



**Office of the Attorney General
State of Texas**

September 28, 1993

DAN MORALES
ATTORNEY GENERAL

Honorable Merrill L. Hartman
Chair
Court Reporters Certification Board
P.O. Box 13131
Austin, Texas 78711-3131

Letter Opinion No. 93-87

Re: Whether a court reporter is authorized to sell a copy of a deposition transcript to a company which operates a computerized database (RQ-558)

Dear Judge Hartman:

On behalf of the Court Reporters Certification Board, you ask when a deposition transcript becomes a public record. By way of background, you enclose a letter from an attorney, who represents a company which operates a computerized database, to a shorthand reporting firm. A draft agreement is attached to the letter. The letter states that the company

is currently contracting with court reporting firms The arrangement provides for court reporting firms to provide . . . copies of deposition transcripts There is no charge to the court reporting firm, and [the company] pays a fee to the court reporting firm, calculated as a percentage of gross revenues, for each deposition copy sold.

The draft agreement states in pertinent part:

Reporting Firm shall ship . . . [to the company] a copy of all testimony recorded by Reporting Firm during the term of this agreement. A copy of testimony recorded by Reporting Firm during the term of this agreement shall be provided by Reporting Firm to [the company] within thirty (30) days following the day of recording. In addition, during the term of this agreement . . . Reporting Firm shall provide to [the company] a copy of all testimony recorded by Reporting Firm prior to the term of this agreement, which is available to Reporting Firm.

In essence, you ask whether a shorthand reporting firm is authorized to sell a copy of a deposition transcript to such a company.¹

¹Because a court reporting firm is a private entity, not a governmental body subject to the Texas Open Records Act, V.T.C.S. 6252-17a, we do not believe that the situation you have recounted requires us to consider whether a deposition transcript is a "public record" under that statute.

Neither the Standards and Rules for Certification of Certified Shorthand Reporters as Promulgated by the Supreme Court of Texas (the "shorthand reporter rules")² nor Government Code provisions governing shorthand reporters³ shed any light on this subject. The shorthand reporter rules are simply silent on the subject. Section 52.059 of the Government Code generally provides that an attorney who takes a deposition is responsible for a shorthand reporter's charges for reporting and transcribing the deposition, and for the costs of each copy of the deposition transcript he or she requests. It also provides that an attorney who appears at a deposition is responsible for a shorthand reporter's charges for each copy of the deposition transcript he or she requests. Section 52.059 does not provide any authority for a shorthand reporter to sell a copy of a deposition transcript to any person other than an attorney who takes or appears at the deposition.

Depositions upon oral examination in a cause of action are governed by rules 200 through 207 and rule 209 of the Texas Rules of Civil Procedure. Prior to 1988, a shorthand reporter was required to file the original transcript of a deposition with the court in the underlying cause of action. Rule 206 as amended generally requires the officer who has taken a deposition, *i.e.*, the shorthand reporter, to attach a certification to the deposition transcript, to file a copy of the certificate with the court in which the cause is pending, and to deliver the original deposition transcript to the attorney or party who asked the first question in the deposition. The "custodial attorney" is required, "upon reasonable request, [to] make the original deposition transcript available for inspection or photocopying by any other party to the suit." Tex. R. Civ. P. 206(2). In addition, the shorthand reporter is required, "[u]pon payment of reasonable charges therefor, [to] furnish a copy of the deposition transcript to any party or to the deponent." Tex. R. Civ. P. 206(5). Rule 206 does not authorize a shorthand reporter to deliver a copy of a deposition transcript to any person other than the attorney or party who asked the first question in the deposition, a party to the suit, or the deponent.⁴

Rule 76a of the Texas Rules of Civil Procedure, which sets forth the standard for sealing court records, is also relevant to your inquiry. That rule presumes that "court records" are open to the general public and may be sealed only upon a heightened

²The Texas Supreme Court is authorized to adopt rules consistent with chapter 52 of the Government Code governing the conduct of court reporters. See Gov't Code § 52.002.

³See Gov't Code ch. 52.

⁴Of course, a court reporter is authorized to deliver a copy of a deposition transcript to a company which operates a computerized database if the company is either the deponent or a party to the suit. We do not address whether such a company is precluded from obtaining a copy of a deposition transcript from the deponent, a party to the proceeding, or a party's attorney.

showing.⁵ Rule 76a defines "court records" for purposes of the rule as "documents of any nature filed in connection with any matter before any civil court" with certain exceptions. Tex. R. Civ. P. 76a(2)(a). It also defines court records for purposes of the rule as

discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

Tex. R. Civ. P. 76a(2)(c). In providing that discovery that has been filed with a court as well as discovery concerning certain matters which has not been filed with the court constitutes "court records" presumed open to the general public, rule 76a suggests that discovery that has not been filed with a court and does not concern such matters, is not open to the general public. As noted above, however, rule 206 requires the shorthand reporter who has taken a deposition to file a copy of a certificate with the court. We do not consider whether, given this filing, deposition transcripts are "court records" under rule 76a(2)(a) in every case, or whether they are subject to the special provision under rule 76a(2)(c) for "discovery, not filed of record."

Clearly, a company which operates a computerized database may obtain a deposition transcript which has been filed with a court and is available to the public from the court. We are not aware of any statutory authority or rule, however, which would prohibit or authorize a shorthand reporter to sell a copy of a deposition transcript to a company which operates a computerized database. The supreme court promulgates the Texas Rules of Civil Procedure, which govern discovery in general, and the shorthand reporter rules, which govern the conduct of shorthand reporters in particular. In addition, trial courts supervise the taking and use of deposition transcripts in particular cases. Given the role of the judiciary in this arena and the absence of any statute or rule prohibiting or authorizing such conduct, we do not believe that it is appropriate for this office to determine whether a shorthand reporter is authorized to sell a copy of a deposition transcript to a company which operates a computerized database. We believe that this question would be more appropriately addressed by supreme court rule or by the court with jurisdiction over a particular case. Until such a rule is promulgated or a court specifically permits it, we believe it would be imprudent for a shorthand reporter to sell a copy of a deposition transcript to any person or entity other than the deponent, a party to the proceeding, or a party's attorney.

⁵Section 22.010 of the Government Code requires the Supreme Court of Texas to adopt rules establishing guidelines for the courts of this state to use in determining "whether in the interest of justice the records in a civil case, including settlements, should be sealed."

S U M M A R Y

There is no statute or rule prohibiting or authorizing a shorthand reporter to sell a copy of a deposition transcript to a company which operates a computerized data base, or any person or entity other than the deponent, a party to the proceeding, or a party's attorney, without leave of court. This question would be more appropriately addressed by supreme court rule or by the court with jurisdiction over a particular case.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee