

SOUTH DAKOTA  
COURT REPORTERS MANUAL

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

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## **SOUTH DAKOTA COURT REPORTERS MANUAL**

*This manual is intended to help court reporters when they need to know what the code sections and rules of court are regarding reporting in the state of South Dakota and to offer suggestions as to reporting procedures. When something is code section or rule, the code section or rule number is cited. In many cases there will be more than one acceptable way to do things. This manual is not intended as legal advice. Reporters 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 or italics that appear in the cites quoted are the editor's emphasis. Web sites containing the cited rules are listed in section 1.6 below. The laws and Web sites mentioned in this manual were current as of 5/15/08. Over time, laws change and Web pages move. 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.*

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Abbreviations used in this manual:

COPE: Committee On Professional Ethics (NCRA)  
CRR: Certified Realtime Reporter  
DRR: Department of Revenue & Regulation  
FRCP: Federal Rules of Civil Procedure  
NCRA: National Court Reporters Association  
SDCL: South Dakota Codified Laws  
SDCRA: South Dakota Court Reporters Association  
TTAB: Trademark Trial and Appeal Board  
UJS: Unified Judicial System

## TABLE OF CONTENTS

### SECTIONS AFFECTING REPORTERS GENERALLY:

- Section 1. South Dakota Court Reporters generally
- Section 2. Notaries Public; Oaths and Affirmations

### SECTIONS PRIMARILY AFFECTING FREELANCERS:

- Section 3: The Standard Stipulation
- Section 4: Certified Questions and Excerpts of Proceedings
- Section 5: Certificate of Reporter
- Section 6: Reading and Signing
- Section 7: Indexing
- Section 8: Filing and Distribution of Transcript
- Section 9: Retention of Freelance Notes and Tapes
- Section 10: Miscellaneous Proceedings
- Section 11: Federal Depositions
- Section 12: Billing Procedures
- Section 13: Subpoenas
- Section 14: Frequently Asked Questions
- Section 15: Sample Pages and Forms Primarily for Freelancers

### SECTIONS PRIMARILY AFFECTING OFFICIALS:

- Section 16: The Official Reporter
- Section 17: Making the Record (Reporting and Transcribing)
- Section 18: Exhibits
- Section 19: Transcript Preparation
- Section 20: Realtime
- Section 21: Confidentiality
- Section 22: Sample pages, Forms, and Miscellaneous Information

### INDEX TO MANUAL

## **SECTION 1. THE SOUTH DAKOTA COURT REPORTER.**

**1.1. No South Dakota certification.** South Dakota does not license or certify court reporters. UJS Policy 5-SC-91 (rev. 8/03) reads, in part, "Although certification standards for shorthand reporters may be advisable...The 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."

**1.2. Becoming a Notary Public.** You must be a South Dakota notary public in order to administer oaths in this state. Contact the secretary of state, or go on line to [www.sdsos.gov](http://www.sdsos.gov) and click on Administrative Services, then on Notary Commissions for more information. See also section 2 below.

**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. In order to sell anything in the state of South Dakota, you must first have a sales tax license. 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 12.4 below.

**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 turn first when trying to find a court reporter), and two low-cost continuing education conventions each year. A reporter who is already a member of SDCRA must sponsor you in order for you to join. Membership dues are currently (May 2008) \$50, payable at the October meeting each year and considered past-due by February 1 of the following year, at which time a late fee of \$10 will be assessed. SDCRA's Web site 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 on line at <http://www.NCRAonline.org>.

**1.6. Anticontracting law.** Per SDCL 15-6-28(c), "No deposition shall be taken before...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. 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, on a case-by-case basis is not prohibited. Any deposition taken by an interested person shall be considered void."

Reporters are also advised that they shouldn't be turning production of the transcript over to others by sending ASCIIs and a separate signed certificate unless it's for a governmental entity. Changes can be made to ASCII files and the reporter's certificate attached to a changed transcript without the reporter realizing it. During the work on the anticontracting provision, the South Dakota Supreme Court justices expressed disbelief that any reporter would be as unprofessional as to agree to a procedure like that. Whether the reporter agrees to bill some contracting entity instead of the parties directly is their own business decision.

**1.7. Web sites containing rules of procedure.** The South Dakota Codified Laws can be read on line at [www.legis.state.sd.us/statutes/index.aspx](http://www.legis.state.sd.us/statutes/index.aspx). The Federal Rules of Civil Procedure may be found at various places on line; for example, [www.law.cornell.edu/rules/frcp/](http://www.law.cornell.edu/rules/frcp/).

## **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 Web site of the secretary of state, "charged with 'special trust and confidence in integrity and ability.'" If you notarize anything, it is a good idea (though not required by South Dakota law) to keep a journal listing 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. (Note: You should not notarize your transcripts. To certify a transcript is not to swear that it is accurate, but to state, declare, or vouch for its accuracy in writing, which does not require use of notarial powers. Also, 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. See 19.8 below) Be sure to read the manual you will get when you receive your notary commission so you'll be aware of what you may and may not do as a notary. If you have been a notary public for a few years now, you should go to the Web site [www.sdsos.gov](http://www.sdsos.gov) and read what it says so you have the most recent information available. Here are only a few of the South Dakota Codified Law sections regarding notaries public:

18-1-13. Removal from office if convicted of misdemeanor or felony.

18-3-1. Officers authorized to administer oaths.

18-3-5. Affirmation in lieu of oath.

**2.1.2. Fee not charged for administering oath.** In South Dakota, a notary public is not allowed to charge for administering an oath (SDCL 18-3-6).

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

19-14-3.1 and 19-14-3.2. Form for **oath of witness**: "You do solemnly swear/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'" )

19-14-4.1 and 19-14-4.2. Form for **oath/affirmation of interpreter**. "You do solemnly swear/affirm that you will justly, truly, and impartially interpret to \_\_\_ the oath about to be administered to him, and the questions which may be asked him and the answers that he shall give to such questions, relative to the cause now under consideration before this court (or officer), [so help you God] [under the pains and penalties of perjury]." (You may want to add "If so, say 'I do'" )

However, if you use different wording, no one is likely to complain; and SDCL 22-29-8 says that it is no defense to perjury to claim that the oath/affirmation was administered or taken in an irregular manner.

**2.2.2. Don't swear a witness over the phone.** Among the "Dos and Don'ts" listed on the SD secretary of state's Web site 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." (A recent exception to this rule is listed in 2.2.3 below.)

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 (Florida, Illinois, Texas, and West Virginia, among others). 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. Swearing a witness over the phone or videoconference system in court.** A new law was adopted in July 2006, SDCL 15-5A (Supreme Court Rule 06-69), which states that "Whenever a proceeding in civil or criminal court is permitted under these rules to be conducted by interactive audiovisual device... [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." Although a regular telephone lacks the "visual" component of an interactive audiovisual device, in court many judges give oaths over the telephone as well.

**2.3.1. Depositions reported out of state or 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 his 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." Some reporters read this to mean that if a South Dakota reporter is named in a deposition notice as the person before whom the deposition will be taken, that confers upon the reporter the power to administer an oath to the witness(es) named in the notice even if the deposition is taken out of state.

### SECTION 3. 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."

Do not insert any stipulation unless you are instructed to do so. 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.

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 {witnessname} may be taken at {streetaddress}, {city}, South Dakota, at the hour of {time}, on {day}, {date and year}, on behalf of the {plaintiff/defendant} herein, before Court ReporterName, Registered Professional Reporter, a Notary Public in and for the State of South Dakota;

That said deposition shall be taken for purposes of discovery and/or for use as evidence 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; {that the notice of the filing of this deposition is waived;} and that the reading and signing of this deposition is waived by the parties, through their counsel.

**Note 1:** Supreme Court rule changes to SDCL 15-6-31(c), adopted July 2006, require the party taking the deposition to give prompt notice of its filing to all other parties, so the phrase "that the notice of the filing of this deposition is waived" is probably no longer necessary in the standard stipulation.

**Note 2:** The line about reading and signing being waived *by the parties* (not just by the witness) is per SDCL 15-6-30(e). If the standard stipulation is inserted into the deposition, you don't need to ask the parties if they'll waive the witness reading and signing. See 6.1.1 below. If the standard stipulation isn't requested, even if the witness waives, you still should ask the attorneys for the parties if they will waive the reading and signing as well. Be sure to note their waiver on the record.

## SECTION 4. CERTIFIED QUESTIONS AND EXCERPTS OF PROCEEDINGS;

**4.1. What is a certified question?** 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. Way back in the olden days, when transcript delivery routinely took three weeks or longer, court reporters were regularly asked to “certify questions” to be presented to a judge. This practice has fallen off since the advent of computers and quicker transcript delivery, but still happens on rare occasions.

**4.2. 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 a question is to take it before a judge for prompt ruling, and if the transcript is not going to be delivered within 24 to 48 hours, the certified question(s) should be excerpted and transcribed immediately, using a method such as the one 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) During 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. Transcripts 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.

**4.3. 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 "Excerpts from the {Deposition of}."

**4.4. Make excerpts available to all counsel.** Do not get caught in an attorney's trial strategy. 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. The National Court Reporters Association has issued Advisory Opinion #22, stating, essentially, that court reporters should make transcripts of proceedings, including excerpts, available to all sides at the same time so as to avoid appearing to favor one side over the other.

If, after learning that opposing counsel will also be offered a copy, the requesting attorney withdraws the request for an excerpt, do not mention to opposing counsel that one had been ordered. See also 7.2.4 below re keyword indexing.

**4.5. Portions of proceedings designated confidential.** 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 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. The 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.

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.

## SECTION 5. CERTIFICATE OF REPORTER

**5.1. 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 him 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 certificate, but section 15.7 below is a sample of a Certificate of Reporter which incorporates all of the above requirements and the requirements of FRCP 30(e) 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.

**5.2. 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}.*"

**5.3. Cases 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. FRCP 30(e)(2) states, in part, that the officer must indicate in the certificate whether a review *was requested*. That means it's up to the witness to ask to read it. Also, the transcript just needs to be "made available" to the witness. You can make the witness come to your office instead of sending the transcript out, never to be seen again. The footnote to the rule change back in '93 indicated that these changes were made because of the extreme difficulties 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.

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 read and sign the deposition.*" See also section 11.5 of this manual.

### 5.4. Certificate of Transcriber.

(a) 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.

(b) If the reporter transcribes directly from a videotape or audiotape, as opposed to reporting 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, 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. A sample Certificate of Transcriber may be found in section 15.9 below.

**5.5. Sign the copies as well as the original.** In some states, a copy of a deposition may only be used in lieu of the original in court if that deposition copy contains an original signature of the court reporter. It is not unheard-of for an ordering attorney to refuse to offer a deposition, and if opposing counsel then decides to offer his or her copy instead, it is essential that that copy have an original signature. Also, in South Dakota workers' compensation cases, according to SDCL 1-26-32.4, the reporter is supposed to 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.

## **SECTION 6. READING AND SIGNING.**

### **6.1. Case filed in South Dakota state court.**

**6.1.1. 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 have asked you to insert the standard stipulation, it includes a waiver of the reading and signing by the parties. (See section 3 above). Otherwise, if the witness waives, you still should ask the attorneys for the parties if they will waive the reading and signing as well. Put the waiver on the record.

**6.1.2. 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 or errors which he or she wants to blame on the reporter. 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. That is the attorneys' problem. The reporter is not required to force the witness to give reasons.

**6.1.3. 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..."

**6.2. Case filed in federal court (See also section 11 below).** FRCP 30(e)(1) says, "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 to (A) 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 or because an attorney prompts them do get the right to read. See also section 11 below.

\*\*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.

**6.3. Cases filed in neighboring state courts.** The rules that apply to transcription and filing of depositions are the court rules of the state court for which they are taken. 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 gets 30 days to read and sign if they want to; and 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.

**6.4. Errata sheet.** In South Dakota, the standard procedure is to include an errata sheet on which the witness can list any changes 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) says

the reporter must attach any changes the deponent makes to the deposition 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 15.15 below.

## SECTION 7. INDEXING

**7.1. Index to Proceedings recommended, but not required.** There is nothing in the South Dakota court rules that requires that depositions or other freelance work 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. At the very least, the index should show the name of the witness, what examinations took place, and what exhibits were marked.

### **7.2. Other indexes recommended, but not required.**

**7.2.1. 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 may be offered during a deposition, but can only be received in court). If the reporter does not take custody of any or all of the exhibits, the index should include an indication of who did take custody of them so that attorneys don't call the reporter later looking for misplaced exhibits. The description should be, if possible, enough to differentiate one exhibit from another. Simply labeling, for example, six letters as "letter" does not help the attorneys. At the very least, a date should be included. An X-ray could be further described in the index by saying what it is an X-ray of. Even if the attorneys retained custody of the exhibits, descriptions can be garnered from the testimony or from the reporter's dope sheet. 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.

**7.2.2. Marking exhibits.** A note re 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 already and when. Putting the witness's name on a sticker helps them quickly locate the transcript in which the exhibit was used, should the exhibit become separated from the transcript--which happens a lot. 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 a lot of time.

**7.2.3. 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, much, 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:

#### 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

**7.2.4. 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"). Concordances are not required, although most attorneys appreciate getting them. Keyword indexes are indexes to specific words and phrases given to a reporter by an attorney. 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.

**7.3. Master indexes.** Master indexes are indexes to a complete court trial or to a long series of depositions taken in the same case. See the official section regarding master indexes to court trials. 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. It is a good idea to keep a master index for yourself and to bring it with you each time you go to one of these depositions so you have a record of the number you left off with.

#### MASTER INDEX TO DEPOSITIONS AND EXHIBITS IN GOODYEAR V. MICHELIN

7-14-02: ROGER JAMES BLUTH

Bluth 1. CV of Dr. Bluth

Bluth 2. Letter of 3-7-99

Bluth 3. Sample of tire tread

7-28-02: PAUL M. GREEN

Green 4. CV of Dr. Green

Green 5. ASME Standard 14.3(b)

9-30-02: C. ANTHONY PARKER

Parker 6. Chart of tread widths

Parker 7. Chart of friction calculations

## SECTION 8. FILING AND DISTRIBUTION OF TRANSCRIPT

**8.1. Depositions no longer filed with court.** Unless the court orders otherwise, depositions are no longer filed with the clerk of court in South Dakota state cases, pursuant to SDCL 15-6-5(g). Bankruptcy court may be an exception. See the last paragraph of 11.7.

**8.2. Original deposition transcript must be sealed.** SDCL 15-6-30(f)(1) states that the reporter is to "securely seal the deposition in an envelope endorsed with the title of the action and marked 'Deposition of (here insert name of witness).'" Federal RCP, 30(f) also says original federal depositions should be sealed before delivery. (See section 11.7 below.)

A window envelope through which the title page shows may be used in lieu of typing all that information on the outside of a manila envelope.

**8.3. Condensed transcripts.** Nothing in the rules as of 12/1/07 states what order the condensed pages must be in, but the ten reporters in South Dakota polled by one editor of this manual indicate they put page 1 in the upper left, page 2 in the lower left, page 3 in the upper right, page 4 in the lower right. Most attorneys are accustomed to reading up-down-up-down, the same way you'd read a newspaper. Go with the crowd and save a client used to the majority's style from the embarrassment of misreading a deposition aloud in court. At the present time, original transcripts of court proceedings are still required to be printed in regular size.

**8.4. 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 deposition *to any party or to the deponent.*" (emphasis added). NCRA Public Advisory Opinion #9 interprets this language to mean that depositions cannot be sold to anyone else without permission of attorneys for the parties and permission of the deponent.

**8.5. Grand jury transcripts secret, not distributed by reporter.** Grand jury proceedings should never be provided by the court reporter to anyone except the prosecuting (AG or State's) attorney's office which conducted the questioning. 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 seem to have different practices regarding ordering grand jury transcripts. In some counties defense counsel are allowed to order the grand jury transcripts directly from the court reporter. SDCL 23A-5-16 states, in part, that a "[a] stenographer...may disclose matters occurring before the grand jury only if...permitted 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 that the transcript was ordered and provided by the state's attorney's office.

**8.6. 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 not intended for the use of anyone other than the attorney (or other party) who took the statement, and as such this manual recommends that they should not be distributed without the attorney's permission. (See also section 8.4 above re NCRA's Opinion #9.)

**8.7. Emailing transcripts.** In most cases, if an attorney wants a transcript emailed, that attorney will still want a hard copy of the transcript, but not always. Some attorneys want not only the emailed transcript, but a hard copy and a disk as well. It is best to ask at the time of the order whether the attorney wants a hard copy as well; however, when in doubt, send the paper copy even if you email the transcript.

If you email a transcript, always 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.

## **SECTION 9. RETENTION OF FREELANCE NOTES AND TAPES.**

**9.1. Freelance proceedings. Mental Health Hearings:** 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 review hearings also shall be preserved at least five years. "At least five years" is a good standard for administrative hearings generally, including workers' compensation hearings. Official court notes need to be retained at least 15 years after the date of hearing, pursuant to the UJS Records Retention and Destruction Schedule (rev. 4/02), which can be found at the Web site listed in section 9.2 below. For more specifics, please refer to the official section of this manual.

There is no specific statute regarding retention of deposition notes, however; and the rules do not specify that the notes be paper notes, so keeping only electronic note files is sufficient as long as you are sure the storage media will be accessible the necessary length of time. The rules don't say for how long deposition notes must be retained, and they don't specify "paper" notes.

**9.2. 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. [See the Official Reporter sections of this manual.] As of 5/16/06, the UJS Records Retention Schedule can be found at <http://www.sdjudicial.com/downloads/appdxDnRcdsRetenDS.pdf>.

**9.3. 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, as shown at 15.22 below. Notes and computer diskettes should be adequately identified and filed in an organized manner so that an outsider can readily find the necessary notes and files.

**9.4. 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: at the home of the reporter's parents, at a friend's house, stored on line (most internet service providers offer quite a bit of online storage space to their customers), or in a safety deposit box, for example. This way, if fire or flood should destroy the first backup, the second backup may still be safe. Don't forget to also keep copies of dope sheets of names and odd terms that came up on the job, as well as a list of briefs you may have made up on the fly, so that four years later when the transcript is finally ordered you will know that NAOIM/NAOIM means "anhydrous ammonia," for example.

**9.5. 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. It is suggested that if the transcript is not ordered within six months, if the exhibits are something besides photocopies (for example, X rays, tools, original checks), the reporter should call the attorneys and ask what should be done with them. There does not appear to be anything in the rules that requires the reporter to keep copies of exhibits after delivery of the freelance transcript.

## SECTION 10. MISCELLANEOUS PROCEEDINGS

### 10.1. Grand Jury proceedings.

**10.1.1. All testimony must be reported.** SDCL 23A-5-11.1 says "The testimony of any witness appearing before a grand jury in any case shall be recorded." 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.

**10.1.2. 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. Per 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.

**10.1.3. Grand jurors not identified by name in colloquy.** When transcribing grand jury proceedings, 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 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 page 15.13 below.

**10.1.4. 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. Some counties also require you to use the Court Reporter/Transcriptionist Transcript Certification Form when you submit your bill to the state's attorney (see section 12.2 below). Be aware that this may cause confusion with some auditors, because there is a place on the form the clerk is supposed to sign, but grand jury transcripts are not supposed to be filed with the clerk. Transcripts are only supposed to be delivered to the state's attorney, who is responsible for distributing them to defense counsel. Some counties allow defense attorneys to order transcripts directly from the reporter, in which case defense counsel should be billed for the transcript; but the reporter should still deliver the transcript to the state's attorney for distribution to defense counsel. See also section 8.5.

## **10.2. Records depositions.**

**10.2.1. 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 him." 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 may only last a few minutes, although on occasion they may go much longer. A **30(b)(6) deposition** in federal court is a longer version of the records deposition.

**10.2.2. 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.

**10.2.3. Questions should be numbered in transcript.** When the deposition 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 software programs have the ability to number questions, because a few state and military courts also require that questions be individually numbered. See sample page 15.12.

**10.2.4. 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.

**10.3. Workers' compensation proceedings.** *[Court Reporters take note: the state statutes use the form workers', not worker's, compensation. Plural, apostrophe.]*

**10.3.1. 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.

**10.3.2. Workers' compensation hearings** may be reported by a court reporter. SDCL 58-20-40 says that the provisions of chapter 1-26 govern all proceedings or investigations of the workers' compensation department.

According to SDCL 1-26-22, "If transcribed, a copy of the record shall be furnished to any other party to the hearing at the request and expense of such party," and "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," which means 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, 700 Governors Drive, Pierre, SD 57501.

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 order from the reporter the written transcript (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.

**10.4. 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 9.1 and 12.3 of this manual for more information on reporting mental health hearings.

**10.5. Interpreted proceedings.** The reporter should swear in the interpreter first (see section 2.2.1 above for a sample oath) and then swear in the witness through the interpreter. It is recommended that all proceedings conducted through an interpreter be tape-recorded, because trained interpreters are not always available and sometimes witnesses will switch back and forth between their native language and English. In section 15.14 below is a sample page of interpreted proceedings with examples of situations the reporter may encounter.

**10.6. Patent and Trademark depositions have a few extra requirements. These are from August of 2007. (Rules change frequently. See the United States Patent and Trademark Office at [www.uspto.gov](http://www.uspto.gov).)**

**10.6.1. Format requirements.** According to 37 CFR 2.123 (g), 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.** The deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used, and each question must be followed by its answer.

**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.* (Note: Experienced P&T attorneys will bring exhibit stickers with the number and title of the case already on the sticker.)

Each deposition **must** contain an **index of the names of the witnesses**, giving the pages where their 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.

Depositions must be filed.

Evidence not obtained and filed in compliance with these sections will not be considered.

**10.6.2. Reporter's Certificate.** According to 37 CFR 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 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.**

37 CFR 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 seal of office, if he has such a seal."

**10.6.3. Filing the deposition:** 37 CFR 2.123 (f)(2) also says, "**Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing.** The officer or the party taking the deposition, or its attorney or other authorized representative, shall then address the package, and **forward the same to the Commissioner of Patents and Trademarks.** If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted by the officer or the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section."

## SECTION 11. DEPOSITIONS IN FEDERAL DISTRICT COURT

**11.1. At the beginning of the deposition.** Federal Rule of Civil Procedure 30(b)(5)(A), lists the duties of the officer reporting the deposition. It says, in part, “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 officer’s administration of the oath or affirmation to the deponent; (v) the identity of all persons present.” An example of an officer's statement read on the record is in 11.2.2 below.

There does not appear to be anything in the federal rules setting out a specific page format (margins, etc.) for *depositions* taken for use in federal court. A freelance reporter who works as a substitute or contract official reporter in federal court should follow the page format for official court reporters in section 11.11 below.

**11.2.1. At a deposition that is not videotaped, the "statement by the officer"** mentioned above is not read aloud. 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. However, NCRA, in their Certified Legal Video Specialist program, recommends that when a deposition is videotaped, the reporter or videographer should repeat items (A) through (C) above at the beginning of each unit of recorded tape or other recording medium whether a stenographic record is made or not. Here is an example of the wording of such a statement:

ORAL SWORN DEPOSITION OF JENNIFER JONES, taken on behalf of the plaintiff herein, on Monday, April 9, 2001, beginning at the hour of 12:30 p.m., at 415 Myrtle Street, Wakonda, Clay County, South Dakota, before Reporter Name, Certified Shorthand Reporter, Reporter business address.

The attorneys' appearances are shown next, and the appearance of other people follows that:

Also present: James Jones, Tamara Lincoln, and Rodney Nomme.

**11.2.2. At a videotaped deposition, the "statement by the officer"** should be read aloud at the beginning of the videotape, and the names of the attorneys and anyone else present at the beginning of the deposition should be listed as well. When transcribing a videotaped deposition, the statement by the officer should be included, similar to this one:

COURT REPORTER: "This is the deposition of Jennifer Jones, taken on behalf of the plaintiff herein, on April 9, 2008, beginning at the hour of 12:30 p.m., at 415 Myrtle Street, Wakonda, Clay County, South Dakota, before Roland Smith, Registered Professional Reporter and Notary Public officed at 415 Myrtle Street, Wakonda, South Dakota. Present on behalf of the plaintiff is attorney John Walker. Present on behalf of the defendant is attorney Sharon Anders. Also present in the room are James Jones, Tamara Lincoln, and Rodney Nomme. The deposition is being videotaped by Rob Allson.

In October 2006 the South Dakota Supreme Court updated SDCL 15-6-30(b)(4) to read the same as the federal rules, and other states also require that a statement be read aloud on the videotape. It is a good idea to carry a generic form with blanks for all the necessary information that you can

fill in and read aloud, if necessary.

**11.3. Telephone Depositions.** Federal R.C.P. 30(b)(4) essentially says that a deposition taken by telephone or other remote means is considered taken at the place where the witness is physically present, not where the attorneys are or where the case is filed.

**11.4. 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. Nor are reporters 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. You can keep the transcript at your office and ask the witness to come there, and that will cut down on the number of transcripts that you send off, never to see them (or any corrections) again.

The notes of the Advisory Committee on Rule Changes in 1993 said these changes were made because of great difficulties reporters face trying to get their transcripts back. If any changes are made, they must be attached to the deposition (most reporters do this in the form of an errata sheet). Under 30(e), the witness may also request to review the videotape and make a list of changes he or she wishes to make to it. This process will generally take place only if there isn't a transcript ordered, and in that case, the errata sheet should be attached to the videotape.

**11.5. Reporter's certificate.** FRCP 30(e)(2) says you have to "note in the certificate...whether a review was requested." That means you need a sentence in your certificate to the effect that "The witness asked/did not ask to read and sign the deposition."

In addition to the indication as to whether the witness waived or did not waive reading and signing, FRCP 30(f) states, in part, "The officer must certify that the witness was duly sworn and that the deposition accurately records the witness's testimony."

**A note re charging for federal grand jury, federal depositions billed to court-appointed attorneys, etc.** 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.

**11.6. Errata Sheets.** If the witness did read and sign, an errata sheet signed by the witness, containing any changes and the witness's reasons for the changes, needs to be attached to the transcript, pursuant to FRCP 30(e).

**11.7. Sealing and filing deposition transcripts; in fed court, condensed originals allowed.**

Federal R.Civ.P. 30(f)(1) says "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 or recording."

In most jurisdictions, local rules now dictate that the depositions are not to be filed with the clerk of court, but instead are to be delivered to the attorney who ordered the original transcript.

At this writing (Jan. 2008) Chief Judge Schreier has left the filing of deposition transcripts in condensed format to the discretion of the judge, and currently all SD federal judges allow

condensed format for original depositions. Original court transcripts still need to be full size, or the reporter may provide a .pdf file instead of a hard copy. This may be a local rule only, however, so check with the federal court in which the transcript will be filed.

At this writing (June 2008) in SD federal bankruptcy court, the rule is that depositions, first meetings of creditors, debtor exams, and 2004 exams are filed with the court, and they are filed in full-size format. Again, this may be a local rule, so check with other courts before filing with them. Another thing mentioned was that the title page should show the date on which the proceedings were held.

**11.8. Retention of shorthand notes.** Rule 30(f)(3) says, “Unless otherwise stipulated or ordered by the court, the officer must retain stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. 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.” This rule doesn’t say how long the notes or recording needs to be kept after the deposition is transcribed or if no transcript is ever ordered

The editor of this manual has so far not been able to find any specific time period for which the reporter is required to retain the shorthand notes for depositions in federal cases. However, NCRA recommends five years as part of their guidelines. The South Dakota and federal rules do not specify that the retained notes need to be paper; presumably keeping the electronic note file is acceptable. However, if using electronic storage it is important to use media that will be accessible for the required period. Also, some older-model steno machines will occasionally “stack” strokes, causing, for example, the number 74 to look like 47 in the electronic notes; and the paper notes may be needed by some reporters to guard against incorrect transcriptions.

Notes of federal official court proceedings need to be retained for at least 10 years. Check the federal reporters manual for the current retention time.

**11.9. Sale of copies to persons not party to deposition.** NCRA Public Advisory Opinion No. 9 interprets that last sentence of Rule 30(f)(2), “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,” as an indication that transcripts are not to be provided to anyone *except* the parties or the deponent. Official court proceedings conducted in open court are considered public record, so those transcripts may be sold to nonparties.

**11.10. Compensation for reporting federal criminal depositions** (see also note at 11.5). 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.

Below are the US Judicial Conference Maximum Transcript Rates - All Parties (Per Page) **effective October 1, 2007** (the most recent rates available as of June 2008). Notice that extras such as ASCII disks are not listed and that the US Judicial Conference may not reimburse for those charges without prior authorization.

|   | <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 of order   | 3.65            | .90                           | .60                                      |
| <u>14-Day Transcript</u> – delivered within 14 calendar days after receipt of order   | 4.25            | .90                           | .60                                      |
| <u>Expedited Transcript</u> –delivered within seven calendar days after receipt of an order   | 4.85            | .90                           | .60                                      |
| <u>Daily Transcript</u> --a transcript delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it is actually a court day   | 6.05            | 1.20                          | .90                                      |
| <u>Hourly Transcript</u> --a transcript delivered within two (2) hours.   | 7.25            | 1.20                          | .90                                      |
| <u>Realtime Transcript</u> --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. | 3.05            | 1.20                          |  |

**11.11. Format for Federal OFFICIAL transcripts.** Here are some of the requirements set out in the federal court reporters' manual, Chapter 18, "Transcript Format":

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.
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 in the case of daily copy, where fewer than 25 lines may be on a page at the points where reporters switched off.
5. 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.
6. 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.
7. 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.
8. 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.)

9. It is the responsibility of the attorneys to note for the record any significant nonverbal behavior; i.e., physical gestures and lengthy pauses on the part of the witness. If counsel 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)

10. Indexes are required.

## SECTION 12. BILLING PROCEDURES.

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

Also, the Web addresses for the DRR listed below have changed four times since we started work on this manual. If you cannot locate the addresses below, just go to [www.state.sd.us](http://www.state.sd.us) and look for a tab that will get you to the Department of Revenue and Regulation.

**12.1. Contracting for the state (FY2008-9).** 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. The 2008 contract rates are \$28/hour for actual attendance in court, \$12/hour travel time if the reporter has to drive more than 30 miles one way to get there, \$.37 a mile (effective 7/1/07). If you are not notified at least 24 hours in advance that your job has cancelled, you may charge a two-hour appearance fee (\$56) to make up for having cleared your books because you thought you'd be working in court that day. Your bill for appearance fee should be submitted on a state voucher. You can get the state vouchers from your circuit court administrator, or you can write to Pierre, to the State Court Administrator's Office, 500 East Capitol, Pierre, SD 57501-5070, to get them. When you bill for appearance using a state voucher, you need to have the judge or magistrate sign the voucher after you've filled it out, and then you turn it in to the circuit court administrator of the circuit in which you did the work. (Keep the gold copy for your records.) No tax is charged because it's billed to the state. Transcripts are not billed on state vouchers unless ordered by the Attorney General's office. If the AG's office orders a transcript, you bill that on a state voucher, itemizing the pages and the appearances, and after you fill out the voucher, you send it to the AG's office that ordered it, not to the court administrator. No tax is charged to the AG's office. If the person ordering a transcript is a court-appointed attorney, then you need to fill out a "Court Reporter or Transcriptionist Transcript Compensation Form" like the one described in section 12.2 below. Section 15.23 shows a sample state voucher followed by instructions on how to fill it out, and section 15.21 shows a sample state contract.

**12.2. Court-appointed attorneys.** If a court-appointed attorney orders a court transcript, you need to fill out a "Court Reporter or Transcriptionist Transcript Compensation/Certification Form." When you deliver the copy of the transcript, you need to have the court-appointed attorney (or a secretary or someone from the attorney's office) sign the "Verification of ordering party" at the bottom of the Certification Form. When you file the original transcript-- and you're supposed file an original of all *court* proceedings, even though you don't file depositions-- then you also have to have the clerk of court sign the Verification by Clerk of Court. Then you send the Certification Form to the county responsible for paying for the transcript. There is no line on the form for postage, but you can draw an extra line and add it in if you had to mail the transcripts. No tax is charged because the bill is to a governmental body. Current (2008) official court rates are \$3/page for the original, .40/page for each copy.

**12.3. 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. 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. No sales tax should be charged to the county. The bill should be directed to the county auditor. If there is more than one patient's hearing being billed, each hearing should be itemized. If transcripts are ordered, the original goes to the clerk of court. In most cases the attorney will be court-appointed, and the bill should be submitted to the appropriate

county auditor using the form described in 12.2 above.

**12.4. Charging sales tax.** You must charge sales tax on appearance fees and on transcripts delivered within the state of South Dakota. In fact, in most cases, anything you charge to the attorney (mileage, postage, exhibits) should be added together and tax charged on that entire amount. Government entities do not get charged sales tax.

**(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 on line at [www.state.sd.us/drr2/revenue.html](http://www.state.sd.us/drr2/revenue.html), which is the Business Tax Division of the SD DRR, click on Sales Tax, and click on Sales/Use Tax License Application; 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.

Some cities have more than one tax rate, but they only have one SALES tax rate. You are to charge the municipal SALES tax rate, not the gross receipts tax rate. To match a street address with the correct tax rate, go to [www.state.sd.us/drr2/GIS/BusinessTax/taxmatch.htm](http://www.state.sd.us/drr2/GIS/BusinessTax/taxmatch.htm).

Some towns do not have a municipal tax rate. If a town is not listed on the DRR Municipal Tax Rate list, you do not need to charge municipal taxes.

**(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 on line at the department's Web site under the Publications link.

**(c) You must charge tax on everything.** Sales tax is charged on everything you bill for, not just appearance fee and transcript. If your bill includes 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), you must charge sales tax on those as well. You don't need to set the tax for each item out separately. Add everything up and figure the sales tax on the pretax subtotal.

**(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, 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.

**(e) Sales tax is based on delivery location/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. (If no transcript is ordered but an appearance fee is charged, the municipal sales tax is the tax of the city where the proceedings were conducted).

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

your office location.

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.

According to the Department of Revenue and Regulation (see copy of email from DRR in section 15.24 below), 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.

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.

**(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% 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/drr2/revenue.html](http://www.state.sd.us/drr2/revenue.html) 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.

**12.5. 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 22.14 below). 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.

## SECTION 13. SUBPOENAS.

As a notary public, you are authorized to issue subpoenas. SDCL 15-6-45(a) through 15-6-45(g) contain statutes governing the issuance of subpoenas for depositions in South Dakota. As a side note: A federal employee may not be served with a state subpoena.

15-6-45(a) says, in part, “A subpoena shall state the name of the court, or tribunal, the title of the action or proceeding, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. It shall state the name of the person or party for whom the testimony of the witness is required. The seal of the court or officer, or tribunal, shall be affixed to the original and all copies, if issued by a court or officer having a seal.”

15-6-45(c). Service of subpoena. Subpoenas may be served, according to 15-6-4(c), “by the sheriff or a constable of the county or other comparable political subdivision where the defendant may be found, or in the District of Columbia by the United States marshal or a deputy, **or by any other person not a party to the action who at the time of making such service is an elector of any state.**” In Indian country, the subpoena, as with a summons, may be served “by a person not a party to the action who at the time of making such service is an elector of any state. The service shall be made and the summons returned with proof of the service, with all reasonable diligence,” to the attorney requesting service of the subpoena. The subpoena shall be served in the same manner as a summons is served, excepting that no service by publication is authorized. The subpoena must be served sufficiently in advance of the date upon which the appearance of the witness is required to enable such witness to reach such place by any ordinary or usual method of transportation which he may elect.

At the time of service of a subpoena, there shall be tendered to or on behalf of the person therein named the fees for one day's attendance and the mileage allowed by law. The fact of such payment, or the signed waiver thereof by the person named in the subpoena, shall be stated in the return. If such fees and mileage be not paid or waived, the witness shall not be obliged to obey the subpoena.

At the commencement of each day after the first day, a witness under subpoena may demand his fees for that day's attendance, and if the same is not paid, he shall not be required to remain.

When the subpoena is issued on behalf of the State of South Dakota or its political subdivisions or an officer or agency thereof, fees and mileage need not be tendered.

According to SDCL 19-5-1, witness fees are currently (2008) \$20 per day. According to the UJS, mileage is currently (7/01/07) 37 cents a mile.

Issuing a subpoena means writing one up; serving means showing it to the witness and delivering it to the witness. If you serve a subpoena, you need to file a return of service. It's a lot easier to have the sheriff serve the subpoena.

## 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 the official reporters section of this manual and sample page 15.20 below) and a different statutory page format for official transcripts of federal court proceedings (see section 11.11 above and sample page section 15.19 below), but there is no required format for freelance proceedings. Some states, such as Texas, do have format requirements for freelance work, but most don't.

*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. *[Editor's note: "Quoted material" in these format guidelines refers to things like case citations or reading other depositions into the proceedings, not to quoted conversations during testimony or short quotes made from exhibits.]*
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?** Not unless ordered by the court. Unless the attorney instructs otherwise, the original transcript of a deposition should always be delivered directly to the ordering attorney. Federal Bankruptcy Court is an exception. See sections 8 and 11.7 above.

**14.3. Why do we have to seal the original if we're delivering the deposition to the attorney?** Because SDCL 15-6-30(f) says that we are supposed to. And so does FRCP 30(f). See sections 8.2 and 11.7 above.

**14.4. Do deponents in a trial or evidentiary deposition have the right to read and sign?** Yes. In depositions taken in South Dakota cases, SDCL 15-6-30(e) does 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 all of section 6 and section 11.4 above.

**14.5. Do we charge sales tax to out-of-state attorneys?** See Section 12.4 above. Basically, if a bill is being sent to an out-of-state address, don't charge sales tax on tangible items, such as transcripts. If the transcript and appearance fee are bundled into the same bill, you don't need to charge sales tax. The out-of-state attorney may be liable for use tax if the deposition is meant for use in a SD 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 reporter does not bill for use tax. However, if the bill is for a service alone, i.e., the appearance fee alone (not bundled in with transcripts, exhibits, etc.) services are charged based on where the service is received, so you charge SD sales tax plus the municipal tax of the city in which you reported the deposition.

**14.6. Do we really have to charge sales tax on postage?** Yes. Anything you charge to an attorney on your bill must be taxed. U.S. Postage is a product you buy and pass on to your client, just like a Fed-Ex delivery charge. Thus, you charge sales tax on it. See also section 12.4 above and the sample bill below at section 15.10.

**14.7. Do we have to use the South Dakota statutory format?** The South Dakota statutory page format must be used for appeal transcripts. It is not required for depositions. Here is the format as found at SDCL 15-26A-93(A). Section 15.20 shows a transcript page done in this format.

1. Appeal transcripts shall consist of volumes of 250 pages or less, prepared on 8 1/2" x 11" white opaque paper with 25 prenumbered, double-spaced lines per page.

2. Each page shall have ruled margins with 3/4" top and bottom margins, a 1.5" left margin, and a 1/2" right margin.

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.

4. The pages shall be consecutively numbered throughout the entire transcript (not according to volume) located at the bottom center of each page.

5. Each volume shall be securely bound with a protective cover upon which or through which the following shall appear:

- (a) a 1.5" 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.

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.

. SAMPLE PAGES AND FORMS FOR FREELANCERS.

- 15.1. Title page to depo with FRCP info on first page
- 15.2. Index to deposition
  - a) includes index to exhibits
  - b) includes index to objections
- 15.3. Title page to depo with FRCP info on page 2 (see Sample 15.4)
- 15.4. Introductory paragraph (FRCP info)
- 15.5. Standard stipulation
- 15.6. Statement of Officer for video deposition
- 15.7. Certificate of reporter for deposition in SD case
- 15.8. Certificate of reporter for deposition in federal case
- 15.9. Certificate of transcriber
- 15.10. Sample bill
- 15.11. Various paragraphs from different letters to attorneys
- 15.12. Example of deposition format for written interrogatories
- 15.13. Grand jury testimony
- 15.14. Interpreted testimony
- 15.15. Errata Sheet
- 15.16. Letter to witness regarding reading and signing
- 15.17. Sample notices of delivery of deposition:
  - (a) mailed to deponent for reading and signing
  - (b) mailed to counsel to take care of reading and signing
- 15.18. Realtime disclaimer
- 15.19. Federal format for officials
- 15.20. SD format for appeal transcripts
- 15.21. Sample state contract
- 15.22. Court reporter Guardian form
- 15.23. Sample state voucher followed by instructions on how to fill it out
- 15.24. Email from SD DRR verifying answers to tax information in section 12

For sample pages and forms for official court work, see Section 22 generally.  
For Ethics Opinion 80-6 re responsibility of attorney to pay, see Section 22.14.

**Sample 15.1. Depo title page with info required by Fed. CRP.  
(See section 11.1)**

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

---

3 JOHN A. PARDY, )  
4 )  
5 Plaintiff, ) Civ. No. 06-28178  
6 vs. )  
7 JANIE D. FENDANT, )  
8 Defendant. )

---

9 Oral Sworn Deposition of GARY WITNESS taken Tuesday,  
10 January 10, 2006, at 721 Douglas Street, Yankton, South  
11 Dakota, beginning at 10:30 a.m., before Name O'Reporter,  
12 RPR, Reporter's Business Address, City, State.

13 A P P E A R A N C E S

14 For the Plaintiff: JENNEVIEVE CUE, Attorney at Law  
15 42 Marconi Lane  
16 PO Box 1899  
17 Yankton, South Dakota 57078  
(605) 555-5555

18 For the Defendant: PAUL H. LAREN, Attorney at Law  
19 311 East Juniper Street  
20 Sioux Falls, South Dakota 57104  
(605) 444-4444

21 Also present: Robert Fendant and Marie Fendant.

22  
23  
24  
25

**Sample 15.2(a). Depo Index with Index to Exhibits  
(See also section 7)**

|    |  |        |
|----|--|--------|
| 1  | INDEX TO DEPOSITION                                  |        |
| 2  | GARY WITNESS   |        |
| 3  | Examination by Mr. Linde at 10:30 a.m., 1-10-06..... | 3      |
| 4  | Stipulation re Deposition Exhibit 3.....             | 34     |
| 5  | Question certified.....                              | 59     |
| 6  | Examination by Ms. Fox.....                          | 67     |
| 7  | Examination by Mr. Linde.....                        | 71     |
| 8  | End of deposition at 12:05 p.m., 1-10-06.....        | 73     |
| 9  | INDEX TO EXHIBITS                                    |        |
| 10 | Number and Description                               | Marked |
| 11 | 1. 11-17-01 Avera Emergency Room Note                | 25     |
| 12 | 2. First Chiropractic Center patient notes (2 pp)    | 33     |
| 13 | 3. Yankton Medical Clinic continuation sheet         | 59     |
| 14 | 4. Medical records (8 pp)                            | 67     |
| 15 | 5. Record of traffic citation issued to Pardy        | 70     |
| 16 |  |        |
| 17 |  |        |
| 18 |  |        |
| 19 |  |        |
| 20 |  |        |
| 21 |  |        |
| 22 |  |        |
| 23 |  |        |
| 24 |  |        |
| 25 |  |        |

**Sample 15.2(b). Depo Index with Index to Objections  
(See also section 7)**

|    |   |    |     |     |               |
|----|---|----|-----|-----|---------------|
| 1  | INDEX TO PROCEEDINGS                    |    |     |     |               |
| 2  |   | DX | CX  | RDX | RCX           |
| 3  | LES MILLER                              | 3  | 148 | 153 | 154           |
| 4  | Question certified on page 67, line 12  |    |     |     |               |
| 5  | Question certified on page 162, line 22 |    |     |     |               |
| 6  | * * *                                   |    |     |     |               |
| 7  | INDEX TO EXHIBITS                       |    |     |     |               |
| 8  | <u>Number and Description</u>           |    |     |     | <u>Marked</u> |
| 9  | NO EXHIBITS WERE MARKED HEREIN          |    |     |     |               |
| 10 | * * *                                   |    |     |     |               |
| 11 | INDEX TO OBJECTIONS                     |    |     |     |               |
| 12 | Page 22, line 15                        |    |     |     |               |
|    | Page 22, line 24                        |    |     |     |               |
| 13 | Page 23, line 9                         |    |     |     |               |
|    | Page 67, line 22                        |    |     |     |               |
| 14 | Page 92, line 3                         |    |     |     |               |
|    | Page 93, line 20                        |    |     |     |               |
| 15 | Page 94, line 5                         |    |     |     |               |
|    | Page 148, line 24                       |    |     |     |               |
| 16 | Page 149, line 8                        |    |     |     |               |
|    | Page 149, line 19                       |    |     |     |               |
| 17 | Page 162, line 4                        |    |     |     |               |
| 18 |   |    |     |     |               |
| 19 |   |    |     |     |               |
| 20 |   |    |     |     |               |
| 21 |   |    |     |     |               |
| 22 |   |    |     |     |               |
| 23 |   |    |     |     |               |
| 24 |   |    |     |     |               |
| 25 |   |    |     |     |               |

**Sample 15.3. Sample depo title page with fed info on page 2**

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

---

3 JOHN A. PARDY, ) Civ. No. 06-28178  
4 Plaintiff, )  
5 vs. ) DEPOSITION OF GARY WITNESS  
6 JANIE D. FENDANT, ) January 10, 2006  
7 Defendant. )

---

9 A P P E A R A N C E S

10 JENNEVIEVE CUE, Attorney at Law  
11 PO Box 9218  
12 Yankton, South Dakota 57078  
(605) 555-5555

13 Appearing on behalf of the plaintiff;

14 PAUL H. LAREN, Attorney at Law  
15 311 East Juniper Lane  
Sioux Falls, South Dakota 57104  
(605) 444-4444

16

17 Appearing on behalf of the defendant.

18

Also present: Robert Fendant and Marie Fendant.

19

20 Reported by: Reporter name  
Reporter address

21

22

23

24

25





**Sample 15.6. Statement to be read at the beginning of videotape of depo  
(See also section 11.2)**

This is the beginning of videotape number [1] of  
the videotaped deposition of \_\_\_\_\_, taken  
on behalf of \_\_\_\_\_ in the matter \_\_\_\_\_ vs.  
\_\_\_\_\_, Case Number \_\_\_\_\_, held at \_\_\_\_\_, city,  
state, before Name O'Reporter, Registered Merit Reporter and  
Notary Public in and for the State of South Dakota, officing  
at [reporter's business address]. The videographer is  
\_\_\_\_\_. The attorneys present are \_\_\_\_\_ on behalf of  
the plaintiff and \_\_\_\_\_ on behalf of the defendant.  
Also present at this deposition are \_\_\_\_\_ and  
\_\_\_\_\_.







**Sample 15.10. Example of bill showing pretax subtotal**

ROBERT DOUGHE, RPR  
PO Box 111  
Some City, SD 57000

Telephone (605) 555-1212

---

December 4, 2005

Invoice No. 120405-1

DOUGLAS M. LAWYER, Attorney at Law  
Law Firm Name  
PO Box 111  
Sioux Falls, South Dakota 57000  
(605) 555-2121

Re: Union Co. CIV 04-136: Plaintiff Name vs. Defendant.

Deposition of Bonnie Weber taken in Sioux Falls, South  
Dakota, on 11-23-05. Original and one copy mailed to you  
with cc of exhibits.

|                         |          |
|-------------------------|----------|
| 30 pp x 3.40 is         | 102.00   |
| Fee for exhibits        | 3.40     |
| Postage                 | 3.85     |
| Pretax subtotal: 109.25 |          |
| SD sales tax 4%         | 4.37     |
| Sioux Falls tax 1.92%   | 2.10     |
| Total due and owing:    | \$115.72 |

Please include copy of statement with payment. Thank you!

### Sample 15.11. Paragraphs from different kinds of letters to attorneys.

With this letter I enclose the errata sheet from the deposition of Larry Wolf taken 1-23-02 for you to attach to your copy of the transcript, and the original errata sheet has been attached to the original transcript, which is mailed herewith to Mr. Thrall.

-----

For your information, Dr. Ragnarsson has yet to send me a copy of his Deposition Exhibit 5, the extra medical records he discussed, to be attached to the original of his deposition transcript. As 30 days have now passed, I am forwarding the original transcript to Mr. Thrall without that exhibit. If I receive it, I will forward it on to counsel.

-----

On September 24, 2003, Susan Witness called my office to say she had decided not to read and sign her deposition of August 24, 2003. With this letter I am sending the original transcript to Mr. Thompson. Pursuant to instruction of counsel, the original exhibits were returned to the witness.

-----

I have discovered errors in the transcript of the deposition of Greg O'Connor taken 1-29-04 in Lopez and Villalpando vs. Aramark. On certain pages somehow the word "me" was changed to the word "people" and I did not catch the error before the transcript went out.

Enclosed are corrected pages for you to insert in your copy of the deposition and an ASCII disk with the corrected file on it. I did a word search on the other two depositions, and this error does not occur in them.

Here is a list of the places where the error occurs (in each instance, change the word "people" to "me"):

- Page 36, line 16
- Page 38, lines 14 and 15
- Page 39, line 2
- Page 40, lines 19 and 24
- Page 41, line 5
- Page 42, lines 9 and 18
- Page 43, lines 14, 17, 18, and 22
- Page 44, line 7

I am extremely sorry for the trouble and inconvenience this has caused and hope you will accept my apologies.

**Sample 15.12. Sample page from deposition upon written interrogatories  
(See also section 10.2)**

1 GARY WITNESS

2 was duly sworn and testified as follows:

3 EXAMINATION

4 Upon Written Interrogatories:

5 Q1. Please state your name for the record.

6 A1. Gary Witness.

7 Q2. What is your address?

8 A2. My home or my business address?

9 COURT REPORTER: It just says "What is your address."

10 A2. My business address is 1429 Michigan Street, Volin,

11 South Dakota.

12 Q3. Are you the records custodian of Westside Clinic?

13 A3. Yes, I am.

14 Q4. Did you receive a subpoena duces tecum requiring you to

15 produce copies of medical records regarding Carly Simonsen?

16 A4. Yes, I did.

17 Q5. Please provide those records to the court reporter, to

18 be marked as Deposition Exhibit 1.

19 (Deposition 1 was marked.)

20 Q6. Do these records contain the complete medical

21 records maintained by this clinic regarding Carly Simonsen?

22 A6. Yes, they do.

23 Q7. Are these records kept in the ordinary course of

24 business of Westside Clinic?

25 A7. Yes.



**SAMPLE 15.14. INTERPRETED PROCEEDINGS**  
**(See also section 10.5, 2.2.1)**

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.

**Sample 15.15. Example of Errata Sheet**  
**See also section 6.4**

1 ERRATA SHEET

2 Indicate changes you want to make below, including page  
3 number, line number, the text as shown in the transcript,  
4 what you want to change it to, and the reason for the  
5 change. Example: Page X, line Y, Smith to Smythe,  
6 incorrect spelling.

| 5  | Page  | Line  | Change what to what | Reason |
|----|-------|-------|---------------------|--------|
| 6  | _____ | _____ | _____               | _____  |
| 7  | _____ | _____ | _____               | _____  |
| 8  | _____ | _____ | _____               | _____  |
| 9  | _____ | _____ | _____               | _____  |
| 10 | _____ | _____ | _____               | _____  |
| 11 | _____ | _____ | _____               | _____  |
| 12 | _____ | _____ | _____               | _____  |
| 13 | _____ | _____ | _____               | _____  |
| 14 | _____ | _____ | _____               | _____  |

15 I have read my deposition and have noted any changes I wish  
16 to make to it above. Signed and dated this \_\_\_\_ day of  
17 \_\_\_\_\_, 20\_\_.

18 \_\_\_\_\_  
19 BONNIE WEBER

20 I witnessed the above signature on the \_\_\_\_ day of  
21 \_\_\_\_\_, 20\_\_.

22 \_\_\_\_\_

23 (If witnessed by a notary public:) My commission expires  
24 \_\_\_\_\_.

**Sample 15.16. Variations on letter to witness to come read and sign depo.  
See also section 6**

date

address

Re: Your deposition in casename

Dear addressee :

Your deposition is ready for you to read and sign. Rather than risk losing the original transcript in the mail, I

have sent you a file copy to be read and signed.

have sent your attorney a file 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.

Please follow these instructions:

1. DO NOT WRITE ON THE TRANSCRIPT ITSELF. Write only on the Errata Sheet I have placed loosely in front of the transcript. Changes you wish to make to the form or substance of the deposition must be written on the Errata Sheet page. 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.
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 from the date you receive this transcript/letter in which to read and sign. If you have any questions, please call me at [phone number].

Sincerely,

Reporter's name and address

cc: attys' names

**Sample 15.17. Sample notices of delivery of deposition after read/sign.**

**15.17(a). Notice that transcript is being delivered to counsel unsigned after a copy was sent to the deponent directly, but deponent did not respond.**

NOTICE OF DELIVERY OF DEPOSITION

PLEASE ATTACH TO YOUR COPY OF  
THE DEPOSITION OF: JANE DOE, taken September 9, 2004

Re: Jane Doe  
vs. Civ. No. 007  
John Doe

The original of the above deposition has been filed with counsel, unsigned, pursuant to provisions of the Rules of Civil Procedure. Said deposition was mailed to the deponent with instructions to read and sign and return the deposition, with no response from the deponent, and said deposition remains unsigned.

Dated at Rapid City, South Dakota, this 19th day of March, 2006.

\_\_\_\_\_  
Reporter Name, RMR

**15.17(b). Notice that original transcript is being delivered to counsel unsigned after a copy was delivered to deponent's counsel, but deponent did not respond .**

NOTICE OF DELIVERY OF DEPOSITION

PLEASE ATTACH TO YOUR COPY OF  
THE DEPOSITION OF: JANE DOE, taken September 9, 2004

Re: Jane Doe  
vs. Civ. No. 007  
John Doe

The original of the above deposition has been filed with counsel, unsigned, pursuant to provisions of the Rules of Civil Procedure. Said deposition was provided to deponent's counsel with instructions to have the deponent read and sign and return the deposition, with no response from the deponent, and said deposition remains unsigned.

Dated at Rapid City, South Dakota, this 19th day of March, 2006.

### **Sample 15.18. REALTIME DISCLAIMER**

NOTICE: This realtime "transcript" of proceedings is produced in instant, rough-draft form. There will be discrepancies between this rough-draft form and the final, certified transcript. This rough-draft form is NOT certified as correct. Use of the rough-draft form constitutes legal acceptance of the following agreement:

The user of this instant, rough-draft form of transcript agrees to use it only as lawyer's notes, not to be cited as a reporter's edited, proofread, corrected, certified transcript of proceedings. The user also agrees not to give, share, copy, fax, scan, or in any way whatsoever distribute this instant form of transcript beyond the user's own office and office personnel. 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.

15.19. Federal page format. We could not get the formatting to hold, so please see hard-copy handout.

1

1 Q. This is Sample 15.19, 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. This is what a page looks like for federal  
9 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?

**Sample 15.20. SD appeal transcript format. Formatting wouldn't hold on computer; please see hard-copy handout.**

1 Q Sample 15.20 is a page in the format for appeal  
2 transcripts as set out in SDCL 15-26A-93(A).  
3 A Is it required for depositions?  
4 Q No. Appeal transcripts shall consist of volumes of 250  
5 pages or less, using 8 1/2" x 11" white opaque paper with 25  
6 prenumbered, double-spaced lines per page.  
7 A Each page shall have a page box, 3/4" top and bottom  
8 margins, a 1.5" left margin, and a 1/2" right margin.  
9 Q Use 10 characters per inch; questions and answers shall  
10 start with the Q or A flush at the left margin, with two  
11 spaces between the Q or A and the text of the question;  
12 colloquy shall start three spaces from the left margin.  
13 MS. JONES: The pages shall be consecutively numbered  
14 throughout the entire transcript (not according to volume),  
15 page number located at the bottom center of each page. The  
16 title page of each volume shall include a 1.5" blank space  
17 at the top of the page; the trial court name, location and  
18 case number; the case name; the type of proceeding; the date  
19 of the proceeding reported in that volume; the name of the  
20 judge before whom the proceedings occurred; appearances; the  
21 volume number and the pages included in the volume. An  
22 index of witnesses, motions, and exhibits shall follow the  
23 cover page of the first volume of each transcript; each  
24 major event of the proceeding shall be listed separately and  
25 identified by the transcript page number at which it begins.

Sample 15.21. Contract between State of SD and Freelance Court Reporter (p. 1 of 2)

CONTRACT FOR COURT REPORTING SERVICES BETWEEN

|   |  |
|---|--|
| Name:<br>Address:<br>City, State, Zip:<br>Phone No. | Unified Judicial System<br>Of South Dakota |
|---|--|

hereinafter referred to as Reporter

hereinafter referred to as UJS

**The UJS hereby enters into a Contract for Court Reporter Service with the Reporter.**

**I. REPORTER**

- A. The Reporter's service on this contract may be provided from July 1, 2007 through June 30, 2008.
- B. The Reporter is not employed as a Court Reporter for the State of South Dakota and is not deemed as an employee of the UJS by virtue of this contract.
- C. The Reporter is not required to accept a job assignment.
- D. The Reporter will provide the stenograph machine, machine paper and any supplies associated with the machine.
- E. The Reporter will perform Court Reporting or other duties required by the assigned Judge.
- F. The Reporter must include a W-9 tax form with this signed contract unless one has been submitted for a previous contract with the UJS.
- G. The Reporter will submit a bill for service detailing the hours of work, hours of travel and travel expenses for the agreed compensation. The Reporter will sign a voucher for the billed amount. The voucher must be approved by the Circuit Judge or Law Trained Magistrate Judge who the Reporter worked for and the Presiding Judge or his/her designee of the Circuit.
- H. The Reporter agrees to become familiar with the requirements of SDCL 15-26A-51 regarding preparation of transcripts and further agrees to abide by those requirements.
- I. The Reporter acknowledges receipt of a copy of SDCL 15-26A-51 and copies of current reporting forms to be used for compliance with that appellate rule.
- J. The Reporter agrees to advise the UJS of any change of address for a period of one year subsequent to the completion of any work performed pursuant to this contract.
- K. Each reporter in the firm agrees to complete the attached "Reporter Guardian" form and return it to the State Court Administrator's Office with this contract.
- L. Each reporter agrees to notify the named "Reporter Guardian" of the location in which their notes are stored.
- M. The Reporter's Employment ID number is \_\_\_\_\_
- N. In the performance of work, duties and obligations imposed by this Agreement, the Reporter is at all times acting as an Independent Contractor practicing profession and not as an employee of UJS. A copy of Reporter's current professional, local, state or other business licenses required to conduct the services stated herein, will be provided to UJS upon request. The Reporter shall not have any claim under this Agreement or otherwise against UJS for vacation, sick leave, retirement benefits, social security or worker's compensation benefits. The Reporter shall be responsible for federal and state payroll taxes.
- O. Reporter shall perform the Reporter's work in accordance with approved industry methods and standards of practice in the Reporter's profession.

**II. UNIFIED JUDICIAL SYSTEM OF SOUTH DAKOTA**

- A. The UJS guarantees no employment of the Reporter's service during the period of this agreement. In the event the Reporter's services are used the UJS will pay \$28 per hour excluding travel time.
  - 1. When the Reporter's services are used the Reporter will receive a minimum of two hours of work for the appearance.
  - 2. If the Reporter is not notified 24 hours in advance of a cancelled appearance date the Reporter will be allowed two hours of work for the day the Reporter was scheduled.
- B. The UJS will pay \$12 per hour for travel time from the Reporter's residence to the location of the job assignment if the mileage exceeds 30 miles one way.
- C. The Reporter's travel expenses will only be paid when the distance from the Reporter's residence to the locations of the job assignment exceeds 10 miles one way.
- D. The UJS will pay the Reporter's meals, lodging and mileage at rates set out in the UJS Travel and Subsistence Regulations. A receipt for lodging must be provided.



**Sample 15.22. Court Reporter Guardian Program form**

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM**

|   |
|---|
| <i><b>Court Reporter Guardian Program</b></i><br>Agreement Form |
|---|

|  |
|--|
| <b>Official/Freelance Court Reporter</b><br>(Circle One) |
| Name: _____  |
| Address: _____   |
| City, State, Zip Code: _____                             |
| Work Telephone # _____ Home Telephone # _____            |

I, \_\_\_\_\_, an official/freelance court reporter for the South Dakota  
(Circle One)

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 the location of my notes. In the event that I should decease or become incapacitated, the Court Reporter Guardian, who I appointed above, will be responsible for my court reporting notes.

|   |
|---|
| <b>Court Reporter Guardian</b>                |
| Name: _____                                   |
| Address: _____                                |
| City, State, Zip Code: _____                  |
| Work Telephone # _____ Home Telephone # _____ |

Court Reporter Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Court Reporter Name (printed): \_\_\_\_\_ Circuit: \_\_\_\_\_

**Sample 15.23. Sample state voucher followed by instructions**

| <p>X Do not use this space</p>   | <p>State of South Dakota<br/><b>VOUCHER</b></p>   |  |               |          |      |                        |        |        |               |                                       |
|--|---|--|---------------|----------|------|------------------------|--------|--------|---------------|---------------------------------------|
| <input type="checkbox"/> Direct<br><input type="checkbox"/> (Z) Travel<br><input type="checkbox"/> (N) Non-Cash<br><input type="checkbox"/> (C) Cash Receipt                       | <input type="checkbox"/> (T) Cash Transfer<br><input type="checkbox"/> (I) Investment<br><input type="checkbox"/> (B) Appropriation Budget Transfer | <input type="checkbox"/> (E) Expenditure Correction<br><input type="checkbox"/> (R) Revenue Correction<br><input type="checkbox"/> (P) Period Ending Adjustment<br><input type="checkbox"/> (A) Other Adjustment |               |          |      |                        |        |        |               |                                       |
| <b>AGENCY USE ONLY</b>   |   | <b>APPROVAL OFFICE ONLY</b>  |               |          |      |                        |        |        |               |                                       |
| Application Area   | Vendor Number   | Invoice ID   |               |          |      |                        |        |        |               |                                       |
| Date   | Purchase Order ID   | Document ID  |               |          |      |                        |        |        |               |                                       |
| TO: (Payee, Billed Agency)   |   | FROM: (Department, Billing Agency)   |               |          |      |                        |        |        |               |                                       |
| <b>FUNDING INFORMATION</b>   |   | <b>Debit/Credit</b>  |               |          |      |                        |        |        |               |                                       |
| S<br>E<br>G  | Company   | Account  |               | Center   |      | Project                |        | Amount | Code          | UC<br>S<br>O<br>D<br>E<br>D<br>R<br>E |
|  |   | Required   | User          | Required | User | Company                | Number |        |               |                                       |
| 1  |   |  |               |          |      |                        |        |        |               |                                       |
| 2  |   |  |               |          |      |                        |        |        |               |                                       |
| 3  |   |  |               |          |      |                        |        |        |               |                                       |
| 4  |   |  |               |          |      |                        |        |        |               |                                       |
| 5  |   |  |               |          |      |                        |        |        |               |                                       |
| 6  |   |  |               |          |      |                        |        |        |               |                                       |
| 7  |   |  |               |          |      |                        |        |        |               |                                       |
| 8  |   |  |               |          |      |                        |        |        |               |                                       |
| 9  |   |  |               |          |      |                        |        |        |               |                                       |
| 10   |   |  |               |          |      |                        |        |        |               |                                       |
| Total  |   |  |               |          |      |                        |        |        |               |                                       |
| Description of Service, Product, or Transfer   |   |  |               |          |      |                        |        |        |               |                                       |
|  |   |  |               |          |      |                        |        |        |               |                                       |
| Total  |   |  |               |          |      |                        |        |        |               |                                       |
| <p>I declare and affirm under the penalties of perjury that this claim has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.</p> |   |  |               |          |      |                        |        |        |               |                                       |
| _____<br>Claimant  |   |  | _____<br>Date |          |      | _____<br>Authorization |        |        | _____<br>Date |                                       |
| _____<br>  |   |  | _____<br>     |          |      | _____<br>Authorization |        |        | _____<br>Date |                                       |

## Sample 15.23 part 2: Instructions for filling out state voucher:

1. In the Payee/Billed Agency box in the upper left, put your name and address. In the Date box put the date you are doing the billing. If you use Invoice Numbers in your bookkeeping system, you may include your invoice number in the box so designated. You can ignore the other boxes in that upper left section.
2. In the Department/Billing Agency box in the upper right, put the name of the attorney from the attorney general's office who ordered the transcript, as well as their billing address. Ignore the other boxes in the upper right—they will fill in the date they received the transcript, the number this voucher will be given in their bookkeeping system, and the date they're sending this voucher on to the state auditor for payment.

(Different people give different instructions for filling out the top part of the voucher, but whether you put your name in the Payee/Billed Agency on the left or the Department/Billing Agency on the right, someone will figure it out and send you your money.)

3. Skip the Funding Information section.
4. In the Description of Service, Product, or Transfer section, list each transcript separately, showing the number of pages and the per-page charge for each transcript, and putting the total cost for each over in the far right column:

|   |         |
|---|---------|
| Grand Jury Proceedings re Mark Jones O&1 sent to you (10 pp x 3.80) | \$38.00 |
| Grand Jury Proceedings re Mary Smith O&1 sent to you (20 pp x 3.40) | 76.00   |
| Postage to send transcripts to you:                                 | 4.60    |

5. Add up everything up and put that amount in the "Total" section at the bottom. Because this is billed to a government agency, you do not charge tax.
6. Sign on the Claimant line in the lower left, and put the date you sign.
7. Keep the bottom copy (the gold copy) for your records, and send the voucher to the attorney named in the Department/Billing Agency box above.

## 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

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](http://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.

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](http://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](#).

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](http://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](http://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**

**16.1. Hiring of official court reporters.** Official court reporters in South Dakota are hired for each circuit by the court administrator in each circuit.

**16.2 . Official work.** According to Rule 9.2 of the UJS Personnel Rules (revised January 2008) “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 addition to reporting and transcribing court proceedings, a part of being an official reporter often includes typing orders and rulings for your judge. Sometimes judges will dictate onto a dictating machine and you will transcribe the orders from cassette tapes. Other judges will dictate directly to you and you will transcribe from your steno notes. Many reporters become experienced enough with orders that they will type orders on their own for their judge’s signature. Official reporters also typically type letters, both work-related and personal, for their judges. Some reporters do the scheduling for the judge and also fill out the judge’s travel vouchers. By doing these tasks the court reporter becomes even more valuable to the judge.

**16.3. Official reporters doing freelance work.** Freelance work is considered extra-judicial employment, and official reporters, like any other UJS employee, may receive authorization from the Chief Justice to take extra-judicial employment.

Officials should read UJS Personnel Rule 9.3 in their employee handbook for all rules pertaining to “Extra-Judicial Employment.” They should not take freelance work if their official work is not current. Rule 9.3 (B)(3) defines a court reporter’s work as considered “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.

**16.3.1. Grand jury proceedings.** Rule 9.2 of the UJS Personnel Rules states that official reporters “may record and transcribe grand jury proceedings at the discretion of the presiding circuit judge,” and if the presiding circuit judge approves it, then it counts as official work. This means 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. However, grand jury work is usually county work, not UJS work, so one may assume the official may not claim overtime from the UJS, but may charge the county an appearance fee for any reporting done after normal business hours. The official is allowed to work on grand jury transcripts during normal

office hours and is permitted to bill for the pages.

**16.3.2. Officials performing freelance work for other state entities.** Rule 9.2 of the UJS Personnel Rules (revised January 2008) states that “‘Freelance’, ‘outside’ or ‘depositional’ work is work that does not involve the recording and/or transcribing of official UJS court proceedings. *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* [editor’s emphasis]. 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.”

Rule 9.2(C)(1) says, “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”] and payment is made 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.”

**16.3.3. Officials performing depositions and other freelance work.** As stated in section 16.3.2 above, court reporters may not perform any type of freelance work (except grand jury work—see section 16.3.1 above) during normal office hours without taking annual leave. Because annual leave is being taken, an official may charge an appearance fee. However, per Rule 9.2(C) above, “the preparation of transcripts from such work may not be performed during normal office hours.” Additionally, state supplies, such as paper and printing supplies, may not be used for the preparation of freelance transcripts.

**16.4. Court reporter annual training.** Court reporter training is provided by the state on an annual basis in conjunction with the Judicial Conference every fall. All court reporters not attending the annual training session must take annual leave unless the presiding judge has excused them because they are needed for court business. A copy of that excuse and the reason for it is to be forwarded to the State Court Administrator’s Office. Section 22.16 is a copy of the Waiver of Attendance Form. (See also UJS Policy 2-SC-85)

**16.5 . Travel vouchers.** If you must travel for any work-related purpose, such as attending the Annual Judicial Conference or reporting in another city, as is common within some circuits, you must fill out and complete a travel voucher. Travel vouchers can be obtained from the Court Administrator or Central Supply in Pierre. The current (July 2007) rates for miles, meals, and lodging are as follows:

Mileage: .37/mile

Meals: Breakfast - \$5 in state, \$8 out of state; Lunch - \$9 in state, \$11 out of state;

Dinner - \$12 in state, \$17 out of state

Lodging: \$46.50 state rate; \$150 plus tax out of state (If you are unable to obtain a state rate, you are responsible for the difference.)

(See Section 22.15 for a sample travel voucher. Original receipts must be attached for lodging and miscellaneous expenses.)

**16.6. Impartiality.** A court reporter must remain impartial. It is important to treat each side of the case in the same courteous way. Official reporters are often requested by attorneys to transcribe a portion of the testimony during a trial and to keep the transcript request from the opposing side. In this situation the reporter should follow NCRA Advisory Opinion 22, which states in part:

The Committee on Professional Ethics believes that a reporter requested to transcribe an excerpted portion of testimony for one party to an action before the proceeding resumes the next day, 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 Provision No. 1 of the Code.

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.

In other words, if you are asked to provide an excerpt of testimony, 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.

**16.7. Familiarity with a witness.** Occasionally a reporter will be faced with a witness who is personally known to the reporter. If you are in the middle of a trial and a close relative is called as a witness, it is proper to alert the judge before the witness takes the witness stand.

Sometimes if a witness or party knows the court reporter, it is embarrassing for that person to have the reporter know the more intimate details of the case. In that instance you may want to switch assignments with another reporter, if possible, so that the witness or party will not be made uncomfortable. If there is not a way to switch with another reporter, it is helpful to the person in the awkward situation if you tell him/her that you will not repeat anything about the case with others, including that you even saw that person in that setting.

**16.8. Do not give legal advice.** A judge cannot give legal advice. A court attendant cannot give legal advice. A court reporter definitely cannot 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 and you could suggest that the person get a lawyer.

**16.9. Case Background.** An official reporter can hear many types of cases: criminal (where a defendant is charged with a crime), civil, divorce, civil equity (where the plaintiff desires a resolution of a case that usually does not ask for money damages – e.g.,

an injunction), civil law (seeking money damages), probate (e.g., estates and guardianships), juvenile (including abuse & neglect cases), post conviction relief actions (usually an inmate claims there was a deficiency in the trial process), adoptions, etc.

On longer hearings it is always a good idea to review the court file for names and terminology in order to familiarize yourself with the case and develop potential briefs for the more difficult terms. Making a job dictionary beforehand will result in cleaner realtime.

**16.10. Opening 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. Everyone will rise while the judge takes the bench. The court reporter should also stand to show respect for the judicial position.

The court reporter can also be on alert for people wearing sunglasses or hats in the courtroom and ask those people to remove such items.

**Closing court:** Occasionally a judge will like you to say, “Please rise” as the judge leaves the bench at recess. Check with the judge.

**16.11. Administering an oath.** In South Dakota the judge, court reporter, or clerk usually administers the oath to witnesses in the courtroom. See section 2 for further instruction on administering oaths. Remember that under current South Dakota law a notary public may not swear a witness over the telephone. The witness must be in the presence of the notary public or appearing via an interactive audiovisual device in order to receive the oath. (See SDCL 15-5A-1) In court hearings it is permissible to administer the oath via audiovisual device, and many judges interpret this to include the telephone.

**16.12. Retention of notes.** Transcripts of some proceedings are ordered months and even years after the record is made. It is important to have a good system in place for storage and retrieval of your stenographic notes. Most reporters utilize diskettes and CD’s as well as paper notes. Whatever system you use, be sure to have sufficient backups. It is also 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.

Official court notes and official audio recordings 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. 4/02). Official audio recordings include FTR and Court Smart recordings, not reporters’ personal backup recordings.

The UJS Records Retention and Destruction Schedule can be found at <http://www.sdjudicial.com/downloads/appdxDnRcdsRetenDS.pdf>.

**16.13. Guardian program.** It is a good idea to designate a guardian for your

stenographic notes. The guardian should be familiar with the software you use and should have a fairly updated copy of your master dictionary. In the event that you are no longer able to prepare transcripts, for whatever reason, your guardian could step in and prepare the necessary transcripts. You should either let your local court administrator's office know who the guardian is for your notes or leave an indication somewhere in your office.

In jury trials with medical or technical terminology, 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 so that when the transcript is prepared at a later date you will remember the brief and also someone else typing up your notes will know what you have typed.

**16.14. Reporting transcript fees.** Under SDCL 16-2-23 official reporters are to fill out a form at the end of each year indicating the state-paid fees they were paid for preparation of transcripts and the expenses incurred in generating said transcripts. See section 22.14.

## SECTION 17. MAKING THE RECORD

**17.1. What needs to be reported?** The best answer is, anything the judge asks you to report! At the circuit court level, testimony is usually 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.”

Opening statements may or may not be reported. 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.” If the opening statements are omitted from the record, it is wise to have the judge indicate on the record that he or she is not requiring the reporting of the opening statements or have counsel indicate their agreement to waive the reporting of opening statements on the record. The reporter is still required to sit in the courtroom during the opening (and closing) arguments, because if objections are made, the objections need to be reported. The reading of the Trial Information or Indictment may or may not be reported. Motions are sometimes reported and sometimes not. Bench conferences are sometimes reported and sometimes not. 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.

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

(The Trial Information was read to the jury.)  
(The jury was selected and duly sworn.)

See section 17.11 for more information on parentheticals.

New reporters may want to ask their judge what the judge’s policy is on the following:

1. Does the judge want the reporter to say “All rise” when the judge enters the courtroom?
2. Does the judge want the reporter to report the opening statements if the attorneys don’t ask to have them reported?
3. Does the judge want the reporter to report the reading of the indictment or information, or will a notation that it was read suffice?
4. Does the judge swear in the witness, or does the court reporter?
5. Does the judge want side-bar or at-the-bench conferences reported?
6. Does the judge want the reporter to report closing statements if the attorneys don’t

ask to have them reported?

**17.2. Discussions off the record.** If the judge asks you to go “off the record,” write “discussion off the record” in your notes and stop writing until you are told the proceedings are back on the record. If a lawyer, however, asks to go off the record, make sure it’s okay with the opposing lawyer and the judge. Sometimes the parties forget to tell you 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. “Discussion was held off the record” can always be later inserted in the transcript.

**17.3. Bench (side-bar) conferences.** Prior to the commencement of a jury trial, you should discuss with the judge you are working for how he or she wishes to handle the reporting of bench discussions. The judge may or may not want them to be reported. If you are not required to report bench conferences, it is wise to stand or raise your hands so that the attorneys are aware you are not reporting the discussions.

**17.4. Reporting the Reading of Depositions.** Often in a trial a deposition of an expert witness will be read into the record or shown to the jury by videotape. Usually those are not “re-reported” by the official reporter. However, if there are several objections or only parts of the deposition are to be read in, the judge might have the reporter report the deposition. Be sure to get a copy of the deposition so that you can put the quotes in the right places when preparing the transcript.

If you don’t report the reading of the deposition, be sure to put in a parenthetical such as “(The deposition of John R. Smith, M.D., was read to the jury.)”

**17.5. Reporting Jury Voir Dire.** A jury is selected by a process called “voir dire,” which means “to speak the truth.” It is a preliminary examination to determine the competency of a proposed juror to sit on the jury.

Usually the jury voir dire is reported, but in civil matters the reporting of jury voir dire can be waived by stipulation of all counsel. If the reporting of jury voir dire is waived, the reporter must include a parenthetical so indicating. For instance, you could include the following in your transcript:

(The reporting of jury voir dire was waived by stipulation of the parties.)  
and  
(A jury was duly impaneled and sworn.)

In felony criminal trials the reporting of jury voir dire cannot be waived.

When reporting jury voir dire, it is advisable to request that the attorneys use each potential juror’s name when questioning that juror so that you can properly identify the juror in the transcript by their name, such as “JUROR ANDERSON:” or “MR. ANDERSON.” You may also wish to prepare a seating chart with the potential jurors’

names on it for your own reference. If you are not able to identify a juror that has spoken, it is acceptable to identify the juror in the transcript with “A JUROR:”.

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.)

Once the jury has been selected to try the case, they will again be sworn. You should include another parenthetical such as:

(The jurors were sworn to try this case.)

A witness can also be examined on “voir dire” to establish whether that witness is competent to testify about a certain matter.

**17.6. Reporting telephone/teleconference proceedings.** A lot of post-conviction relief actions or habeas hearings are done with the judge, attorneys, and court reporter in chambers while the inmate is on the phone. Other times attorneys will appear via telephone for motions.

It is often very difficult to hear someone over the phone, and they often don’t hear you if you ask them to speak louder or slow down. Ask your judge before the hearing to remind the witness or party to speak clearly.

Under current South Dakota law, a notary public may not swear a witness over the telephone. The witness must be in the presence of the notary public or appearing via an interactive audiovisual device in order to receive the oath. (See SDCL 15-5A-1)

**17.7. Reporting grand jury proceedings.** Official reporters may report hearings to select grand juries. Grand jury panels are usually selected to serve terms of one year to one and a half years. Once the grand jury has been impaneled, the state’s attorney usually hires a freelance reporter to report the grand jury proceedings or tapes the proceedings. See section 10.1 of the freelance portion of this manual for instruction on reporting grand jury proceedings.

If an official reporter is reporting grand jury proceedings, that is not considered freelance work and the reporter does not need to take annual leave, but the reporter cannot bill for the time. See section 16.3.1 above.

**17.8. Reporting jury questions.** After jurors have retired for deliberations, they will often have questions of the Court or desire additional information. Any information the Court gives them must be given in the presence of, or after notice to, the plaintiff’s attorney and the defendant or his/her 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.

**17.9. Stopping the Action!** It is important to control the record. If witnesses (or attorneys) start talking too fast for you to get it all down, stop them! Of course, do so politely (but forcefully if necessary). It is sometimes difficult, especially as a new reporter, to get the courage to take control of the situation, but it will make your transcription time so much easier.

It is preferable not to stop a witness to ask for a spelling that can easily be found elsewhere; but feel free to interrupt and ask for a spelling if it is, for example, the name of a person from Thailand that the witness knew 25 years ago and you know it is not in the court file or in exhibits! Even though it is preferable to wait for a break to ask for a spelling or clarification of what a witness said, sometimes that witness will be out of the courtroom before you have a chance to take a break.

It is also preferable not to stop an attorney during opening or closing arguments during a jury trial.

**17.10. 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.

**17.11. Parentheticals.** Although reporters cannot interpret the actions of a witness, you can indicate that there is an action taking place. For instance, if a witness says, "Maybe about this far," and spreads his arms several feet apart, do not interpret it in your notes to say, "The witness spread his arms three feet apart." You can write, however, "The witness indicates."

Occasionally something will happen in the courtroom that perhaps should be indicated on the record; but unless it is spoken, do not write it down yourself. For instance, if a defendant suddenly jumps up, starts running toward the door and after a scuffle breaks out he is removed from the courtroom, the judge or attorney should say, "Let the record show that the defendant has been removed from the courtroom."

It is important to show who was present for the record. The following are examples of parentheticals used in official reporting:

(Trial commenced at 9:00 a.m. with the Court, counsel and parties present.)

(Trial commenced at 10:00 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 outside the presence of the jury.)

(Hearing recessed at 10:30 a.m.)                      (Hearing resumed at 10:45 a.m.)  
(A brief recess was taken.)                              (Discussion was held off the record.)  
(Trial recessed at 4:30 p.m. on the 1<sup>st</sup> day of August, 2002.)  
(The deposition of Dr. John Doe was read to the jury.)  
(The videotaped deposition of Dr. John Doe was shown to the jury.)  
(The witness indicates.)                                      (The witness complies.)  
(The jurors respond.)    (No audible response.)  
(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 by the court reporter.)  
(Opening statements were given by counsel for the state and counsel for the defendant.)  
(Closing arguments were given by counsel.)  
(Trial concluded at 4:30 p.m. on the 10<sup>th</sup> day of May, 2001.)

## **17.12. Transcribing from electronic recordings.**

**17.12.1. (Inaudible), (indiscernible), (unintelligible).** 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 there is no need to use (inaudible) or (unintelligible) in the transcript.

If an (inaudible) 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 unintelligible portion clarified, such as in this example:

A. We bid (inaudible).

Q. What was that? Would you repeat what you just said? The court reporter

didn't hear it.

A. Sorry. I'll take it off speaker phone. Is this better?

Q. Yes.

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

Court reporters who have been taught to "get it all down" may not be sure how to deal with garbled recordings where words may be indecipherable or inaudible. This manual recommends the following guidelines for such situations:

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

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

MR. SMITH: (Inaudible.)

THE COURT: Thank you.

(Unintelligible) means something can be heard on the tape, 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.

If a question is asked and no answer can be heard, you may wish to use (No audible response) instead of (Inaudible). Some people feel (Inaudible) implies there was a response, but it couldn't be heard, whereas (No audible response) implies there *may* have been a response, or there may have been no response at all, not even a shrug or a shake of the head.

Some reporters use "indiscernible" instead of "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"?

**17.12.2. 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 unintelligible portion of a recording? If what you are transcribing is not a confidential matter, like

grand jury or juvenile cases, ask a few other people if they can understand what is being said. If the judge who was present is readily available, ask the judge to listen. If after three playbacks the words cannot be understood by you or the people you asked for help, put (unintelligible) and move on. If you have time after you have finished the transcript, go back to those portions where you put (unintelligible) and listen to the tape again. You may be able to understand the words once you have heard the entire context of the matter. If there are a lot of (unintelligibles) you may need to ask the attorneys for the parties to listen to the recording against the rough draft to try to reconstruct the record.

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 be tempted to assume that what you typed was what was actually said even though you can't certify that those words are positively verbatim.

An Indiana court handbook says, "In the event lengthy passages are inaudible, a court reporter should confer with the judge first, and in 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."

**17.12.3. What constitutes "verbatim"?** In several 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. If you try, where are you going to draw the line?

Are you really going to try to differentiate between *gonna* and *gunta* and *gohn* and *goin' tuh* each time you decide someone didn't pronounce "going to" correctly? What is correctly? Really, when's the last time you heard someone pronounce that final "g" in "going"? Are you going to differentiate between "the" pronounced with a long "e" sound and "the" pronounced with an "uh" sound? And how are you going to differentiate between a rolled "r" and an unrolled "r" or between a dental "d" sound vs. the alveolar "d" sound?

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: *beautifullest*, *aggrigated*, *defugalty*. No [sic] is needed. Attorneys realize people use words like this, 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.

There are, of course, 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 the context of the record:

- 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.

**17.12.4. More on *ums* and *uhs*.** Re *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.

There are, of course, exceptions to every rule. If an *um* or *uh* is necessary to the understanding 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?

#### **17.12.5. Yes and no and variations thereon:**

"Uh-huh," according to the Merriam Webster Collegiate Dictionary, Tenth 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" or in such a way that the vowel sound is the same as the vowel sound in "pat" or "bed."

"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.

**17.12.6. [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 witness's speech patterns. 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.

## SECTION 18. EXHIBITS

**18.1. Exhibits received.** An exhibit that is marked and then offered and received into evidence is 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. In most circuits in South Dakota a clerk will be in the courtroom and will be in charge of the exhibits once they have been received into evidence. If a clerk is not available, some judges ask the court reporter to take charge of the exhibits. Keep a list of what exhibits are offered and whether they were rejected or received into evidence so that you will know which ones you are supposed to have, and also, at the end of a jury trial, 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.

**18.2. Offer-of-proof exhibits.** Some exhibits are treated differently than others. Occasionally an exhibit will be offered, there will be an objection, and the judge will sustain the objection. If the offering attorney then asks that it be admitted as an offer of proof, that exhibit will not go to the jury. However, it does get filed with the clerk's office.

When filing the exhibits, some reporters put the offer-of-proof exhibit in the same envelope with the other exhibits. Be sure to note on the envelope that "Exhibit \_\_\_\_\_, offer of proof, not to go to the jury," or language to that effect. Other reporters put the offer-of-proof exhibits in a separate envelope.

**18.3. Exhibits not received.** Exhibits are sometimes offered but then objected to and not received into evidence. These exhibits should **not** go to the jury. Some judges like to include the offered (but not received) exhibits with the exhibits filed with the clerk (and noted on the envelope that they were not received), because the failure of the court to receive those exhibits could be an issue on appeal.

**18.4. Depositions marked as exhibits.** Depositions are often marked as exhibits. These usually do not go to the jury because they would overemphasize the deposition testimony as opposed to live testimony. Check with the judge if you are unclear.

**18.5. 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 there are a few documents that attorneys often read from during the trial, make a copy of those documents and wrap them around your notes or keep them in a file, especially if you believe you will need to prepare a transcript. Some exhibits can be destroyed after several years, and you will be glad you have the documents to refer to.

When marking exhibits, be careful not to cover up anything important. If you're unsure, ask the attorney who is offering the exhibit where he would like the sticker placed.

## **SECTION 19. TRANSCRIPT PREPARATION**

**19.1. Ordering the transcript.** Not every record an official reporter makes will be transcribed. In fact, most records will not be put into a transcript form. A transcript can be ordered for appeal or nonappeal purposes.

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." [emphasis theirs] Apparently in the past some court reporters routinely transcribed arraignments and sentences even when the attorneys had not requested them. To stop this practice, the presiding judges made it a 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." 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, and a court order authorizing the transcript is not required. But see section 21.1 below regarding juvenile matters and other closed or confidential proceedings.

**19.1.1. Transcripts for nonappeal purposes.** A nonappeal transcript can be ordered formally through a prepared order or letter or informally through a telephone call or verbal request in court. A nonappeal 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. A party may request an entire hearing be transcribed or only a portion, such as an excerpt of a witness's testimony or the judge's findings. Requesting payment in advance for the transcript may be advisable, especially when dealing with pro se parties.

**19.1.2. Transcripts for appeal purposes.** If the transcript 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. 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 22.11 on attachments referencing SDCL 15-26A-51.) The reporter should indicate 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. Once the Order for Transcript has been endorsed, a copy is to be filed with the trial clerk and the original is to be mailed to the Clerk of the Supreme Court at the following address:

Clerk of the Supreme Court  
500 East Capitol  
Pierre, SD 57501-5070

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.” See section 22.10 for a sample “Extension Request Form”.

**19.2. Appeals: Step-by-step.**

1. Endorse the “Order for Transcript” and consider prepayment options. (See section 19.1.2)
2. Make copies of the original endorsed order for the trial clerk and the ordering party and deliver the same.
3. Send the original endorsed order to the Clerk of the Supreme Court.
4. Prepare the transcript according to the SDCL guidelines in Form 3 in the Appendix of Forms. (See section 19.3)
5. File the original transcript with the trial clerk. (If the transcript is to be paid for by the county, as in the case of an indigent defendant, a “Court Reporter Transcript Compensation/Certification Form” must be presented to the trial clerk for signature upon filing of the original transcript. See section 22.6.)
6. Send or deliver copies of the original transcript to the attorneys for each party to the appeal. (If the transcript is to be paid for by the county, you must also secure the signature of the ordering party on the “Court Reporter Transcript Compensation/Certification Form.”) In criminal and abuse and neglect cases, a copy of the original transcript must be sent to the Attorney General’s Office rather than to the State’s Attorney’s Office. The A.G.’s mailing address is: Attorney General’s Office; 1302 E. Hwy 14 Ste. #1; Pierre, SD 57501.
7. Fill out the “Court Reporters’ Reporting Form” (See section 22.8) and deliver it via email or regular mail to the Clerk of the Supreme Court. Email the form to Shirley.Jameson-Fergel@uj.s.state.sd.us.
8. Bill using appropriate forms or invoices. (If the transcript will be paid for by the county, the “Court Reporter Transcript Compensation/Certification Form” must be completed and attached to a “Request for Payment” form (or county voucher, in some places). (See section 22.7) These forms should be submitted to the Court Administration Office or directly to the County Auditor, depending on the preference of the Administration Office. A sample invoice can be found in section 22.9.

**19.3. Transcript preparation.** The SDCL Appendix of Forms, Form 3, sets out the proper format for all transcripts prepared for appeal purposes. The same format should be used for all transcripts. Form 3 indicates as follows:

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.
2. Each page shall have ruled margins with ¾" top and bottom margins, a 1 ½" left margin, and a ½" right margin.
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.
4. The pages shall be consecutively numbered throughout the entire transcript (not according to volume) located at the bottom center of each page.
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.
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." (See section 22 for sample title pages, indexes etc.)

**19.4. 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 (e.g., "Motion to Suppress Hearing"), a paragraph stating where and when the proceedings occurred and before which judge, whether it is a jury trial, the appearances (list of attorneys and which party each attorney represents), and the reporter's name and address. For space purposes, the appearances can be put on the second page instead.

**19.4.1.** In lengthy trials you will likely need to divide the proceedings into several volumes. In the caption on each volume, indicate as follows: Volume 1 of 5, Pages 1 through 235, October 1, 2002, etc.

**19.4.2.** When appeal transcripts are ordered in abuse and neglect cases, the title pages should show only the initials in place of the names of the child(ren), the child(ren)'s parents, guardian(s) or custodian(s), who are parties to the action. (See SDCL 15-26A-63.1 and 26-7A-112). Initials in place of those names should also be used in the body of the transcript.

**19.5. Index.** 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. Sometimes it is sufficient to simply list the page numbers where exhibits are offered and received. It is often helpful to the litigants to have a more detailed index giving a description of each exhibit along with the page numbers referencing where they are marked, offered and received. (See section 22.3.1 and 22.3.2 and 22.3.3 for examples of indexes.)

**19.6. Certificate of Court reporter.** At the end of every transcript, attach a “Certificate of Court Reporter.” The rules do not include a standard form of certificate, but a sample certificate page is included in section 22.2.

**19.7. Transcribing from FTR Gold and CourtSmart.** In some circuits, FTR Gold and CourtSmart systems are used to record specific types of hearings, such as magistrate court hearings, protection orders, etc. If you are called upon to transcribe a hearing from a recording as opposed to reporting 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, 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. A sample Certificate of Transcriber may be found in section 22.2.2.

**19.8. Signing and notarizing transcripts.** The original transcript should always contain an original signature. All transcript copies must contain either a photocopied signature or an original 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 court transcripts, requires that the reporter place his or her notarial seal on the certificate. To certify a transcript is not to swear that it is accurate, but to state, declare, or vouch for its accuracy in writing, which does not require use of notarial powers. Also, 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.

**19.9. Filing original transcripts.** All original transcripts should be filed with the trial clerk. Originals must be bound and in a single-page format (no minis or condensed). I.P. Rule 2000-02, the UJS Records Retention and Destruction Schedule, CR-3 Transcripts of Court Proceedings states the following: “Includes original transcripts produced pursuant to SDCL 15-26A-52 and Form 3 in the appendix of forms. Transcripts are filed with the clerk of courts; an ASCII disk may accompany the hard copy transcript. These records are maintained for post-judgment and appeal purposes and are to be retained according to the appropriate retention schedule for the different case files.”

**19.10. Fee for transcripts.** According to SDCL 15-15-7, a reporter shall charge \$3.00 per page of the original transcript and \$.40 per page for each additional copy of the transcript. For nonappeal transcripts, bill the ordering party for the original and one copy.

For appeal transcripts, bill the appealing party (appellant) for the original and one copy for every party involved in the action. For county-paid transcripts, as in the case of an indigent defendant, both the ordering party and the trial clerk must sign a “Court Reporter Transcript Compensation/Certification Form.” This form must then be attached to a “Request for Payment” form or county voucher. (See section 22.6.) These forms should be submitted to the Court Administration Office or directly to the County Auditor, depending on the preference of the Administration Office. A sample invoice for transcripts that are not county-paid can be found in section 22.9.

**19.10.1 Fee for transcripts ordered by a trial court.** Please refer to section 22.12, to a memorandum dated 11-02-2005 from D.J. Hanson, the State Court Administrator, to Circuit Court Administrators regarding payment for Civil Transcripts ordered by a trial judge. The memorandum indicates that court reporters are required to prepare such transcripts free of charge when requested by a trial judge. This memorandum provides the most current guidance for this position taken by the State Court Administrator. As to Criminal Transcripts ordered by a trial judge, there is no such memorandum. Discuss the situation with your Court Administrator before submitting a bill to the county.

**19.11 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.

## **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. The UJS has agreed in UJS policy 1-SC-03 to purchase and maintain the output hardware and software necessary to connect the judge to realtime, including the computer used by the judge. The software currently being used is Stenograph's Caseview. Attorneys desiring realtime are required to supply their own laptop computers.

**20.2. Realtime Training.** UJS policy 2-SC-03 states that "The UJS will be responsible for providing online training opportunities for court reporters to begin realtime court reporting. Reporters shall make their request to obtain training in writing (email is sufficient) to Lynn Sudbeck, Deputy State Court Administrator, SCAO, Pierre. Reporters also shall have written approval (email is sufficient) from their judges to begin UJS-sponsored realtime training. The judge's written approval must be sent to Lynn Sudbeck. The sessions may be taken only once at UJS expense and may be taken during normal working hours. The UJS will not provide continuing or proficiency training beyond these initial online training sessions. Training provided under this policy includes the following online courses offered by Stenograph: Setting the Stage for Realtime and either Dictionary Doctor I or Dictionary Doctor II. The course length from date of first use for Setting the Stage is 14 days; the length for either Dictionary Doctor I or II is 90 days. Stenograph will determine whether the court reporter is placed in the Dictionary Doctor I or II course based on a precourse written assessment. At the completion of either Dictionary Doctor I or II, court reporters are intended to be at the same level of training. Any additional training that may be required by the individual court reporter to gain certification in realtime court reporting is at the court reporter's own expense."

**20.3. Salary Differential.** A 5% salary differential will be paid to reporters passing NCRA's Certified Realtime Reporter examination. Fees for taking the realtime examination must be paid by the reporter. (See UJS policy 3-SC-03)

**20.4. Rates.** You should use the federal rules regarding realtime transcript rates as a guideline. See section 11.10 of this manual.

**20.5. Providing Rough Drafts.** It is common to provide a rough draft to the judge or law clerk to use when drafting rulings. 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 or by inserting throughout the transcript the words "uncertified rough draft." Do not put a title page or certificate page on a rough draft transcript.

**20.6. Using a disclaimer.** It is a good idea to include a disclaimer at the beginning of a Realtime feed. A sample disclaimer is provided below.

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, VIA MODEM OR COMPUTER, OR BY ANY OTHER MEANS, TO ANY PARTY OR COUNSEL TO THE CASE.**

**20.7. Daily Copy.** Occasionally you will be asked to provide daily copy transcripts (a transcript to be delivered following 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 certainly not required to. 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. You can charge extra for daily copy and expedited transcripts on civil cases and on criminal cases where the attorney is privately retained. If a person is indigent (a judge has ruled he or she is entitled to court-appointed counsel because of insufficient income), you may or may not be able to charge for your extra efforts. Again, it is your discretion whether you provide daily copy, just as it is when providing rough drafts or realtime.

## SECTION 21. CONFIDENTIALITY.

**22.1. Confidential Proceedings.** The following proceedings are confidential:

- (a) Grand Jury proceedings: Grand jury proceedings are confidential and should not be discussed with 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, he/she must provide you with a court order. (See SDCL 23A-5-16) An alternative to obtaining a court order would be for the court reporter to deliver the grand jury transcripts to the state's attorney's office, who may then provide them to defense counsel without a court order, although defense counsel would still be responsible for payment, unless the defendant is indigent and the county is paying.
- (b) Adoption proceedings: Only the parties involved can get a copy of the transcript. Adoption hearings are closed to the public. (See SDCL 25-6-15)
- (c) Juvenile proceedings: SDCL 26-7A-36 indicates that juvenile proceedings shall be open and a matter of public record only "...if a juvenile is summoned into court for an offense which if committed by an adult would constitute a crime of violence as defined in 22-1-2(9) or a crime involving a drug offense in violation of 22-42-2 or 22-42-3 and at the time of the offense the juvenile was sixteen years of age or older. All other proceedings involving "abused or neglected children," as defined under SDCL 26-8A; "children in need of supervision," as defined under SDCL 26-8B; and "delinquents," as defined under SDCL 26-8C, are closed hearings and must be kept confidential. Only the parties involved in the proceedings may order a transcript. When appeal transcripts are ordered in abuse and neglect cases, the title pages should show only the initials in place of the names of the child(ren), the child(ren)'s parents, guardian(s) or custodian(s), who are parties to the action. (See SDCL 26-7A-112)
- (d) Involuntary commitments and mental illness hearings. Only the parties involved can get a copy of the transcript. IVC and mental illness hearings are closed to the public.
- (e) Records in chambers. If the judge has a record made "in chambers" (the judge's office), that record may be confidential. If you're unsure, check before putting that record into the transcript.
- (f) Any sealed record. Often attorneys will ask that the judge "seal" the court record, meaning they would like the judge to order that it remain confidential.

Sometimes a record can be sealed if it involves trade secrets or settlement offers or if disclosing information would result in certain harm to others.

\*\*It is a good idea to require a photo ID to make sure that the person ordering a confidential transcript is actually involved in the case. If you are ever unsure, ask the judge. If a record has previously been sealed, you will need a signed order from a judge before you can prepare a transcript.

**21.2 Other confidential considerations.** 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.

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, that should be shown by parentheses.

## **SECTION 22. SAMPLE PAGES FOR OFFICIALS; OTHER ATTACHMENTS**

- 22.1 Sample title pages
  - 1) Jury trial
  - 2) Juvenile hearing
- 22.2 Sample certificates
  - 1) Certificate of Reporter
  - 2) Certificate of Transcriber (see also section 15.9)
- 22.3 Sample index pages
- 22.4 Sample transcript pages
- 22.5 Sample Order for Transcript
- 22.6 Court Reporter Transcript Compensation/Certification form
- 22.7 Request for Payment form (county voucher)
- 22.8 Court Reporter's Reporting Form (Endorsement of Transcript)
- 22.9 Sample invoice
- 22.10 Extension Request
- 22.11 Sample letter requesting prepayment
- 22.12 Letter from UJS that court reporters are not reimbursed for judges' transcripts.
- 22.13 Memorandum and Form for income reporting by April 15
- 22.14 Ethics Opinion 80-6 re attorney's responsibility to pay
- 22.15 Travel voucher
- 22.16 Request for Waiver of Attendance at UJS Fall Court Reporter Seminar
- 22.17 Briefs & Terms Common in SD
- 22.18 South Dakota Statutes pertinent to court reporting
- 22.19 Realtime disclaimer

22.1.1. Sample title page: Jury trial

1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
2 COUNTY OF MINNEHAHA ) :SS  
3 SECOND JUDICIAL DISTRICT

3 \* \* \* \* \*

4 STATE OF SOUTH DAKOTA,  
5 Plaintiff, CR. 05-5917

6 vs. JURY TRIAL  
7 JAMES MARVIN LINDNER, VOLUME II

8 Defendant.

9 \* \* \* \* \*

10 BEFORE: THE HONORABLE JOSEPH NEILES,  
11 Circuit Court Judge, Sioux Falls,  
12 South Dakota.

13 APPEARANCES: Randy Sample  
14 Attorney at Law  
15 Minnehaha County State's Attorney's Office  
16 415 North Dakota Avenue  
17 Sioux Falls, South Dakota 57104

for the Plaintiff;

18 Michael G. Miller  
19 Attorney at Law  
20 Minnehaha County Public Defender's Office  
21 413 North Main Avenue  
22 Sioux Falls, South Dakota 57104

for the Defendant.

23 PROCEEDINGS: The above-entitled proceeding commenced at  
24 9:00 a.m. on the 4th day of April, 2006, in  
25 Courtroom 4B at the Minnehaha County  
Courthouse, Sioux Falls, South Dakota.

Reporter's Name  
Registered Professional Reporter

Sample 22.1.2. Juvenile hearing

1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 :SS  
2 COUNTY OF LINCOLN ) SECOND JUDICIAL DISTRICT  
3 \* \* \* \* \*

4 The People of the State of  
5 South Dakota, ex rel, South  
6 Dakota Department of Social  
7 Services, in the Interest of, JUV.  
8 K.C. and J.C., DISPOSITION HEARING  
9 Minor Children, VOLUME IV  
10 and Concerning  
11 P.C., K.S., and J.E.H.,  
12 Respondents.  
13 \* \* \* \* \*

14 BEFORE: THE HONORABLE JUDGE'S NAME  
15 Circuit Court Judge, Sioux Falls,  
16 South Dakota.

17 PROCEEDINGS: The above-entitled proceeding commenced at  
18 1:30 p.m. on the 16th day of December, 2005,  
19 in Courtroom 4B at the Minnehaha County  
20 Courthouse, Sioux Falls, South Dakota.

25

Reporter Name  
Registered Professional Reporter





**22.3.1 Sample index #1**

|    |   |      |       |      |
|----|---|------|-------|------|
| 1  | INDEX TO PROCEEDINGS                                    |      |       |      |
| 2  | TESTIMONY   | DX   | CX    | RDY  |
| 3  | LAWRENCE E. BOWLER                                      | 7    | 52    | 75   |
| 4  | PATRICIA K. BOWLER                                      | 80   | 111   | 145  |
| 5  | LEWIS L. COOKE (ON REBUTTAL)                            | 151  | 153   | --   |
| 6  | LAWRENCE E. BOWLER (ON REBUTTAL)                        | 155  | 157   | --   |
| 7  | PATRICIA K. BOWLER (ON SURREBUTTAL)                     | 159  | 160   | --   |
| 8  | * * *   |      |       |      |
| 9  | RULINGS   |      |       |      |
| 10 | Defendant's motion for continuance (denied).....        |      |       | 5    |
| 11 | Ruling re property division generally.....              |      |       | 164  |
| 12 | Plaintiff's motion for home phone number (granted)..... |      |       | 181  |
| 13 | * * *   |      |       |      |
| 14 | INDEX TO EXHIBITS                                       |      |       |      |
| 15 | Number and Description                                  | Mrkd | Offrd | Recd |
| 16 | COURT'S EXHIBIT   |      |       |      |
| 17 | 1. Property list showing court's division of property   | 162  | --    | --   |
| 18 | PLAINTIFF'S EXHIBITS                                    |      |       |      |
| 19 | 1. Wells Fargo statement 3-16-06                        | 13   | 14    | 15   |
| 20 | 2. Credit report  | 37   | 140   | --   |
| 21 | DEFENDANT'S EXHIBIT                                     |      |       |      |
| 22 | A. Joint property list                                  | 6    | 6     | 7    |

22.3.2. Sample index page #2

**INDEX  
EXAMINATION**

| Witness Name                  | Page |
|-------------------------------|------|
| MELISSA HERRICK               |      |
| Direct By Mr. Nelson .....    | 4    |
| Cross By Mr. Wollman .....    | 32   |
| Cross By Mr. Golden .....     | 39   |
| Re-Direct By Mr. Nelson ..... | 46   |
| Re-Cross By Mr. Wollman ..... | 48   |
| Re-Direct By Mr. Nelson ..... | 49   |
| REBECCA WIMMER                |      |
| Direct By Mr. Wollman .....   | 51   |
| Cross By Mr. Golden .....     | 77   |
| Cross By Mr. Pfeifle .....    | 85   |
| Cross By Mr. Nelson .....     | 97   |
| MELISSA VANDERSTOUWE          |      |
| Direct By Mr. Nelson .....    | 118  |
| Cross By Mr. Pfeifle .....    | 135  |

**EXHIBITS**

| Exhibit | Description                                   | Identification | Evidence |
|---------|---|----------------|----------|
| 6       | ██████████ telephone notes                    | 4              | 8        |
| 7       | Pride class notification                      | 13             | 50       |
| 8       | Videotape                                     | 51             | 74       |
| 9       | Information from Texas                        | 51             | 74       |
| 10      | Volume I of DSS records                       | 51             | 74       |
| 11      | Volume II of DSS records                      | 51             | 74       |
| 12      | Volume III of DSS records                     | 51             | 74       |
| 13      | Volume IV of DSS records                      | 51             | 74       |
| 14      | DSS report to the Court                       | 95             | 97       |
| 15      | Report of Dr. Clayborne                       | 96             | 97       |
| 16      | Change of Name document for ██████ and ██████ | 96             | 97       |
| 17-18   | Home studies                                  | 116            | 117      |
| 19      | Letters from DSS                              | 117            | 137      |
| 20      | Casa report                                   | 137            | 137      |

### 22.3.3. Sample Index #3

#### INDEX

| Witness Name          | EXAMINATION |       |           |          |           | Page |
|-----------------------|-------------|-------|-----------|----------|-----------|------|
|                       | Direct      | Cross | Re-Direct | Re-Cross | Voir Dire |      |
| DANIEL STRICHERZ      | 6           | 11    |           |          |           |      |
| MICHAEL RICHARDS      | 19          |       |           |          |           |      |
| <b>FINAL ARGUMENT</b> |             |       |           |          |           |      |
| Mr. Sample            |             |       |           |          |           | 33   |
| Mr. Miller            |             |       |           |          |           | 39   |
| Mr. Sample            |             |       |           |          |           | 44   |
| <b>VERDICT</b>        |             |       |           |          |           |      |
|                       |             |       |           |          |           | Page |
|                       |             |       |           |          |           | 48   |

### 22.3.1 Sample index #4

|   | INDEX TO PROCEEDINGS                                 |    |
|---|--|----|
| 1 |  |    |
| 2 | Defendant Bowdler's motion for summary judgment..... | 4  |
| 3 | Plaintiff's resistance to motion.....                | 14 |
| 4 | Defendant Penniston's resistance to motion.....      | 21 |
| 5 | Defendant Bowdler's further argument.....            | 24 |
| 6 | Plaintiff's further resistance.....                  | 27 |
| 7 | Court's ruling denying motion.....                   | 30 |

### 22.4.1. Sample court transcript page

1 THE COURT: The state may continue its presentation.

2 MR. SAMPLE: State would call Julie Briney.

3 JULIE BRINEY,

4 Called as a witness, having been first duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 Q. (BY MR. SAMPLE) Good morning.

8 A. Good morning.

9 Q. Would you please state your name for the record and  
10 spell your last name, if you would.

11 A. Julie Briney, B-r-i-n-e-y.

12 Q. Where do you live, ma'am?

13 A. 512 South Lyndale Avenue, Sioux Falls.

14 Q. Is that location in Minnehaha County?

15 A. Yes, it is.

16 Q. Do you know an individual by the name of Victor Sinclair  
17 Neuroth?

18 A. Yes, I do.

19 Q. And how is it that you know him?

20 A. He's been a friend of my son for quite a while. I've  
21 known him about 11 or 12 years.

22 Q. And is Mr. Neuroth present in the courtroom here  
23 today?

24 A. Yes, he is.

25 Q. Can you identify where he's sitting and what he's

**22.4.2. Sample page showing part of deposition read into record.**

5 Q I'm handing you what's been marked as Exhibit 29, which purports to be  
6 a copy of your deposition taken October 1 of '98. If you look on page 129  
7 at the very back, is that an errata sheet with your signature on it?

8 A Yes, looks like it.

9 Q Directing you to page 111, starting at line 12, the question, "Did you ever  
10 discuss installing a fence around the lot to discourage kids from entering?"

11 Answer: "We discussed it on a couple of occasions, yes."

12 "Did Quentin say that it would be a good idea to keep kids out?"

13 Answer: "He said something along those lines."

14 Question: "What was your response?"

15 "That I agreed and would get a fence installed as soon as there was  
enough money in the kitty."

16 "So you intended to install a fence around that lot at some point?"

17 Answer: "Yes, eventually."

18 Are those the questions you were asked and the answers you gave  
19 at your deposition in October of 1998?

20 A Yes, but you're taking that out of context.

### 22.4.3. Sample transcript page of colloquy

1 THE COURT: Let's do some housecleaning this afternoon.  
2 What are we going to do about the right named defendant  
3 MR. HAIGH: Our position, Judge, is that the right  
4 defendant should be Sioux Valley Hospital. Sioux Valle  
5 Hospital and Health System is a separate corporation and  
6 certainly not a d/b/a or a/k/a, so they should be  
7 removed.  
8 THE COURT: Mr. Johnson.  
9 MR. JOHNSON: Well, they never made a motion, to my  
10 knowledge, so I don't know why it's an issue at this  
11 point. We want it to be correct, of course. My  
12 understanding was that Sioux Valley Hospital and Health  
13 Systems was the parent to Sioux Valley Hospital. Is  
14 that correct?  
15 MR. HAIGH: As I understand it's a little more  
16 complicated than that. Loosely speaking, yes, it's a  
17 parent nonprofit corporation.  
18 THE COURT: Well --  
19 MR. JOHNSON: We can figure that out, Judge.  
20 THE COURT: Okay. Well, I read your briefs and I read  
21 your arguments. Does anybody want to add anything to  
22 what you dropped on my desk?  
23 MR. HAIGH: Judge, most of my argument was in the brief.  
24 And basically our position is Dr. Freeman was deposed  
25 early on in this case as a treating physician. And

**Sample 22.5: Order for Transcript(s)**  
**(Used for transcripts ordered for appeal purposes)**

(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.)

**22.6. Court Reporter Transcript Compensation/Certification Form**

UJS 083  
12-90

COURT REPORTER TRANSCRIPT COMPENSATION/CERTIFICATION FORM

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

CASE FILE NO. \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff, )  
vs. )  
\_\_\_\_\_, )  
Defendant, )

CERTIFICATION

COURT REPORTER CERTIFICATION

I hereby certify that I have prepared the transcript for the above entitled:

- Preliminary Hearing
- Appeal to the Supreme Court
- Grand Jury
- Other \_\_\_\_\_

Date transcript completed: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

The actual cost for this transcript is:

Original - Actual Number of Pages: \_\_\_\_ @ \_\_\_\_ per page . . . . . \$ \_\_\_\_

Copies - \_\_\_\_ copies of original = \_\_\_\_ total copies @ \_\_\_\_ per copy . \$ \_\_\_\_

TOTAL: . . . . . \$ \_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Court Reporter

\*\*\*\*\*

VERIFICATION BY CLERK OF COURTS

I hereby verify the above entitled transcript was prepared, and that the number of pages contained in the original of the same has been filed with this office.

Date: \_\_\_\_\_

\_\_\_\_\_  
CLERK OF COURTS

VERIFICATION OF ORDERING PARTY

I hereby verify that a transcript was ordered by me in the above captioned matter and a copy of the same was delivered to me, as requested, this date.

Date: \_\_\_\_\_

\_\_\_\_\_  
ATTORNEY AT LAW OR ORDERING PARTY



## 22.8 Court Reporter's Reporting Form (Endorsement of Transcript)

UJS 056

### 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.
  
1. 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 \_\_\_\_\_

Date Transcript Completed: \_\_\_\_\_

Date Transcript Filed: \_\_\_\_\_  
( \_\_\_ by mail, or \_\_\_ in person)

Date Transcript Transmitted to Appellant: \_\_\_\_\_  
( \_\_\_ by mail, or \_\_\_ in person)

Date Transcript Transmitted to Other Parties: \_\_\_\_\_  
( \_\_\_ by mail, or \_\_\_ in person)

Number of Pages in Transcript(s): \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

22.9 Sample Invoice



Reporter's Name, RPR  
 425 North Dakota Avenue  
 Sioux Falls, South Dakota 57104  
 (605) 782-3065 fax (605) 367-5979

Invoice No. 247

**INVOICE**

**Customer**

|         |                                      |           |            |
|---------|--------------------------------------|-----------|------------|
| Name    | Karen L. Crew Crew & Crew            | Date      | 11/16/2006 |
| Address | 141 N. Main, Suite 706 -- PO Box 923 | Order No. |            |
| City    | Sioux Falls State SD ZIP 57101       | Rep       |            |
| Phone   |                                      | 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.<br>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         |
| <b>TOTAL</b>        | <b>\$64.82</b> |

Office Use Only

Payment due upon receipt.

Thank you

**22.10. Extension Request**

UJS 057

EXTENSION REQUEST

This section should be completed in duplicate and transmitted to the Clerk of the Supreme Court when a transcript has not been completed within forty-five 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 \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

\* \* \* \* \*  
(This portion of form for use of 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

- 1. \_\_\_\_\_ Granted to and including \_\_\_\_\_.
- 2. \_\_\_\_\_ Denied.

\_\_\_\_\_  
Clerk of the Supreme Court

by \_\_\_\_\_  
Deputy

## 22.11 Sample Letter Requesting Prepayment

May 10, 2006

[REDACTED]  
Attorney at Law  
[REDACTED]

Sioux Falls, SD 57104

RE: [REDACTED]  
[REDACTED]

Dear [REDACTED]:

This acknowledges receipt of your order for transcript in the above-referenced matter. The estimated cost of the transcript and required copies is \$ [REDACTED]. Prepayment in the amount of \$ [REDACTED] is hereby requested. Pursuant to SDCL 15-26A-51 you have ten days or until [REDACTED] to remit that amount to me.

SDCL 15-26A-48 provides that a transcript must be ordered within ten days of filing a notice of appeal. SDCL 15-26A-51 provides an additional 10-day period within which to make prepayment if requested. Failure to timely order a transcript or make prepayment results in forfeiture of the right to order a transcript, unless relief from default is granted by the Supreme Court.

Upon timely receipt of the required prepayment, I will endorse the order for transcript, transmit it to the Supreme Court, and begin preparation of the transcript.

Yours truly,

[REDACTED]  
Court Reporter

PC: Supreme Court Clerk Shirley Jameson-Fergel

22.12. UJS letter that reporters aren't to charge for transcripts made for judge

|   |  |
|---|--|
|    | <p>State of South Dakota<br/>Unified Judicial System</p>                           |
| <p>Office of the State Court Administrator</p>  |  |
| <p>Telephone: (605) 773-3474<br/>FAX: (605) 773-5627</p>  | <p>500 East Capitol<br/>Pierre, SD 57501-5070</p>                                  |
| <p>MEMORANDUM</p>   |  |
| <p>TO: Circuit Court Administrators</p>   |  |
| <p>FROM: D.J. Hanson<br/>State Court Administrator</p>  |  |
| <p>DATE: November 2, 2005</p>   |  |
| <p>RE: Civil Transcripts</p>  |  |
| <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:taa<br/>cc: Janet Borchard</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>  |  |

22.13.1. Memo re Official Reporters Reporting Form Required By SDCL 16-2-23



State of South Dakota  
Unified Judicial System  
Office of the State Court Administrator

Telephone: (605) 773-3474  
FAX: (605) 773-5627

500 East Capitol  
Pierre, SD 57501-5070

March 17, 2006

**MEMORANDUM**

**TO:** Court Reporters

**FROM:** State Court Administrator's Office

**SUBJECT:** Reporting 2005 Fees as Required Under SDCL 16-2-23

Please complete the enclosed form in accordance with SDCL 16-2-23, giving the months you worked during the calendar year 2005 and your income figure for reporting under this statute. It must be signed and returned to the State Court Administrator's Office, with a copy sent to your Presiding Judge.

Please return the completed form to this office by April 15, 2006.

cc: Presiding Judges  
Circuit Administrative Staff

*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.*

22.13.2. Official Court Reporters Form for Reporting state-paid transcripts

I AM REPORTING MY INCOME FOR TAKING TESTIMONY OR  
PREPARING TRANSCRIPTS THAT WERE AUTHORIZED BY THE  
JUSTICE, JUDGE, OR MAGISTRATE WHO APPOINTED ME.

MY TOTAL INCOME FOR THIS WORK DURING THE MONTHS  
\_\_\_\_\_ THRU \_\_\_\_\_ OF THE CALENDAR  
YEAR 2005 WAS \$ \_\_\_\_\_. MY TOTAL EXPENSES AS  
RELATED TO THIS INCOME WERE \$ \_\_\_\_\_,  
GIVING ME A NET INCOME OF \$ \_\_\_\_\_.

THIS REPORT IS AS ACCURATE AS MY RECORDS SHOW.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COURT REPORTER'S SIGNATURE

Please return completed form by April 15, 2006 to:

State Court Administrator's Office  
Attn: Debbie Bryant, Payroll Administrator  
500 East Capitol  
Pierre, SD 57501-5070

22.14. Ethics Opinion 80-6 re Attorney's Responsibility to pay for transcripts

South Dakota Ethics Opinions

**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 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>



**22.16. Request for Waiver of Attendance at Fall Seminar**

**REQUEST FOR WAIVER OF ATTENDANCE AT  
UJS FALL COURT REPORTER SEMINAR**

I respectfully request a waiver for attendance at the 200\_\_\_\_\_ Fall Court Reporter Seminar given  
by the South Dakota Unified Judicial System pursuant to Supreme Court Rule 2-SC-85.

*2-SC-85 states that "all court reporters not attending the annual training session conducted in conjunction  
with the Judicial Conference must take annual leave unless the presiding judge has excused them because they  
are needed for court business. A copy of that excuse and the reason for it is to be forwarded to the SCAO."*

|                                 |                  |
|---------------------------------|------------------|
| _____                           | _____            |
| Name of Official Court Reporter | Judicial Circuit |
| _____                           |                  |
| Reason for Waiver               |                  |
| _____                           | _____            |
| Signature of Presiding Judge    | Date             |

## 22.17. A Few Briefs and Terms

|          |   |
|----------|---|
| KHOEMS   | Children's Home Society                   |
| S-S      | Social Services                           |
| SWORK    | social work                               |
| SWORK/ER | social worker                             |
| SNAOEDZ  | special needs                             |
| STKR-L   | SDCL                                      |
| IK/WA    | ICWA (Indian Child Welfare Act)           |
| KWA/DRO  | QDRO (Qualified Domestic Relations Order) |

|        |                                  |
|--------|----------------------------------|
| SKORT  | circuit court                    |
| K-S    | court services                   |
| KR-PD  | court appointed (also KR-P)      |
| KR-PT  | court-appointed attorney         |
| KR-PZ  | court-appointed attorney fees    |
| STKR-L | SDCL (South Dakota Codified Law) |
| P-J    | prospective juror                |
| G-J    | grand jury                       |
| GROR   | grand juror                      |
| FAIP   | fair and impartial               |
| IMT    | immaterial                       |
| IRT    | irrelevant                       |
| F-B    | factual basis                    |
| ST-K   | standard of care                 |

|       |                         |
|-------|-------------------------|
| FIRG  | first degree (also 1-G) |
| SEG   | second degree (2-G)     |
| THIRG | third degree (3-G)      |
| FOURG | fourth degree (4-G)     |
| FIFG  | fifth degree (5-G)      |

|        |           |
|--------|-----------|
| KWAON  | Count I   |
| KWAO   | Count II  |
| KWAOE  | Count III |
| KWAOR  | Count IV  |
| KWAOIF | Count V   |
| KWIX   | Count VI  |
| KWEFN  | Count VII |

|        |             |
|--------|-------------|
| KLAON  | Class One   |
| KLAO   | Class Two   |
| KLAOE  | Class Three |
| KLAOR  | Class Four  |
| KLAOIF | Class Five  |

LARK/LARK            Lewis and Clark  
BLALS                Black Hills (or BLILS)  
GARKS/GARKS        Game, Fish & Parks

IMPACT Program: Individualized and Mobile Program of Assertive Community Treatment)

HIPAA (Health Information Privacy Access Act)

Kuhmo Tire Co. v. Carmichael, 526 US 137 (a 1999 case)

Fuerstenberg v. Fuerstenberg case, 199 SD 35, 591 NW2d 798 (child custody)

Daubert v. Merrell Dow Pharmaceuticals case, 509 US 579, a 1993 case (general acceptance in the scientific community is no longer required)

#### A FEW NATIVE AMERICAN TERMS

Sinte Gleska University (sin-tay-glesh-ka)

Oglala Sioux Tribe (compare to town of Ogallala, Nebraska)

The term “oyate” means “people” as in “nation”

The term “tiyospaye” means “band” or “clan” or “community”

“Mitakuye oyasin” means “We are all related” or “All my relations”

Ihanktonwan (Yankton), Lakota, Dakota, Nakota, Minnicoujou, Hunkpapa Sioux tribes

Pilamaya (also pidamaya) means “thank you”

Paha Sapa means “Black Hills”

#### A FEW CITIES & COUNTIES

SFAULS            Sioux Falls (or SFAULZ)

R-S                Rapid City

KLAIKT            Clay County

M-K                Minnehaha County

L-K                Lincoln County

P-K/P-K            Pennington County

YAOUKT            Union County

YAKT              Yankton County

STAEUFD          State of South Dakota

\*\*\* Check out the South Dakota Court Reporters’ web site at

<http://www.southdakotacourtreporters.org/4.html>

for updated briefs

## 22.18. PERTINENT SOUTH DAKOTA STATUTES

|               |  |
|---------------|--|
| 1-26-31.1     | Venue of appeal  |
| 1-26-32.2     | Ordering of transcript   |
| 1-26-32.3     | Payment for costs of transcript  |
| 1-26-32.4     | Copies of transcript, filing of original                                 |
| 15-5A         | Audiovisual device use in court proceedings                              |
| 15-6-4(c)     | Service of summons   |
| 15-6-28(a)    | Taking of depositions within the U.S.                                    |
| 15-6-28(c)    | Disqualification to take deposition                                      |
| 15-6-30(b)(4) | Non-stenographic recording   |
| 15-6-30(b)(7) | Telephonic depositions   |
| 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 and expenses of referee and reporter                                |
| 15-15-7       | Official transcript rates  |
| 15-26A-48     | Order for transcript of proceedings                                      |
| 15-26A-51     | Costs of transcript, endorsement of order by reporter, extension request |
| 15-26A-52     | Form of transcript, number of copies, certification                      |
| 19-14-4.1     | Form for oath of interpreter   |

### PERTINENT FEDERAL RULES OF CIVIL PROCEDURE

|          |   |
|----------|---|
| 28(c)    | Disqualification for interest                     |
| 30(b)(2) | Method of taking deposition                       |
| 30(b)(3) | Additional method of taking deposition            |
| 30(b)(4) | Specific information to be included in the record |
| 30(b)(7) | Telephonic depositions                            |
| 30(c)    | Objections to qualifications of officer           |
| 30(e)    | Reading and signing of depositions                |
| 30(f)(1) | Certification and filing of depositions           |
| 30(f)(2) | Persons before whom depositions may be taken      |
| 31(b)    | Depositions upon written questions                |

Internet Sources: [www.legis.state.sd.us/statutes/](http://www.legis.state.sd.us/statutes/)  
[www.law.cornell.edu/rules/frcp](http://www.law.cornell.edu/rules/frcp)

## 22.19. UNEDITED REALTIME TRANSCRIPTION DISCLAIMER

The following transcript of proceedings, or any portion thereof, is being delivered unedited and uncertified by the court reporter.

The purchaser 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.

## Index to the South Dakota Court Reporters Manual

- Abbreviations used in manual..... page 2
- Abuse and neglect cases.....19.4(1)
- Accents and mumblings.....17.10, 17.12.2-4
- Administering an oath.....Section 2, 16.11
- Administrative hearings (see also Mental Health, Work Comp).....9.1
- Adoption proceedings confidential...21.1(b)
- Advance payment for transcript.....19.1.1  
Sample letter.....22.11
- Advice, legal (do not give).....16.8  
This handbook is not.....page 2, preface
- Advisory Opinions, NCRA  
Re third-party orders, #9.....8.4, 8.6, 11.9  
Re impartiality of reporter, #22.....4.4, 16.6  
(See also Attorney Responsible for payment)
- Affirmations...see Oaths
- "All rise" .....16.10
- Annual training for official court reporters...16.4, 22.16
- Anticontracting law.....1.6
- Appeal transcripts, step by step.....19.2  
Generally.....19.1.2  
Page format.....14.7, 19.3
- Appearance fees taxable.....1.3, 12.4(c)
- ASCII files, electronic transcripts...1.6, 8.7
- Associations, Reporter.....1.4, 1.5
- Attorney General.....12.1, 15.23 page 2  
Office address...19.2(6)  
Grand jury proceedings.....21.1(a)
- Atty responsible for payment.... 12.5, 19.11, 22.14
- Attorney work product.....8.6
- Audio recordings (see also Videotapes)  
Certifying transcript of...5.4, 15.9, 22.2.2  
Retention of.....11.8, 16.12  
Transcribing from.....17.12
- Background of case.....16.9
- Backup files.....9.4
- Bankruptcy court (fed).....8.1, 11.7, 14.2
- Bench discussions/conferences.....17.3
- Billing...see also Transcript fees  
Attorney responsibility for.12.2, 12.5, 22.14  
Collections.....19.11  
Court-appointed attorneys...12.2, 11.10  
Exhibits, charging tax on...12.4(c)  
Federal indigent cases.....11.5 note, 11.10  
Grand jury.....10.1.4  
Mental health board.....10.4, 12.3  
Pro se party.....12.5  
Sales tax.....12.4, 15.24  
Sample freelance bill.....15.10  
Sample voucher.....15.23  
SD billing procedures.....12  
State/UJS contracts.....12.1  
Work comp hrgs.....10.3.2
- Briefs and Terms common in SD.....22.17
- Business taxes...see Sales tax
- Caption/style/title of case.....19.4  
see also: Title Page
- Case background.....16.9
- Certificate of Reporter (generally). Section 5  
Anticontracting.....1.6 second paragraph  
Court transcript.....19.6, 22.2  
Deposition transcript (federal)...5.2, 11.5  
Deposition transcript (state)...5.1, 5.2, 15.7  
Patent and Trademark depositions.....10.6.2  
Sign copies as well as original.....5.5  
Sworn other than by reporter at dep...5.2
- Certificate of Transcriber.....5.4  
Death or disability of reporter....5.4(a)  
Electronic (audio or video) recordings...5.4(b)  
FTR/Court Smart...15.9, 22.2.2
- Certification of Court Reporter in SD....1.1  
Salary differential for CRR...20.3
- Certified Realtime Reporter salary differential...20.3
- Certified Questions at Depositions....Section 4
- Chambers, proceedings in...21.1(e)
- Checklist of Q's for new officials.....17.1
- Clerk of Supreme Court address.....19.1.2  
Email address.....19.2(7)

|  |   |
|--|---|
| Closing arguments, reporting.....17.1  | Court Smart and FTR Gold.....19.7                                     |
| Closing court.....16.10  | CRR , Salary differential for...20.3                                  |
| Collecting transcript fees (see also Advance Payment)...12.5, 19.11, 22.11             | Daily copy.....20.7   |
| Colloquy generally, see 22.4   | Death or Disability of reporter...see Guardianship Program...5.4, 9.3 |
| In grand jury.....10.1.3   | Delivery of transcripts on appeal.....19.2(6)                         |
| In jury voir dire.....17.5   | Department of Revenue and Regulation...1.3 (see also Sales Tax)       |
| Concordances.....7.2.4   | Depositions   |
| Condensed transcripts.....8.3  | Depositions no longer filed.....8.1                                   |
| Originals must be full-size.....8.3, 11.7  | Federal court cases.....Section 11                                    |
| Confidentiality generally..... 4.4, 4.5, 7.2.4, 21                                     | Reading and signing.....6, 11.4, 14.4                                 |
| Adoptions.....21.1(b)  | Records depositions/30(b)(6).....10.2.1                               |
| Considerations.....21.2  | Reporting the reading of in court...17.4, 22.4.2                      |
| Depositions.....4.4, 4.5   | Sealing deposition transcripts.....8.2, 11.7, 14.3                    |
| ECT, forced meds, etc., see Mental Health  | Stipulations, standard stipulation..Section 3, 15.5                   |
| Excerpts of proceedings.....4.4, 4.5   | Upon written interrogatories.....10.2                                 |
| Grand jury.....21.1(a), 8.5, 10.1.2  | Videotaped depositions.....11.2.2                                     |
| Juvenile proceedings.....21.1(c)   | Workers' comp cases.....9.1, 10.3                                     |
| In Chambers proceedings.....21.1(e)  | Discussions   |
| Involuntary commitments.....21.1(d)  | At the bench or side-bar...17.3                                       |
| Mental illness hearings.....21.1(d)  | Off the record.....17.2   |
| Sealed records.....4.5, 21.1   | Distribution to third parties.....8.4                                 |
| Statements.....8.6   | Deposition.....8.4  |
| Transcript orders.....21.1, last paragraph   | Grand jury transcript...8.5, 10.1.4                                   |
| Contracting with the state of SD...12.1, 15.21   | Statements.....8.6  |
| Anticontracting law.....1.6  | Email.....8.7   |
| Controlling speakers/proceedings....17.9   | Dope sheets.....7.2.1, 9.4, 16.9, 16.13                               |
| Corrections by witness: See Reading and Signing, Errata Sheet                          | DRR...see Sales Tax   |
| Court, opening and closing.....16.10   | ECT hearings...see mental illness hearings                            |
| Court-appointed attorneys  | Electronic transcripts/ASCII files.....1.6, 8.7                       |
| Federal cases.....11.5 note, 11.10   | Emailing transcripts.....8.7  |
| Payment for transcripts.....11.10, 12.2, 19.1.1, 19.2(5), 19.2(6)                      | Endorsing transcript orders....19.1.2, 19.2(7), 22.8                  |
| South Dakota cases.....12.2  | Errata Sheet...6.4, 11.6, 15.11, 15.15                                |
| Court orders for grand jury transcripts....21.1  | See also Reading and signing  |
| Court Reporters in South Dakota  | Ers and ums.....17.12.2   |
| Freelancers.....Sections 3 through 15  | Evidentiary depositions.....14.4                                      |
| (see also "Freelance Court Reporting" below)   | Ethics Opinion 80-6.....12.5, 19.11, 22.14                            |
| Officials.....Sections 16 through 22   | See also Advisory Opinions  |
| (see also "Official Court Reporters" below)  | Excerpts of proceedings generally...Sec. 4                            |
| South Dakota Court Reporters.....Section 1   | Confidential proceedings.....4.5                                      |
| Associations.....1.4, 1.5  | Must be offered to all parties...4.4, 16.6                            |
| Court Reporters' Reporting form.....19.2(7), 22.8                                      |   |
| Court Reporter Transcription Compensation/ Certification form... 10.1.4, 19.2(8), 22.6 |   |

|  |                             |
|--|-----------------------------|
| Transcribing excerpts.....                                   | 4.2, 4.3                    |
| Exhibits generally in Court...Section 18                     |                             |
| Marked.....  | 18.5                        |
| Received.....  | 18.1                        |
| Not received.....  | 18.3                        |
| Unusual exhibits, weapons.....                               | 18.5                        |
| Exhibits generally in depositions..                          | 7.2.1, 7.2.2                |
| Depositions marked as exhibits....                           | 18.4                        |
| Indexing in depositions...7.2.1, 7.2.2                       |                             |
| Indexing in court transcripts....                            | 19.5                        |
| Not received.....  | 18.3                        |
| Offered.....   | 7.2.1                       |
| Offers of proof.....   | 18.2                        |
| Patent and Trademark depositions..                           | 10.6.1                      |
| Received in court.....                                       | 18.1                        |
| Retention of.....  | 9.5, 18.5                   |
| Unusual exhibits, weapons...18.5                             |                             |
| Expenses...see Transcript Fees, Travel Vouchers              |                             |
| Extensions on appeals transcripts....                        | 19.1.2, 22.10               |
| Extrajudicial employment.....                                | 16.3                        |
| Familiarity with witness.....                                | 16.7                        |
| FAQ's, see Frequently Asked Questions..                      | 14, 12.4                    |
| Federal court  |                             |
| Billing rates.....   | 11.10                       |
| Certificate of Reporter.....                                 | 5.3                         |
| Charging in indigent cases...11.5 note, 11.10                |                             |
| Depositions.....   | Section 11                  |
| Depos not filed.....   | 11.7                        |
| Grand jury proceedings.....                                  | 10.1.2                      |
| Page format for court transcripts...11.11                    |                             |
| Page rates.....  | 11.10                       |
| Reading and signing.....                                     | 6.2, 11.4, 11.5, 11.6, 14.4 |
| Reporter's certificate....                                   | 11.4                        |
| Telephone depositions.....                                   | 11.3                        |
| Title pages.....   | 15.1, 15.3                  |
| Videotaped depositions.....                                  | 11.2.2                      |
| Fees...see Transcript Fees, Travel Vouchers                  |                             |
| Filing court transcripts.....                                | 19.2(5)                     |
| Federal court matters.....                                   | 11.7                        |
| Originals should be full-size....                            | 8.3, 11.7                   |
| Filing freelance matters...Section 8                         |                             |
| Depositions not filed.....                                   | 8.1, 14.2                   |
| Federal court matters.....                                   | 6.2, 11.7                   |
| Out-of-state cases.....                                      | 6.3                         |
| Patent and Trademark depositions.....                        | 10.6.3                      |
| Sealing transcripts.....                                     | 8.2, 11.7, 14.3             |
| Work comp hearings.....                                      | 10.3.2                      |
| Formats...see Page Formats                                   |                             |
| Forms...see Sample forms                                     |                             |
| Freelance Court Reporting generally: Sections 1 through 15   |                             |
| Officials doing.....   | 16.3                        |
| Frequently Asked Questions.....                              | 12.4, 14                    |
| FTR Gold and Court Smart.....                                | 19.7                        |
| Grand jury generally...see Section 8.5, 10.1                 |                             |
| Billing for.....   | 10.1.4, 16.3.1              |
| Confidentiality.....   | 8.5, 10.1.2, 21.1           |
| Court orders for transcripts...10.1.4, 21.1(a)               |                             |
| Grand jurors not named in colloquy..                         | 10.1.3                      |
| Off-the-record discussion during...10.1.1                    |                             |
| Officials reporting grand jury...16.3.1, 17.7                |                             |
| Transcribing.....  | 10.1.3, 15.13               |
| Guardian program in case of death/disability....             | 9.3, 15.22, 16.13           |
| Certificate of Transcriber.....                              | 5.4                         |
| Hard-to-understand witnesses....                             | 17.10, 17.9                 |
| Hourly rates...see Transcript fees (SD state contract rates) |                             |
| Impartiality.....  | 1.6, 16.6                   |
| Familiarity with witness....                                 | 16.7                        |
| Inaudible, unintelligible.....                               | 17.12.1                     |
| In Chambers (In Camera) proceedings.....                     | 21.1(e)                     |
| Indexing..generally..Section 7                               |                             |
| Appeals transcripts.....                                     | 19.3(6), 19.5               |
| Certified Questions.....                                     | 4.2                         |
| Concordance (word index)..7.2.4                              |                             |
| Court transcripts.....                                       | 19.5                        |
| Depositions.....   | 7.1, 15.2(a), 15.2(b)       |
| Exhibits.....  | 7.2.2, 19.5                 |
| Keyword indexing.....  | 7.2.4                       |
| Master indexes.....  | 7.3                         |
| Objections in depositions..7.2.3                             |                             |
| Patent and Trademark depositions...10.6.1                    |                             |
| Sample forms.....  | 15.2(a&b); 22.2 (1-3)       |
| Indigent parties (see also Court-Appointed Attorneys)        |                             |
| Payment for transcripts.....                                 | 19.2(5), 19.2(6)            |
| Interpreted proceedings.....                                 | 10.5, 15.14                 |
| Oath to interpreter.....                                     | 2.2.1                       |
| Interrupting proceedings.....                                | 17.9, 17.10                 |
| Invoices.....  | 15.10, 19.2(5), 19.2(8)     |
| Sample.....  | 15.10, 22.9                 |
| Involuntary commitment hearings confidential....             | 21.1(d)                     |
| Iowa, depositions for court cases in...6.3                   |                             |
| Jury questions, reporting.....                               | 17.8                        |

|  |  |
|--|--|
| Jury voir dire, reporting.....17.5                       | Federal cases.....11.8                               |
| Juvenile court proceedings confidential...21.1(c)        | Guardian program.....16.13                           |
| Keyword indexes.....7.2.4                                | Mental Health hearings.....9.1, 10.4                 |
| Knowing the witness personally...16.7                    | Notes to self for future reference...16.13           |
| Legal advice, do not give.....16.8                       | Organizing.....16.12                                 |
| Letter to attorney after reading/signing....15.11, 15.17 | Paper notes not required.....9.1                     |
| Requesting prepayment.....22.11                          | Retention of freelance notes/tapes...9               |
| To witness for reading and signing...15.16               | Retention (official) for 15 years....9.2, 16.12      |
| From UJS re rpters not paid for judge trnsprt..22.12     | Notice of filing deposition.....Sec. 3 note 1        |
| Licensing SD reporters not done...1.1                    | Notice of delivery of transcript....15.17            |
| Making the Official Record....Section 17                 | Notice, dep on written interrogatories...10.2.4      |
| Margins...see Page Formats                               | Oaths and Affirmations                               |
| Marking exhibits...See Exhibits                          | Administering.....Sec. 2, 16.11                      |
| Master Indexes.....7.3                                   | By someone other than reporter at dep..5.2           |
| Meals, mileage, lodging rates...16.5                     | Fees not charged for administering...2.1.2           |
| Mental Health hearings...see Mental Illness hearings     | Forms of oath/affirmation.....2.2.1                  |
| Mental illness proceedings....9.1, 10.4, 12.3, 21.1(d),  | Over the teleconference device...2.2.2, 2.2.3, 16.11 |
| Retention of notes/tapes..9.1                            | Interpreted proceedings.....2.2.1                    |
| Mileage rates.....16.5                                   | Irregular form.....2.2.1                             |
| Mini-transcripts.....8.3                                 | Out of state, foreign countries....2.3.1             |
| National Court Reporters Association                     | Over the telephone.....2.2.2, 2.2.3, 5.2, 16.11      |
| Advisory Opinions...see Advisory Opinions                | Witness, form of oath for.....2.2.1                  |
| Joining.....1.5  | Objections, indexing.....7.2.3, 15.2(b)              |
| Page format.....14.1                                     | Off-the-record proceedings generally.... 17.1-3      |
| Web site.....1.5   | Discussions.....17.2                                 |
| NCRA...see National Court Reporters Association          | During grand jury proceedings.....10.1.1             |
| Neighboring states.....6.3                               | Offer of proof.....18.2                              |
| No and yes, nodding head...11.11(9), 17.12.5             | Officer of the court.....2.1.1, 11.1, 11.2           |
| Nonappeal transcripts.....19.1.1                         | Notary public as officer.....2.2.1                   |
| Nonparties.....8.4, 11.9, 21.1                           | Officer before whom depo is taken...2.1.1, 11.1      |
| Notarial seal not needed on certs...19.8, 2.2.1          | Official Court Reporters generally.....Section 16    |
| Notaries Public generally.....Section 2                  | Freelancing, officials doing.....16.3                |
| Becoming a notary public....1.2                          | Hiring.....16.1                                      |
| Fee not charged for oath....2.1.2                        | Official work defined/described.....16.2             |
| Journals.....2.1.1                                       | Opening court.....16.10                              |
| Public "officer".....2.1.1                               | Opening statements, reporting.....17.1               |
| Web site.....1.2, 2.1.1                                  | Orders for court transcripts...Section 19            |
| Notes (stenographic)                                     | Appeals transcripts.....19.1.2, 19.2                 |
|  | Nonappeal court transcripts....19.1.1                |
|  | Third-party orders of depos....8.4                   |
|  | Writ of habeas corpus, court-appointed attys...19.1  |
|  | Oregon attorneys must pay tax too....12.4(e)         |
|  | Original transcripts                                 |
|  | Appeals transcripts filed with clerk....19.2(5)      |
|  | Condensed/scrunched/mini.....8.3                     |
|  | Depositions generally.....Section 8                  |
|  | Depositions not filed.....8.1                        |
|  | Do not use notarial seal on cert.....2.1.1, 19.8     |
|  | Filing original court transcripts....19.9            |
|  | Full-size originals, not condensed....8.3, 19.9      |

|  |  |
|--|--|
| Orders for transcripts.....19.1  | Realtime generally in court...see Section 20             |
| Original signatures on original.....19.8                                 | Disclaimer/rough drafts.....15.18, 20.6, 22.19           |
| Original depositions to be sealed.....8.2, 11.7                          | Equipment in court.....20.1                              |
| Work comp hearings.....10.3.2  | Salary differential for official with CRR...20.3         |
| Page formats   | Training for officials.....20.2                          |
| Deposition format up to reporter....14.1                                 | UJS policy 1-SC-03 re judge's equipment...20.1           |
| Appeals transcripts in SD courts.....19.3                                | Reconstructing the record.....17.12.2                    |
| Federal court.....11.1, 11.11, 15.19                                     | Records depositions.....10.2.1                           |
| NCRA format.....14.1   | Records retention and destruction....16.12               |
| Patent and Trademark depositions.....10.6.1                              | Reduced transcripts.....8.3, 19.9                        |
| Samples.....15.12-14, 15.19-20   | Reporter death or disability.....5.4, 9.3                |
| South Dakota format.....14.1, 14.7, 15.20                                | Reporting in court (see also Official Court Reporters)   |
| Page numbering...see Page Formats  | Ask the judge.....17.1                                   |
| Page rates...see Transcript fees   | Discussions off the record...17.2                        |
| Parentheticals in court.....11.11(8-9), 17.1-6, 17.11                    | Jury selection, charge, voir dire..17.1, 17.5            |
| at depositions.....11.11.8-9   | Opening and closing statements...17.1                    |
| in grand jury.....10.1.1   | Questions from the jury.....17.8                         |
| Patent and Trademark depositions.....10.6                                | Reading of depositions.....17.4                          |
| Payment in advance for transcripts.....12.5, 19.1.1-2                    | Telephone/teleconference proceedings...17.6              |
| Letter requesting prepayment.....22.11                                   | What needs to be reported....17.1                        |
| Per diem.....12.1, 16.5  | Reporting transcript fees (officials).....16.14          |
| Playing "bill collector".....19.11                                       | Reporting trials (what gets reported).....Sec. 17        |
| Photo ID for confidential transcript order....21.1 note                  | Request for Extension on appeal transc...19.1.2, 22.10   |
| Preparing transcripts...see Transcripts                                  | Request for Payment form.....22.7                        |
| Pro se litigants/parties.....12.5, 16.8, 19.1.1                          | Reserving signature.....6.2 (note)                       |
| Questions from the jury.....17.8   | Responsibility for paying reporter's bill....12.5, 19.11 |
| Rates...see Transcript fees  | Retention of Exhibits.....9.5, 18.5                      |
| Reading depositions in court.....17.4, 22.4.2                            | Retention of notes in federal cases.....11.8.            |
| Reading and Signing...Section 6...See also Section 3, note 2, 11.4, 14.4 | Retention of Freelance notes and tapes...Section 9       |
| Asking witness about.....6.1.1   | Administrative hearings.....9.1                          |
| Certificate of Reporter...5.3  | Errata sheets, retention of...6.4                        |
| Changes to form or substance....6.1.2                                    | Federal court depositions.....11.8                       |
| Errata sheets.....6.4, 15.11, 15.15                                      | Mental health hrgs.....9.1, 10.4                         |
| Evidentiary/trial depo...14.4  | Work comp hearings....9.1                                |
| Federal court depositions...5.3, 6.2, 11.4, 11.6                         | Retention Schedule for court notes... 9.2, 11.8, 16.12   |
| Letters to attorneys...15.11, 15.17                                      | Rough Drafts.....20.5                                    |
| Letters to witnesses.....15.16   | Disclaimer.....15.18, 20.6, 22.19                        |
| Notice of delivery of transcript after...15.17                           | Rules of procedure, Web sites for....1.7                 |
| Out-of-state court cases....6.3  | Salary differential for CRR...20.3                       |
| Parties must waive....Sec. 3 (note 1), 6.1.1                             | Sales to third parties, see Third-party orders           |
| Reserving signature.....6.2 (note)                                       | Sales tax, charging.....12.4, 12.4(c), 14.5, 14.6, 15.24 |
| Time limits.....6.1.3, 6.2, 6.3  |  |
| Waiving signature.....6.1.1, 11.5  |  |
| Witness does not read/return transc...15.11, 15.17                       |  |
| Work comp depo.....10.3.1  |  |

|   |   |
|---|---|
| Based on delivery location.....12.4(e)                |   |
| Email from DRR..... 15.24                             | [Sic].....17.12.1, 17.12.3-4, 17.12.6                             |
| License, getting one....12.4(a)                       |   |
| Not charged to government entities...12.4(d)          | Side-bar discussions.....17.3                                     |
| Not charged on out-of-state delivery....12.4(e), 14.5 | Signing and notarizing transcripts....19.8                        |
| On photocopies.....12.4(f)                            |   |
| On postage.....14.6                                   | Slang.....17.12.1   |
| Out-of-state deliveries.....14.5, 12.4(e)             |   |
| Web site.....12.4(a)                                  | South Dakota Court Reporters Association                          |
|   | Dues.....1.4  |
| Sample forms  | Joining.....1.4   |
| Bill for transcript.....15.10                         | Web site.....1.4  |
| Certificate of Reporter, court transcript..22.2       | South Dakota Statutes listed.....22.18                            |
| Certificate of Reporter, deposition.....15.7-8        |   |
| Certificate of Transcriber.....15.9, 22.2.2           | Standard stipulation.....Section 3, 15.5                          |
| Corrections by witness (errata sheet)...15.11, 15.15  | Statements.....8.6  |
| Contract with state.....15.21                         | Statement of officer taking deposition.....11.1, 11.2, 15.4, 15.6 |
| County voucher/Request for payment.....22.7           | Statutes re reporters in SD....22.18                              |
| Court Reporter Guardianship Form.....15.22            | Stipulations at depositions...Section 3, 15.5                     |
| Court Reporters' Reporting form.....22.8              | Re oath.....2.2.2   |
| Court Reporter/Transcriptionist Cert.....22.6         | Stopping the proceedings.....17.9                                 |
| Deposition read into the record.....22.4.2            | Stutters.....17.12.1  |
| Endorsement of transcript.....22.8                    | Style/Caption/Title of case.....19.4                              |
| Errata sheet.....15.15                                | Subpoenas.....Section 13  |
| Ethics Opinion 80-6.....22.14                         | Supreme Court clerk...see Clerk of the Supreme Court              |
| Extension request on appeal transcripts...22.10       | Tapes...see Audio recordings, Videotapes                          |
| Federal format.....15.19                              | Taxes....see Sales tax  |
| Format for SD court.....22.4                          | Telephone/teleconference proceedings                              |
| Freelance bill..... 15.10                             | Federal depositions.....11.3                                      |
| Guardianship (Court Reporters) form.....15.22         | Oaths over telephone/teleconference...16.11, 2.2.2                |
| Grand Jury testimony.....15.13                        | Reporting in court.....17.6                                       |
| Indexes, court transcripts.....22.3.1-4               | Terms and Briefs for SD court.....22.17                           |
| Index to deposition.....15.2(a-b)                     | Third-party transcript orders.....8.4, 11.9                       |
| Interpreted testimony.....15.14                       | Title Pages (see also 15.1, 15.3, 15.4, 21.1)                     |
| Invoice by official court reporter.....22.9           | Abuse and neglect cases.....19.4                                  |
| Letters to attorneys re read/signing...15.11, 15.19   | Appeals transcript, description.....19.3(5)                       |
| Letter requesting prepayment.....22.11                | Deposition in federal court.....11.1                              |
| Letter to witness for reading and signing..15.16      | Third-party orders.....8.4, 11.9, 21.1                            |
| Memorandum/Form for income reporting...22.13          | 30(b)(6) depositions.....10.2.1                                   |
| Order for court transcript on appeal.....22.5         | Title/Caption/Style of case.(see also title pages).19.4           |
| Request for Extension (appeals transcript).22.10      |   |
| Request for Payment form (county voucher)..22.7       |   |
| SD format.....22.4                                    |   |
| Standard stipulation.....15.5                         |   |
| Statement of officer taking deposition.....15.4, 15.6 |   |
| State voucher.....15.23                               |   |
| Title page, juvenile hearing.....22.1.2               |   |
| Title page, jury trial.....22.1.1                     |   |
| Title pages (depositions).....15.1, 15.3, 15.4        |   |
| Court transcript pages.....22.4.1-3                   |   |
| Transcription Compensation/Certification...22.6       |   |
| Travel voucher (state).....22.15                      |   |
| Written interrogatories.....15.12                     |   |
| Scrunched transcripts.....8.3                         |   |
| SDCRA...see South Dakota Court Reporters Association  |   |
| Sealing transcripts.....14.3, 8.2, 11.7               |   |
| Depositions...8.2, 10.6.3, 11.7, 14.3                 |   |
| Secretary of State Web site.....1.2                   |   |

Trademark and Patent cases...see Patent and Trademark

Training  
 Annual for officials.....16.4  
 Excusal from training....16.4, 22.16  
 Realtime for officials...20.2

Transcriber certificate...see Certificate of Transcriber

Transcribing  
 from electronic recordings...5.4(b), 15.9, 17.12 19.7  
 for another reporter.....5.4(a), 9.3, 15.9

Transcription Compensation/Certification form...22.6

Transcript fees  
 Federal court rates.....11.10  
 Federal depts in indigent cases.....11.5 note, 11.10  
 Fees for court transcripts.....19.10  
 No charge to judge ordering transcript...20.5  
 Realtime rates in court.....11.10, 20.4  
 Reporting expenses for transcripts...16.14  
 Reporting forms for officials...22.8, 22.13  
 Reporting state-paid fees.....16.14  
 SD state contract rates.....12.1

Transcripts, official/court generally...Section 19  
 Appeal transcripts.....19.1.2, 19.2  
 Available to all sides.....16.6  
 Confidential/closed court proceedings...21.1, 19.1.1  
 Format for appeals transcripts.....19.3  
 Nonappeal court transcripts.....19.1.1  
 Orders for court transcripts.....19.1  
 Preparing official court transcripts....19.3  
 Sealing depositions.....14.3, 8.2, 11.7  
 Third-party orders: 21.1, 16.6

Travel vouchers generally.....16.5  
 Rates as of July 1, 2006.....16.5  
 Sample travel voucher.....22.15

UJS policies:  
 1-SC-03 re officials doing realtime..20.1, 20.2  
 1-SC-85 re officials doing freelancing.16.3  
 2-SC-85 re annual training, officials...16.4  
 2-SC-03 re realtime training.....20.2  
 5-SC-91 re not certifying reporters.....1.1

Uh-huh/uh-uh.....17.12.3

Ums and ers.....17.12.2

Unintelligibles and inaudible....17.12.1

Use tax.....1.3, 12.4(b)

Verbatim record.....17.11, 17.12

Videoconference...see Telephone/Teleconference

Videotaped depositions.....11.1, 11.2, 11.2.2, 11.4, 15.6  
 Indexing objections to....7.2.3  
 Reporting in court.....17.4  
 Transcribing from video....5.4(b)

Voir dire of jury, reporting.....17.5, 22.4(c)  
 Voir dire of witness.....17.5, last sentence; 22.4(d)

Volume numbers.....19.4(a)

Vouchers...see Travel Vouchers; see also Sample Forms; see also Billing

Waiver of Attendance at Fall Seminar.....22.16

Waiving reporter's qualifications to administer oaths...see Oaths...2.2.2

Waiving signature.....see Reading and Signing

Web sites:  
 Federal Rules of Procedure...1.7  
 NCRA.....1.5  
 SD Codified Laws.....1.7  
 SDCRA.....1.4  
 Secretary of State...1.2  
 UJS Records Retention/Destruction...16.12

What needs to be reported .....17.1  
 (see also Reporting Trials)

Witnesses, familiarity with....16.7  
 Interrupting/stopping.....17.9, 17.10

Workers' compensation hearings.....10.3.2, 9.1  
 depositions in.....10.3.1

Word indexes (concordances)....7.2.4

Writ of habeas corpus transcript....19.1

Written interrogatories, depositions upon....10.2, 15.12  
 Attach notice to transcript.....10.2.4  
 Questions should be numbered.....10.2.3

Yes and no answers (yeah, etc.).....17.12.3