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WASHINGTON, D.C. 20544

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MEMORANDUM TO: CHIEF JUDGES, UNITED STATES COURTS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS

SUBJECT: Filing and Availability of Official Transcripts of Court
Proceedings **(INFORMATION)**

Several courts and the District Clerks Advisory Group have requested guidance on the statutory and policy requirements for copying official court transcripts of court proceedings filed with the clerk of court. In light of the recent Judicial Conference policy on privacy and the availability of documents in electronic format, the Office of the General Counsel thought it would be helpful to clarify for all courts the statutory and policy requirements on the copying and distribution of official court transcripts on file in a clerk's office.

Pursuant to 28 U.S.C. § 753(b), a court reporter or transcriber must promptly deliver to the clerk of court for the records of the court a certified copy of any transcript when one is produced. The statute further states that the copy of the transcript or original records or notes in the office of the clerk shall be available during office hours for inspection by any person without charge.

Transcripts of court proceedings are not original works of authorship subject to the protection of the Copyright Act (17 U.S.C. § 101). Even if the transcript were a proper subject of the Act, official court reporters would not be able to seek a copyright because their transcripts are prepared as part of their official duties and thus come within the "work of the United States Government" exception. Contract court reporters' and transcribers' work has the same status under the "work made for hire" doctrine (work performed within the scope of person's employment) which applies to an independent contractor as it would to a salaried member of the employer's staff. (*Samet & Wells, Inc. v. Shalom Toy Co., Inc.*, 429 F. Supp. 895 (E.D.N.Y. 1977), *aff'd*, 578 F.2d 1369 (2d Cir. 1978)) Therefore, certified transcripts filed with the clerk of court may not contain statements or seals which purport to restrict the distribution or copying of the transcript by the clerk's office or by the public. Because transcripts filed with the clerk are

public records, they may be used, reproduced and provided to attorneys, parties, and the general public without additional compensation to the court reporter, contractor, or transcriber.

In addition, the Miscellaneous Fee Schedule, prescribed by the Judicial Conference pursuant to 28 U.S.C. § 1913, §1914, §1926, §1930, and § 1932 provides that the clerk shall charge 50 cents per page for reproducing any record or paper. The fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. A transcript, once filed with the clerk, becomes an official court document that should be copied by the clerk for any person paying the required fee under the Miscellaneous Fee Schedule. A person requesting access to the court file may also review transcripts in the file and may make a copy of the transcripts on any commercial copy service equipment available within the court, unless placed under seal. Therefore, a transcript should be handled in the same manner as any other case file document.

Until recently, only paper copies of court transcripts were available. Under the statutory and Judicial Conference actions noted above, the same procedures should apply to any electronic or imaged copies of transcripts made part of the records of the clerk of court. Copies of the electronic or imaged documents in civil cases may be accessed at the courthouse free of charge and printed out at the courthouse at \$.10 per page or through the electronic public access systems (PACER) at the approved Judicial Conference fee of \$.07 per page (Electronic Public Access Fee Schedule). Under the Privacy Policy approved by the Judicial Conference, criminal case file documents, except those in the 10 pilot courts established by the Committee on Court Administration and Case Management or in a court that has invoked the limited “high profile” criminal case exception to the Privacy Policy, may not be accessed by the public through any electronic system, including the PACER system or external transcript depositories used by court reporters to provide public access to transcripts.

As courts implement the new Case Management/Electronic Case Files system, courts will want to consider how best to include transcripts in the new system. This may be done by requiring court reporters or transcribers to file the certified copy of the transcript in an electronic format, or by imaging the transcripts. Under the policies stated above, the non-availability to the public of criminal case file documents, including transcripts, in electronic form should not prevent a court from accepting or requiring the filing of transcripts in an electronic format with an appropriate certification from the court reporter. Accepting an electronic filing of the certified transcript will allow the court to access transcripts electronically within the court and will also save valuable storage space.

I would ask that copies of this memorandum be circulated to the court reporting supervisor and the official court reporters in your court. Questions concerning the filing of court transcripts may be directed to Ed Baca in the District Court Administration Division on 202-502-1570 or by email at Edward.Baca/DCA/AO/USCOURTS; questions concerning the

Judicial Conference's Privacy Policy may be directed to Katie Simon in the Court Administration Policy Staff on 202-502-1563; questions concerning the PACER system may be directed to Brian LeDuc in the Electronic Public Access Program Office at 202-502-1500.

A handwritten signature in black ink, appearing to read "Leonidas Mecham". The signature is fluid and cursive, with the first name being more prominent.

Leonidas Ralph Mecham
Director

cc: Circuit Executives