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## Advice? Attorneys request that I destroy whole day's record

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**Date:** April 04, 2007 11:21 PM

**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

I just received an unusual request this evening (at 10 p.m. no less!).

For five and a half hours today I took the dep of a husband in a divorce case. During the dep, a particular question about his business was asked which halted everything. The husband refused to answer, he conferred at length with his attorney, and suddenly the parties and attorneys started settlement negotiations. At this point they released me and sent me on my way, declining to order the transcript. I went home and billed for my appearance. So far so good.

A few minutes ago one of the attorneys called me. He said that they had settled the case and that the two attorneys were requesting that I destroy the whole day's record in every format in which I had captured it. He said that the two attorneys together would draft a document directing me to do so and would I be

comfortable doing that. My response to him was that I thought that I could, but that I wanted to take a day to think this over. Without going into the details of the dep, I know what questions on the record prompted all this. So I asked him if I were to receive a subpoena from some third party at some point in the future for the record, how do I handle that? He said that I would simply respond that upon the direction of the parties and attorneys, the record was destroyed.

So what do you think? Is it okay for me to destroy the record?

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**Date:** April 04, 2007 11:44 PM

**Author:** Jill S. Driscoll ([jilldmail@gmail.com](mailto:jilldmail@gmail.com))

If it is pending in a court, I think I might prefer an order from the judge to approve the destruction of the record.

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**Date:** April 04, 2007 11:50 PM

**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

FWIW, it was a discovery dep which ended in settlement. The attorney indicated to me that the settlement paperwork was drawn up this afternoon and everyone signed it. It just needs to be filed in court tomorrow. So at that point it is no longer pending.

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**Date:** April 04, 2007 11:54 PM

**Author:** Jill S. Driscoll ([jilldmail@gmail.com](mailto:jilldmail@gmail.com))

Maybe I'm being too cautious, but if they are going to have settlement paperwork presented to the court, I think they could also have an order for the judge to sign regarding destruction of the record in the case. I don't know, it would just make me feel more comfortable. The agreement of the parties/lawyers is probably enough, but I'd still rather have that one little smidge more.

My reaction may stem from the fact that I was an official for most of my career, so maybe that's why I'm thinking the way I am.

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**Date:** April 05, 2007 12:28 AM

**Author:** Cathryn Bauer ([cathryn@mindspring.com](mailto:cathryn@mindspring.com))

**Subject:** Same here

Greetings:

I'm with Jill. I would be very uneasy about destroying those documents without a court order. I believe the bottom line for me would be better safe than sorry. Certainly, I would not unquestioningly take the assurances of the lawyers who were directly involved.

Blessings, Cathryn

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**Date:** April 05, 2007 10:54 AM

**Author:** Douglas J. Zweizig, RDR, CRR ([DougieJZ@verizon.net](mailto:DougieJZ@verizon.net))

That's a tough one. Personally, I wouldn't feel comfortable doing that unless a judge was somehow involved. Sometimes I'll take hearings and the Court will seal it, only to be unsealed by order of the Court.

I had an attorney the other year try and be sneaky and order a hearing which he knew was sealed. It was actually sealed by the Court after the hearing was concluded, so it wasn't on the record. Luckily I had a vivid memory of it, partially because the witness was over the speakerphone. I informed the judge he tried to order it and she dealt with him.

But I don't envy you. Thing is, you shouldn't feel pressed for time, I don't think. It's not like you should have to decide this in a day or two. Just inform them that there are ethical and other considerations that you must think about before making a decision. Since you were asked if you'd feel comfortable destroying it, sounds like they're understanding.

Just my thoughts.

D.

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**Date:** April 07, 2007 11:39 AM  
**Author:** Sabrina Lewis ([csr1917@hotmail.com](mailto:csr1917@hotmail.com))  
**Subject:** Keepers of the Record

Court reporters are keepers of the record, not destroyers of the record. The attorneys could request a judge to issue an order sealing the record. I think destroying the record in this instance could start a bad precedent.

I don't mean to sound paranoid, but the reason we all have jobs is because people do not always behave in a "reasonable" manner. What today seems "reasonable" to the parties involved may turn out to be anything but reasonable.

At all costs, protect yourself. Don't get caught in the middle. Do not do any destroying without a court order, in my opinion. Do not trust the attorneys involved to protect you.

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**Date:** April 05, 2007 12:38 AM  
**Author:** Karen Morris ([karencsr108@yahoo.com](mailto:karencsr108@yahoo.com))  
**Subject:** DITTO!

I'm with Jill, t-o-t-a-l-l-y! I would get a court order. Period!

Karen

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**Date:** April 05, 2007 01:43 AM  
**Author:** Aminah Hardy ([aminahc2@msn.com](mailto:aminahc2@msn.com))

Oooh, this is why I read these boards all the time. I've never heard of that one! I agree, I think I'd want a court order. If they're serious, seems it would be easy enough to get.

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**Date:** April 05, 2007 08:16 AM  
**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

So let me play devil's advocate here.

What makes this situation require a court order? What scenario can you think of where down the road I would regret not having a court order if I were to destroy the record?

FWIW: I know that at least in this jurisdiction settlement negotiations are not admissable in court.

I'm wondering if I should request a COPE opinion.

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**Date:** April 05, 2007 08:43 AM

**Author:** Adam H. Alweis ([adamalw@aol.com](mailto:adamalw@aol.com))

**Subject:** DO NOT DO NOT DO NOT DESTROY ANYTHING

This is of course my opinion, but I would in no way ever destroy any record that was taken in any proceedings. To be asked to do so is quite absurd.

You can explain to the attorneys that because the proceedings involved were in the nature of a divorce action, that the information contained therein is confidential and that no one other than the parties and/or their attorneys would ever have access to the transcript and/or minutes of the proceeding, and unless ordered by the Court (in writing), no one would have access to this. But, even if the proceedings had nothing to do with a divorce action, you should never destroy anything unless, by law, you are allowed to do so. I'm not even sure if a Court can direct you to do so, but I guess that depends on what state you're in and whatever the law is there, but again, it is my opinion that you should not destroy anything, especially if the instruction is coming from attorneys who have an interest in those proceedings.

Adam H. Alweis  
New York

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**Date:** April 05, 2007 09:28 AM

**Author:** Cathryn Bauer ([cathryn@mindspring.com](mailto:cathryn@mindspring.com))

**Subject:** Caution

Greetings:

My state's code directs me to keep transcripts such that I can produce them for a period of eight years after the proceeding. So that's what I do, period. There's nothing in there about destroying at the attorneys' request. I would therefore be going against code if I did that in the absence of a

court order that specifically spells out I am to destroy it.

One of the first things I realized during the period when I was taking my first 100 depositions was that attorneys know surprisingly little about what we do and the code we must answer to. I learned then that it is sometimes necessary to pull rank on them. It's a part of the job which, fortunately, I have had to do less than a handful of times. Unlike any other profession I can think of, attorneys and reporters are ultimately not answerable to those who pay us, but to a board and a code of ethics which can't be bent or broken for their convenience. I once had to explain this to an attorney in pretty much those words.

If the attorneys are worth working with, they will ultimately respect you for sticking to your guns, so to speak, even if this does not seem to be the case in the moment.

Blessings, Cathryn

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**Date:** April 05, 2007 10:53 AM

**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

One more bit of info, this occurred in Indiana, which has no statutes or rules or guidelines governing the preservation of the record in non-court situations. Also, this was a job I took for my own client rather than for an agency. If I took the job for an agency, I would follow their record retention procedures.

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**Date:** April 05, 2007 11:31 AM

**Author:** Barbara Wichmann ([bwichmann@sbcglobal.net](mailto:bwichmann@sbcglobal.net))

**Subject:** Record destruction

This is what happened to us once here in Illinois. A crazy case.

What eventually happened is that we were directed to submit paper notes, exhibits we had been given, disks -- everything involved in the deposition -- to the attorney specified (I believe the Court was involved).

At this point I have nothing left. But I do have the paper involving the whole procedure so that we're covered, all parts of us, in case some squirrely thing raises its ugly head in the future.

Barbara

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**Date:** April 05, 2007 11:33 AM

**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

One more bit of info, this occurred in Indiana, which has no statutes or rules or guidelines governing the perservation of the record in non-court situations.

Another update: This morning I spoke with the judge who I used to work for. Here was her advice. First, to ask the attorneys to draw up something to the effect of on such and such a date a discovery dep was initiated in such and such as a case which was not completed, that the parties entered into a settlement, and that the parties request leave to destroy the record of said dep with everyone signing off on it and presenting it to the Court for signature. She suggested that a second option would be to do the same thing but without presenting it to the Court for signature. In her opinion, I would be protected in either case as this would be an agreement of the parties and as there is no law here that precludes me from destroying the record (horrifying, I know). Of course, this does not protect the parties if I were to be called as a witness in a grand jury. I can destroy my records, but I cannot destroy my memory.

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**Date:** April 05, 2007 11:56 AM

**Author:** Janice McMoran ([janicekmc@charter.net](mailto:janicekmc@charter.net))

**Subject:** All parties

Victoria,

I assume when she said "all parties," she meant the parties to the action itself, not just the attorneys. The reason I say that is, there may be a situation down the road where an actual party to the action may want to use that information and didn't realize his attorney signed that right away by agreeing to destroy everything. IF this is the course of action you take, the advice of your former judge, I'd make sure the petitioner and respondent BOTH have their signatures on it as well.

Janice

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**Date:** April 05, 2007 12:31 PM

**Author:** Victoria Sawyer ([vicsaw@comcast.net](mailto:vicsaw@comcast.net))

Yes, Janice. The petitioner, respondent, as well as each of their respective attorneys are all making this joint agreed request.

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**Date:** April 05, 2007 09:12 PM

**Author:** Jim Scally ([jimscally@comcast.net](mailto:jimscally@comcast.net))

This is an interesting thread.

Once a long time ago I was contacted by the official reporter in Superior Court in I believe New Haven County, CT, to look at a reporter's notes in a divorce case because the wife was claiming that her atty, her husband and his atty, and perhaps even the judge, and the court reporter all conspired to change the official record to cover up for the fact that she was duped into agreeing to a settlement that wasn't in her best interests.

I was asked to compare what was in the transcript with what was in the reporter's notes.

So I'd be reluctant under any circumstance to destroy my notes because what happens down the road if one of the parties asserts that they were not adequately represented by counsel?

Jim Scally

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**Date:** April 07, 2007 04:02 AM

**Author:** Susan Vaughan, CSR, RPR, CRR ([susan0227v@sbcglobal.net](mailto:susan0227v@sbcglobal.net))

**Subject:** I'd say, not without an order from the judge (but -- ?)

It's been my experience that cases are sometimes more complex than simply Party 1 vs. Party 2. There can be other interested parties, countersuits, related actions, even an underlying case which we as reporters may not even exists. Bottom line, there could well be others who have or may in the future develop an interest in the case this deposition pertains to.

I mostly work in court, haven't reported depositions for years and certainly could be coming at this from the totally wrong angle, but my inclination is to categorically decline to destroy my notes from any proceeding just because someone asks me to. They may not like what came out, but the darned thing did

happen, I did report it and I have no idea how to evaluate the "legitimacy" of someone's request to make the record go away.

Isn't our responsibility as reporters to safeguard our record, not destroy our notes at somebody's whim? I would, of course, obey a judge's whim to do so :-)  
if conveyed to me in a signed order.

But then again, I guess my reaction is based on my assuming, maybe entirely wrongly, that anyone, even a non-party, is legally entitled to order a copy of a deposition, or I should say the original transcript of a deposition. Does anyone know if that's actually true? (Personally I'm not sure I've ever been faced with a request for an original by a non-party, certainly not when there has been opposition by one of the parties to having it transcribed.)

But I would appreciate being corrected if I am wrong in these assumptions.  
Thanks to anyone more knowledgeable who is willing to jump in.

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**Date:** April 07, 2007 08:53 AM

**Author:** Phyllis Clarke DeFonzo ([clarke.csr@verizon.net](mailto:clarke.csr@verizon.net))

**Subject:** Their Request

I would not destroy the record for the many reasons already stated, but another take...not knowing what type of client this is, but in terms of their payment to you and your billing presumably based upon your time there or estimated number of pages written, you want to make sure you have proof when they get your invoice, and possibly question, for five and a half hours' worth of work, etc.

Phyllis

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**Date:** April 11, 2007 02:25 PM

**Author:** Carole Bartkowitz ([carolebart@earthlink.net](mailto:carolebart@earthlink.net))

**Subject:** Destruction

I checked with another judge. He said to get an order from the court where the case is filed. The first sentence of Federal Rule 30(f)(2) says we must retain the notes, and the states usually follow the Fed's pretty closely.

As an aside, reporters are frequently asked to swear witnesses over the phone, and the attorneys agree we can do that, which we can't (unless maybe a videoconference where you can see the witness). That's like them all agreeing we can drive without a license. They can't agree that we can do something that is against the law.

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