agreement Form

Official/Freelance Court Reporter (Circle one)
Name (Please Print) :
Address:
City, State, Zip Code:
Work Telephone: () Home Telephone: ()
Email Address:

I, _____, an official/freelance court reporter for the South Dakota Unified Judicial System, agree to abide by the requirements of the Court Reporter Guardian Program and hereby appoint _____ as my Court Reporter Guardian who is familiar with my court reporting equipment, writing theory and location of notes. In the event that I should die, become incapacitated, or otherwise become unavailable, my Court Reporter Guardian, who I appointed above, will be responsible for my court reporting notes. By signature below, the Court Reporter Guardian agrees to transcribe these notes upon request by the Unified Judicial System.

Court Reporter Guardian
Name (Please Print) :
Address:
City, State, Zip Code:
Work Telephone: () Home Telephone: ()
Email address:

Signature Page/Continued on Back

Page 3 of 3

By checking the boxes below, I the Court Reporter Guardian, agree to knowledge and proficiency in the following:

- I can retrieve and understand the Court Reporter's dictionary.
- I can access the Court Reporter's audio backups, if applicable.
- I can locate the Court Reporter's calendar sheet.
- I have access to the Court Reporter's system and possess a proficiency in the system/software.
- I know where the Court Reporter's paper and storage is located.
- I have access to the Court Reporter's system passwords and back up storage.

Court Reporter Signature

Date

Court Reporter Guardian Signature

Date

State Court Administrator Signature

Date

15.21 (b). Transcript page using Federal format.

1 Q. This is Sample 15.21, showing the federal format.

2 A. The federal official court reporters manual sets these
3 guidelines: 1 3/4" from left, 3/8" from right; Q & A to start
4 flush to left margin; text starts 5 spaces from left margin
5 (not five spaces from Q&A); colloquy/paragraphs 10 spaces in,
6 and type is 10 characters to the inch, margin lines left and
7 right. Parentheticals start no more than 15 spaces from the
8 left-hand margin.

9 This is what a page looks like for federal court.

10 Q. And so you moved to Sioux City in 1988, correct?

11 A. Yes.

12 Q. And did you stay, then, in the position of production
13 manager from '88 to '93 in assembly and manufacturing, or did
14 you switch in that time to a different division?

15 A. No, that was still in assembly manufacturing.

16 MR. JONES: Did you say "assembly"?

17 THE WITNESS: Yes.

18 MS. SMITH: Jim, have you seen this yet? I just got
19 it by fax this morning.

20 Let's mark this.

21 (Exhibit 1 marked.)

22 Q. (By Ms. Smith) Go ahead and look at that, Ms. Bates.

23 Marked as Exhibit 1 is your resume, correct?

24 A. Yes.

25 Q. And that's a document you would have prepared?

15.22. Ethics Opinion stating lawyers are responsible for services they request.

State Bar of South Dakota

Ethics Opinion 80-6

January 19, 1981

- **Subject: Lawyer's responsibility for requested services**
- **Summary: Lawyer who orders service for client is responsible for payment unless provider is advised in writing in advance.**

The State Bar Ethics Committee has considered the subject of indebtedness incurred for professional services on behalf of clients by lawyers and the committee unanimously agreed to issued Ethics opinion No. 80-6 which is as follows:

"It is professional misconduct for an attorney to deny responsibility for the payment of compensation for services rendered by doctors, engineers, accountants, other attorneys, or other persons, if the attorney has ordered or requested the services without informing the provider of the service, by express written statement at the time of the order or request, that he will not be responsible for payment."

January 19, 1981

Max Gruenwald
Chair, Ethics Committee

Subject: Lawyer's responsibility for requested services

Summary: Lawyer who orders service for client is responsible for payment unless the attorney by express written statement at the time the services are contracted for disclaims responsibility for payment.

The State Bar Ethics Committee has considered the subject of indebtedness incurred for professional services on behalf of clients by lawyers and the committee unanimously agreed to issued Ethics opinion No. 80-6 which is as follows:

"It is professional misconduct for an attorney to deny responsibility for the payment of compensation for services rendered by doctors,

engineers, accountants, other attorneys, or other persons, if the attorney has ordered or requested the services without informing the provider of the service, by express written statement at the time of the order or request, that he will not be responsible for payment."

Max Gruenwald
Chair, Ethics Committee

DISCIPLINARY BOARD NOTE

In 1998, the Disciplinary Board processed 108 complaints. Of the several general areas in which the Disciplinary Board receives complaints, one deserves special comment, since it seems many lawyers are not precisely aware of the correct rule. This involves the situation where an attorney contracts for services on behalf of the client and in furtherance of work or litigation being done on behalf of the client. The question sometimes arises whether the attorney or the client is responsible for paying the provider of the services.

On this subject, the State Bar Ethics Committee has previously issued Ethics Opinion 80-6, which is reproduced above. This Opinion is consistent with the position which the Disciplinary Board has taken in the past and which the Disciplinary Board will take in the future. There is, of course, no doubt that the lawyer has recourse against the client for these services. However, as between the person rendering the services and the attorney, the attorney is responsible for payment unless the attorney by express written statement at the time the services are contracted for disclaims responsibility for payment.

It is our hope that the foregoing will clarify for the members of the Bar the position of the Disciplinary Board on this subject. It is the intention of the Disciplinary Board to adhere to this Opinion in the future as to any complaints which are filed with the Disciplinary Board.

Richard L. Travis
Chair, Disciplinary Board

Ethics Opinions (1995 to present) are available at the State Bar Website Member Services:
<http://www.sdbar.org/members/ethics/default.htm>

15.23 Collection letters.

Dear Attorney Name:

While doing my sales taxes I came across the enclosed bill which my records show is now more than 60 days overdue. Please check your records, and if you have not paid it, please remit payment by return mail. If you show it was paid, please let me know when it was paid and the date on which the check cleared. Thank you for your prompt attention to this matter.

Sincerely,

Dear Counselor:

I have received no response from you regarding my request for payment of the enclosed invoice, which is now six months overdue. According to the South Dakota Bar Association's Ethics Opinion 80-6 (copy enclosed), a lawyer who orders services for a client is responsible for payment for those services "unless the attorney, by express written statement at the time the services are contracted for, disclaims responsibility for payment."

Please remit payment by return mail. If I am mistaken and you have already paid this bill, please send a copy of the cancelled check so I can correct my records. If you are experiencing some sort of problem which prevents you from paying the bill, please contact me, and perhaps we can work out some sort of arrangement, such as an installment payment plan.

Sincerely,

Dear Counselor:

I have received no response from you regarding my request for payment of the enclosed invoice, which is now eight months overdue. According to the South Dakota Bar Association's Ethics Opinion 80-6, a lawyer who orders services for a client is responsible for payment for those services "unless the attorney, by express written statement at the time the services are contracted for, disclaims responsibility for payment."

Enclosed is a copy of the small claims action I will be obliged to file unless you remit payment by return mail. If I am mistaken and you have already paid this bill, please send a copy of the cancelled check so I can correct my records.

Sincerely,

Section 15.24. Email from SD DRR re tax questions:

-----Original Message-----

From: Riley, Jo

Sent: Friday, June 09, 2006 2:00 PM

To: Meyer, Mary Anne

Subject: FW: sales tax questions

Section 15.24: Email from SD DRR.

Note: Websites in this email are out of date. This email is included only for purposes of reference should someone from the DRR ask where we got our information from.

Mary Anne, I made some changes and modifications on your information. Our corrections and suggestions are in blue. If you have any further questions, please do not hesitate to contact me. Thank you for making this effort to inform your association.

=====

You must charge sales tax on appearance fees and transcripts delivered within the state of South Dakota. In order to sell anything in the State of South Dakota, you must have a sales tax license. To get one, go on line at www.state.sd.us/drr; or contact the South Dakota Department of Revenue & Regulation (SD DRR) Business Tax Division, 445 E. Capitol Ave., Pierre, SD 57501-3100 (phone 1-800-829-9188 or 605-773-3311 in the Pierre area). You can also get a list of SD cities and city sales tax at the DRR Website [Current Municipal Tax Rates](#) scrolling down to Current Municipal Tax Rates.

Some contact info in this 2006 email is out of date—see Section 3 and/or double-check online

Some cities have more than one tax rate. To match a street address with the correct tax rate, go to www.state.sd.us/drr2/GIS/BusinessTax/taxmatch.htm.

If you are moving your business into South Dakota from another state, you may also be liable for use tax on equipment and supplies purchased in another state and brought into South Dakota. Consult the Sales Tax Guide provided by the DRR for more information. It is on line at the Department's Web site under the Publications link.

Site's format has changed also.

You must charge municipal (city) sales tax as well as state sales tax. The municipal tax to charge is usually the tax of the city in which the delivery of the transcript is made, not where the proceedings were reported or transcribed. (If no transcript is ordered but an appearance fee is charged, the municipal tax is the tax of the city where the proceedings were conducted).

No tax is charged to government entities, such as state's attorneys, court-appointed attorneys IF you are billing the state/county and not the attorney directly, tribal authorities, school boards, or city councils, to name a few. However, you will need proof that your payment is being received directly from a governmental body. Be sure to (a) bill the governmental body directly and (b) keep evidence (check stub or envelope with County Auditor's name and address on it, photocopy of check showing it's drawn on school board's account, etc.) to prove you were paid directly by the governmental body **OR** obtain a properly completed exemption certificate signed by an authorized individual from the governmental entity.

If your bill includes photocopied exhibits, long-distance telephone fees for telephone depositions done at your office, an appearance fee, or anything else, such as delivery fees (*including postage*, according to the Sales Tax Guide issued by the SD DRR), you must charge sales tax on those as well.

If the transcript is being delivered to an out-of-state address, you do not need to charge sales tax. If the transcript is being delivered to an in-state address, but the bill is being sent to an out-of-state address, you do need to charge sales tax, because tax is based on where the transcript is delivered, not where the bill is sent. If the bill is for an appearance fee only, charge sales tax even to an out-of-state attorney. Base the municipal tax in that situation on the place where you appeared. However, if you are charging the out-of-state attorney for the transcript and

appearance fee and delivering it to an out-of-state address, you don't need to charge tax on the appearance fee if it is "bundled" in with the fee for the transcript. ~~in that situation.~~

~~As explained by a senior revenue agent at the DRR,~~ According to the Department of Revenue and Regulation, if the bill is for tangible items sent to an out-of-state address, don't charge tax on those tangible items and don't charge tax on fees for services if those fees are bundled in with the bill for the tangible items. The out-of-state attorney may be liable for use tax if the deposition is meant for use in a South Dakota case, but out-of-state attorneys practicing in South Dakota are required to have a tax license, so they are responsible for paying their own use tax. The court reporter does not bill for use tax.

If you pay to have exhibits photocopied, the copy business will charge you sales tax. If you then charge a little extra for the copies in addition to the original cost plus tax that the copy business charged, you have to charge sales tax on the amount you're charging your client for the copies. For example: Kinko's in Yankton charged you 10 cents a page for 10 exhibits, which is \$1.00, plus the 4% state and 2% municipal tax, so you paid Kinko's \$1.06. If you bill the attorney 15 cents a page for the 10 exhibits, you must also bill the attorney 4% state tax on \$1.50 plus whatever the municipal tax is for the city where the exhibits are being delivered.

If you aren't charging the attorney more for the exhibits than the copy business charged you, you can either: (a) charge sales tax on the original-cost-plus-sales-tax because you're bundling all your charges together on the bill; or (b) you can give the copy business a signed Exemption Certificate so they will not charge you sales tax on your copies. This is purchasing your copies as a sale for resale and you will then bill the attorney for sales tax on those exhibits. Contact the DRR at 800-829-9188 for an Exemption Certificate or go to their website at www.state.sd.us/drr to download a copy of an Exemption Certificate.

Transcripts and other tangible items picked up at your office are subject to sales tax at your office location.

Contrary to claims of attorneys from Oregon, some of whom have declared that under Oregon law they don't have to pay sales tax *anywhere*, if those attorneys take depositions or do other work in South Dakota, they are subject to South Dakota's sales tax laws.

Municipal sales taxes change periodically (January 1 and July 1 only), so make sure you read updates the Department of Revenue & Regulation will send you.

SAMPLE BILL:

To: Attorney Name
 Attorney Address
 Yankton, South Dakota 57069

Deposition of Joe Smith reported 2-2-06 in Vermillion, SD

Fee for transcript: 40 pages x \$3.00 is	\$120
Appearance fee:	25
Exhibits (10 pp x 10 cents/page)	1
Postage:	<u>4</u>

Pretax subtotal:	\$150
SD sales tax (4%)	6
Yankton municipal sales tax (2%)	<u>3</u>

Total bill:	\$159
-------------	-------

Jo S. Riley &
Business Education Coordinator
SD Department of Revenue
445 E. Capitol Avenue
Pierre, SD 57501
(605) 773-5445

-----Original Message-----

From: Meyer, Mary Anne
Sent: Wednesday, June 07, 2006 1:20 PM
To: DRR - Business Tax
Subject: sales tax questions

Hi. Last year the South Dakota Court Reporters Association had someone from the Department of Revenue come speak with us about charging sales tax. I found her presentation to be very helpful.

This year I was asked to help put together a manual for new court reporters to help them learn proper procedures for reporting in South Dakota, and I thought it would be a good idea to include information on sales tax.

Would you please read the information below to make sure I've got it right? Make whatever corrections or suggestions you think are needed. I was asked to present the manual at our June seminar, so if I could get this information back before June 15 so I have time to print everything out, that would be great.

Thank you very much!

Sincerely,

Mary Anne Meyer
Official Court Reporter
605.677.6757

You must charge sales tax on appearance fees and transcripts delivered within the state of South Dakota. In order to sell anything in the State of South Dakota, you must have a sales tax license. To get one, go on line at www.state.sd.us/drr; or contact the South Dakota Department of Revenue & Regulation (SD DRR) Business Tax Division, 445 E. Capitol Ave., Pierre, SD 57501-3100 (phone 1-800-829-9188 or 605-773-3311 in the Pierre area). You can also get a list of SD cities and city sales tax at the DRR Web site by clicking on Municipal Taxes and scrolling down to Current Municipal Tax Rates.

The remainder of this email was deleted to save space in the manual, but it's the unedited version of the information edited by Jo Riley in the top part of this email.

SECTION 16. THE OFFICIAL COURT REPORTER

The official court reporter is an officer of the court. The official court reporter has an obligation to be fair and impartial toward each participant in all aspects of reported proceedings; to act at all times with honesty and integrity; to guard against not only the fact but also the appearance of impropriety; to promote justice and the effective operation of the judicial system; and to preserve the confidentiality and ensure the security of information, oral or written, entrusted to the official court reporter in the performance of his or her duties.

16.1. Accessing the UJS Intranet. There are many rules and policies affecting official court reporters that will not be included in the SDCRA Court Reporters Manual. Those rules and policies may be found in the UJS Employee Handbook and UJS Personnel Rules, which may be accessed on the UJS Intranet, along with other resources for UJS employees.

As of the September 2024 update to this manual, to access the Intranet it has to be from a state computer. Go to <https://intranetujs.sd.gov/> and type in the same user name and password you use to get into Outlook and Odyssey.

To read the Employee Handbook, go to <https://ujs.sd.gov/>, click on “Human Resources” found under the “Departments” heading, and then click on “Employee Handbook.” Farther down the list on the right you can also find the Personnel Rules.

UJS policies are under the “UJS Info” heading. Click on “General Information,” and “UJS Policies.”

The User Manual for Odyssey is under the “UJS Info” heading. Click on “Odyssey.”

South Dakota Supreme Court Rules: Go to the UJS website at <http://ujs.sd.gov> and click on “Supreme Court” at the top menu bar, then click on “Rules.”

16.2. What constitutes “official work.” The UJS position description of a court reporter’s duties may be found at <https://ujs.sd.gov/careers/classification>. Those duties may include, but are not limited to, marking exhibits; reading back the record as requested; maintaining original and backup files of court proceedings; providing short excerpts of the record for judges, law clerks, court services officers, court clerks, etc., at no charge when court personnel have questions regarding what transpired or the exact wording of a judge’s ruling; comparing the record to orders prepared by attorneys to ensure accuracy; scheduling the judge’s calendar if requested; arranging for DDN and ITV conferences as necessary; preparing correspondence; answering the telephone and taking messages; typing, filing, and mailing pretrial orders; preparing the judge’s travel voucher; and other work as assigned, depending upon the circuit/judge.

Work done for other state entities does NOT count as official work, even though the official will ultimately be paid by the state via the official’s regular paycheck. See Section 16.3.4.

16.2.1. Working on transcripts during business hours. According to Rule 10.2(A) of the UJS Personnel Rules (revised July 2017) “Official work is the recording and/or transcribing of those court proceedings authorized by the presiding circuit judge. Court reporters may use normal office hours to prepare transcripts of official UJS court proceedings, not to exceed eight hours in one workday.”

In other words, if the reporter does not have other official duties to perform, the reporter may work on transcripts during business hours. However, if there are other official duties the reporter has to perform, having transcripts to work on cannot be used as an excuse not to perform those duties. Reporters are paid extra to work on transcripts, and that is intended to compensate for time spent transcribing after hours. If a reporter comes in early or stays late at the office to work on transcripts, that does not count as overtime.

16.2.2. Office days and working at home. On days when there is no court and the reporter has time to perform office duties, the reporter is expected to be at the courthouse even if the judge is not present. One never knows when a last-minute hearing may book in and the reporter may be needed. If a

reporter chooses to go home to work, the reporter must take annual leave, even if the judge has given the reporter permission to work at home. If the reporter is “on the clock,” the reporter should be at the office. If the reporter is not at the office during business hours, the reporter is supposed to take leave.

In a situation where a reporter has a transcript deadline coming up that they are afraid they will not be able to meet and other reporters appear to be available to do reporting (for example, where more than one court reporter offices in the same courthouse), the reporter with the looming deadline should not presume that the other reporter(s) should step in to do the first reporter’s regular duties. Transcript work takes second place to other official duties during regular business hours. If necessary, a reporter can take annual leave and go home to work in order to meet a transcript deadline.

This does not preclude reporters from helping one another out, but reporters need to be careful not to make other reporters feel as if they are being taken advantage of.

16.2.3. Annual leave during Fall Training and June Seminar. If an official reporter decides not to go to the June convention and/or Fall Training and stays at the courthouse to work, the reporter does not need to take annual leave. If the reporter does not go to the convention and/or training and does not work at the courthouse, then leave must be taken. UJS Policy 2-SC-85 was rescinded in 2015, and official reporters no longer need to provide a Waiver of Attendance at Annual Training.

16.3. Official reporters doing extra-judicial work.

16.3.1. Outside employment generally. UJS Personnel Rule 9.3 says UJS employees may take outside employment if it doesn’t conflict with their UJS work and if they get approval from their supervisor and Presiding Judge by following the steps laid out in Rule 10.3, which may be found on the UJS Intranet.

16.3.2. Reporting Grand Jury proceedings is considered official court work. Rule 10.2(B) of the UJS Personnel Rules states that official reporters “may record and transcribe grand jury proceedings at the discretion of the presiding circuit judge. If the presiding circuit judge approves such work, the recording and/or transcribing of grand jury proceedings is official work.” Grand jury work may be recorded and transcribed during normal work hours without the official reporter taking annual leave. However, it also means that an appearance fee cannot be charged for reporting grand jury proceedings during normal work hours. The Personnel Rules do not say anything about what to do if the grand jury proceedings run past 5 p.m. Grand jury work is usually county work, not UJS work, so the official may not claim overtime from the UJS, but may charge the county an appearance fee for any reporting done after normal office hours. The transcript pages should be billed at a page rate the official reporter deems reasonable.

16.3.3. Officials doing freelance reporting. Officials should not take freelance work if their official work is not current. Rule 10.3(B)(3) defines a court reporter’s work as “current” if the court reporter has no appeal transcript unprepared within the initial time fixed for the preparation by rule of the Supreme Court, no transcript (official or freelance) unprepared thirty days after it was requested or ordered, and fewer than 750 unprepared transcript pages for all appeals, depositions, judicial and extra-judicial proceedings.

Rule 10.2(C) of the UJS Personnel Rules (rev. July 2024) states that “‘Freelance’, ‘outside’ or ‘depositional’ work is work that does not involve the recording and/or transcribing of official UJS court proceedings.” It further specifies that “Court reporters may not perform freelance work during normal office hours without taking annual leave. Additionally, the preparation of transcripts from such work may not be performed during normal office hours.”

16.3.4. Special considerations when performing work for other state entities. Rule 10.2(C) says, “Freelance work does include recording and/or transcribing other UJS hearings such as Board of Bar Examiners’ hearings and examinations, grievance hearings under the UJS Personnel Rules, and

proceedings of other state entities, such as the South Dakota Retirement Board.”

According to this rule, “Court Reporters who are performing freelance work for the UJS must report this work in advance to the Director of Budget and Finance so their work is properly recorded on TKS [the state’s Time Keeping System, often referred to as the ‘time sheets’] so their work is properly paid according to Internal Revenue Service requirements. Court reporters who are performing work for other state entities will have their work recorded on TKS by the hiring entity. As with other freelance work, the court reporter is responsible for negotiating his or her own rate of compensation for this work with the hiring entity.”

16.4. Reimbursement for travel and expenses related to official court reporting. If you travel for any work-related purpose, such as attending the Annual Judicial Conference or reporting away from your station of origin, you can get reimbursement for certain expenses if you submit a travel voucher to your court administrator. Original receipts must be attached to the voucher for lodging and miscellaneous expenses, such as parking, airline tickets, etc. Agendas for meetings and seminars must also be attached to show that the travel was work-related. Mileage is paid from station of origin to work location or from your home address to the work location, whichever is shorter.

Travel vouchers should be submitted monthly. The Budget Office in Pierre has the discretion to not reimburse expenses submitted after 60 days, so get the vouchers in promptly, within 30 days if possible, so the circuit administrator has time to check the voucher before forwarding it to the state. Travel voucher forms can be found on the UJS Intranet at <https://ujsintranet.sd.org/>, under the “Budget & Finance” heading, then “Forms,” then “Travel Payment Form Judicial (Excel) 10/4/24,” or may be obtained from the court administrator.

When making reservations, check to make sure you are getting state rates. Not all motels give them, and some offer them only at certain times of year. You will have to pay the difference if you can’t get state rates. Any in-state work-related lodging can be direct-billed if the State has an account with that hotel. To utilize direct billing, contact your circuit administration. As of the September 2024 updates to this manual, the website listing motels at state rates can be found at <https://boa.sd.gov/fleet-travel/lodging-at-staterates.aspx>.

If you use a state vehicle, you may also need to submit a Training Travel Log showing how many actual miles you drove the vehicle so that court administration can compare it to the bill they receive from Fleet Services. Ask them for a form. And if a state employee elects to use a personal vehicle for state business but an Office of Fleet and Travel Management, Department of Transportation or Unified Judicial System pool vehicle is available, the mileage reimbursement rate will be set at 45% of the rate set by the IRS, or \$.302 per mile. This rule applies if there is a motor pool vehicle within 10 miles of an employee’s place of residence of duty station.

TO: All UJS Personnel

FROM: Greg Sattizahn, State Court Administrator
Aaron Olson, Director of Budget and Finance

SUBJECT: Travel Reimbursement Rates for FY2025

Date: September 25, 2024

As outlined in HB 1060 during the 2024 Legislative Session and IP Rule 24-01, the mileage rate and the in-state lodging reimbursement rate will be updated to align with the rates set by the federal government.

MILEAGE REIMBURSEMENT

Effective October 1, 2024, the mileage reimbursement rate will increase to be consistent with the Mileage reimbursement rate for business set by the Internal Revenue Service (IRS), or \$0.67 per mile. If a state employee elects to use a personal vehicle for state business but an Office of Fleet and Travel Management pool vehicle is available, the mileage reimbursement rate will be set at 45% of the rate set by the IRS, or \$0.302 per mile.

IN-STATE LODGING

Effective October 1, 2024, the maximum in-state lodging reimbursement rate will increase to be consistent with the actual cost of in-state lodging, not to exceed the rate set by the General Service Administration (GSA). The standard rate of \$110 per night will apply to travel in all counties in South Dakota, except for those specifically listed by the GSA. The lodging reimbursement rate for out-of-state and out-of-country travel will not change from the current rate of \$175 per night, with an additional \$100 available with excess lodging approval.

Travel Reimbursement Rates

Effective October 1, 2024

Mileage Reimbursement

Type	Rate	Comments
High Mileage	\$0.67/mile	Personal vehicle is used AND state motor pool vehicle is not available.
Low Mileage	\$0.302/mile	Personal vehicle is used AND state motor pool vehicle is available.
Special Needs Mileage	\$0.871/mile	Large personal vehicle is used (ex. Van, Truck, SUV).
Special Needs Mileage	\$0.67/mile	Personal vehicle is used.

In-State Travel Reimbursement

In-State Lodging

Primary Destination	County	Maximum Lodging Rate + Taxes and Mandatory Fees
Standard Rate	Applies for all locations without specified rate	\$110
Deadwood/Spearfish	Lawrence	October: \$140; November - April: \$110; May - September: \$140
Hot Springs	Fall River/Custer	October-May: \$110; June-September: \$161
Rapid City	Pennington	October-May: \$110; June-August: \$158; September: \$110
Special Needs	Applies for all locations without specified rate	up to \$125

The Chief Justice or State Court Administrator may approve a higher amount for lodging, if warranted.

In-State Meals

Meal	Amount	Leave Before	Arrive After
Breakfast	\$6	5:31 AM	7:59 AM
Lunch	\$14	11:31 AM	12:59 PM
Dinner	\$20	5:31 PM	7:59 PM
Daily Maximum	\$40		

Out-of-State Travel Reimbursement

Out-of-State Lodging

Lodging	\$175 + Tax	Additional \$100 available with excess lodging approval.
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The Chief Justice or State Court Administrator may approve a higher amount for lodging, if warranted.

Out-of-State Meals

Breakfast	\$10	5:31 AM	7:59 AM
Lunch	\$18	11:31 AM	12:59 PM
Dinner	\$28	5:31 PM	7:59 PM
Daily Maximum	\$56		

16.5. Impartiality. A court reporter must not only remain impartial but must also maintain the appearance of being impartial. It is important to treat each side of the case in the same courteous way.

16.5.1. Familiarity with parties and witnesses. If you learn that a close relative, good friend, or a neighbor of yours is to be called as a witness in a case you are assigned to report, alert the judge before the witness takes the witness stand. You may want to switch assignments with another reporter so that there is no appearance of impropriety or bias on your part. If you are unable to switch with another reporter, the attorneys or judge may want to put something on the record about your relationship to the witness and the fact that all sides are aware of it and stipulate that you may still do the reporting.

16.5.2. Offering transcripts to all sides. If a court reporter is asked to transcribe a portion of proceedings but to keep the transcript request from the opposing side, the reporter should advise the person requesting the transcript that according to UJS Policy 3-PJ-10 [found on the Intranet, General Information, UJS Policies], a reporter requested to transcribe an excerpted portion of testimony for one party to an action must engage in a two-part disclosure process to preserve the reporter's impartiality:

First, the reporter must notify the requesting attorney of the reporter's obligation to inform the other party that the reporter has received a request for an excerpt and that the reporter must offer the other party the opportunity to order excerpts, including the same excerpts ordered by the requesting attorney. Second, assuming the requesting attorney still wants an excerpt, the reporter must disclose to the other party that a request for an excerpt of the proceeding was made and that such other party has the right to request transcript excerpts that it may require, including those ordered by the requesting attorney. If specifically requested, the reporter must then deliver the excerpts the requesting attorney ordered to the other party. Failure to follow these disclosure practices would place the reporter into a situation that would compromise the reporter's impartiality and violate the National Court Reporters Association's Code of Professional Ethics, Provision No. 1.

NCRA Advisory Opinion 22 adds:

This two-step disclosure process applies, but is not limited to, requests for uncertified rough drafts, certified deposition transcripts, and excerpted or certified courtroom transcripts.

If you are asked to provide an excerpt of proceedings, inform the requesting party that you will be offering a copy to the other side. If the requesting party then withdraws the request, do not mention the request to the opposing party.

16.5.3. Do not give legal advice. Be careful in your efforts to be helpful. If a pro se litigant is asking questions of you about the law, you should tell that person that it would be improper for you to give legal advice. Suggest that the person get a lawyer. You can also refer the person to the UJS website "Self-Help Center," which has various online forms for the pro se litigant.

16.6. Trial prep for court reporters. Thanks to Odyssey, it is now possible for official court reporters to read case files prior to reporting proceedings in those cases even if the case is filed in a different county. This allows the reporter to make a list of proper names and unusual terminology and develop briefs for faster writing and transcribing and cleaner realtime. You can also print out any witness lists or exhibit lists for easy reference. Skim the lawyers' briefs for important case names or phrases that you may want to steno-brief (for example, "product disparagement" [PRAIRMT]).

16.7. Courtroom procedures. Courtroom procedures vary from judge to judge. If you are a new reporter, or if you are working with a judge and/or clerk of court you haven't worked with before, check to see how they usually handle the following things:

16.7.1. “Please rise for the Court.” When it is time for the record to start, usually the court attendant, clerk, or court reporter will say, “All rise, please,” or words to that effect. (Check to see if you are the one who is expected to say this. Otherwise you may end up saying “Please rise” just as the clerk is saying “Rise, please”). To show respect for the judicial position, everyone, including the court reporter, should stand while the judge takes the bench. However, in some situations the judge may prefer to keep things informal; for example, if the judge is hearing a matter via ITV, the judge may prefer to skip the “all rise” instruction.

Some judges want someone to say “Please rise” as they leave the bench; others do not. Many attorneys will rise whether told to or not as the judge steps down. Sometimes a deputy or other person unexpectedly will say “Please rise” as the judge steps down. The court reporter’s first duty is to the record, so if you are still writing on your machine, stay seated until you have taken care of writing and saving the record to the computer, then rise.

16.7.2. “Please rise for the jury.” It is customary for the judge, court attendant, clerk, or court reporter to say “All rise for the jury” when a jury is entering and exiting the courtroom. The court reporter should rise unless it is necessary to stay seated to preserve the record.

16.7.3. Administering an oath/affirmation. In some courts the judge administers the oath to a witness; in some the clerk of courts does it; in some the court reporter administers the oath. An oath may also need to be administered to an interpreter. Section 2 of this manual sets out the form of oath and affirmation contained in the South Dakota Codified Laws. Remember that under current South Dakota law a notary public may not swear a witness over the telephone, although judges, grand jury forepersons, and other persons authorized to administer oaths may do so over the phone. But the witness must be in the presence of the notary public or appearing via an interactive audiovisual device in order for a notary public to administer the oath. SDCL 15-5A-1 states, in part, “A judge or any other person authorized by law to administer oaths may administer an oath to a witness who is not personally present but who is appearing by means of the interactive audiovisual device. The provisions of SDCL § 22-29-1 shall apply even though the person taking the oath was not personally present before the person administering the oath, and prosecution for perjury shall take place in the jurisdiction of the tribunal receiving the interactive audiovisual testimony.”

Indicate in your notes that an oath or affirmation was administered. You do not need to transcribe the entire oath or affirmation unless something unusual happens, such as a lecture by the witness about whether the oath was properly administered, or the rare witness who refuses to take either an oath or affirmation and won’t even promise to tell the truth.

16.7.4. Marking exhibits. In some courts the clerk of courts marks and keeps track of the exhibits; in some courts the attorneys mark their own exhibits; in others, the court reporter does it. The court reporter should keep track of which exhibits have been offered so at the end of proceedings everyone can check to make sure those exhibits are left with the clerk. See Section 18 for more information about marking exhibits.

16.8. Retention of notes. Transcripts of some proceedings are ordered months and even years after the record is made. Be sure to have sufficient backups of your note files. It is wise to periodically migrate your backup files to different backup media as technology changes so when older backup media can no longer be read by updated equipment, the electronic files will still be accessible.

The Records Retention Policy can be found on the Intranet under the “UJS Info” heading, “General Information,” “UJS Policies,” and then “Retention and Destruction Schedule – Circuit Court Records.” Official court notes of legal proceedings need to be retained at least 15 years after the date of hearing, pursuant to the UJS Records Retention and Destruction Schedule (rev. 2020).

UJS Policy 6-SC-09 (Adopted 12/17/09) states, “The South Dakota UJS system provides computerized storage on UJS remote servers for all notes of state court proceedings whether reported by

official reporters employed by the UJS or by freelance reporters who contract with the UJS. This storage service is meant to provide security for the court record. Compliance with this service is mandatory. The UJS will continue to use transcription services by the reporters who produced the notes, or where the reporter is unavailable, the assigned guardian under the UJS reporter guardian program. This storage service is not to be used as the primary backup system for reporter notes. UJS Circuit Administrators are responsible for monitoring that notes for all court proceedings reported by a court reporter, whether an employee of the UJS or a freelance reporter on contract with the UJS, are stored within this system.”

To upload your notes into the UJS Court Reporter File Upload program, instructions can be found under the “Resources” heading, “Court Reporters & Court Records,” “I/T Training Manual,” and then “Court Reporter Upload.”

16.9. The Court Reporter Guardian Program. Court reporters who report official court proceedings, including freelance court reporters who contract to work in court, are required to designate a guardian for their stenographic notes. The guardian is a person who agrees to transcribe the court reporter’s notes in case of death or disability. The guardian should be familiar with the reporter’s software and should have access to an updated copy of the court reporter’s master CAT dictionary. They should know where the reporter’s files are kept and how to access them, including knowledge of the reporter’s user names and passwords, or at least knowledge of who has those things so the guardian can get them in order to transcribe the deceased/disabled reporter’s notes. The UJS provides forms for court reporters to fill out stating who their guardian is.

Reporters will often make up briefs on the fly. If you have decided to type “klebsiella oxytoca” as KLEB/KLEB, be sure to leave an indication somewhere in your notes and on your dope sheets or calendar sheets so that when the transcript is prepared at a later date you or your guardian will know what the brief is for. Be sure to save any job dictionaries you have created, which should have your briefs as well. See Section 15.19 for an example of a Court Reporter Guardian Program Agreement Form.

16.10. Court Reporter Annual Training. Court reporter annual training is provided by the state on an annual basis in conjunction with the Fall Judicial Conference, usually held around the first weekend of October. This training is provided at no charge to official reporters, and the state pays for meals, lodging, and travel expenses. The UJS applies for and NCRA gives continuing education points for these sessions.

All official court reporters not attending the annual training session must take annual leave unless they are working at the courthouse. See Section 16.2.3.

The UJS will reimburse officials for their registration fee, meals, mileage, and lodging when attending the SDCRA spring conference, usually held around the third weekend in June in conjunction with the SD Bar Association Annual Convention. SDCRA applies for and NCRA gives CEUs for this convention as well. Annual leave must be taken if the reporter does not attend this convention, unless the reporter is working at the courthouse.

Also, once every three years, each circuit may include in their training budget funding for one official court reporter to attend out-of-state training. You need to apply to your circuit court administrator for this funding, usually prior to the budget year in which you hope to travel to out-of-state training, and will need to fill out a form describing the training and the estimated costs (lodging, seminar fees, etc.) involved. The circuit will probably not approve the entire amount but may pay the allowable out-of-state lodging and meals plus at least part of the registration fees. They will only provide this funding once every three years, and only to one reporter within that three years. The forms can be found on the Intranet under “Budget & Finance,” and then under “Forms.” The instructions can be found under “Out of State Travel Request Instructions.” And then to submit the expenses, use the “Out of State Travel Request Form UJS-071” form.

16.11. Court reporter interns/job shadowing. Students who wish to shadow official court reporters are supposed to fill out a form agreeing to keep everything they hear while shadowing confidential. As of November 21, 2017, this form can be found on the UJS Intranet under the Human Resources link, under Intern Volunteer Forms. Not all court administrators require that this form be filled out. Officials should get permission from their administrator and judge before letting a student shadow them.

SECTION 17. REPORTING AND TRANSCRIBING OFFICIAL COURT PROCEEDINGS

17.1. What needs to be reported. SDCL 15-15-1 says, “Objections, rulings, proceedings, and remarks to be noted by the court reporter. When a court reporter is making a record of the proceedings of the court in any trial, motion, or proceeding of any kind before the court, he shall note all objections to the evidence and rulings thereon and all motions, stipulations, applications, and similar proceedings relevant to the matter involved and all rulings and remarks of the court thereon.”

The editor of this manual notes that the statutes specifically state opening statements need not be reported (SDCL 15-14-14), but the statutes are silent as other parts of the trial, which would seem to indicate that the legislature expects everything else to be reported.

Reporters disagree among themselves about whether certain portions of the record need to be reported or not. Some report closing arguments; others do so only when asked; others do so only in criminal, not in civil cases. Some report the reading of the trial indictment or information, and others do not. (Many state’s attorneys read indictments and informations so fast that it is clear they do not expect the reporter to report them.) Some reporters report jury instructions because they know of times where an instruction has been misread or completely skipped during the reading; others do not report the reading of jury instructions. The reporter should always remain in the courtroom during the readings and during opening and closing statements in case an objection is raised, because the objection will need to be on the record.

When in doubt about whether something needs to be reported, ask your judge. If you don’t have time to ask, it’s best to report it. You can always take something out if you reported it and didn’t need to, but if you need it and didn’t report it, you won’t be able to put it back in. Because not all courts do things the same way, attorneys may expect you to be reporting something because that’s how it’s done where they usually practice. The reporter should have the attorneys stipulate or the judge state on the record when the reporter will not be reporting something so the attorneys are not unpleasantly surprised later.

In federal court, everything is reported.

In felony cases, report everything, including opening statements, closing arguments, jury voir dire, preliminary and final instructions.

Note: You should file any certified transcript you make of official court proceedings, even if it is just a 3-page excerpt or a 5-page ruling. If you certify it, you file it with the clerk of court in the county in which the case is filed.

If part of the trial process is not reported, it is important to include a parenthetical showing that it nonetheless took place. For instance, write in your notes and include in the transcript parentheticals such as the following:

(The Trial Information/Indictment was read.)

(The jury was selected and duly sworn.)

(The final jury instructions were read to the jury.)

See Section 17.11 for more parentheticals.

17.1.1. Opening statements. The only thing the statutes specifically exempt reporters from reporting are opening statements. According to SDCL 15-14-14, “The court reporter need not make stenographic report of the opening statements of counsel unless the court shall direct, nor if made shall he include same in the transcript unless requested by the party ordering the transcript.”

Even if the reporting of the opening statement has been waived, the reporter needs to stay in the courtroom in case an objection is made during the opening statement, because the reporter will have to report the objection. This manual recommends reporting the opening statements so that if an objection is

made, the record shows what led up to the objection. But you should not transcribe opening statements unless the attorney asks you to.

17.1.2. Reading of the Trial Information or Indictment. The original editor of this manual conducted a poll of 20 official court reporters, and 17 responded. Of those 17, 12 say they do not report the reading of the trial information or indictment and just include a parenthetical in the record showing it was read. Three reporters said that if amendments or corrections are made to the indictment or information, they report that. Two reporters report the reading, and of those two, one includes it in the transcript.

17.1.3. Closing arguments must be reported. Nothing in the statutes exempts a court reporter from reporting closing arguments, and of the 17 reporters who responded to the poll mentioned above, 15 said they always report closing arguments and two said they report them if counsel doesn't waive the reporting. The editor of this manual notes that the statutes specifically state opening statements need not be reported, but the statutes are silent as to the reporting of closing arguments, which would seem to indicate that the legislature expects closings to be reported. If counsel agrees to waive reporting closing arguments, have them state that on the record.

17.1.4. Jury voir dire. Nothing in the statutes indicates that jury voir dire need not be reported. Always report jury voir dire in criminal cases. In civil cases, report jury voir dire unless the attorneys waive the reporting. Always have counsel state the waiver on the record.

17.2. Discussions off the record. In court, only the judge can instruct the reporter to go off the record. Indicate "Discussion off the record" in your notes and stop writing until you are told to go back on the record. Sometimes no one thinks to tell the reporter to go back on the record. If you think you should go on the record, ask, "Is this on the record?" If you ever have any doubt about whether something should be on the record, keep writing. You can take it out later and insert "Discussion off the record" if it turns out it wasn't on the record.

17.3. Bench (sidebar) conferences. Prior to the commencement of a jury trial, you should discuss with the judge how he or she wishes to handle the reporting of bench discussions. The judge may or may not want them to be reported.

17.4. Reporting the Reading of Depositions and/or Playing of Video or Audio Recordings.

Often in a trial, instead of a witness appearing in person, a deposition will be read into the record or shown to the jury by videotape. Usually those are not "re-reported" by the official reporter unless someone specifically asks it to be done. Have the attorneys or judge state on the record that you do not need to report the reading so there is no question later about whether the attorneys expected you to. If you do not report the reading, include a parenthetical to the effect of (Plaintiff's Exhibit 23, the deposition of John Doe, was read to the jury).

Excerpts of depositions read into the record for other purposes, such as impeachment of a witness, should be reported. Lawyers reading excerpts of transcripts should (but don't always) indicate page and line numbers of those portions read. The lawyer should also indicate "Question" and "Answer," but often will forget, and it isn't always possible to tell where a question ends and an answer begins. Ask for a copy of the deposition so that you can put the quotation marks and the Q's and A's in the right places when preparing the transcript.

When video or audio recordings are played as exhibits, the official reporter usually does not report them but includes a parenthetical such as (Defendant's Exhibit C, an audiotape, was played to the jury). Have the judge state on the record beforehand that the recordings will not be reported by the court reporter.

17.5. Reporting Jury Voir Dire. In criminal trials, the reporting of jury voir dire is required and cannot be waived. In civil trials, usually the jury voir dire is reported, but can be waived by stipulation of all counsel. If the reporting of jury voir dire is waived, it should be done on the record.

Prior to the jury selection process commencing, the prospective jury panel will be sworn. You should include a parenthetical in the transcript such as:

(The prospective jury panel was sworn by the clerk.)

When reporting jury voir dire, try to get the attorneys to use each potential juror's name or number when questioning that juror so that you can properly identify the juror in the transcript by their name, such as "JUROR NUMBER 10:" "JUROR ANDERSON:" or "MR. ANDERSON." You should also try to prepare a seating chart with the potential jurors' names on it for your own reference.

One reason it is important to show the names of the jurors is in case of a *Batson* challenge (from the case of *Batson v. Kentucky*, 475 US 79 (1986)). The *Batson* challenge may be used in both criminal and civil cases and is an objection to the validity of a peremptory challenge on grounds that the other party used it to exclude a potential juror based on race, ethnicity, or sex. If the challenge is sustained, it may lead to a new trial. Identifying the prospective jurors by name helps the court to determine if there are any differences in the way in which jurors who are members of a particular group are questioned, which may lead to an inference that discrimination has occurred.

However, it is ultimately the responsibility of the lawyer to make the record as to which juror(s) answered which questions. If you are not able to identify a juror that has spoken, it is acceptable to identify the juror in the transcript as "A JUROR." In situations where jurors are asked to raise their hands and several of them do so, but you are not able to identify all of them before they put their hands down, you may use a parenthetical such as (Several jurors raise their hands).

17.6. Reporting telephone/teleconference/ITV/DDN proceedings. When proceedings are conducted by telephone or ITV, it can be difficult to hear or understand. By the time the reporter's request for a repeat is heard, the speaker is usually two or three sentences beyond the word in question because the reporter does not have the advantage of being near a microphone.

It may be helpful for your judge to lay down some ground rules:

- a. Wait until one person is finished speaking, and count to 2 before starting to talk, because there is a delay while the words are transmitted over the line.
- b. When more than one person appears by telephone or is out of range of the ITV camera, each person should identify himself/herself before starting to talk.
- c. Participants should turn off their microphones until it is their turn to speak, so that they don't accidentally drown out another speaker because they coughed or rustled some paper or poured some water.

Under current South Dakota law, a notary public (thus, a court reporter) may not swear a witness over the telephone, but may swear in a witness appearing via an interactive audiovisual device when the witness is located in South Dakota in order to receive the oath or affirmation. (See SDCL 15-5A-1)

17.7. Reporting jury questions. After jurors have retired for deliberations, they may have questions of the judge or desire additional information. Any information the judge gives them must be given in the presence of, or after notice to, the plaintiff's attorney and the defendant or defense counsel, and must be taken down by the court reporter. (See SDCL 23A-25-8) The court reporter must be available throughout jury deliberations in case any questions should arise.

17.8. Don't hesitate to stop speakers and ask them to repeat themselves. It is important to maintain control of the record. If witnesses or attorneys start talking on top of each other or too fast for you to get it

all down, stop them and ask them to slow down and repeat themselves.

17.9. Hard-to-understand witnesses. If you have a witness with an extremely heavy accent, you might have to ask him/her to repeat almost every answer several times. If you still can't understand what the witness is saying, you can turn to counsel and say, "I'm sorry, Counsel. I just don't understand the answer." The attorneys have usually been working on the case for months and perhaps have gotten used to the accent. They can probably clarify for you what the witness said.

17.10. Parentheticals. Sometimes a reporter must include parentheticals for the record to be clear, but the reporter should not act as a witness. For instance, if a witness says, "Maybe about this far," and spreads his arms, do not try to estimate how far apart his arms are. Just use the parenthetical (indicating). It is the responsibility of the judge and lawyers to put on the record any more detailed description. You don't want to be called to the witness stand later and be grilled about why your guesstimate was, say, 3 feet and not 4, or 36 inches and not 22. Keep your parentheticals short and leave it to counsel to fill in the details.

It is important to show in the record who was present for what parts of the proceedings, especially in criminal cases where an appeal may turn on whether something took place in the presence of the jury and/or defendant. Sample parentheticals:

(In open court at 9:00 a.m. with the Court, counsel, and parties present.)

(In closed court at 9:00 a.m., with the Court, counsel, defendant, and interpreter present.)

(The following record was made outside the presence of the jury.)

(The following record was made in chambers, with all counsel and the defendant present.)

(Hearing recessed at 10:30 a.m.)

(Hearing resumed at 10:45 a.m.)

(Discussion was held off the record.)

(The Trial Information was read.)

(The videotaped deposition of Dr. John Doe was shown to the jury.)

(Defendant's Exhibits 101 and 102 were published to the jury.)

(Cell phone interruption.)

(Fire alarm sounds.)

(An unidentified man entered the courtroom.) **for example, if someone enters a closed proceeding

(Persons in the audience leave the courtroom.) **for example, after the court says witnesses are sequestered

(Indicates.) or (indicating)

(Complies.)

(The jurors respond.)

(No audible response.)

(Recess from 3:02 p.m. to 3:20 p.m., 5-15-15.)

(The record was read back as requested.)

(The jury was selected and sworn.)

(The interpreter was sworn.)

(The jury left the courtroom at 3:15 p.m.)

(The jury returned to the courtroom at 3:30 p.m.)

(All parties were duly sworn by the Court.)

(The bailiffs were sworn by the Court.)

(Plaintiff's Exhibits 1 through 18 were marked for identification.)

(Defendant's Exhibit C received.)

(Opening statements were given by counsel for the state and counsel for the defendant.)

(Closing arguments were given by counsel, which were reported but not transcribed.)

(The final jury instructions were read to the jury.)

(Trial recessed at 4:30 p.m. on the 1st day of August, 2002.)

(Trial concluded at 4:30 p.m. on the 10th day of May, 2001.)

17.11. Transcribing from electronic recordings.

17.11.1. (Inaudible), (Indiscernible), (Unintelligible).

“Inaudible” means something could not be heard (perceived by the ear).

“Indiscernible” means “incapable of being discerned or detected: not recognizable as distinct.”

“Unintelligible” means “incapable of being understood or comprehended.”

Each of these words gets used in transcripts to indicate that someone said something on the recording, but the transcriber couldn't figure out what was said. (No audible response) is used when the transcriber thinks something might have been said, but if so, it couldn't be heard.

One of the advantages to having a court reporter reporting proceedings is that the court reporter can ask people to repeat things, to slow down, and to speak up so that there is no need to use these terms in the transcript. If an (inaudible) or (indiscernible) or (unintelligible) is used in a transcript of proceedings reported by a live reporter, it should be followed by a statement in the record indicating that an attempt was made to have the word or words clarified, such as in this example:

A. We bid (inaudible).

COURT REPORTER: I didn't hear anything after “We bid.” Could you please repeat?

THE WITNESS: Sorry. I'll take it off speaker phone. Is this better?

COURT REPORTER: Yes.

A. I said we bid \$500 and they didn't accept it.

This manual recommends the following:

(Inaudible) means nothing can be heard, even though one would assume something was said:

THE COURT: Counselor, to what page in the deposition are you referring?

MR. SMITH: (Inaudible.)

THE COURT: Thank you.

(Indiscernible) or (Unintelligible) may be used to indicate something can be heard on the recording, but it cannot be understood by the transcriber:

THE COURT: Counselor, to what page in the deposition are you referring?

MR. SMITH: Page (unintelligible).

THE COURT: Thank you.

Some reporters prefer “indiscernible” to “unintelligible” because they worry that readers will think “unintelligible” implies “unintelligent.”

Sometimes the attorney follows up with something like "I see you are shaking your head. Does that mean no?" Even if the attorney is describing a movement or gesture as having been made, if you, as the transcriber, did not personally see the witness yourself, you should not describe any gestures or movements in parentheses.

Q. Was the car red? You are shaking your head. Does that mean "no"?

17.11.2. Reconstructing the record. A Florida manual for court transcribers states, "Occasionally when transcribing [from a recording], there may be a word or words that cannot be heard or are garbled. Make every effort to transcribe it, but do not guess..."

But what constitutes "every effort" when trying to make out an unclear portion of a recording? If

after a reasonable effort you cannot understand what was said, move on. If you have time after you have finished the transcript, go back to those portions and listen to the recording again. You may be able to understand the words once you have heard the entire context of the matter.

However, you, as the transcriber, should not make guesses, not even a "best" or an "educated" guess. The transcript is supposed to show what was actually said, and if you make guesses, educated or not, readers might assume that what you typed was what was actually said even though you can't certify that those words are verbatim.

An Indiana court handbook says, "In the event lengthy passages are inaudible, a court reporter should confer with the judge first, and in the event that permission is granted, a court reporter may then consult with the attorneys. An attempt should be made to reconstruct the missing passage to assist appellate review." If a transcript is "reconstructed" like this, the certificate of transcriber should show this is what happened so the reader is not misled into thinking it is a verbatim transcript; for example, the certificate might need a statement to the effect that "Due to the poor quality of the audio recording, the transcriber relied on help from the judge and counsel for the parties to reconstruct the trial record."

17.11.3. What constitutes "verbatim"? In some state court reporter manuals, transcribers are instructed that "the transcript is to be verbatim and contain all words and other verbal expressions uttered during the proceeding...All grammatical errors, changes of thought, contractions...are to be transcribed as spoken. In the interest of readability, however, false starts, stutters, ums and uhs, and other verbal tics are not normally included in transcripts, but such verbalizations are to be transcribed whenever their exclusion could change a statement's meaning." There is similar language in the federal court reporters manual.

To the transcriber's ears, a spoken statement may sound something like this:

"Um, yer, uh, g-gonna -- gonna hafta ax duh heada duh -- duh dahvision, cuz yer axing me about s-sumtheen I, uh, n-n-never seen d-done."

But in a court transcript, it should be transcribed as:

"You're going to -- going to have to ask the head of the -- the division, because you're asking me about something I never seen done."

Do not try to mimic accents. Use standard spellings where possible, and as a general rule, leave out ums and uhs. Bad grammar should not be changed. Slang words and made-up words should be transcribed as spoken: beautifulst, aggrigated, defugalty. No [sic] is needed. Attorneys realize people use words like these, and they will not think you are making a mistake.

What constitutes a "verbatim" record is an ongoing issue in the field of court reporting and transcription, and there is not room in this manual to go into a long dissertation on the topic. Suffice it to say that the court transcript is not a screenplay. The very act of putting the spoken word into print unavoidably removes subtle tones of voice, body language, accents, pitch, and other communication clues from the conversation. Even professional linguists disagree on how best to show in print the way something was actually spoken.

17.11.3(a). Stutters. There are exceptions to every rule. One exception to the rules above is a situation where someone is speaking with a pronounced stutter and that stutter is claimed to be the result of some injury or stress, resulting in the lawsuit; another is when the inclusion of the stutter is necessary for context:

Q. Was it Jamie or Susanna that first figured out something was wrong?

A. I was told that Su-su-su-su-su –

Q. That's all right. Do you just want to refer to her as the clerk?

A. Yes. Thanks. The clerk was the one that found the bullets on the floor.

17.11.3(b) Transcribing text messages and documents with nonstandard spellings and/or typos. Emails and text messages are often read into the record. Sometimes the reporter is able to get a copy of them, but many times a copy is not available.

The job of a court reporter is to report and transcribe the spoken word, not the written word, even if the document is available so the reporter can see the nonstandard spellings used. If typographical errors or deliberate misspellings are important to the substance of the case, the attorneys should offer the document and let it speak for itself, or, alternatively, describe for the record the unusual spellings.

If the witness reads a text message into the record as “Wait, are you serious about shooting him or just kidding?” this manual recommends using standard spellings and normal punctuation even if the actual message is written as “W8 RU serus abt shooting him or jk?” In this case transcribing the words as spoken is important for clarity, as not everyone knows that “jk” means “just kidding.” Many readers would not be able to translate the following acronyms in use in text messages in 2018: B3, FC, JTLYK, SLAP, or WRT. Transcribing the words as spoken, not as spelled, makes the record clear.

Also, although many times texts do not include punctuation, when transcribing the spoken text message, the reporter should include punctuation based on how it is read aloud so that the reader can tell how the message was interpreted by the person reading it to the court and jury. It is standard practice for a court reporter to add punctuation to the spoken word. The fact that the spoken word also happens to be written down on a person’s cell phone does not change the court reporter’s job, which is to transcribe what is spoken in such a way that the reader of the transcript can tell how it was said.

If an exhibit that has a typo is quoted for the record, quotation marks should still be used around the quotation, and the misspelled word should be spelled correctly:

- A. It says, “An envelope with the money has been left on your desk.”
 Q. Well, technically it says “envelop,” without the final “e,” correct?
 A. Yes. That’s a typo.

There are always exceptions to every rule. If the reporter believes using the nonstandard spellings as shown on the document or cell phone are essential for clarity or understanding, then the reporter should use the nonstandard spellings.

17.11.4. More on ums and uhs. Regarding ums and uhs specifically, although some people think that ums and uhs may be evidence of someone trying to lie, not all professional linguists agree. Indeed, some linguistic studies show otherwise, and those studies also show that transcribers tend to hear and transcribe more uhs and ums in the speech of people the transcriber perceives to be less intelligent, less confident, or less “powerful” than other speakers, even when there is no difference in the number of ums or uhs spoken by other speakers in the same conversation. This can affect how the reader of the transcript judges the honesty or intelligence of the respective speakers. For this reason, this manual advises against trying to include ums and uhs in transcripts. If you insist on including them, then you must include them for judges and lawyers as well as witnesses and parties so that you do not inadvertently give the impression that a witness, for example, is verbally stumbling around while the lawyer smoothly and competently interrogates him. But there are exceptions to every rule. If an um or uh is necessary for the clarity of the record, include it:

- Q. When were you married?
 A. Um...
 Q. You seem to be stuck on that “um” there. Should I just wait till I depose your wife?

17.11.5. Yes and no and variations thereon: "Uh-huh," according to the Merriam Webster Collegiate Dictionary, Eleventh Edition, is the correct spelling for the utterance meaning "yes," and "uh-uh" is the correct spelling for the utterance meaning "no." Some reporters use "huh-uh" for "no," regarding it as more easily differentiated from the affirmative "uh-huh." It is not recommended that indications such as (yes) or (no) be written after uh-huh, huh-uh, etc. Sometimes those sounds mean "I am listening, so keep talking," or "Oh, you think so, do you?" or "Is that so?" and it is not for the reporter to interpret what the witness means.

"Yeah" is the correct spelling of the word meaning "yes" when it is pronounced "yah" or "yeh" or "yuh."

"Yea" is the correct spelling for the word "yes" when it is pronounced "yay"; this is an archaic word that occurs in phrases such as "yea or nay" and "It was yea big" and Biblical verses such as "Yea, though I walk through the valley of death..."

"Yay" is the correct spelling for the word meaning "yippie" or "hurrah" and is used as expression of happiness or excitement. It is, for example, the sound one makes cheering at a football game or when indicating pleasure upon learning one has just won a free trip to Disneyland.

Nodding is an up-and-down movement. Shaking is a side-to-side movement. One dictionary defines it as "moving to and fro with jerky movements." In our society, when one nods one's head up and down it is commonly taken to indicate "yes"; shaking one's head from side to side is commonly taken to indicate "no." The federal court reporter's manual shows (Nods head up and down) and (Shakes head from side to side) as acceptable parentheticals when head movements are given as answers. The parenthetical (No audible response) followed by the court reporter saying "I didn't get a verbal response" is also acceptable.

17.11.6. [Sic]. When people use nonstandard words, it is not necessary to use [sic]. The attorneys will not think the court reporter is to blame for the speech patterns of the witness. Nonstandard words like *honestest* or *beautifuler* do not need a [sic]. The [sic] designation should be reserved for times when someone has misspoken in such a way that it creates a substantive error and no one corrects it later in the transcript. For example, if for seven pages the witness says he only soldered pipe 118, and then ten pages later he says, "I keep telling you I only soldered pipe 119," you may want to [sic] that so readers realize it isn't a typo. But if the attorney keeps referring to the defendant as the witness's husband and she corrects him and tells him the defendant is the witness's brother, but the attorney keeps saying "husband" throughout the transcript, it is not necessary to clutter the record with [sic] at each incorrect reference. Use [sic] at the first instance only. After that, it will be apparent from the record that the attorney is misspeaking. Another example might be where the witness says her neighbor "incinerated" she was a thief; the reporter knows the witness means "insinuated," but must put what the witness said, so it is wise to [sic] the first instance of the misused word to show that the reporter is not responsible for the error, that it is actually what the witness said. But [sic] should be used sparingly, and it isn't needed at all in most transcripts.

17.11.7. Readbacks. Usually when a readback is requested it is very close in time to when the original question was asked, and the reporter indicates the readback with a parenthetical such as (The last question was read back) or (Record read as requested).

However, when asked to read back a part of the record that occurred several minutes earlier, it is easier for the reader if that portion is reprinted in the transcript at the point where the readback was requested, so the reader doesn't have to go back and look for it:

THE COURT: I'll ask the court reporter to go back to the question where the adhesive band was first mentioned and read it back for me. The question and the answer, please.

COURT REPORTER: Question, “You don't know if there was an adhesion or not, do you?”

Answer, “In the literature, cecal bascules are almost always, virtually always, associated with an adhesive band.”

If the requested readback is lengthy, instead of copying the entire readback into the transcript, a parenthetical may be used to show where the readback begins and ends:

(The record contained on page 23, line 5, through page 25, line 2, was read back.)

17.11.8. Examination setups. The first party’s attorney to ask questions of a witness is set up as Direct Examination. Everyone else starts with Cross-Examination. So if Plaintiff #1 asks questions, that’s DX. If Plaintiff #2 asks questions, that’s CX, even though they’re both plaintiffs, because not all the plaintiffs will necessarily have the same claims or issues. If there are a number of parties and one attorney elects not to do Cross-Examination on the first go-round but then asks questions during what is Recross-Examination for everyone else, that attorney is set up as doing Cross-Examination because it’s the first cross for that side.

Below are some common examination scenarios about which the editor has fielded questions in the recent past. Different experienced reporters may do things differently, however, and the editor has not heard of any complaints by attorneys as to how things have been done.

- a. Hostile/Adverse witness.** If an attorney says a witness (usually a party) is called as a hostile or adverse witness, the examinations still start out with DX, then CX, but in the witness setup put (ADVERSE) after the witness’s name:

MARCUS WELBY (ADVERSE)
was duly sworn and testified as follows:
DIRECT EXAMINATION

After this adverse direct, the other side has the option of just asking questions related to the adverse examination or conducting a full examination as if the witness had been called for their side in the first place. If the other side does not specify whether they are doing cross-examination or testimony in their own case, set the examination up as Cross-Examination and let the judge and counsel worry about whether it’s cross or direct later. If the other side specifies they are doing examination in their own case, set it up as Direct Examination:

MR. QUINCY: That’s all I have for Mr. Welby for now.

MS. KILDARE: If it’s all right with the Court, counsel and I have agreed I can conduct my examination now, as long as he’s already on the stand.

THE COURT: That’s fine with the Court.

MARCUS WELBY
being previously duly sworn, further testified as follows:
DIRECT EXAMINATION
Q (BY MS. KILDARE)

And when Mr. Quincy asks questions after Ms. Kildare’s DX, Mr. Quincy is doing Cross-Examination.

- b. Examination by the Court.** If the Court asks just a few questions, you can put that in colloquy. If the Court conducts a lengthy examination, you may set it up as

EXAMINATION
Q (BY THE COURT)

- c. **Voir Dire of a witness.** If an attorney asks to voir dire a witness prior to making an objection, if it is just a few questions you can do it in colloquy, but if it is a lengthy examination you can set it up as VOIR DIRE (you don't need the word "Examination" because Voir Dire *means* Examination, "a preliminary examination of a witness or juror by a judge or counsel").

VOIR DIRE

Q (BY MR. SANDERS)

- d. **Testimony by pro se party.** When a pro se party wants to give testimony, sometimes the judge will ask questions and conduct an examination. That may be set up as plain EXAMINATION. However, if a pro se party testifies in narrative fashion with few or no questions from the judge, examination may be set up as follows:

JULIE BROWN

being duly sworn, testified as follows:

TESTIMONY

THE PETITIONER: I love my boyfriend, I really do, but that day when –

THE COURT: Please state your name first.

THE PETITIONER: Oh, sorry. I'm new at this. Julie Brown. So that day when he came to the house, I wasn't going to let him in at first, but then he said how sorry he was about everything and how he wanted things to be better and he just wanted us to get back together again and how much he loved me and was

how

- e. **Testimony through an interpreter.** See sections 22.5 and 22.8.

17.12. Content of Record. SDCL 15-15-9 reads as follows:

The record of any hearing, court trial or jury trial conducted by or on behalf of the Unified Judicial System shall consist of the transcript prepared by an official court reporter or court recorder or freelance reporter on contract with the Unified Judicial System, the exhibits offered in evidence and jury instructions. This rule shall not apply to child support referee hearings.

The reporter shall transcribe and certify such parts of the record of the proceedings as may be required by any rule or order of the court. Upon the request of any party to any proceeding which has been so recorded, who has agreed to pay any applicable fee for such transcription, the reporter shall file an electronic transcript with the clerk of court upon completion and transmit a paper or electronic copy to the requesting party. The court may request that an additional paper copy of the transcript be filed with the clerk of court.

17.13. All transcripts to be sealed for 90 days upon filing to allow redactions.

17.13.1. Ninety-day waiting period and access to transcript.

SDCL 15-15-10 provides for temporary sealing of transcripts to allow time for attorneys to redact things like account numbers, names of minor children, or other potentially sensitive information. It reads: "The clerk of court shall file the transcript in the court record. The transcript shall be sealed for a period of ninety days from the date filed unless otherwise ordered by the court. During this time period, any copy of such transcript shall be obtained from the court reporter or transcriber at the rate provided by existing law.

"Following the expiration of such period of time, unless otherwise sealed or declared

confidential by court order or existing law, the filed transcript will be available for public inspection and copying through the clerk of courts office or through any other means of electronic court record access. Reproduction of the transcript may be provided on the same terms and conditions as any other document in the court record.”

17.13.2. Redaction is not the reporter’s responsibility. SDCL 15-15-11 states:

A request to prohibit public access to certain information in a transcript shall be governed by SDCL 15-15A-13. The court may order that any transcript be filed under seal or may require the redaction of information contained in the transcript for good cause shown. In the event of redaction, an unredacted version shall also be filed with the court under seal. During the ninety-day period, or for such period of time as may be extended by the court pursuant to 15-15-10, the parties to the case shall review the transcript to identify any items contained therein that should not be accessible to the public pursuant to court order or existing law. If such information exists, the parties shall move for the court to have that information protected in the public record. It shall not be the responsibility of the reporter when preparing a transcript to redact information unless a request has been made in advance to redact specific information by the parties or the court.

Sometimes a judge will order the transcript to be redacted. Sometimes attorneys will stipulate that the reporter redact the transcript while transcribing. This may happen before the proceedings start, during the proceeding when it becomes known that confidential information is being relayed, or shortly after the proceedings end, before a transcript is even ordered. In such situations as that, the reporter should go ahead and report what is spoke but make the redactions in the process of transcribing. It will be the attorneys’ responsibility to check to make sure the reporter made all redactions necessary.

Sometimes the reporter may be asked to redact a transcript that has already been finished and delivered. If this happens, simply find the places where a redaction needs to be made and replace those words or phrases with a global that takes the same number of spaces so line and pages numbers match those of the original transcript. You may use X’s or hard spaces to take up the same amount of space. Indicate on the title page and in the file name that the transcript is redacted.

- Q. Were you aware that Tina and Leanna were sleeping in that bedroom too?
 Q. Were you aware that T.D. and ~L.K.~ Were sleeping in that bedroom too?
- A. The money was placed in Account Number 37-84460-12.
 A. The money was placed in Account Number XXXXXX12.

17.14. File any transcript you certify if it is of official court proceedings. You should file any certified transcript you make of official court proceedings, even if it is just a 3-page excerpt or a 5-page ruling, even if it was not transcribed for purposes of an appeal. If you certify it, you file it with the clerk of court in the county in which the case is filed. You should file it in full-size electronic format.

SECTION 18. EXHIBITS

18.1. Exhibits received. Most exhibits that are marked and then offered and received into evidence are allowed to be considered by the fact-finder of a case (the judge or the jury) as evidence in the matter. In a jury trial, an exhibit that is received will go back into the jury room for the use of the jury in deliberations (see exceptions in 18.2 below).

A clerk may be in the courtroom to be in charge of the exhibits once they have been received into evidence, but if a clerk is not present, the court reporter takes charge of the exhibits. The reporter should keep a list of what exhibits are offered and whether they were refused or received into evidence so that at the end of a jury trial it is clear which exhibits should go to the jury and which should not. It could be grounds for a mistrial if evidence which was not received is viewed by the jury during deliberations. However, all exhibits offered during trial need to be kept for the court file, even if they were refused. Refused exhibits are kept so the appeals court can look at them to see if they were appropriately refused.

All exhibits should be accounted for before the attorneys leave the courtroom so that no one accidentally stuffs an offered exhibit into a briefcase and walks away with it. If you keep a list, you can say, “We are missing Exhibit 14, which is a letter dated 4-19-14,” and the attorneys will know what to look for. You could also ask a law clerk, if one is present, to help track the exhibits.

18.2. Exhibits that stay in the court file but do not go to the jury. Certain types of exhibits stay in the court file but do not go to the jury even if received. Keeping a list of these on the reporter’s dope sheet will help speed the process of putting the exhibits in order at the end of the trial and also makes doing an exhibit index easier.

18.2.1. Demonstrative exhibits are exhibits such as charts or diagrams that are used to help an attorney or witness explain or clarify a part of testimony but which are not sent back to the jury.

18.2.2. Offer-of-proof exhibits. An offer of proof is a way for a lawyer to put on the record why evidence which has been refused should have been allowed in the record. This evidence is not presented in front of the jury. Exhibits presented as part of an offer of proof do not go to the jury but do get filed with the clerk. Keep these exhibits separate so that they are not accidentally sent back to the jury room.

18.2.3. Exhibits not received. Exhibits are sometimes offered but then objected to and not received into evidence and do not go to the jury. The judge should write “Refused” on the exhibit to make this clear. The offered but refused exhibits should go to the clerk, because the failure of the court to receive those exhibits could be an issue on appeal. Keep them separate from exhibits going to the jury.

18.2.4. Depositions marked as exhibits. Depositions read into the record in lieu of testimony are often marked as exhibits but do not go to the jury because they would overemphasize the deposition testimony as opposed to live testimony.

18.2.5. More on exhibits. There may be occasions when weapons and ammunition are received into evidence. For safety concerns, usually judges will allow either the gun or the bullets in the jury room for the jury to examine, but not both of them at the same time.

If an exhibit is a recording on a CD or memory stick, it may be in a format that does not play on the court’s recording device. Attorneys are responsible for making sure there is a way to play such an exhibit to the jury. The court reporter’s laptop should not be used to play such an exhibit.

When marking exhibits, particularly photographs, be careful not to cover up anything important.

Put the sticker on the back, if necessary, or ask the attorney who is offering the exhibit where the sticker should be placed.

Do not use dark exhibit stickers (especially red, brown, orange, and dark green) to mark exhibits. When they are scanned into Odyssey it is impossible to read the exhibit number because it all blends together. Stick to white, yellow, and blue stickers. Try to put the sticker at the top of the exhibit. That way when the exhibit is pulled up on Odyssey, the sticker can be read right away; the reader does not have to scroll down the page looking for it. This is very helpful because often exhibits are scanned in in groups and a judge has to scroll page by page trying to find the exhibit needed. The process is quicker if the sticker is at the top of the page.

Freelancers who subbed in court and would like to check a quotation against an exhibit may call an official reporter, who can pull the exhibit up in Odyssey and read it for them. In most cases an official can call up a case in Odyssey even if it is outside the official's circuit, so long as the reporter has the correct case number.

SECTION 19. TRANSCRIPT PREPARATION

19.1. Request for transcript. (Order for transcript.)

19.1.1. Excerpts of transcripts may be ordered. Not every record an official reporter makes will be transcribed, and not every party will want to order a copy if an original transcript is ordered. Sometimes only a partial transcript or excerpt of proceedings will be ordered, which is acceptable as long as the request is reasonable. (A request that the reporter go through a 200-page transcript looking for any reference to the plaintiff's wife and only transcribe those questions and answers is unreasonable, for example, because it means that the reporter would have to check for the wife by first name, by "Mrs." or "Ms." last name, by references to "your wife" or "my wife," possibly by "mother" or nickname, etc.)

19.1.2. Contact the other side. According to UJS Policy 3-PJ-10 and NCRA Advisory Opinion 22, if you are asked to provide an excerpt of proceedings, you need to inform the requesting party that you will be offering a copy to the other side. (See Section 16.5.2.) If the transcript has been ordered on appeal, the appellant pays for the original and copies to each side. You do not have to contact the other side to see if they want a copy; you just make a copy for them automatically.

19.1.3. "Rush" transcripts, excerpts, and other special services. Per Footnote 1 to SDCL 15-26A-51 [in November 2017 found in SDCL Vol. 10A, page 454, under "Notes of Decisions"], "Statute does not require reporters to furnish portions of transcripts during trial on a party's arbitrary time table, though they may do so." Official court reporters are not obliged to provide rush, expedited, overnight, or daily transcripts, although they may if they choose. If you do provide such services, the same services must be offered to opposing counsel as well.

Keep in mind there are no special statutory rates for extra services. If the attorney requesting the special service is court-appointed, if you plan on charging extra for rush or realtime, etc., you should get a court order authorizing the extra charge before providing the service, or you may find that the county will refuse to pay anything more than the statutory rate. If the attorney is not court-appointed, be sure to advise counsel what the rates will be in advance, and if possible get agreement to those rates in writing. See also Section 20.7 below.

19.1.4. Transcript ordered for non-appeal purposes. For non-appeal transcripts, bill the ordering party for the original and one copy to the ordering party alone. You should contact the other side to ask if they would like a copy, and if they request a copy, they get billed for it.

A non-appeal transcript can be ordered formally through a prepared order or letter or informally through a telephone call or verbal request in court. A non-appeal transcript might be ordered by attorneys, interested parties, or the media (in certain circumstances). See Section 21 regarding confidentiality to determine who may or may not be authorized to receive a copy of any given transcript. Requesting payment in advance for the transcript may be advisable, especially when dealing with pro se parties.

There is no statutory deadline for delivery of non-appeal transcripts, but Rule 10.3(B)(3) of the UJS Employee Manual indicates that the UJS expects that if officials accept freelance work, they should deliver the transcripts no later than 30 days from time of reporting, so it is reasonable to assume non-appeal official transcripts should be delivered in 30 days or less as well. Most reporters do their best to deliver transcripts within ten business days.

19.1.5. Transcripts for appeal purposes. If a transcript of proceedings held in circuit court is requested on appeal, you will receive a written "Order for Transcript" from the appellant within 10 days of the filing of the notice of appeal. If a transcript is ordered of proceedings held in magistrate court (see also section "b" below) or before another body, such as the Board of Mental Health, you probably will not receive the "Order for Transcript" form, and in those types of cases it is not necessary because those appeals are not being made to the Supreme Court. (An exception to this is when a protection order hearing is heard before a magistrate. Protection order hearings heard in front of a magistrate are treated

as if they are heard in circuit court and get appealed to the Supreme Court.)

Procedure varies from place to place, but in some courts if a defendant is indigent a court order is required before a transcript will be paid for by the county auditor. Check local practice.

- a. Appeals from Circuit to Supreme Court.** At the time of ordering, a party must make satisfactory arrangements with the reporter for payment or prepayment of the costs of the transcript and all necessary copies. (For a sample letter requiring prepayment, see Section 23.9.) The reporter should indicate in the endorsement or at the foot of the Order for Transcript the date the order was received, the date prepayment was received if such payment was required, and the date on which he or she expects to have the transcript completed. If the transcript is already finished, indicate “completed” and the date it was completed in the blank space.

As of January 10, 2024, court reporters will now efile the endorsed Order for Transcript through File & Serve under the five-digit appeal number assigned to the Supreme Court case. To locate the five-digit number, pull up the circuit court case in Odyssey. The appeal number can be found on the right-hand side of the Odyssey screen in the “case cross reference” box. You may also search in File & Serve for the appeal number. If there is no appeal number listed, you will have to wait until the Supreme Court clerks get the file.

There is no need to file the endorsed Order for Transcript under the circuit court case number. You only have to file it under the five-digit appeal number.

The transcript shall be completed within 45 days after receipt of the order or, if prepayment was requested, within 45 days after receipt of such prepayment. According to SDCL 15-26A-51, “If the reporter cannot complete the transcript within the prescribed time, he shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the Supreme Court shall be entered on the record and the parties notified.”

Request for Transcript Extension forms can be found on the Intranet under the “Resources” heading, under “Court Reporter & Court Recorders,” and under “UJS Official Court Reporter Forms.” The Request for Transcript Extension form needs to be efiled in File & Serve under the five-digit appeal number.

See Section 23.8 for a sample “Request for Transcript Extension” form.

b. Appeals from Magistrate Court to Circuit Court are handled differently. According to SDCL 15-38-33 (Rule 5(b)) “...the appellant shall petition the circuit court for an order that a transcript of the verbatim record of the proceedings be prepared.” The court reporter does not sign any endorsement of receipt of the transcript order, nor file any form stating when the transcript has been filed. The court reporter has 30 days to efile the transcript, not 45, and the transcript is efiled through File & Serve under the circuit court case number only, not with the Supreme Court.

(There is an exception to this procedure when a protection order hearing is heard before a magistrate. Protection order hearings heard in front of a magistrate are treated as if they are heard in circuit court and get appealed to the Supreme Court.)

c. Retention of transcript order forms, endorsements, requests for extensions, etc. Once the transcript has been filed and payment has been received, the reporter no longer needs to retain the various forms that get filled out during the appeal process. They are on file with the clerk if anyone needs to see them.

19.2. Appeals from Circuit Court to the Supreme Court: Step-by-step.

1. Endorsing the “Order for Transcript.”
 - a. First, decide if you want prepayment. If you aren’t going to request prepayment, go to (b) below. If you do request prepayment, do not sign the endorsement yet, but email the appellant’s attorney requesting prepayment and cc the Supreme Court clerk. The appellant has 10 days in which to send you the prepayment. If you request prepayment, your 45 days in which to complete the transcript starts the day you receive the prepayment. Otherwise your 45 days begins the day you sign the endorsement.
 - b. Fill in your name and the date on which you received the Order for Transcript (or prepayment, if requested). If that date is more than two or three days after the date on which the attorney made the order, indicate on the endorsement why there is such a time difference; for example, vacation, illness, stuck in a lengthy trial away from usual station and unable to check mail, requested prepayment, etc.
 - c. Fill in your estimated date of completion. You have 45 days in which to complete the transcript. If you have already transcribed and delivered the transcript, simply indicate “already completed” and the date you filed it.
 - d. Sign and date the endorsement.
 - e. Email the endorsed Order for Transcript to the ordering attorney. When the Supreme Court five-digit appeal number is available, efile the order through File & Serve under that number. If the defendant is indigent, attach a copy of the endorsed Order for Transcript to the county voucher for payment.
2. Prepare the transcript according to the SDCL guidelines in Form 3 in the Appendix of Forms (see Section 19.6). To sign the transcript, simply put /s/ followed by your typewritten name in the signature line of the certificate. Prepare the transcript to be filed in regular-size pages, not mini/condensed.
3. When the transcript is completed, efile a regular-size transcript with an attached word index. Use PDF format. Page 3 of the eFiling for Court Reporters and Court Recorders manual notes how files need to be named.

As of June 7, 2023, transcripts are to be efiled through File & Serve under the circuit court case number. The “eFiling for Court Reporters and Court Recorders” manual is available on the Intranet. This is a step-by-step guide on how to use File & Serve. To locate the manual, go to the Intranet, then to the “Resources” heading, choose “Court Reporters & Court Recorders,” and then choose “I/T Training Manuals.” Clerk Support has created a naming standard for each of the transcripts; so there are filing codes for those transcripts that need to be sealed (grand jury and jury trial voir dire).

For those who would like more instruction and/or have more questions regarding File & Serve, there is a document entitled “File & Serve Court Reporter and Court Recorder FAQs” under “I/T Training Manuals.” This is a list of questions received from the training sessions. There’s also a recorded training session entitled “File & Serve Court Reporter Webinar – June 6th, 2023” if you were unable to attend or would like to listen again.

4. Send or deliver copies of the original transcript to the attorneys for each party to the appeal. Before sending the transcript, call to see if the attorney prefers regular or condensed size and whether they want a paper or electronic copy or both.

In criminal cases, a copy of the original transcript must be sent to the assigned attorney at the Attorney General's Office rather than to the State's Attorney's Office.

In juvenile/A&N cases, a copy of the transcript must be sent to the assigned attorney at the Department of Social Services:

****NOTE:** As of November 2017 some attorneys in the AG's office still want paper transcripts as well as the PDF transcripts (they base that on the rule in the state that still requires a transcript to be "bound." See 19.6.1(5) below). Some Assistant AGs prefer regular size; others prefer condensed. To see which attorney is assigned to your case and which type of transcript they prefer, please call (605) 773-3215. A PDF transcript may be emailed to ATGService@state.sd.us. The postal address is:

Attorney General's Office
1302 E. Hwy 14 Ste. #1
Pierre, SD 57501

5. Fill out the "Court Reporters' Reporting Form" section entitled "Filing and Transmittal of Completed Transcript" (see sample at 23.7) and efile it through File & Serve under the Supreme Court five-digit appeal number. Use PDF format.
6. Send a copy of this form to appellant's counsel so they have a record of what date the transcript is officially delivered to counsel, as the time for filing their briefs starts running on that date.

****Note:** where it says "number of pages in transcript(s)," include the title page(s) and certificate(s), but do not include the word index(es) in the page count.

7. Bill using appropriate forms or invoices. Section 23.10 has examples of invoices. See also Section 13.7 regarding W9s and tax ID numbers.

19.3. Request for Extension. SDCL 15-26A-51 says, "If the reporter cannot complete the transcript within the prescribed time, he shall request an extension of time from the clerk of the Supreme Court, and the action of the clerk of the Supreme Court shall be entered on the record and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the Supreme Court shall take such steps as may be directed by the Chief Justice of the Supreme Court."

19.4. Do not prepare a transcript unless one has been ordered. UJS Policy 2-PJ-97 (Revised 4/12/02) states that "Transcripts of arraignments and sentences will be prepared as a routine matter only in capital cases."

In the past, a few court reporters routinely transcribed arraignments and sentences even when the transcripts had not been ordered. Then the presiding judges have made it policy that arraignments, sentences, and juvenile proceedings should only be transcribed when a judge determined that the court reporter's notes were "insufficient to maintain the record of the proceedings." As a result, now some court reporters will only transcribe these matters after they have received a judge's written order authorizing the transcription. But the point of the policy was to stop court reporters from transcribing and billing for transcripts that were not actually ordered. Anyone can order a transcript of proceedings of any kind that were conducted in open court (unless the court seals it afterwards), and a court order authorizing the transcript is not required. Confidential matters, such as juvenile proceedings, do need a court order. See Section 21 for more information about confidential proceedings.

Do not assume all sides will want a copy of a transcript that has been ordered. If the transcript has not been ordered for appeal purposes, do not automatically send copies to everyone, but call the other sides to see if they want a copy.

19.5. Who can order a transcript. Anyone can order a transcript of an open, public official court proceeding (unless it has been sealed by the court). If the ordering person is not an attorney, it is advisable to get payment in advance before starting the transcript. For closed hearings, confidential proceedings, or proceedings ordered sealed by the court, the ordering person needs to get a court order first. An indigent person may need a court order before the county will pay the bill, depending upon the circumstances. See also Section 19.13.2 (re billing) and Section 21 (re confidential proceedings).

19.6. Transcript Preparation. The **SDCL Appendix of Forms, Form 3**, found at SDCL 15-26A-A (right after SDCL 15-26A-93), sets out the format for all transcripts prepared for appeal purposes. This format should be used for all transcripts of official court proceedings. See Section 23.1, 23.2, and 23.5 for pages done in the statutory format.

Although as of this writing the heading of Form 3 is “Appeal Transcripts,” the same format should be used for all transcripts done of official court proceedings. Freelancers may vary their formats and page rates for freelance work, but if they substitute in court and transcribe official court proceedings they must use the statutory format. Attorneys have the choice to hire or not hire particular freelancers for deposition work based on their page formats and rates, but attorneys and parties have no choice in the matter of an official reporter. Statutory formats and page rates assure attorneys and parties that they get the same transcript for the same cost regardless of where the case is being tried.

NOTE: Although the requirements below are the ones currently contained in the statute, they were written in 1979, before computer-aided transcription. Some practices have changed due to the electronic filing now in place. Making changes in a statute is a long process, so changes in practice have been noted in the list below.

19.6.1. Statutory Page Format.

1. Appeal transcripts shall consist of volumes of 250 pages or less, prepared on 8 ½ x 11 white opaque paper with 25 prenumbered, double-spaced lines per page.

Note 1: Transcripts are now filed electronically, but the format of the electronic pages should match the requirements of the paper transcripts.

Note 2: You may begin each new day as a separate volume or combine proceedings from different days in the same transcript. If one day’s proceedings require more than 250 pages, find a logical break point before the end of page 250 and start a new volume. You do not have to go to line 25 of page 250 before starting a new volume. The new volume should start with the next page number. So, for example, if Volume 1 ends on page 248, then Volume 2 should start on page 249. All administrative pages (title page, index, certificate) should be included in the numbering. Word indexes should not be included in the page numbering.

2. Each page shall have ruled margins with ¾” top and bottom margins, a 1 ½” left margin, and a ½” right margin.

NOTE: The Supreme Court still microfilms transcripts, so it is important to have the top and bottom margins at ¾”. The 1 ½” left margin is to leave room for binding if a paper transcript is needed.

3. The transcript shall be typed using pica type with 10 characters per inch; questions shall start with a “Q” flush at the left margin, with two spaces between “Q” and the text of the question; answers shall start with an “A” flush at the left margin with two spaces between “A” and the beginning of the text of the answer; colloquy, such as “THE COURT,” “MR. JONES,” etc., shall start three spaces from the left margin.

Note 1: The second and subsequent lines of text following the Q or A or colloquy also start three spaces from the left margin:

Q Would you please state your name, work address, and occupation for the court and jury?

Note 2: Type must be a monospaced font, which means every character takes up the same amount of horizontal space, regardless of whether it is a wide letter, like D, or a narrow letter, like I. Most computer fonts are proportional, which means wide letters take up more space than narrow letters. Because the number of characters per inch varies, you may get more or fewer characters per line depending upon what letters are contained in that line. For example:

Wide vs. Narrow letters in Courier New (monospace) in size 13 font

Infiltrate
Additional
Wonderment
Mammograms
one inch

Wide vs. Narrow letters in Bookman Old Style (proportional) in size 14 font:

Infiltrate
Additional
Wonderment
Mammograms
one inch

Even though the words above are the same number of letters, in a proportional font they take up different amounts of space. To ensure you are getting the required ten characters per inch, no more, no less, choose a monospace font such as Consolas, Courier, DejaVu Sans Mono, or Lucida Console. On most computers, Courier New comes closest to the old IBM Pica font on which the rule was based. See Section 23.14 for examples of other monospace fonts.

4. The pages shall be consecutively numbered throughout the entire transcript (not according to volume) located at the top right-hand corner of each page.
Note: This means if Volume 1 ends on page 237, Volume 2 starts on page 238. Administrative pages (title page, index, certificate) should be included in the numbering, but word index pages should not. If your software automatically numbers word index pages consecutively from the last page of the volume, your next volume should start on the page number that immediately follows the number of the last page of actual transcript in the previous volume.
5. Each volume shall be securely bound with a protective cover upon which or through which the following shall appear: (a) a 1 ½” blank space at the top of the page; (b) the trial court name,

location and case number; (c) the case name; (d) the type of proceeding; (e) the date of the proceeding reported in that volume; (f) the name of the judge before whom the proceedings occurred; (g) appearances; (h) the volume number and the pages included in the volume.

Editor's note: When a transcript is filed electronically, obviously the protective cover is not needed on the original. The 1 ½" blank space at the top of the title page is probably intended as space on which the clerk's filing stamp may be placed without covering up any information. To achieve this 1 ½" blank space, the example in Rule 79-1 (the source for this code section) shows the title page as leaving lines 1, 2, and 3 blank and starting the caption on line 4. Standard practice for the last several years has been not to leave this blank space.

It is important to maintain the ¾" top and bottom margins so that nothing gets cut off when paper transcripts need to be microfilmed, which is still being done at the Supreme Court.

6. An index of witnesses, motions, and exhibits shall follow the cover page of the first volume of each transcript; each major event of the proceeding shall be listed separately and identified by the transcript page number at which it begins.

19.6.2. Frequently Asked Questions About the Statutory Page Format.

a) Is it all right to bold my Q, A, Colloquy, etc.? Yes. The important thing is that you have the statutory margins and statutory number of characters per line.

b) I prefer to use a different font than Courier New 13. May I do so? As long as you are getting ten characters per inch, no more, no less, and staying within the statutory margins, you may use a different monospace font.

c) We are filing everything electronically. Must we provide paper transcripts when clients ask for them? Yes. The client is permitted to purchase a transcript in whatever format the client wants.

d) The client ordered a mini/condensed transcript. Do I still have to file a full-size original? Yes. The Supreme Court Justices say that smaller the print, the harder it is to read on an iPad or tablet.

19.7. Title Page. The first page of the transcript is the title page. It includes the caption of the case, a heading stating what the transcript contains (for example, "Hearing on Motion to Suppress"), a paragraph stating where and when the proceedings occurred and before which judge, the appearances, and the reporter's name and address. For space purposes, the appearances can be put on the second page instead.

If a transcript is to be filed in more than one case, you may put all captions on the first page if they fit, or make separate title pages for each case. See an example at 23.1(d).

Sometimes in criminal cases a single defendant may have more than one file number. In that situation, if the proceedings are deemed held in more than one case file, simply add the additional file numbers. You do not need to do separate captions for each number:

STATE OF SOUTH DAKOTA)	Case No. 61CRI17-111
Plaintiff,)	Case No. 61CRI17-22
vs.)	
JON BADMAN,)	CHANGE OF PLEA HEARING
Defendant.)	

19.7.1. Use Arabic numerals for volume numbers. This manual recommends using Arabic,

from an FTR or CourtSmart recording as opposed to reporting live, UJS I.P. Rule 2015-02 states that “The person who transcribed the proceedings shall certify the transcript of the proceedings as follows:

I hereby certify that the transcript of proceedings in the above-entitled action is a true and accurate transcript based on the electronic recording.
“

If you transcribe other proceedings from an electronic recording, your certificate should be changed to read “Certificate of Transcriber” and the wording should be amended to show that the recording is transcribed to the best of the reporter’s knowledge and ability. Some reporters do not believe they should put any certificate on a transcript from a recording, because they do not feel they can certify as to its accuracy. However, in some courts if no certificate is attached to the transcript the transcriber may be called to testify that he or she was the person who did the transcription and that it was done to the best of the transcriber’s ability. The certificate may prevent this hassle. See also Section 23.4.

19.11. Signing transcripts does not require your notarial stamp.

19.11.1. Signature. The original paper transcript should always contain an original signature. When the original transcript is in electronic format only, official court reporters have been told to use /s/ followed by the reporter’s typewritten name.

19.11.2. Do not notarize your own signature. SDCL 1-26-32.4 and 15-26A-52 indicate that “The reporter or agency shall certify the correctness of the original and all copies of the transcript.”

To “certify” something to formally state or affirm something. Certifying does not require notarization. None of the statutes which govern reporters’ certificates on transcripts requires that the reporter place his or her notarial seal on the certificate. According to the Office of the Secretary of State, a reporter who signs a certificate of reporter and then places his or her notarial stamp thereon is effectively notarizing his or her own signature, which is against the law.

19.12. Filing original transcripts. All certified original transcripts of official court proceedings, whether done for appeal purposes or not, should be efiled through File & Serve under the circuit court case number. See Section 19.2(3). Transcripts must be in a full-size page format.

19.13. Fee for transcripts.

19.13.1. Transcript fee. According to SDCL 15-15-7 and Supreme Court Rule 22-16, a reporter shall charge \$3.60 per page of the original transcript and \$.65 per page for each additional copy of the transcript. Prepayment may be requested pursuant to SDCL 15-26A-51. This applies to all transcripts, not just transcripts done on appeal, and not just criminal transcripts.

Be aware that as of this writing (3/1/18) there are no statutory rates governing extra services such as rush or daily copy transcripts. See Section 20.7 below for more information.

19.13.2. Who to bill. You may request prepayment in civil cases and in criminal cases where defense counsel orders the transcript and is privately retained. If you request prepayment for an **appeal** transcript, email the attorney that you are requesting prepayment and cc the Clerk of the Supreme Court for their records. You are not required to request prepayment. [Editor’s note: See Section 13.7 above regarding W9 forms and tax identification numbers.]

a. For civil non-appeal transcripts, bill the ordering party for the original and one copy to the ordering party alone. They only have to pay for their own copy. In accordance with UJS Policy 3-PJ-10, contact the other side to ask if they would like a copy, and if they request a copy, they get billed for it. The original transcript gets filed with the clerk of the circuit court but is not

sent to the Supreme Court. Do NOT send it to the SCBriefs email address. You may request prepayment.

b. For civil appeal transcripts, bill the appealing party (appellant) for the original and one copy for each party involved in the action. But see also point “i” below if only part of the transcript is ordered. You may request prepayment.

Habeas corpus cases are technically civil cases, but the county pays for the transcripts if the plaintiff (usually a confined prisoner or mental health patient) is indigent.

c. For criminal non-appeal transcripts ordered by the state’s attorney, bill the state’s attorney directly. Some state’s attorneys require that you submit your invoice with a county voucher (county voucher forms vary from county to county); others are fine with just your usual invoice, which they will in turn attach to a voucher they will submit. In some counties you may be asked to submit your bill directly to the auditor, in which case you may need to also fill out a county voucher. If you do need to fill out a county voucher, simply put the same information as you would on a regular invoice, sign the voucher in the appropriate spot, and submit it to the state’s attorney to authorize and submit to the auditor. If you have a court order for a transcript, attach that to the bill. No sales tax should be charged to the county.

d. For criminal non-appeal transcripts ordered by the Attorney General’s office, submit your invoice to the ordering attorney with the transcript. The AG’s office can pay via direct deposit using the state payroll system.

e. For criminal non-appeal transcripts ordered by an indigent defendant, the defendant may or may not need a court order before the county will pay for it. SDCL 23A-32-1 says transcripts are prepared when necessary to protect an indigent defendant’s rights. Preliminary hearing transcripts can be requested for appeal purposes without a court order in some counties, but if it is not for appeal purposes usually an indigent defendant will need a court order.

f. For criminal non-appeal transcripts ordered by privately retained defense counsel, or by anyone other than someone from the state’s attorney’s office or attorney general’s office, bill that person directly for their original and one. Call the prosecuting attorney to see if they want one too, and if they do, bill them for their copy. (If the ordering party is not defense counsel or the prosecuting attorney, call the those attorneys as well as well.) You may request prepayment.

g. For criminal appeal transcripts, if the state is appealing, the Attorney General’s office gets the copy and pays for all transcripts, because the state’s attorney is not involved at the appeal stage. If an indigent defendant appeals, the county pays for the original and one copy to each side. If the defendant is not indigent, the defendant or defense counsel is responsible for payment for the original and one copy to each side. If the attorney orders the transcript, the attorney is responsible for payment (see the Ethics Opinion at Section 15.22). If the defendant personally orders the transcript, the defendant is responsible for payment. You may request prepayment pursuant to SDCL 15-26A-51.

Preliminary hearings transcripts are usually treated like criminal appeal transcripts for billing purposes, because they are generally ordered for purposes of appeal from magistrate court to circuit court. They do not get filed with the Clerk of the Supreme Court, but the ordering party pays for a copy to the other side. However, if the preliminary hearing is ordered by someone not a party to the case (perhaps because it contains information relevant to a related civil case), the ordering party does not have to purchase copies for anyone else. In that situation you may call the actual parties to see if they want a copy, and if they do, they will have to pay for it themselves (or an indigent party may ask for a court order to have the county pay for it).

h. Confidential proceedings, juvenile cases, adoption cases, mental illness cases, other closed proceedings. Only the parties involved may order a transcript in confidential or closed proceedings, and they need a court order allowing it.

i. When only portions of proceedings are ordered. It is permissible to order only portions of a transcript when an attorney does not believe all parts of a proceeding are relevant to

an appeal. If the appellant only orders portions of a transcript on appeal, the appellee has the option of designating additional parts of the proceedings to be transcribed. SDCL 15-26A-50 says, “Unless within ten days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following ten days either order the parts or move in the circuit court for an order requiring the appellant to do so.” If the appellant only orders parts of a proceeding to be transcribed, the appellee has the option of ordering other portions and needs to bring a motion before the court to order appellant to pay for those additional portions. If the motion is not brought, or if it is brought but not granted, then the appellee is responsible for paying for the original and all copies of those additional portions. You may request prepayment.

j. Requests for the reporter to verify the record. Sometimes a reporter is asked to check the record to see what was actually said during the proceedings; for example, the state’s attorney and the court services officer may disagree as to what a judge ordered as part of a sentence. These short checks by the reporter do not require a formal transcript and may be answered in an email or by a phone call (“Yes, the judge ordered the drug patch. No, the judge did not order a fine.”) Do not charge for doing this.

Sometimes an attorney or a party will contact the reporter for a quick verification of a point or two (“Yes, the judge said child support was to start the 1st of next month. No, the witness did not say the last name of his girlfriend.”) Again, you can read the relevant record to the person over the phone or send an email and not charge for the favor, as long as no one is making a habit of calling for things like this and as long as it is just a matter of a short portion of the record that can be easily located with a word search or maybe a quick scan of the judge’s ruling.

k. Grand jury transcripts. Only the prosecuting attorney may order transcripts of grand jury proceedings without a court order. Bill the prosecuting attorney. If defense counsel gets a court order and requests a transcript, send a bill to the attorney for the original, a copy to defense counsel, and a copy to the state. If the attorney is court-appointed, bill the county.

Check with local court reporters to see how things are handled in their county. The county or state pays for the transcripts, in accordance with Sections “c” and “d” above.

19.13.3. Transcripts ordered by a trial court are not billable. Do not charge for realtime, rough drafts, or transcripts done for the judge or law clerk for the judge’s use. See Section 23.11.

19.14. Playing “bill collector.” If you have difficulty collecting from an attorney, you may provide them with a copy of Ethics Opinion 80-6, which details a lawyer’s responsibility for paying for transcripts ordered. See Section 22.14 for a copy of Ethics Opinion 80-6. See also Section 15.23 for examples of collection letters.

19.15. The Court Reporter Transcript Compensation/Certification form is obsolete and should no longer be required in order for the court reporter to get paid by a county auditor, but some long-time auditors may insist on having you do the form anyway. If you need a copy, see Section 23.12.

19.16. Non-appeal transcripts. Transcripts of official proceedings that are ordered for purposes other than appeal should still follow the statutory format. All transcripts of official proceedings which a reporter certifies should be filed with the clerk of courts of the county in which the case is filed. Do not file non-appeal transcripts with the Supreme Court or the SCBriefs email address. If you just type up a few lines of transcript into an email for the judge or a court services officer or a law clerk, you do not

need to file that, because it isn't a certified transcript with a title page or certificate of reporter.

SECTION 20. REALTIME/ROUGH DRAFTS/DAILY COPY

20.1. Realtime Equipment. Official reporters are encouraged, though not required, to provide realtime reporting services. Reporters are responsible for purchasing and maintaining their own hardware and software to perform realtime, including a realtime cable connection extending to the judge’s bench. UJS Policy 3-SC-09 Revised 9/3/09 states, “UJS will provide wireless transmitter, receivers, and UJS standardized realtime software to provide realtime capability for judge and ADA-requested systems.”

Attorneys desiring realtime are required to supply and know how to operate and troubleshoot their own laptop computers and software.

20.2. Realtime Training. UJS policy 4-SC-09 (Revised 9/3/09) states, “UJS will provide reimbursement to court reporters for test fee for successful realtime testing that results in certification status (CRR) with the National Court Reporters Association.”

20.3. Salary Differential. Per UJS Policy 3-SC-03/5-SC-09 (Revised 9/3/09), a 5% pay differential will be paid to reporters passing NCRA’s Certified Realtime Reporter examination.

20.4. Realtime Rates. There are no South Dakota statutory rates for providing realtime. Some official reporters use the federal rules regarding realtime transcript rates as a guideline. See Section 12.8 of this manual for the federal rates applicable on 10/1/23.

20.5. Providing Rough Drafts. It is common to provide a rough draft to the judge or law clerk to use when drafting orders, opinions, rulings, etc. Do not charge a judge or law clerk for a rough transcript. However, it is important they understand that it is for their personal use only and cannot be given to attorneys, the media, litigants or any other party. Indicate that it is an uncertified rough draft. This can be done with the use of headers or footers and a rough draft disclaimer inserted at the beginning, or by inserting throughout the transcript the words “uncertified rough draft.” Do not put a title page or certificate page or index on a rough draft transcript. Do not file a rough draft transcript.

20.6. Realtime Disclaimer. Here is a sample Realtime Disclaimer. Another version is at Section 15.18.

Disclaimer: This realtime text feed is unedited and uncertified and may contain untranslated words, a note made by the reporter, a misspelled proper name, and/or word combinations that do not make sense. All such entries will be corrected on the final certified transcript.

Due to the need to correct entries prior to certification, this realtime draft can be used only for the purposes of annotating counsel's notes and cannot be used or cited in any court proceedings or to distribute to other parties to the case who have not purchased a transcript copy.

Consent: By opting for this realtime rough draft service, you have agreed: (1) to purchase the transcript at the agreed-upon rate; (2) not to furnish this transcript, either in whole or in part, on disk or hard copy, or by any other means, to anyone else, including any party or counsel to the case or to any media sources.

20.7. Daily Copy. Daily copy is a service where a transcript of proceedings is delivered to counsel within a few hours of adjournment and prior to the normal opening hour of court on the following morning, whether or not it actually is a court day. You can provide this service if you would like, but you are not required to do so.

Because daily copy requires working during every break and over the lunch hour and into the

evening, it is best to hire a proofreader or scopist to help with the task, and also find another reporter to help report the case, where one of you reports in the morning and the other in the afternoon, for example. It is customary to charge extra for daily copy and expedited transcripts. Because these rates are not statutory, you must get in writing beforehand agreement from the attorneys that they will pay the extra charge.

If a person is indigent (a judge has ruled he or she is entitled to court-appointed counsel because of insufficient income), you will need to get the approval of the judge assigned to the case first. In some circuits you may be required to also get the approval of the court administrator and/or county commission.

NOTE: THERE ARE NO SOUTH DAKOTA STATUTORY RATES FOR DAILY COPY as of 1/31/18. IF YOU DO NOT GET PREAPPROVAL YOU MAY ONLY GET PAID THE STATUTORY RATE of \$3.60 for the original and \$.65 for each copy. Get counsel (if they are not court-appointed) to sign a written agreement that sets out the rates so there is no question that they have been advised of the additional cost and agree to pay it. Court-appointed counsel may have to get the approval of the county commissioners. An example of a written agreement is shown in Section 15.17. In criminal cases with indigent defendants, counties will resist paying the additional cost, so it is important to get preapproval and a court order beforehand.

At this writing (3-1-18), in Minnehaha County there is now a protocol for requests for daily copy:

1. A motion and order for daily copy should be filed with the judge presiding over the trial for the judge's approval;
2. A payment plan should be agreed upon previous to any daily copy services, to include page rate and payment source.

20.8. Some suggestions on daily copy procedure. Thanks to computers, daily copy can be done by a solo reporter, but it is stressful and best split between at least two reporters.

1. As far in advance as possible prior to the trial, all reporters involved should look over the case file, make a master dope sheet of terms/names that will be coming up, come up with brief forms, and build a job dictionary. This makes as clean a rough draft as possible. When possible, the reporter(s) not reporting the first session should sit in to become familiar with terminology, participants and their speech patterns, etc.
2. For a two-person team, the first reporter reports the morning, the second reporter the afternoon, then swap the next day (although this isn't necessary, if both reporters agree one always does a.m. and the other always does p.m.). For a three-person team, swap out reporters every 30 minutes to 2 hours. If you have the equipment and know-how, you can feed your realtime to a scopist in another room. If you are doing your own scoping, you don't need to wait for a break to swap out reporters. You can set up all steno machines/computers beforehand. When the second reporter comes in at the designated time, at a logical point in the testimony the hands of the first reporter lift up as a signal to the other reporter to start writing. Then the first reporter leaves quietly, without interrupting court (explain this to the judge so he/she doesn't try to stop things during the swap-out).
3. The reporters should keep a running dope sheet/exhibit list/witness list on the reporter's desk in the courtroom so each reporter knows what happened in the previous session, what exhibit number to start with, doesn't have to stop and ask for a spelling the previous reporter already has, and knows which witness they're on and in which examination [John Smith DX by Bruggan CX by Morrissey etc.]. Always put a note re exhibits that says "You START with Exhibit ___" so

there is no confusion whether the last number written down was the last one marked or the number the next person was supposed to start with.

4. The certificate should have signature lines for each reporter that reported proceedings contained in that transcript.

SECTION 21. CONFIDENTIALITY.

21.1. Confidential Proceedings. The following proceedings are confidential:

(a) Grand Jury proceedings. Grand jury proceedings are confidential and closed to the public. The Attorney General’s office or the State’s Attorney’s office may order a copy of the transcript without a court order. If defense counsel is requesting a copy of the grand jury proceedings, they need to get a court order (see SDCL 23A-5-16), or defense counsel can ask the State’s Attorney to order the transcript for them. The transcript should not be delivered directly to the defense attorney unless the defense attorney has obtained a court order permitting that. Instead, deliver the transcripts to the state’s attorney’s office, who may provide them to defense counsel without a court order.

(b) Adoption proceedings. Adoption hearings are confidential and closed to the public. Only the parties involved can get a copy of the transcript, and they must get a court order to do so.

SDCL 25-6-15 says, in part, “The files and records of the court in adoption proceedings are not open to inspection or copy by persons other than the parents by adoption and their attorneys, representatives of the Department of Social Services, and the child when he reaches maturity, except upon order of the court expressly permitting inspection or copy. No person having charge of any adoption records may disclose the names of any parents, or parents by adoption, or any other matter, appearing in such records, or furnish certified copies of any such records, except upon order of the court for the county in which the adoption took place or other court of competent jurisdiction except as otherwise provided by this section and §§ 25-6-15.1 to 25-6-15.3, inclusive.”

(c) Juvenile proceedings. SDCL 26-7A-36 says, “All hearings in actions under this chapter and chapter 26-8A, 26-8B, or 26-8C are closed unless the court finds compelling reasons to require otherwise.” These include A&N (abuse and neglect) cases, CHINS (child in need of supervision) cases, and juvenile delinquency cases.

There’s been discussion whether a court order is really needed to get a transcript of a juvenile hearing if the ordering person was a party or their attorney, so SDCL 26-7A-37, Persons Authorized to Inspect or Receive Copies of Records of Court Proceedings, has been included at this section.

It states: “Records of court proceedings, including reports of the Department of Social Services, records and reports of court services officers, clinical studies, and evaluation reports, under this chapter and chapters 26-8A, 26-8B, and 26-8C shall be open to inspection by or disclosure to the child’s parents, guardian, or custodian and by other respondent parties involved in the proceedings, their attorneys, the child’s attorney and by any department or agency having custody of the child.

“Pursuant to court order, records of court proceedings may be inspected by or disclosed to the child, by parties having a legitimate interest in the proceedings and by parties conducting pertinent research studies.”

Please refer to 21.2 for more information about using initials in place of names.

(d) Involuntary commitments, forced medication, Electroconvulsive Therapy (ECT), and mental illness hearings. Only the parties involved can get a copy of the transcript, and you should get a court order first. These hearings are closed to the public.

(e) Records in chambers (in camera). If the judge has a record made in chambers, that record will usually be included in the transcript, if one is ordered, even in a situation such as when the judge interviews a child outside the presence of the parties and counsel. That portion of the transcript is generally not considered confidential and is usually not sealed, even if the proceedings took place outside

the presence of the parties and counsel. If you have concerns about whether you should include an in camera discussion in the transcript, ask the judge.

(f) Any sealed or confidential record. A court order is required in order for a transcript to be made of sealed or confidential proceedings. If a transcript or portions thereof are confidential or sealed, note that on the title page and in the electronic file name.

****Note:** A “sealed” record is a record that can be seen by no one, not even the parties or counsel, without a court order. A “confidential” record is a record that may be seen by the parties and counsel, but not by anyone else unless they have a court order. However, even the parties and counsel should get a court order if they want a transcript of either confidential or sealed proceedings.

(g) Jury voir dire to be transcribed and filed separately. Rule 15-15-12 states:

In order to protect the confidentiality of private juror information, the transcript of any voir dire proceeding shall not be made available to the public except through inspection at the courthouse unless otherwise ordered by the court.

This means if jury voir dire is transcribed, it should be in a separate volume of transcript. When filing the transcript, remind the clerk that it should be sealed because it is voir dire.

21.2 Using initials to maintain confidentiality .

SDCL 15-15A-8(3) states:

The following information in a court record is not accessible to the public: The name of any minor child alleged to be the victim of a crime in any adult criminal proceeding.

SDCL 15-15A-9(3) states:

Names of any minor child alleged to be the victim of a crime in any adult criminal proceeding shall appear as initials only. The names shall be provided on a separate Confidential Information Form.

There has been a great deal of discussion as to what the reporter’s responsibility is in a case like this. Unless instructed otherwise by the judge, you do not need to change names to initials. Ultimately it is the responsibility of the attorneys to make sure initials are used where they need to be used. Transcripts are sealed for 90 days to give them time to do this. However, sometimes at the beginning or end of the hearing the judge on the record will order the court reporter to change names to initials. In that case, do what the judge tells you.

You do not need to use initials in a transcript of a juvenile court proceeding, because the entire file (and thus the transcript) is considered confidential and is not open to the public. In other types of cases, such as protection order cases or divorce cases, do not use initials unless specifically ordered to do so by the judge, even if those cases are related to an adult criminal file.

21.3. Indicate in the transcript whether proceedings are conducted in open or closed court. If court proceedings are confidential and/or conducted in closed court, that should be noted on the record. If the entire proceedings are confidential, that should be indicated on the title page if the proceedings are transcribed. If portions of the proceedings are conducted in closed court and filed under separate cover,

that should be shown by parentheticals. If a portion of proceedings is ordered sealed and placed in a separate transcript, put a parenthetical such as (Confidential proceedings had which were transcribed and filed under separate cover).

21.4. Filing and delivering confidential transcripts. Confidential paper transcripts should be stamped “Confidential” and placed in a sealed document also stamped “Confidential.” Some reporters include language such as “Pursuant to SDCL 26-8A-13, the enclosed transcripts are CONFIDENTIAL documents” or “SEALED TRANSCRIPT – TO BE OPENED ONLY UPON ORDER OF THE COURT.”

The electronic file name should include the word CONFIDENTIAL or SEALED in the file name so that the lawyer does not inadvertently send the file to someone not authorized to read it, and so the clerk knows not to place the electronic file in public view in Odyssey.

A sealed document is a document that no one but the court will be able to access in the court file. A confidential document is a document that can be accessed in the court file by the parties and counsel but is not available for public view. A court order is needed if the parties or counsel want to order a transcript of something designated Sealed or Confidential. Indicate on the title page of a sealed transcript that it is SEALED. Indicate on the title page of a confidential transcript that it is CONFIDENTIAL.

21.5. Attorneys’ Eyes Only. If a portion of the proceedings are designated “Attorneys’ Eyes Only,” separate that portion from the remainder of the transcript, use a header that reads “Attorneys’ Eyes Only,” and bind and seal the original and copies of that portion separately. Give the electronic file a name that makes clear it is ATTYEYESONLY. (Note: sources say Attorneys’ Eyes, Attorney’s Eyes, and Attorney Eyes Only are each correct, so just pick one and be consistent.)

21.6. Do not talk about confidential matters. As an official, you will hear things in chambers or in the courtroom that should be kept confidential. Be careful not to disclose conversations with your judge or the nature of personal typing for your judge with others.

SECTION 22. INTERPRETED PROCEEDINGS.

(A sample transcript of interpreted proceedings is at 22.8.)

22.1. The location of the interpreter. When working with an interpreter, be considerate of the interpreter's needs. Like the reporter, the interpreter needs to be in a location where he or she is not looking into bright lights, where the noise of people in the hall or the fan kicking in will not interfere with the interpreter's ability to hear everyone who is speaking, and where there are no microphones, books, lamps, computers, or other visual distractions that may make it difficult to see the faces of the persons whose words the interpreter needs to translate. Some interpreters like to read over the shoulder of a court reporter doing realtime because it can eliminate the need to ask speakers to repeat mumbled or missed words.

22.2. SDCL 19-19-604. Form for oath/affirmation of interpreter. "I, _____, do solemnly swear (or affirm) that I will justly, truly, and impartially interpret, to the best of my skill and judgment, and will make a true interpretation to any party or witness, the oath or affirmation administered in all matters; the questions which may be asked and the answers that shall be given to such questions, and all statements relative to any [court proceedings, probation activities, or any other proceeding] now under consideration in which I am employed to interpret, [so help me God] [under the pains and penalties of perjury]."

Some reporters use: "Do you swear or affirm that you will interpret from English into [Spanish] and from [Spanish] into English all proceedings of record, truthfully and accurately, to the best of your ability?"

22.3. The witness is sworn through the interpreter. After the interpreter is sworn, the oath should be administered to the witness through the interpreter. It is good manners to look directly at the witness, not at the interpreter, while you are administering the oath to the witness.

22.4. Identifying the interpreter. The judge and attorneys are responsible for identifying an interpreter for the record, but if they don't, the reporter should ask for the name in case it comes up during testimony. At depositions, the interpreter should be listed by name (followed by the designation "Interpreter") on the title page as someone who is also present, in case a question arises later about the interpreter's qualifications or impartiality. When a telephonic interpreting service such as Language Line is used, interpreters do not always give their full names, but the reporter should still get the spelling of whatever name the interpreter gives. When a telephonic interpreting service such as Language Line is used, however, interpreters do not always give their full names. Ask the judge to get the interpreter to spell his or her name.

If the interpreter speaks in colloquy during the deposition, however, show "INTERPRETER" or "THE INTERPRETER" and not the interpreter's name.

If more than one interpreter is present during any proceedings, identify them on the record as INTEPRETER SMITH and INTERPRETER JONES, should the need arise.

22.5. Transcribing interpreted testimony. A sample transcript may be found at Section 22.8.

(a) Witness setup. Indicate that the witness is testifying through the interpreter:

YOSHI YAMAGUCHI,
was duly sworn through the interpreter and testified through the interpreter, as follows:

(b) Use Q&A format where possible. An interpreter should translate the questions and answers verbatim, in the first person. Some will do this nearly simultaneously as the witness is speaking, but in most cases the attorney will ask a complete sentence or question and wait for the interpreter to interpret. For a cleaner record, some attorneys and judges will ask the witness to answer only in the witness's first

language, even if the witness speaks some English. The testimony should be transcribed in usual format, with no further indication that the testimony is being interpreted.

(c) Use colloquy if interpreter speaks in third person. The attorneys should ask the interpreter to translate in the first person. However, inexperienced interpreters may still slip into third person, so the reporter needs to be prepared to transcribe it in this way. This manual strongly recommends that all interpreted proceedings be audio-recorded in case questions arise as to whether the interpreter did or did not translate a question before making some kind of response, and also in case questions arise as to whether the witness did or did not wait for a question to be translated before responding:

Q. Is your brother among these men in this photograph?

INTERPRETER: He says it was his cousin.

Q. Is your cousin the one with the beard?

INTERPRETER (before translating): That's him. Yeah, I know that guy.

(d) When the witness speaks some English. When the witness speaks some English but has an interpreter on hand for occasional help, the attorneys may still ask the witness to answer only in his/her native language, which makes transcription much easier. If the witness uses both English and another language when responding, the record should show whether the witness answers in English or through the interpreter. The record should also indicate those times when the witness answered before the interpreter translated the question, because sometimes the witness's ability to understand the English language is at issue in the case. For an example, see the sample Section 22.8.

(e) When the interpreter speaks as the interpreter. There will be times when the interpreter will need clarification from the lawyer before proceeding or when the interpreter will be speaking for himself/herself. When that happens, show the interpreter speaking in colloquy:

Q. Do you know who finished the baseboards?

INTERPRETER: Do you mean "finished" as in "completed" or "finished" as in "varnished"?

Q. Do you know who varnished the baseboards?

A. The guy from Sam's Carpentry.

INTERPRETER: Could we take a break? I need to make a phone call.

(f) Writing other languages. Sometimes short answers may be given in the witness's language and not interpreted because the interpreter assumes everyone present understands. Most of us know, for example, that "sí" means "yes" in Spanish or that "nyet" means "no" in Russian. Sometimes the reporter may face the challenge of writing bits and pieces of other languages. When individual foreign words or phrases are used, try to get the spellings at the time. If that is not possible, or if complete sentences are spoken, it is appropriate to indicate (speaking Spanish), for example, and not worry about what was said in the non-English language. See Section 22.8 for a sample transcript of an interpreted proceeding.

22.6. The reporter as interpreter for the Deaf or hard-of-hearing. A court reporter should avoid serving at the same time as both the court reporter for the proceedings and as an interpreter, by means of realtime, for a party who is Deaf or hard-of-hearing, because the court reporter is not supposed to include in the official record things which a CART provider or CRC serving as an interpreter may be expected to include for the benefit of a Deaf or hard-of-hearing person (such as environmental sounds or off-the-official-record statements, etc.).

It is acceptable, however, for a court reporter to allow a Deaf or hard-of-hearing person to read the reporter's realtime in court as long as everyone understands the court reporter is not an official interpreter and also that there will be things like untranslates and misspellings in the realtime record which the reporter will fix after the proceedings are finished.

22.7. Special considerations when dealing with interpreters. Some hints commonly given to people dealing with interpreters include the following:

- a) Establish that good communication exists among the interpreter and the persons for whom the interpretation is being performed *before* getting down to the actual business at hand.
- b) When communicating through an interpreter, face the person whose words are being interpreted, not the interpreter, unless you intend to be speaking to the interpreter directly. Use good eye contact and be very careful of your facial expression and tone of voice, because the person who does not speak your language will rely heavily on tone of voice and visual cues and may misinterpret careless body language.
- c) Don't stand with your back to a bright light.
- d) Always use first-person tense when speaking through an interpreter.
- e) Rephrase what you are saying if the person does not understand. Repeat as often as necessary. Avoid telling the person, "Never mind, it's not important," because that can cause frustration on both sides of the conversation.
- f) Speak clearly, without mumbling, in a normal tone of voice, perhaps a little more slowly than usual to make it easier for the interpreter. Don't shout.
- g) Remember that body language may also cause communication problems. Nodding the head up and down, for example, may not mean "yes" to someone from another culture. Pointing and certain gestures, such as the American "okay" sign—making an "o" with index finger and thumb with the other three fingers pointing up—means "worthless" in some parts of France, and is a sexual insult in Russia, Brazil, Turkey, and other countries in the Mediterranean region. Rely on words, not gestures, whenever possible, so as to avoid inadvertently giving offense.

Online, various organizations for the Deaf Community offer the following further advice to court personnel dealing with the Deaf and hard-of-hearing:

- h) Maintain eye contact and don't cover your mouth with your hands when speaking with a Deaf or hard-of-hearing person. Many hearing-impaired persons learn to read lips, and facial expressions are an important part of communication in the Deaf culture. However, do not assume that all Deaf persons can read lips.
- i) Not all Deaf persons can read well enough to be able to use realtime/captioning effectively. Remember that it is hard to learn to read a language when you cannot "sound out" the words; and keep in mind that reading disabilities, such as dyslexia, exist even among persons who can hear. Also, American Sign language has its own syntax, which is different from spoken English, so a Deaf person who can read is essentially having to translate the captioned spoken word in order to understand it.
Advise court and counsel to speak a bit more slowly and to be precise with their words if they are relying on a realtime translation. Also keep in mind that if the Deaf person is being asked to respond by writing or typing, as opposed to speaking through a Sign interpreter, the written messages may not be clear to someone accustomed to the syntax of spoken English.
- j) Not all hard-of-hearing persons can use an assistive listening system. There may be feedback problems between the system and the person's hearing aids. There may be certain sounds or frequencies to which the hard-of-hearing person is totally deaf. Do not assume that a person who is hard-of-hearing

is deliberately causing problems if he or she says an assistive listening device is not helping.

k) Sign language relies heavily on visual cues to convey emotions, emphasis, and meaning. Don't be surprised by forceful gestures, grunting or other vocalizations, or what may appear to be exaggerated facial expressions or body language on the part of persons who are Signing.

22.8. Sample of interpreted proceedings (page 1 of 4)

1 THE COURT: You may call your next witness.

2 MS. STARZL: We would call Tokoyo Sato. I should note
3 for the record, Your Honor, that Ms. Sato will be testifying
4 through an interpreter, as we discussed in chambers.

5 (The interpreter was duly sworn.)

6 THE COURT: Members of the jury, our next witness does
7 not speak English. Do not allow the fact that any witness
8 requires an interpreter when testifying influence you in any
9 way. Treat the testimony of this witness the same way you
10 would treat the testimony of any witness. This witness
11 speaks Japanese. If any of you jurors understands the
12 Japanese language, you should still consider only the
13 testimony as it comes through the interpreter in English.
14 If you think the interpreter has made a mistake, then you
15 must ignore what you think is a mistake and base your
16 deliberations solely on the official interpretation.

17 I would instruct the witness that the interpreter is
18 here only to interpret the questions asked and the answers
19 you will give. The interpreter is not permitted to give
20 advice. If a question is confusing to you, you should tell
21 that to the attorney, and the attorney will try to make it
22 more clear. If you need to have a question repeated for any
23 reason, you may ask the attorney to do so through the
24 interpreter. Please wait until the entire question has been
25 interpreted in your language before you start to answer.

(Sample of interpreted proceedings page 3 of 4)

1 THE INTERPRETER: Sorry, Your Honor.

2 A. I am a CEO. I manage Sato Metals, American branch.

3 Q. (BY MS. STARZL) How long have you been CEO of Sato
4 Metals, American branch?

5 A. Twelve years. My husband started the American branch
6 about fifteen years ago, then put me in charge twelve years
7 ago, and finally requested that I move here eleven years
8 ago so I could more efficiently manage the company.

9 Q. What is the business of Sato Metals?

10 THE INTERPRETER: Excuse me. I must check this word,
11 "seisakusha."

12 A. We are a manufacturer of metal bearings.

13 Q. (BY MS. STARZL) Does your company manufacture metal
14 bearings for VanderTeig Tractors?

15 A. Yes. (In English) Much work for VanderTeig, many
16 years.

17 Q. Have you manufactured metal bearings for VanderTeig
18 Tractors during the entire time you have been CEO?

19 A. (In English, prior to translation of question) Yes.

20 THE COURT: I'll remind you again, Ms. Sato, to try to
21 confine your answers to Japanese, and not to answer before
22 the attorney is finished asking the question.

23 Q. (BY MS. STARZL) What are these bearings made of? What
24 kind of metal?

25 A. (Through interpreter) Iron. (In English) Steel.

(Sample of interpreted proceedings page 4 of 4)

1 THE INTERPRETER: Steel, excuse me. I misspoke.

2 THE WITNESS: (In English) Steel. Steel.

3 Q. (BY MS. STARZL) Are these bearings coated in any
4 special way?

5 A. They are smoothed out and then fired in a special way
6 so they do not get hot so fast during use, and they are, of
7 course, supposed to be oiled regularly.

8 Q. And do they come with instructions that they need to
9 be oiled regularly?

10 A. Yes.

11 MS. STARZL: That's all the questions I have.

12 CROSS-EXAMINATION

13 Q. (BY MR. BERN) (Speaking Japanese.)

14 A. (Speaking Japanese.)

15 THE INTERPRETER: (Speaking Japanese.)

16 THE COURT: That's enough of that, now.

17 Q. (BY MR. BERN) Sorry. I know the court reporter can't
18 kaku Japanese, but I couldn't resist the nozomi to see if I
19 could still hanasu Nihongo.

20 Ms. Sato, could you tell me, please, when the bearings
21 in question were finished?

22 A. They were completed in February. (Speaking Japanese.)

23 THE INTERPRETER: Excuse me, Your Honor, but she is
24 asking me if she could have a glass of water, please.

25 THE COURT: We'll have the bailiff bring her some.

SECTION 23. Sample Pages for Official Proceedings; Some Official Forms; Appendix

- 23.1(a). Title page from SDCL15-26A-A showing statutory format (Jury Trial appeal)**
- 23.1(b). Title page, pro se parties**
- 23.1(c). Title page, juvenile proceedings**
- 23.1(d). Title page for one hearing in two different cases**

- 23.2(a). Index page from SDCL15-26A-A showing statutory format (Jury Trial appeal)**
- 23.2(b). Index page, motions hearing**
- 23.2(c). Another kind of index**

- 23.3. Certificate of Reporter for official court proceedings**

- 23.4(a) Certificate of Transcriber for electronic recordings of official court proceedings**
- 23.4(b) Generic Certificate of Transcriber for electronic recordings**

- 23.5. Transcript page in SDCL 15-26A-A statutory format**

- 23.6. Transcript order form with court reporter's acknowledgment of receipt of order**

- 23.7. Court Reporter Reporting Form (Filing and Transmittal of Completed Transcript)**

- 23.8. Request for Extension of Time to complete transcript**

- 23.9. Letter requesting prepayment**

- 23.10(a) and (b). Sample invoices (see also Section 15.16)**

- 23.11. UJS Memorandum that reporters should not charge for transcripts made for judge**

- 23.12. Court Reporter Transcript Compensation/Certification Form (obsolete, for reference only)**

- 23.13. Example of transcript with portion of deposition read into the record**

- 23.14. Samples of monospace fonts**

- 23.15. Example of written agreement to pay daily copy rates**

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF MINNEHAHA) :SS
3) SECOND JUDICIAL CIRCUIT
4)
5) CIV # 78-1
6)
7) TRANSCRIPT OF
8) CIVIL JURY TRIAL
9) PROCEEDINGS
10) Volume 1 of 2
11) (Pages 1 to 120; 6-7-77)
12) (Pages 121 to 250, 6-8-77)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

9 BEFORE: THE HONORABLE JAMES M. WINSTON
10 Circuit Judge, and a Jury at
11 Sioux Falls, South Dakota, on
12 June 7, 8, 9, and 10, 1077

13 APPEARANCES: For Plaintiff: Steven S. Summer
14 Attorney at Law
15 455 Summit Drive
16 Sioux Falls, So. Dak.
17
18 For Defendant: Larry Linton of
19 Linton and Lawler
20 Attorneys at Law
21 128 Lyndale Avenue
22 Sioux Falls, So. Dak.
23
24
25

23.1 (b). Title page, pro se parties

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :SS
 2 COUNTY OF XXXXXXXXXX) XXXXXXXX JUDICIAL CIRCUIT

3 PETITIONER NAME,)
 4) TPO 15-08
 Petitioner,)
 5) PROTECTION ORDER HEARING
 vs.)
 6)
 RESPONDENT NAME,)
 7)
 Respondent.)

9 BEFORE: THE HONORABLE XXXXX XXXXXXXXX, Circuit Court
 Judge, at XXXXXXXX XXXX, South Dakota, on March 16, 2015.

11 APPEARANCES

12 PETITIONER NAME, Petitioner

13 Appearing pro se;

14 RESPONDENT NAME, Respondent

15 Appearing pro se.

16

17

18

19

20

21

22

23

24

25

23.1(c). Title page – Juvenile

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
2 COUNTY OF DAVISON) FIRST JUDICIAL CIRCUIT

3 The People of the State of)
South Dakota, in the Interests) JUV
4 of C. W.,)
))
5 Minor Child,) ADJUDICATORY HEARING
) Volume 1 of 3
6 and Concerning)
) Pages 1 through 182
7 K.Z., T.W., B.P., and B.J.,)
))
8 Respondents.)

9
10 BEFORE: THE HONORABLE JUDGE NAME, Circuit Judge, at
11 Mitchell, South Dakota, on February 6 and 7, 2013.

12 APPEARANCES
13 For the State: JAMES MISKIMINS, State's Attorney
1015 South Miller Avenue
14 Mitchell, South Dakota 57301
15 For the Minor Child: DAVA A. WERMERS, Attorney at Law
PO Box 434
16 Mitchell, South Dakota 57301
17 For Respondent K.Z: CHRIS A. NIPE, Attorney at Law
PO Box 396
18 Mitchell, South Dakota 57301
19 For Respondent T.W: DOUGLAS N. PAPENDICK, Attorney at Law
PO Box 954
20 Mitchell, South Dakota 57301
21 For Respondent B.P: LYNN A. MORAN, Attorney at Law
609 South Isadore Street
22 Mitchell, South Dakota 57301
23 Appearing Pro Se: MR. B. J., Respondent in JUV 12-57
24
25

23.1(d) Title page with two cases.

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :SS
2 COUNTY OF XXXXXXXXXX) FIRST JUDICIAL CIRCUIT

3 STATE OF SOUTH DAKOTA,)
Plaintiff,) Case No. 04CRI16-1XX
))
4 vs.)
) MOTIONS HEARING
5 DEFENDANT NAME,)
Defendant.)
6

7 STATE OF SOUTH DAKOTA,)
Plaintiff,) Case No. 04CRI16-2XX
))
8 vs.)
))
9 SECOND DEFENDANT NAME,)
Defendant.)
10

11 BEFORE: THE HONORABLE XXXXX ZZZZ
Circuit Court Judge (Retired)
12 at XXXXX, South Dakota, on
December 13, 2017.
13
* * *
14
APPEARANCES:
15
XXXXXXXX X. XXXXXXX
16 State's Attorney
ADDRESS
17 XXXXX, SD 57XXX
18
Appearing on behalf of the plaintiff;
19
XXXXX X. XXXXX
Attorney at Law
20 PO Box ZZZ
Mitchell, South Dakota 57301
21
Appearing on behalf of the defendant AAAAA BBBB;
22
XXXXX XXXXX
23 Attorney at Law
PO Box YYYY
24 Yankton, South Dakota 57078
25
Appearing on behalf of the defendant CCCCC DDDDDDD.

23.2 (a). Index page from SDCL15-26A-A in statutory format (Jury Trial)

INDEX					
1					
2	WITNESSES:	Direct	Cross	Redirect	Recross
3	For the Plaintiff:				
	John C. Doe	34	80	112	115
4	Ralph R. Schultz	116	122	125	130
	Frank H. Hunt	131	142	148	
5	James E. Larson	150	186		
	Burton B. Sears	187	210	213	
6					
	For the Defendant:				
7	Michael R. Gillen	220	231	240	248
	Edward L. Renfer	250	253	260	
8	Susan M. Vangen	262	289	305	
	Richard P. Roe	328	259	377	382
9					
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	Stipulation, unavailability of Witness				
11	Todd K. Onnen			217	218
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13	#2 Photograph	74	98		98
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14	#4 Blueprint	251	253		253
	#5 Deposition (Todd K. Onnen)	217	382		384
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16	VERDICT: Page 475				
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19					
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22					
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24					
25					

23.2 (b). Index page from nontrial

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6	PMOL#4 re noncompliance/negligence granted.....16
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20	DMOL#8 re cause of stroke and death denied52
21	DMOL#9 re pain and suffering denied54
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23	DMOL#12 re Golden Rule argument granted55
24	DMOL#13 re no discussion of settlement, granted56
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23.2(c) Another kind of index:

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1. Emails re Christmas break 2014 (8 pp)	45	48	48
2. Email dated May 11, 2016	50	65	65
3. Email 12-20-15 re Christmas visit	53	65	65
4. Email 7-19-16 from Daniel to Dad	60	65	65
Defendant's Exhibits			
(None offered.)			

23.3. Certificate of Reporter for official court proceedings.

CERTIFICATE OF REPORTER

I, Reporter Name, Registered Professional Reporter, Notary Public in and for the State of South Dakota, hereby certify that I was present for and reported the proceedings as described on page 1 herein, and that this transcript contains a true and correct record of the proceedings so had.

To all of which I have hereunto set my hand this ___ day of ___, 20__.

/s/ Reporter Name
REPORTER NAME, RDR

23.4(a). Certificate of Transcriber for electronic recordings of official court proceedings:

(Also Section 24.1)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the transcript of proceedings in the above-entitled action is a true and accurate transcript to the best of my ability based on the electronic recording.

/s/ Reporter Name
REPORTER NAME, RPR

23.4(b). Generic certificate of Transcriber for electronic recordings.

CERTIFICATE OF TRANSCRIBER

I, Reporter Name, Registered Professional Reporter, hereby certify that I transcribed from a digital audio recording the proceedings as described on page 1 herein, and that to the best of my knowledge and belief, this transcript contains a true and correct record of the contents of the recording so described.

To all of which I have hereunto set my hand this ___ day of ___, 20__.

/s/ Reporter Name
REPORTER NAME, RDR

23.5. Transcript page in SDCL 15-26A-A statutory format

1

1 CROSS-EXAMINATION

2 Q (BY MR. SUMMER) Okay. With respect to this stocking cap,
3 is State's Exhibit Number 13 similar to the ones you sell?

4 A They look exactly like the ones he bought. He bought 3 of
5 them.

6 Q Okay. Go through it again. It could be one that is
7 similar to that as opposed to the actual one.

8 MR. LINTON: That's argumentative, Your Honor.

9 THE COURT: Well, he's already answered the questions
10 previously.

11 MR. SUMMER: What was his answer?

12 THE COURT: I believe he said it could be.

13 MR. LINTON: Wait just a minute, Your Honor. I move that
14 answer be stricken.

15 THE COURT: If in fact he answered the question it will be
16 stricken.

17 Any further questions, Mr. Summer?

18 MR. SUMMER: No, Your Honor.

19 REDIRECT EXAMINATION

20 Q (BY MR. LINTON) Sir, I'm going to hand you again State's
21 Exhibit 13, and will you examine it and tell the Court what
22 differences if any you see between this particular exhibit
23 and the stocking cap you sold on January 7th, 1977.

24 A Well, just that the way it is laying here, it's open and
25 the ones that we have on display are folded up like this.

23.6. Transcript order form.

(Attachment to Supreme Court Rule 95-3)

STATE OF SOUTH DAKOTA)
 COUNTY OF _____) SS

IN CIRCUIT COURT
 _____ JUDICIAL CIRCUIT

vs.

ORDER FOR TRANSCRIPT(S)

 TO: COURT REPORTER(S) _____:

Pursuant to SDCL 15-26A-48, (name(s) of party/parties placing order) hereby orders a transcript(s) of proceedings in the above-entitled action as indicated below:

DATE OF PROCEEDING	✓ TYPE OF PROCEEDING	NAME OF REPORTER
_____	<u>Arraignment</u>	_____
_____	<u>Closing Statements</u>	_____
_____	<u>Court Trial</u>	_____
_____	<u>Jury Trial</u>	_____
_____	<u>Motion Hearing(s)</u>	_____
_____	<u>Opening Statements</u>	_____
_____	<u>Sentencing</u>	_____
_____	<u>Voir Dire</u>	_____
	(Other-Specify)	

As the ordering party I hereby certify that notice of appeal was filed with the trial clerk on _____, and that this order is timely made within ten days of said filing date.

I also certify that pursuant to SDCL 15-26A-48, an original of this order has been transmitted to each Court Reporter who took the requested proceedings; that a copy has been filed with the trial clerk; and that service has been made upon all parties to the action as reflected in the attached certificate of service.

DATED this _____ day of _____, 19__.

 (Name and Address of Attorney/
 Party placing order)

COURT REPORTER'S ENDORSEMENT

I, _____, hereby acknowledge receipt of this order for transcript on _____. My anticipated date of completion is _____.
 (Explanatory comments should be noted by the reporter on the reverse side of this form.)

 Court Reporter

(Note to Ordering Party: Within ten days of the filing of the notice of appeal the original of this order must be transmitted to the Court Reporter. If more than one Reporter is involved, duplicate originals should be transmitted to each. One copy is to be filed with the trial clerk and a copy is to be served upon counsel for each party to the action or upon each party if unrepresented by counsel. A certificate of service should be attached to the original order and to each copy thereof. See SDCL 15-26A-48.)

23.7. Court Reporter Reporting Form (Filing and Transmittal of

COURT REPORTERS' REPORTING FORM

SECTION I

ENDORSEMENT OF TRANSCRIPT ORDERS

Pursuant to SDCL 15-26A-51, please be sure to endorse the following information at the foot of each order for an appellate transcript before transmitting the ORIGINAL order to the office of the Clerk of the Supreme Court:

1. The date on which you received the order.
 - (a) If there is a substantial discrepancy between the date of the order and date you received it, e.g., you were on vacation, or postmark is substantially later than the date of the order, please explain.
2. The date on which you expect to have the transcript completed.

SIGN THE ORDER AS SO ENDORSED.

SECTION II

FILING AND TRANSMITTAL OF COMPLETED TRANSCRIPT

Complete this section and transmit it to the Clerk of the Supreme Court when you have prepared an appellate transcript, filed the original with the trial clerk, and transmitted copies to attorneys for each party to the appeal separately represented, and directly to any parties not represented pursuant to SDCL 15-26A-52.

Title of Action: _____

_____ *County File Number* _____

Supreme Court Appeal Number: _____

Date Transcript Completed: _____

Date Transcript Filed (emailed to clerk): _____

Date Transcript Transmitted to Appellant: _____

(__by First Class mail; ___ email; ___ hand delivery)

Date Transcript Transmitted to Other Parties: _____

(__by First Class mail; ___ email; ___ hand delivery)

Number of Pages in Transcript(s): ____

Date: _____

Signed: _____

Note: do not include word index pages in the page count.

23.8. Request for Extension of Time for Transcript

REQUEST FOR TRANSCRIPT EXTENSION

This section should be completed and transmitted to the Clerk of the Supreme Court when a transcript has not been completed within forty-five (45) days as required by Rule 10, subsection 2(c):

TITLE OF ACTION: # _____

VENUE OF ACTION (County): _____

I hereby request an extension of _____ days to complete the transcript in the above entitled action.

PRESENT STATUS OF TRANSCRIPT

Projected length of transcript: _____ pages

Completed to date: _____ pages

Reason for extension request: _____

Reporter's Signature _____

Assigned Judge's or Administrator's Signature _____

(This portion of form for use by the Clerk of the Supreme Court)

Your request for an extension of time within which to complete the transcript in the above entitled action is:

_____ Granted to and including _____.

_____ Denied.

Clerk of the Supreme Court

By Deputy

23.9. Letters re prepayment**23.9(a): Letter requesting prepayment for appeal transcript**

Attorney Name, Esq.
Address

Re: CIV 14-1414 Plaintiff v. Defendant

Dear Attorney:

I have received your order for transcript of the jury trial held November 1 through 4, 2014, in the above case. Pursuant to SDCL 15-26A-51 I am requesting prepayment of the estimated cost of the transcript, \$XXXX. The statute provides that you have ten days within which to make prepayment.

Upon timely receipt of the prepayment, I will endorse the order for transcript, transmit it to the Supreme Court, and begin transcribing the trial.

Sincerely,

Reporter Name and Address

cc: Clerk of the Supreme Court

23.9(b): Letter regarding split prepayment for non-appeal transcript

Plaintiff's Attorney Name
Address

Defendant's Attorney Name
Address

Re: Case number and name

Counselors:

On June 2 I received a request to transcribe the hearing held May 14, 2014, in the above matter and sent a letter requesting prepayment for the transcript. On June 17 I received and deposited plaintiff's share of the prepayment. On July 2 I sent a letter telling counsel that defendant had not paid her share. She still has not done so.

If I have not received defendant's share of the prepayment by August 4, 2014, I will refund plaintiff's prepayment and close my file on this matter.

Sincerely

,

23.10 (a). Sample invoice with tax



Report Name, RPR
PO Box ABC
Sometown, SD 57ZIP

Phone Number

Invoice No. 247

INVOICE

Cus
 Name Attorney Name
 Address PO Box 123456
 City Sioux Falls State SD ZIP 57101
 Phone _____

Date 11/16/2006
 Order No. _____
 Rep _____
 FOB _____

Qty	Description	Unit Price	TOTAL
18	For the original and one copy of the partial transcript of the Judge's Ruling from the Motion hearing held on 1/26/06 before Judge Tiede. 18 pages @ \$3.40/page	\$3.40	\$61.20

Payment Details

Cash
 Check
 Credit Card

Name _____
 CC # _____
 Expires _____

SubTotal	\$61.20
Shipping & Handling	\$0.00
Taxes	State \$2.45
	City \$1.18
TOTAL	\$64.82

Office Use Only

Payment due upon receipt.

Thank you

23.10(b). Sample invoice, no tax charged**REPORTER NAME, RPR****REPORTER ADDRESS****Reporter Telephone****Reporter Email**

+ + + +

December 23, 2014**Invoice No.122314-1**

**Clay County State's Attorney
 211 West Main Street, Second Floor
 Vermillion, South Dakota 57069**



Re: Clay County CRI 08-xxx State v. Defendant Name

Transcript of Defendant's motion to correct illegal sentence heard 12-11-14 before Judge Gering. Original filed with clerk, copy sent to State's Attorney, copy sent to court-appointed counsel Attorney Name.

**Transcript fee (25 pp x 3.80 statutory rates) = \$95
 no tax - govt**

Please include copy of statement with payment. Thank you!

23.11. UJS Memorandum that reporters should not charge for transcripts made for judge

	State of South Dakota Unified Judicial System Office of the State Court Administrator
Telephone: (605) 773-3424 FAX: (605) 771-5627	500 East Capitol Pierre, SD 57501-5079
MEMORANDUM	
TO: Circuit Court Administrators	
FROM: DJ Hansen State Court Administrator 	
DATE: November 2, 2005	
RE: Civil Transcripts	
<p>At your last meeting on October 5, 2005, you requested clarification from this office regarding payment to court reporters for civil transcripts ordered by a trial judge. Three of you who were at the meeting indicated that your reporters either do civil transcripts ordered by a judge free of charge or they bill the counties. The consensus among the Circuit Administrators at the meeting was that court reporters should not be charging for these types of transcripts.</p>	
<p>The position of the SCAO is that unless ordered by the Supreme Court, civil transcripts will not be paid from UJS funds.</p>	
<p>DJH:aa cc: Janet Bonchard</p>	
<p><i>The mission of the Office of the State Court Administrator is to provide quality court-related support services to the Unified Judicial System, other government entities, and the public.</i></p>	

23.13. Example of deposition excerpts read into record.

1

1 Q Do you remember giving a deposition in this case a few
2 months ago, on December 6, 2017?

3 A Yes.

4 Q I'm going to read part of that deposition to you.

5 Question, "Had you known these people before?"

6 Your answer, "The man more than the woman."

7 "How is it you knew the man more?"

8 Answer, "The man lived in the house across the street
9 from us, and I'd seen him frequently."

10 Question, "How frequently, about?"

11 "Oh, he'd come out in front of his house and smoke,
12 and I'd come out of my house and smoke about the same
13 time, and so we'd kind of nod and wave at each other."

14 Have I read it correctly so far?

15 A Yes.

16 Q Question, "So when you say you knew him, were you, like,
17 good friends, or just that you would recognize him if you
18 saw him on the street?"

19 Answer, "Just to recognize him, I guess."

20 "So why would he come ask to use your phone?"

21 "I don't know. That's why I kind of hesitated at
22 first, and then when he said, 'Can I use your phone to
23 call the police?' I said, 'Yeah, sure.'"

24 Question, "Do you remember making a statement to the
25 police that, quote, 'He seemed scared,' end quote?"

23.14. Samples of monospace fonts

1 **Examples of Available Monospace Computer Fonts that meet the**
2 **requirement of 10 characters per inch:**

3 Courier New 13

4 MR. BUTLER: Thank you, Your Honor. I won't repeat my
5 arguments, but will try to comment a bit on the state's
6 response and then point out a couple of additional
7 citations. *ONE INCH*

8
9 Consolas Font size 14

10 MR. BUTLER: Thank you, Your Honor. I won't repeat my
11 arguments, but will try to comment a bit on the state's
12 response and then point out a couple of additional
13 citations. *10 characters, one inch*

14
15 DejaVu Sans Mono Font size 14

16 MR. BUTLER: Thank you, Your Honor. I won't repeat my
17 arguments, but will try to comment a bit on the state's
18 response and then point out a couple of additional
19 citations. *one inch*

20
21 Lucida Console 16:

22 MR. BUTLER: Thank you, Your Honor. I won't repeat my
23 arguments, but will try to comment a bit on the state's
24 response and then point out a couple of additional
25 citations. *one inch*

23.15. Example of agreement to pay daily copy rates (see also Section 15.7)

From: Reporter, Dash
Sent: Tuesday, May 05, 2015 4:26 PM
To: Attorney 1; Attorney 2
Subject: Fee for daily copy transcripts

Counselors,

As we discussed after yesterday's motion hearing in the case of SuperDuper Chemicals vs. YouStoleMyPatentInc., I can provide daily copy transcripts and realtime for all or a portion of the upcoming trial in November. The rates will be as follows: \$s.ss/page for the original, \$s.ss/page for the first copy to each side, and .ss/page for additional copies to each side. If you would also like realtime, the rate will be s.ss/page per feed for two feeds, s.ss per feed if more than two feeds are requested. The s.ss applies whether each side gets the same number of feeds or not, as long as there are at least three feeds.

Please let me know no later than June 5, 2015, if you agree to these rates, as there are additional preparations needed for daily and/or realtime to go smoothly.

Also let me know in what format(s) you would like to receive the transcripts and to whom they should be sent. Will you want paper transcripts in addition to the electronic transcripts? Regular size or 4-to-a-side transcripts or both? I can provide electronic transcripts in PDF, ASCII, and/or Summation formats.

If you have further questions, please don't hesitate to ask.

Reporter Name and Address, etc.

From: Attorney1
Sent: Tuesday, May 05, 2015 8:34 PM
To: Reporter, Dash; Attorney 2
Subject: Fee for daily copy transcripts

We would like daily copy and realtime. We will need two realtime feeds. Electronic transcripts only: PDF regular-size and 4-to-a-side. We do not need ASCII or Summation.

Attorney 2, what do you say we split the cost of the original between us?

==

SECTION 24. APPENDIX

24.1 Revised Rule Regarding FTR/CourtSmart recordings (IP Rule 2020-02).

The Supreme Court has approved changes to the IP rule related to rules for computer-assisted electronic court recordings. This IP Rule 2020-02 is effective August 13, 2020, and replaces IP Rule 2015-02. It says that *recordings can no longer be released to the parties, so giving them a CD of the hearing is no longer an option.*

IP Rule 2020-02. In the Matter of the Rules for Computer-Assisted Electronic Court Recording.

“The following rules shall now be in effect concerning the use of digital recording of court proceedings in all of South Dakota’s Judicial Circuits.

“Digital Electronic Recording of Proceedings in Magistrate Court

“Except in small claims proceedings, a digital electronic recording device may be used by the court to maintain a verbatim record of all proceedings and evidence at trials before a magistrate or circuit court judge sitting in magistrate court. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in circuit court.

“Digital Electronic Recording of Proceedings in Circuit Court

“A circuit court may elect to maintain the record of proceedings in circuit court by electronic recording. A circuit court may elect to maintain the record of juvenile proceedings by electronic recording. Any proceedings so recorded shall be maintained confidentially as required by statutes and court rules governing juvenile proceedings.

“Access to the Electronic Recording

“The copy of any electronic recording or any log notes or memorandum prepared by an official court reporter or court recorder shall not constitute an official record of the proceedings and shall not be deemed a public record. No person who maintains, possesses or receives a copy of an electronic recording may disseminate the recording to any persons or entities unless authorized in writing by the presiding judge or the circuit court. Unauthorized dissemination or distribution of the recording shall constitute contempt of court and may be punished accordingly.

“Preparation of Transcripts

“If any party desires a transcript of the proceedings, the party shall file a request with the court designating the parts of the recording to be transcribed. The court shall arrange for its expeditious production. The transcript of the electronic recording shall be deemed the official record of the proceedings.

“The per page rate of a transcript prepared from an electronic recording shall be \$2.00 per page for the original and \$.25 per page for each copy if transcribed by the court recorder. Stenographic court reporters who prepare a transcript from an electronic recording shall be paid their statutory rate. The person who produced the electronic recording and the person who transcribed the proceedings shall certify the transcript of the proceedings as follows:

“I hereby certify that the proceedings in the above-entitled action were fully and accurately recorded at the time and place set forth above and that the recording has been preserved in an unaltered condition.

(Signature of Computer-Assisted Court Recorder)

“I hereby certify that the transcript of proceedings in the above-entitled action is a true and accurate transcript to the best of my ability based on the electronic recording.

(Signature of Court Reporter or Transcriptionist)

“Dispute as to the Accuracy of the Transcript

“In the event a party disputes the accuracy of a transcript prepared from an electronic recording, the matter shall be submitted to the judge of the court in which the original proceedings were held. The judge shall resolve any question as to the accuracy of the transcript and in doing so, may only review the original electronic recording prepared by an official court reporter or court recorder. No party may request access to such recordings or attempt to introduce unofficial recordings of a court proceeding to dispute the accuracy of a transcript. If the judge determines that the transcript materially misrepresents a matter affecting the determination of any issue, the judge shall order a new transcript prepared at no additional cost to the parties.

“Maintaining the Digital Electronic Recording

“The original digital electronic recording of the proceedings shall be indexed and maintained according to standards set by the State Court Administrator pursuant to applicable industry practices and record retention provisions.”

24.2 County Codes for case file numbers for Odyssey.

COUNTY CODES '09					
01	Aurora	47	Mellette	Fall River	23
02	Beadle	48	Miner	Faulk	70
03	Bennett	49	Minnehaha	Grant	25
04	Bon Homme	50	Moody	Gregory	26
05	Brookings	51	Pennington	Haakon	27
06	Brown	52	Perkins	Hamlin	28
07	Brule	53	Potter	Hand	29
08	Buffalo	54	Roberts	Hanson	30
09	Butte	55	Sanborn	Harding	31
10	Campbell	56	Oglala Lakota (formerly Shannon)	Hughes	32
11	Charles Mix	57	(formerly Spink)	Hutchinson	33
12	Clark	58	Stanley	Hyde	34
13	Clay	59	Sully	Jackson	35
14	Codington	60	Todd	Jerauld	36
15	Corson	61	Tripp	Jones	37
16	Custer	62	Turner	Kingsbury	38
17	Davison	63	Union	Lake	39
18	Day	64	Walworth	Lawrence	40
19	Deuel	65	(no county)	Lincoln	41
20	Dewey	66	Yankton	Lyman	42
21	Douglas	67	Ziebach	Marshall	43
22	Edmunds	68	Rapid City	McCook	44
23	Fall River	69	Sioux Falls	McPherson	45
24	(formerly Faulk)	70	Faulk	Meade	46
25	Grant	71	Spink	Mellette	47
26	Gregory	Aurora	01	Miner	48
27	Haakon	Beadle	02	Minnehaha	49
28	Hamlin	Bennett	03	Moody	50
29	Hand	Bon Homme	04	Pennington	51
30	Hanson	Brookings	05	Perkins	52
31	Harding	Brown	06	Potter	53
32	Hughes	Brule	07	Rapid City	68
33	Hutchinson	Buffalo	08	Roberts	54
34	Hyde	Butte	09	Sanborn	55
35	Jackson	Campbell	10	Oglala Lakota	56
36	Jerauld	Charles Mix	11	Sioux Falls	69
37	Jones	Clark	12	Spink	71
38	Kingsbury	Clay	13	Stanley	58
39	Lake	Codington	14	Sully	59
40	Lawrence	Corson	15	Todd	60
41	Lincoln	Custer	16	Tripp	61
42	Lyman	Davison	17	Turner	62
43	Marshall	Day	18	Union	63
44	McCook	Deuel	19	Walworth	64
45	McPherson	Dewey	20	Yankton	66
46	Meade	Douglas	21	Zeibach	67
		Edmunds	22		

24.3. Some South Dakota courtroom words and phrases.

Alford plea (NOT “alfred): plea taken for the benefit of the bargain

Daubert hearing (pronounced DAW-bert and also doh-BAIR)

Fuerstenberg v. Fuerstenberg case, 1999 SD 35, 591 NW2d 798 (child custody) - (sounds like firstenberg); the court follows the *Fuerstenberg* factors when deciding custody

Kuhmo Tire Co. v. Carmichael, 526 US 137 (a 1999 case) (KOO-moe)

State of SD vs. Blakney case (pronounced black-nee and blake-nee), 2014 SD 46, re whether court can delegate authority to probation officers to impose conditions not specifically mentioned by the court on the defendant

CBISA: Cognitive Behavioral Interventions for Substance Abuse – pronounced SA-BEE-SA
DDN (teleconferencing services – Dakota Digital Network)

ICWA (IK-wah): Indian Child Welfare Act

IMPACT program: Individualized and Mobile Program of Assertive Community Treatment

JIPPS: Juvenile Intensive Probation Program Something-or-other

Marsy’s Law (victims’ rights bill)

Mike Durfee State Prison (Springfield prison)

Jameson Unit, South Dakota State Penitentiary

MRT (Moral Reconciliation Therapy...no one seems to know what “reconciliation” is)

PBT (Preliminary Breath Test)\

QDRO (Qualified Domestic Relations Order – pronounced KWA-droh)

SCRAM program

SESDAC (Southeast South Dakota Action Council? no one ever says the full name)

STAR Academy (juvenile detention)

VOA (Volunteers of America)

Yankton Trusty Unit, although you may see it sometimes spelled Trustee because people forget what a trusty is and that it is a noun as well as an adjective...

SDCL

South Dakota Codified Law(s)

South Dakota law(s)

South Dakota Supreme Court

Supreme Court

State of South Dakota

state’s attorney

deputy state’s attorney

special assistant attorney general

Indian Child Welfare Act

24/7

24/7 program

SDEL

SKLAU(Z)

SDLAU(Z)

SDROURT

SKROURT

STODZ

STOERN

DOERN

SPEJ

KHAK/KHAK

TW*N

TWAM

A few Native American terms:

(note: some Native American words will have more than one correct spelling in English)

Native American = NAIRM

Sinte Gleska University (sin-tay-glesh-ka) (means “Spotted Tail”)

Oglala Sioux Tribe (compare to town of Ogallala, Nebraska)

The term “oyate” means “people” as in “nation” (oh-YAH-tay)

The term “tiyospaye” means “band” or “clan” or “community” (tee-OESH-shpa-yay)

“Mitakuye oyasin” means “We are all related” or “All my relations” (me-TA-ku-yay o-YAH-sin)

Pilamaya (also pidamaya, pinamaya) means “thank you” and also “please”

canupa (cha-NOOM-pa) means “peace pipe” (may also be spelled *chanupa* – no “m” in spelling)

tatanka = buffalo/bison

wakan = holy

Wakan Tanka = Great Spirit or Great Mystery

washte (was-TAY) means “that’s good”

wacipi (wah-CHEE-pee) means “dance” and “powwow”

wicasa (we-SHA-sah) means “man” or “human”

Paha Sapa means “Black Hills”

Mato Paha means “Bear Butte”

Sioux tribes/linguistic groups: Lakota, Nakota, Dakota (LAUKT, NAUKT, DAUKT)

Lakota bands: Oglala, Sicangu (pronounced she-KAHN-gu, or Brule, “Burnt Thighs”),

Itazipcola (or Sans Arcs, “without bows”), Mnikowoju (or Minneconjou or Miniconjou),

Oohenunpa (Two Kettles), Sihasapa, Hunkpapa

Dakota Sioux (Santee Sioux) bands: Mdewakantonwon, Wahpeton, Wahpekute, Sisseton

Nakota bands: Ihanktonwan (Yankton or Yanktonai), Upper Yankton, and Lower Yankton

Reservations: Yankton, Crow Creek, Cheyenne River Sioux, Flandreau, Lower Brule, Pine

Ridge, Rosebud, Standing Rock, Sisseton-Wahpeton, Lake Traverse, Turtle Mountain

Cheyenne = SHAO*IN

Pine Ridge= PR*IJ

Standing Rock= STRO*K

Sisseton-Wahpeton = SW*AP or SWAP/SWAP

Oglala = GLOL

Oglala Sioux = GLAOL

Oglala Sioux Tribe = GLAOLTS

Rosebud = R-B

Rosebud Sioux = RAOB

Rosebud Sioux Tribe = RAOBTS

tribal court = TROURT

Indian child = YAOILD

Indian tribe = YAOIB

enrollment = NOERMT or NOEMT

quantum = KWUM

blood quantum: BLUM

membership: MOIRP

tribal membership: TROIRP

More South Dakota terms:

Queen of Peace (hospital in Mitchell)	KWAOEP
Avera (a regional medical system)	VAIR
Sacred Heart (hospital in Yankton)	SCRART
Avera Sacred Heart	VART
Lewis & Clark	LARK/LARK
Avera McKennan	VAIRK
University of South Dakota	YAOUFRDZ
USD	S*UD
Aberdeen	BRAOEN
Aberdeen, South Dakota	BRAOENDZ
Pierre (pronounced “peer” not “pee-YAIR”)	PAO*ER
Sioux Falls	SAOFLS or SFAULS
Sioux Falls, South Dakota	SAOFLDZ
Vermillion	VERM
Vermillion, South Dakota	VERMDZ
Yankton	YAONT
Yankton, South Dakota	YANDZ
Rapid City	R-S
Rapid City, South Dakota	R-PDZ
State of South Dakota	STAIFDZ
Black Hills	BLILS or BLALS
Badlands	BLANDZ
Game, Fish & Parks	GARKZ
Missouri River	MIFR
East River (the part of SD that’s east of the Missouri River)	
West River (the part that’s west)	

chislic: cubed grilled meat, sometimes on a stick

kolache: (kuh-LAH-chee) sweet puffy bun-size roll with center filling of fruit, poppy seed, or custard

kuchen (KOO-kin): the official state dessert – pastry with a sweet dough base and fruit or custard filling

lefse (LEF-sa): a soft flatbread made with potatoes, flour, butter, and milk or cream—what one reporter describes as the most delicious, irresistible traditional Norwegian dessert known to mankind

wasna: dried ground buffalo and berries, high in protein. The Tanka Bar is based on wasna.

24.4. Some South Dakota Statutes related to court reporting.

** Note: These are the statute numbers as of 1-12-18. This is not a complete list.

- 1-26-32.2 Ordering of transcript [for administrative hearings, such as work comp]
- 1-26-32.3 Payment for costs of transcript [for administrative hearings, such as work comp]
- 1-26-32.4 Copies of transcript, filing of original [work comp]
- 15-5A Interactive audiovisual device use in court proceedings
- 15-6-5(g) Documents not to be filed--Depositions
- 15-6-28(a) Taking of depositions within the U.S.
- 15-6-28(c) Disqualification to take deposition for interest
- 15-6-30 Depositions upon oral examinations
- 15-6-30(b)(7) Telephonic depositions, location of witness
- 15-6-30(c) Objections to qualifications of officer
- 15-6-30(e) Reading and signing of depositions
- 15-6-30(f) Certification and filing of depositions
- 15-6-31(b) Depositions upon written questions
- 15-6-32(d) Effect of errors and irregularities in depositions
- 15-13-4 Fees, expense, and compensation of shorthand reporter [in referee hearings]
- 15-14-14 Stenographic report of opening statements not required
- 15-15-1 Objections, rulings, proceedings, and remarks to be noted by court reporter
- 15-15-7 Official transcript rates
- 15-26A-48 Order for transcript of proceedings on appeal
- 15-26A-51 Costs of transcript, endorsement of order by reporter, extension of time for transcript
- 15-26A-52 Form of transcript, number of copies, certification
- 18-1-11 Notarizing without appearance by parties as misdemeanor.
- 18-1-12.1 Acting without commission a violation.
- 18-1-13 Removal from office if convicted of misdemeanor or felony.
- 18-3-1 Officers authorized to administer oaths.
- 19-19-603.1 Form of oath for witness
- 19-19-604 Form of oath for interpreter
- 23A-5-11.1 Recording of testimony of witness before grand jury
- 27A-11A-2 Stenographic record of proceedings in mental health hearings, retention of notes
- 27B-7-39.2 Attendance of court reporter at hearings of county review board, retention of notes

SDCL Appendix of Forms, Form 3 (Found at SDCL 15-26A-A, right after SDCL 15-26A-93): statutory format for appeal transcripts.

24.5. Federal Rules related to court reporting.

** Note: These are the rule numbers as of 1-12-18. This is not a complete list.

28	Persons before whom depositions may be taken
28(c)	Disqualification for interest
30	Depositions by oral examination
30(b)(4)	Deposition taken by remote means (telephone, audiovisual, etc.)
30(b)(5)	Duties of officer taking depositions; on-the-record statement to be made
30(c)(2)	Objections to qualifications of officer
30(c)(3)	Depositions through written questions
30(e)	Reading and signing of depositions
30(f)(1)	Certification and delivery of depositions
30(f)(3)	Copies of transcript of recording; retention of stenographic notes
31(b)	Depositions upon written questions: delivery to officer, officer's duties
80	Stenographic transcript as evidence

24.6 DEFINITIONS of terms found in this manual

Administrative pages: nontestimony pages in the transcript: the title page, index to proceedings, index to exhibits, standard stipulation, errata sheet, and court reporter's certificate.

Administrative hearings: proceedings conducted by a governmental body charged with administering particular rules or legislation. These may be state or local governing bodies (for example, workers' compensation hearings, public utility commission hearings, city council hearings, school board hearings) or the governing boards of private companies or organizations (stockholders' meetings, hospital board hearings).

Appearances: in court proceedings, the list of all attorneys present, their business addresses, and whom they represent. In freelance proceedings, such as depositions, the appearances should also include the names of other persons present or just sitting in, such as the parties to the action, videographer, interpreter, or interested persons not parties to the action. As a general rule, members of the audience at hearings or public proceedings are not included in the appearances.

Affirm: to state as a fact; assert strongly and publicly; used in place of an oath for people who do not wish to swear to tell the truth.

ASCII format: format of the American Standard Code for Information Interchange, which allows a computer file to be read by most software programs regardless of which program was used to originally create the file.

Attest: to declare that something exists or is the case; to certify something formally; to witness; to affirm to be true. (Attesting does not require an oath.) In South Dakota state courts, a clerk will attest to a document as being the actual document filed.

Caption of the case: the name of the case, including a heading indicating in what court the case is filed, the case number, and the names of the parties. Some attorneys may refer to the caption as the *heading*, *style*, or *title* of the case.

Captioning: as used in the court reporting profession, is words underneath a picture (such as on television or on a screen projecting to a live audience). It may or may not be done in realtime. It is not the same as CART, and it requires more than just a reporter's CAT software and laptop computer. Captioning may be open (always in view) or closed (capable of being seen only when turned on or by use of special software). Captioning is not just the reporting of words, but may include other indications such as musical notes to indicate music, parenthetical notations such as (mumbling in audience), etc.

CART: Communication Access Realtime Translation is the translation of the spoken word into the written word in real time for persons who are Deaf or hard-of-hearing. This service uses CAT software and a notebook computer sitting near the CART consumer; the CART may be projected to an overhead screen. CART may include indications of things occurring, such as musical notes to indicate music is being played, or parenthetical notations such as (mumbling in audience), etc.

CAT: Computer-Aided Transcription

Certify: to attest or affirm something in a formal statement; to officially recognize (someone or something) as possessing certain qualifications or meeting certain standards. One does not need to swear an oath to certify something.

Closed captioning: see **Captioning**

CLVS: Certified Legal Video Specialist (an NCRA certification)

Concordance: a list of most of the words contained in a transcript and the page and line numbers on which they can be found. Also referred to as a *word index* or *word list*. Not to be confused with a *keyword index*, which is an index of specific words or phrases requested by a lawyer to be indexed but not shared with other attorneys.

Condensed transcript: A transcript that has been miniaturized (“condensed”) into a format that allows more than one page of transcript (usually four pages) to fit onto a single sheet of paper. Also called *mini*, *reduced*, *scrunched*, or *squished* transcripts.

COPE: Committee on Professional Ethics (an NCRA Committee)

CPE: Certified Program Evaluator (an NCRA certification)

CRC: Certified Realtime Captioner (an NCRA certification)

CRR: Certified Realtime Reporter (an NCRA certification)

CSR: Certified Shorthand Reporter, a certification required in some states in order for a court reporter to work in those states. South Dakota does not require that its reporters be certified.

DRR: Department of Revenue & Regulation (of South Dakota), the governmental department in charge of, among other things, collecting sales tax

Errata sheet: an administrative page in a transcript on which a witness lists changes the witness wishes to make to the certified transcript. Also called the *correction page* or *witness addendum*.

FAPR: Fellow of the Academy of Professional Reporters (an NCRA designation)

FAQ: “Frequently Asked Question,” sometimes pronounced “fak”

Footer: a line or lines at the bottom of a transcript page showing the name of the reporter, the reporter’s address, and the reporter’s phone number

FRCP: Federal Rules of Civil Procedure

Freelancer: a court reporter whose primary practice of the profession of shorthand reporting is outside the courtroom setting; for example, deposition work, arbitrations, board meetings, proceedings before administrative bodies, witness statements, etc.

Header: lines at the top of a page of transcript, containing a brief description of the portion of proceedings contained on the page, such as the date, witness name, type of examination:

JEAN PAUL – CX by Smith – 2/28/18

Heading: See **Caption**

Index: a listing of the contents of a reporter’s record. An Index to Proceedings shows the page numbers on which the important occurrences during proceedings begin; an Index to Exhibits gives a brief description of exhibits used during proceedings and shows the pages on which exhibits are marked, offered, and received, if applicable; in official court proceedings, there may also be an Index to Motions, giving a brief description of each motion and showing the page on which the motion is ruled on. An index may also be called a Table of Contents, as it is usually placed at the beginning of the transcript. A “word index” (see **Concordance**) is placed at the end of the transcript. See also **Master Index**.

Keyword Index: an index of specific words or phrases requested by a lawyer to be indexed but not shared with other attorneys. It should be handed to the requesting attorney separately, not bound into the transcript. It is considered attorney work product, and the reporter should not tell other counsel it was requested. It is not the same as a “word index” (see **Concordance** above).

Master Index: multiple indexes merged to form one index when the record of proceedings require more than volume; for example, when a deposition or trial lasts several days. The Master Index may be placed at the beginning of the first volume of transcript or it may be its own volume, in which case its first page number will be the number after the final page of the last volume of transcript.

NCRA: National Court Reporters Association

Official court reporter: a court reporter hired by a court system and whose primary practice of shorthand reporting is the reporting of official court proceedings; an official reporter may be assigned to a particular judge, may be part of a pool of court reporters, or may work as a “float” reporter to cover court where needed.

RDR: Registered Diplomate Reporter (an NCRA certification)

Realtime, as used in the court reporting profession, is the translating of the spoken word into written words on a screen where one or more people can read it. Not the same thing as **captioning** (see above).

Reporter’s record: the court reporter’s transcription of proceedings along with a list of exhibits designated.

RMR: Registered Merit Reporter

RPR: Registered Professional Reporter

SDCL: abbreviation for “South Dakota Codified Laws”

SDCRA: South Dakota Court Reporters Association

Sic: a Latin word meaning “as spoken”

Style: see **Caption**

Text as used in this manual refers to the main body of a transcript, the transcription of the spoken part of proceedings (questions, answers, objections, rulings, argument, etc.)

Title page: the first page of a reporter’s record, showing the caption of the case, the type of proceeding (or the name of the witness), the appearances, and the location, date, and starting time of the proceedings

Transcriber: one who types into English shorthand notes, audio recordings, or video recordings

TTAB: Trademark Trial and Appeal Board

UJS: Unified Judicial System (of South Dakota)

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