



# THE NCRA ONLINE FORUM

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Back
  Refresh
  Options
  Search

## atty requesting digital backup

|  |                              |          |
|--|------------------------------|----------|
| <a href="#">digital backup request</a>   | cathy aiello                 | 11/27/06 |
| <a href="#">providing backup tape</a>  | Jo Ann Betler, RMR, CRR, CPE | 11/27/06 |
| ↳ <a href="#">They can subpoena it</a>   | Greta Duckett                | 11/27/06 |
| ↳ <a href="#">You mean this thread?? :-)</a>                                     | Candis Bradshaw              | 11/27/06 |
| ↳ <a href="#">Thx</a>  | cathy aiello                 | 11/27/06 |
| <a href="#">so what would you say to them?</a>                                   | cathy aiello                 | 11/27/06 |
| ↳ <a href="#">a response</a>   | Curt Cloward                 | 11/27/06 |
| ↳ <a href="#">If not, I have told an attorney that once I'm handed the su...</a> | Donna Kanabay Harvey         | 11/28/06 |
| ↳ <a href="#">exactly right</a>  | Marie Splane                 | 11/28/06 |
| ↳ <a href="#">Realtime rough? THAT'S a new one! My answer on that one wo...</a>  | Donna Kanabay Harvey         | 11/29/06 |

[Post new message in this thread](#)

Top
  Previous
  Next
  Print
  Reply

**Date:** November 27, 2006 05:13 PM

**Author:** cathy aiello ([caiello2@cox.net](mailto:caiello2@cox.net))

**Subject:** digital backup request

Any advice on atty wanting copy of my digital backup?

The depo was sarcastic at times and they want the judge to listen to other atty's attitude!

And should we charge for this?

Thanks,  
Cathy

([http://forums.verbatimreporters.com/Index.cfm?CFApp=3&Message\\_ID=147092](http://forums.verbatimreporters.com/Index.cfm?CFApp=3&Message_ID=147092))

Top
  Previous
  Next
  Print
  Reply

**Date:** November 27, 2006 05:51 PM

**Author:** Jo Ann Betler, RMR, CRR, CPE ([betler@frontiernet.net](mailto:betler@frontiernet.net))

**Subject:** providing backup tape

In the not-to-distant past there was a great discussion about providing of backups. I believe there is also an advisory opinion in regard to such.

Personally, I would not want to provide this and so the charge - which we can't discuss anyway - is not a

question.

I know this doesn't tell you much, but I'm sure others will have an opinion.

Sincerely,

Jo Ann Betler

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 27, 2006 06:18 PM

**Author:** Greta Duckett ([ilovedigitalcat2@hotmail.com](mailto:ilovedigitalcat2@hotmail.com))

**Subject:** They can subpoena it

If a party to an action needs your work product backup, they can subpoena it or get a Court order. Other than that, I would not provide it.

Greta

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 27, 2006 06:45 PM

**Author:** Candis Bradshaw ([Candisbradshaw@gmail.com](mailto:Candisbradshaw@gmail.com))

**Subject:** You mean this thread?? :-)

[forums.verbatimreporters.com/Index.cfm?CFApp=3&Message\\_ID=143892](http://forums.verbatimreporters.com/Index.cfm?CFApp=3&Message_ID=143892)

The Advisory Opinion is No. 38: [ncraonline.org/AboutNCRA/cope/Advisory/038.htm](http://ncraonline.org/AboutNCRA/cope/Advisory/038.htm)

:) Candis

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 27, 2006 08:38 PM

**Author:** cathy aiello ([caiello2@cox.net](mailto:caiello2@cox.net))

**Subject:** Thx

Thanks for all the feedback.

Cathy Aiello

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 27, 2006 06:45 PM  
**Author:** cathy aiello ([caiello2@cox.net](mailto:caiello2@cox.net))  
**Subject:** so what would you say to them?

So what's a good response to them?

Cathy Aiello

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 27, 2006 07:20 PM  
**Author:** Curt Cloward ([SPDwriter@aol.com](mailto:SPDwriter@aol.com))  
**Subject:** a response

Howdy; This situation has come up several times in my career and I've provided that backup material only once. There was some compelling reason for providing it, but for the life of me I can't remember.

When asked by an attorney to give them a copy of the backup tapes, etc., my standard reply is "no", and then I shut up. If they press the issue I explain that I only use the tapes as a proofing aid and do not retain them once the transcript is completed. That usually takes care of it.

If not, then I tell them that the recording is part of my work product process, not the record and that no, I will not provide a copy of it. I usually say this with no sound of hesitation or doubt in my voice and that usually takes care of it.

If not, I have told an attorney that once I'm handed the subpoena I will provide it.

Hope that helps, Curt

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 28, 2006 08:31 AM  
**Author:** Donna Kanabay Harvey ([donna@kanabay.com](mailto:donna@kanabay.com))

[If not, I have told an attorney that once I'm handed the subpoena I will provide it.]

nuh-uh. in which case you go to court on a motion to quash the subpoena.

conversely, i fought a motion to compel the tape successfully a year or two ago. if anybody wants the transcript feel free to e-mail me. it's not "case law" because no appeal was taken, and it may not be persuasive outside of Florida, but it may give you some ideas if you have to go before a judge to defend your right to protect the audio.

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 28, 2006 06:11 PM

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

**Subject:** exactly right

What Donna suggests is exactly right.

On a similar note, about two years ago I had a deposition duces tecum subpoena served on me that requested my realtime rough draft in a case that was related to the one I reported (same defendant). Fortunately, the other side filed a motion to quash, which was granted.

Marie Splane

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---

[Top](#) [Previous](#) [Next](#) [Print](#) [Reply](#)

**Date:** November 29, 2006 06:15 AM

**Author:** Donna Kanabay Harvey ([donna@kanabay.com](mailto:donna@kanabay.com))

Realtime rough? THAT'S a new one! My answer on that one would be pretty simple: if it hasn't been transcribed, sure, you can buy the rough, which means you're also buying the final. if transcribed already, nope, you can buy the final but you're going to have to take me to court to get the rough. there's no rough left anyway; i scoped it to produce the final. i might - MIGHT - still have the original writer file that could be retranned, though, but due to changes in my dix since then it won't be the rough that was generated that day, two years ago.

(Honestly, what on EARTH was the purpose of that one? I'd love to hear "the rest of the story"!)

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