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## public records request for transcripts

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**Date:** June 15, 2007 04:28 PM

**Author:** kathi fegers ([kfegers@aol.com](mailto:kfegers@aol.com))

**Subject:** public records request for transcripts instead of payment

Some attys here are filing a public records request in court so they don't have to pay the court reporter for a copy of transcripts. This includes any county, govt. state, city, and involves quite a few cases. The judge has agreed with the attys that the govt/county etc atty has to copy the transcript and give them to the other side leaving the court reporter with no ability to get copy sales. Is this happening elsewhere and has anything been done to fight this.

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**Date:** June 15, 2007 05:35 PM

**Author:** Karen Yates CCP ([karenccr@aol.com](mailto:karenccr@aol.com))

**Subject:** time to educate

Kathy, what state are you in? Yes, I've heard of it happening elsewhere, but it seems to me that the court reporters all sat down with a presiding judge (maybe judges) and made a very convincing case.

I hope someone else recalls the details. Good luck!  
Karen

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**Date:** June 15, 2007 05:42 PM  
**Author:** Denise A. "Mitz" Drill ([ddrill@rocketmail.com](mailto:ddrill@rocketmail.com))  
**Subject:** timely post.

Someone else has been complaining about this happening in e-mail, and she posted this as something recently in The JCR.

Food for Thought  
Subpoena a Transcript to Avoid Payment for Certified Copy?  
BY JUDY EVERMAN

If you receive a subpoena that requires you to produce a transcript that the attorney intends to photocopy rather than pay your professional fees, you can provide the attorney or the court (along with a motion to quash the subpoena) with a copy of this case. In *Urban Pacific Equities Corporation, et al., Petitioners, v. The Superior Court of Los Angeles County, Respondent; Steiner & Libo, et al., Parties in Interest*, filed November 26, 1997, in the Court of Appeal of the State of California, Second Appellate District, Division One, Case No. B114725, Super. Ct. No. BC151818, the court addresses the issue of a court reporting firm being subpoenaed to produce a transcript to counsel for photocopying to avoid payment for a certified copy.

In describing the original proceeding, the court stated the following:

To avoid a court reporter's \$6,500 fee for a photocopy of a deposition transcript that any lawyer could produce in-house for about \$150, a party served the reporter with a business records subpoena for the transcript. The reporter and the party who had noticed the deposition moved to quash the subpoena, their motions were granted, and a petition for a writ of mandate was filed with us. We were intrigued and issued an order to show cause but conclude, albeit reluctantly, that a business records subpoena cannot be used in this manner.

The taking or ordering counsel's motion stated this subpoena was the petitioner's "ill-conceived attempt to avoid paying the court reporter for copies of deposition transcripts. ..."

The court reporting company moved to quash the subpoena by complaining that the "subpoena constituted a misuse of a discovery tool because it sought to obtain documents 'otherwise available through alternate means.'"

The petitioner took the position that he had "simply taken a more cost-effective approach to obtaining the same discoverable information available through considerably more expensive channels. [The court reporting company] is demanding the exorbitant rate of \$2.30 per page, impermissibly forcing [the petitioner] to bear a portion of the cost of transcribing the deposition of

[the petitioner].... That the subpoena method is less lucrative for court reporters is not grounds to quash a business records subpoena.”

The petitioner went on to say that the market price for photocopies was between \$0.02 to \$0.04 per page. The petitioner was not trying to get free transcripts and was willing to pay the reasonable costs of photocopying the deposition using his own copier service.

The opinion goes on to say, “The trial court granted the motions to quash the subpoena, finding ‘there are other available means to get transcripts other than by subpoena,’ but denied the motions for sanctions. [The petitioner] then filed a petition for a writ of mandate, asking us to direct the trial court to vacate its order quashing the subpoena. We issued an order to show cause and set the matter for hearing.”

In the court’s discussion, it noted that it was offended by the “excessive charges” by the court reporting company, but the only real issue in the case was whether the petitioner could obtain copies through a business records subpoena. “Since the transcript is not a ‘business record’ within the meaning of section 2020, subdivision (d), our answer is that he can’t.”

The key language used by the appellate court is that the deposition transcript is the product of the court reporting company’s business and not a record of its business.

Although this opinion — in my humble opinion — contains a number of unconscionable derogatory remarks about court reporters and costs, it is, as someone else said, “a precedent-setting decision in favor of reporting in a backhanded sort of way.”

Please note that you should not confuse this subpoena with a subpoena to produce a certified copy of a deposition transcript that the attorney is perfectly willing to pay for that is done when the attorney represents a nonparty to the lawsuit.

Also, I would like to emphasize that signing a “certified copy” with your original signature is what makes the transcript a “certified copy” and not a “photocopy.” Always sign — do not stamp, do not photocopy — your original signature on the copy certificates!

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**Date:** June 16, 2007 02:32 PM

**Author:** kathi fegers ([kfegers@aol.com](mailto:kfegers@aol.com))

Mitz,

I am keeping this to find the case. I did read the JCR article. The difference here they are not subpoenaing (sp) the court reporter. They filed a records request and sent it to the def. atty. The court ruled the def atty has to copy the transcript and give it to the plf. lawyer even though it is not a public record because he hasn't file the original.

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**Date:** June 16, 2007 03:34 PM

**Author:** Denise A. "Mitz" Drill ([ddrill@rocketmail.com](mailto:ddrill@rocketmail.com))

**Subject:** I'm not a lawyer . . .

. . . but couldn't you file a brief or some motion against them stealing your work product using this case? I'm sure defense attorneys don't want to pay for or subsidize the lawsuit against them.

Have you made it known that if this becomes practice, that rates will have to be increased to reflect this practice? It will end up that defense attorneys will be financing the majority of lawsuits against them. Seems like that's antithetical to justice.

Mitz

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**Date:** June 17, 2007 05:16 PM

**Author:** kathi fegers ([kfegers@aol.com](mailto:kfegers@aol.com))

the def attys are not too happy about doing this. they firmly believe court reporters should be paid for their copy and they also realize that the rates might go up.

I did send the last dep on uncopyable paper and the def. copied it and sent it to the lawyers and it cause a lot of laughter in the def office and quite a stir in the plf. office. The def lawyer called me and said I was having a miserable day until I started copying your transcript and couldn't copy it and that is what I sent.

but that is neither here nor there. I will do something about it.

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**Date:** June 18, 2007 06:34 PM

**Author:** Marie Splane ([msplane@earthlink.net](mailto:msplane@earthlink.net))

**Subject:** public records

kathi,

Correct me if I'm wrong, but depositions are not "public" records, are they?

It seems to me that records requests are generally made to an agency, etc., because that is the only means of obtaining the document. In this case, copies of depositions are readily available through the court reporter, and anyone using this tactic is simply trying to circumvent the standard rules.

Perhaps there have been changes in your Criminal/Civil Rules of Procedure?? Since I'm in federal court, I haven't had the opportunity to read the state rules lately. Do the Rules of Judicial Administration cover this topic?

Hope everything works out here.

Marie Splane

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**Date:** June 15, 2007 06:48 PM

**Author:** SueLynn Morgan ([SueLynn@cableone.net](mailto:SueLynn@cableone.net))

**Subject:** Ohio case law

Kathi, there is also a case in Ohio that addresses this issue.

The officials in Oklahoma had a similar issue come up last summer and we used this case in our argument.

I've included it here as an attachment and also the citation below.

Good luck!

SueLynn

[Cite as State ex rel. Slagle v. Rogers, 103 Ohio St.3d 89, 2004-Ohio-4354.]

THE STATE EX REL. SLAGLE, PROS. ATTY., APPELLEE, v. ROGERS, APPELLANT, ET AL.

[Cite as State ex rel. Slagle v. Rogers, 103 Ohio St.3d 89, 2004-Ohio-4354.]

Transcript of proceedings — R.C. 2301.24 — Party requesting copy of transcript of proceeding in action must pay official court reporter fees designated by court — R.C. 149.43(B)(1) superseded, when.

(No. 2003-1671 – Submitted May 25, 2004 – Decided September 8, 2004.)

APPEAL from the Court of Appeals for Marion County, No. 9-02-52, 2003-Ohio-4162.

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## SYLLABUS OF THE COURT

When a party to an action requests copies of a court transcript of the proceedings in that action, R.C. 149.43 is superseded by R.C. 2301.24, and the party must pay the official court reporter the fees designated by the court pursuant to the latter statute.

**Attachments:** [Slagle v Rogers Decision.txt](#)

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**Date:** June 16, 2007 02:30 PM

**Author:** kathi fegers ([kfegers@aol.com](mailto:kfegers@aol.com))

thanks for the info. I will post the continuing saga and give this case to the def atty.

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