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OPEN RECORDS DIVISION

# OFFICE OF COURT ADMINISTRATION

**RQ-0111-GA**

Alicia G. Key  
Administrative Director

September 24, 2003

By Certified Mail, Return Receipt Requested

FILE # ML-43269-03  
I.D. # 43269

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Compensation for court reporters who are full-time state employees

Dear Attorney General Abbott:

I respectfully request your opinion on several questions regarding payment of transcription fees for court reporters who are full-time state employees.

## Facts

The Office of Court Administration ("OCA") employs six court reporters for foster care courts as described in chapter 201, subchapter C of the Family Code. These court reporters were hired as personnel needed to implement or administer the provisions of this subchapter. They are full-time state employees classified as "hearings reporters" under the state classification system. They do not directly serve a judge in a court of record, but they record and take verbatim shorthand notes of testimony and statements at hearings and trials on cases referred by the court of record to an associate or visiting judge. They attend court unless excused by the judge to take care of other business, and they produce a transcript of the notes as occasionally requested by either party. To produce a transcript, the reporter translates the shorthand notes into typewritten format, in accordance with the formatting required by the rules established by the Court Reporter's Certification Board and approved by the Supreme Court, edits the transcript, and verifies its content in comparison to the transcription notes. Finally she provides an original and one copy to the requesting party. In addition, five of the court reporters also function as court coordinators, performing routine program administration work and providing relatively complex administrative and technical assistance for the associate or visiting judge. Their work involves preparing reports to determine the effectiveness of the court; assisting in evaluating program activities; scheduling, tracking and managing cases and assisting in courtroom proceedings to ensure that Child Protective Services cases are completed within time frames established by law.

Questions Presented and Discussion of Issues

1. Is a court reporter who is a full-time state employee required by law to charge a fee for the preparation of a transcript?

Rule 35.3(b) of the Rules of Appellate Procedure provides as follows:

“The official or deputy court reporter is responsible for preparing, certifying, and timely filing the reporter’s record if:

- (1) a notice of appeal has been filed;
- (2) the appellant has requested that the reporter’s record be prepared; and
- (3) the party responsible for paying for the preparation of the reporter’s record has paid the reporter’s fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.”

Section 52.047(a) of the Government Code provides in pertinent part as follows:

“A person may apply for a transcript of the evidence in a case reported by an official court reporter. . . . and the reporter shall furnish the transcript on payment of the transcript fee . . . .”

These court reporters are not official court reporters because they are not appointed under Section 52.041 of the Government Code. We question, however, whether the nature of their duties and the circumstances of their appointments would require them to charge a fee under the provisions of Rule 35.3 and Section 52.047.

Even if the court reporters are not required to charge a fee by the cited provisions, OCA questions whether providing transcripts free of charge to the requesting party would be unlawful or inadvisable. Because only parties in counties served by a foster care court would receive a state-funded benefit not provided to other litigants, such a practice may appear to favor some parties over others.

We respectfully request your opinion whether the OCA court reporters are required to charge a fee for preparation of transcripts. In addition, we respectfully request your opinion on the following questions.

2. May a court reporter who is a full-time state employee receive a fee for the preparation of a transcript while on state time?

As state employees, the OCA court reporters are subject to Section 659.020 of the Government Code, which provides as follows:

“A state employee employed by a state agency as defined by Section 658.001 whose position is classified under Chapter 654 . . . may not receive a salary supplement from any source unless a specific grant of authority to do so is provided by the General Appropriations Act or other law.”

Because there is no grant of authority in the General Appropriations Act for them to do so, the OCA court reporters are prohibited by this statute from receiving a salary supplement. If the fee charged by a court reporter for preparation of a transcript is a “salary supplement,” then OCA’s court reporters are prohibited from receiving such a fee. We have been unable to find any authority that the fees are a salary supplement.

3. May a court reporter who is a full-time state employee receive a fee for the preparation of a transcript if the reporter prepares the transcript on her own time by either doing so after normal business hours or taking annual leave?

If you interpret Section 659.020 to prohibit OCA court reporters from receiving fees for preparing transcripts during normal working hours, then would the same statute prohibit them from receiving fees for preparing transcripts outside their full-time working hours? It could be argued that preparing the transcript is outside the scope of their duties for the foster care court judge, and instead is a service performed for the requesting party. We believe that preparation of the transcript may actually be a second job, so that payment for that service is not a supplement but is compensation for those other services. However, we have found no supporting authority.

4. If a court reporter who is a full-time state employee may not receive a fee under any of these circumstances, may the fee be paid to OCA?

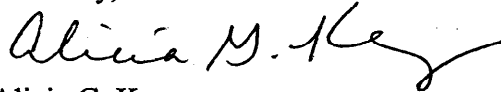
The Texas Department of Insurance is the only other state agency that currently employs a hearings reporter. That hearings reporter takes notes at meetings related to commission business, including administrative hearings, not judicial proceedings subject to the cited provisions of the Government Code and the Rules of Appellate Procedure. When transcripts are received from the public, the Department of Insurance handles the request as a request for public information and charges accordingly. The transcripts in the foster care cases are records of the judiciary and therefore are not subject to the Public Information Act. In addition, they are not subject to Rule 12 of the Rules of Judicial Administration, because they are records created in connection with a matter that has been before a court. If OCA were allowed to receive the fee on behalf of the

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court reporters, then it would charge either a reasonable fee based on the fee usually charged in that community, or it would charge the actual costs of having its employee prepare the transcript.

We appreciate your assistance with this request.

Sincerely,

A handwritten signature in cursive script that reads "Alicia G. Key". The signature is written in black ink and is positioned above the printed name and title.

Alicia G. Key  
Administrative Director

AGK:lmo

cc: Presiding Judges, Administrative Judicial Regions