



By John A. Taylor, Esq.

This is the fifth in a series of articles based on comments from appellate practitioners regarding reporter's transcripts on appeal. The comments were presented to the "Reporting on the Record Task Force" in December 2002, and this article addresses the topic of the transcript designation process.

The other day I heard an angry old appellate practitioner reminiscing: "In my day, we didn't have to deposit funds for the reporter's transcript when we designated the record! We didn't have to track down any court reporters for deposit waivers! Heck no, we just filed those designations, we waited for a cost estimate from the reporters of how much the transcript would cost, and we didn't have to pay a plug nickel until then!"

Ah, the good old days. That was a system many appellate lawyers would like to bring back because the current reporter's transcript deposit/waiver process is broken and needs fixing.

The existing process works like this. An appellant's first option is to contact all the reporters, obtain an estimate from each regarding the portion of the trial he/she reported, and then pay that amount directly to each reporter in return for a "fee waiver." The other option is to pay the mandatory rate of \$325 for each partial day of trial that is less than three hours, or \$650 for each full day or fraction of a day exceeding three hours.

Because the required deposit is almost always substantially more than the actual cost of preparing the transcript, attorneys and their clients usually prefer the fee waiver approach, especially where the appeal involves a lengthy trial and a long record. That avoids having to make an interest-free loan to the court in form of an excess fee deposit, as well as the delay and uncertainty of ever actually getting a refund of the excess deposit back from the court once the transcript has been finished.

But the problem with the fee waiver approach is that after filing the notice of appeal, counsel has only ten days within which to designate the reporter's transcript. During that time, it is often difficult, if not impossible, to track down all the reporters, obtain estimates of the cost for their respective portions of the transcript, make the required payment, and finally obtain the fee waiver. This is especially true where there were several different reporters, but the process can be equally difficult with just one or two reporters if they are too busy to provide the estimate or do not promptly return phone calls. Strangely, many reporters appear to be unaware of the fee waiver option. Others simply refuse to give fee waivers.

Where fee waivers cannot be obtained, there is no option other than to deposit the \$325 or \$650 per day fee for the transcript. The deposit can far exceed the actual cost of the transcript. For example, in a trial with 14 different hearings, each under 20 minutes, a \$325 deposit would be required – totaling over \$4,500 for less than five hours of court proceedings! Another inequity can occur when the party has already paid for preparation of a daily transcript but cannot obtain a fee waiver from the reporter for that particular proceeding – and is forced to make the full \$650 statutory deposit.

The current system also creates problems for attorneys representing respondents on appeal because there is no regular procedure for a respondent to obtain a copy of the reporter's transcript, except on an ad hoc basis. A return to the old system would ensure that respondents receive a timely notice before preparation of the record, asking if they want to order a copy of the transcript, and listing the price.

Nobody is proposing that court reporters be required to do any work on preparing a transcript before they are paid, apart from providing an estimate of the cost. Returning to the old system would simply eliminate the difficulty of locating all reporters, receiving phone calls, and obtaining waivers in advance of filing the designation of the record. Steely Dan once sang, "Those days are gone forever, over a long time ago." Let's hope we can someday prove them wrong.

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