

FILED

September 15, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8010

IN RE PILOT PROJECT REGARDING PRODUCTION OF *IN FORMA PAUPERIS* TRANSCRIPTS

O R D E R

Court reporters “may charge” a fee to prepare a transcript “at a rate set by the chief justice.” Minn. Stat. § 486.06 (2020). The chief justice has delegated the authority to set transcript rates to the Judicial Council. *Order re: Authority to Set Transcript Rates*, No. C1-84-2137 (Minn. filed Mar. 30, 2006). Transcripts ordered by a judge, however, are produced without charge, Minn. Stat. § 486.02 (2020), and are produced by the court reporter who took the record of the proceeding during normal court business hours. The court reporter’s normal hourly wage covers the production of these transcripts, and so consistent with the public-purpose doctrine, reporters are not permitted to receive a separate fee for these transcripts.¹

The Judicial Council, the policymaking body for the Judicial Branch, has adopted Policy No. 221, *Court Reporter Transcript Rates*, which sets transcript rates. On June 17,

¹ The public-purpose doctrine provides that expenditures of public funds by a government entity must have a valid public purpose and legal authority for the expenditure. *See Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958); *Burns v. Essling*, 194 N.W. 404, 405 (Minn. 1923). Payment of wages to a court reporter who is at the same time preparing a transcript for a fee that is charged by the court reporter and paid in addition to wages would be a gift in violation of the public-purpose doctrine. Accordingly, transcripts produced for a transcript fee cannot be produced during the work day while the court reporter is being paid wages as a judicial branch employee.

2021, the Judicial Council amended Policy No. 221, effective October 1, 2021, by modifying transcript rates, eliminating the IFP rate, and establishing a one-year pilot project to have IFP transcripts (excluding transcripts in sexual psychopathic personality/sexually dangerous person cases) that are produced by court reporters employed by the Judicial Branch to be transcribed during the work day without charge.

The Judicial Council also adopted Policy No. 523, *Storage of Captured Records of Court Proceedings*, which governs the safe and secure storage, retention, and maintenance of records of court proceedings. This policy also addresses the ability to produce transcripts of such records when the person who took the record is unavailable to produce or arrange for the preparation of a transcript.

Minnesota Statutes § 480.182(6) (2020), requires the state courts to pay costs for transcripts that are mandated by statute, except in appeal cases and postconviction cases in which the Board of Public Defense appears on behalf of a party. Transcripts mandated by statute to be paid by the state courts are *In Forma Pauperis* (IFP) transcripts, authorized by Minnesota Statutes § 563.01, subd. 7 (2020), upon a finding that a transcript of any part or all of an action is necessary to adequately prepare, present, or decide an issue presented by that action. Procedurally, to secure an IFP transcript, a party must have applied for and been granted an order authorizing the party to proceed IFP. In addition, the party must have filed a Supplemental Affidavit for Proceeding IFP requesting the production of transcripts and been granted a Supplemental IFP Order authorizing the payment of expenses by the state for the production of the transcript.

The judicial branch has the inherent authority to ensure the performance of judicial functions, *see, e.g., In re Clerk of Court's Comp. for Lyon Cty.*, 241 N.W.2d 781, 784 (Minn. 1976), which includes control of court records, *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981). The Chief Justice has general supervisory and administrative authority over the operations of the courts of the State of Minnesota, Minn. Stat. § 2.724 (2020); Minn. Stat. § 480.16 (2020).

IT IS HEREBY ORDERED THAT:

1. All official court reporters shall prepare *In Forma Pauperis* (IFP) transcripts ordered by a district court judge on behalf of a party during normal business hours, excluding transcripts in sexual psychopathic personality/ sexually dangerous person (SPP/SDP) cases. Official court reporters shall continue to prepare SPP/SDP transcripts outside of normal court business hours.

2. Under the IFP Transcript pilot project authorized by Judicial Council Policy No. 221, the Supplemental IFP Order granting a request for transcript constitutes an order by the judge for the production of the transcript on behalf of a party. The official court reporter's normal hourly wage covers the transcript costs for the production of the IFP transcripts during normal court business hours.

3. In the event the record was taken by a former official court reporter or per diem reporter, the former court reporter or per diem reporter shall be paid at the applicable case type transcript rate to prepare the IFP transcript.

4. The official court reporter responsible for producing the IFP transcript under Judicial Council Policy No. 523 must notify the court administrator within 5 business days

of the filing of the Supplemental IFP Order if the official court reporter, in good faith, determines based on the court calendar that he or she will be unable to produce the transcript during normal business hours within the required time, and has attempted unsuccessfully to find another official court reporter to prepare the transcript.

5. The court administrator or designee is authorized to make arrangements with a qualified transcriptionist or transcription service under the following circumstances:

a. An official court reporter gives notice of the inability to produce the IFP transcript, as provided in paragraph 4 of this order;

b. The court administrator or designee is unable to find another official court reporter to produce an IFP transcript for an official court reporter who is unavailable under section III(D)(6), Judicial Council Policy No. 523;

c. An official court reporter is unable to produce an IFP transcript during the work day after following the local practice for preparing a transcript of proceedings taken by an electronic recording equipment operator or other authorized person who is not an official court reporter, *see* section III(D)(5), Judicial Council Policy No. 523; or

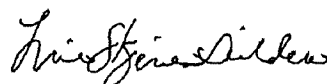
d. In the Fourth Judicial District, there is a shortage of court reporters available to cover the recording of court proceedings.

6. The IFP transcript rate authorized to be paid to a qualified transcriptionist or transcription service is \$3.55 per page for an original and \$.25 per page for each copy.

7. This order is effective October 1, 2021 and will be in effect until September 30, 2022 or further order of this court, whichever occurs first. This order applies to IFP transcripts ordered during this period.

Dated: September 15, 2021

BY THE COURT:



Lorie S. Gildea
Chief Justice