

43. Procedures for Court Reporters to Follow Regarding Filing Transcripts Post-Beringer.

The Board of Court Reporting has been asked to issue an Advisory Opinion on the following question:

If a transcript is prepared, should it be sent to the ordering attorney for filing or does the reporter file with the clerk of court? If e-filing is required, where can you find procedure to follow?

The Board's Advisory Opinion on this matter is:

Whether or not a transcript should be sent to the ordering attorney for filing or filed directly with the clerk of court depends on the type of proceeding, class of court, and potentially other factors, including, but not limited to, whether a protective order has been entered, or the clerk's file has been sealed. Where a court proceeding is required to be transcribed, the court reporter should file the transcript directly with the clerk of court. Transcripts of depositions in civil matters should be sent directly to the ordering attorney and not filed directly with the court. For in-court matters that are not required to be transcribed, court reporters should consult with the trial court if they are unsure whether to file directly with the clerk.

Court reporters should be aware that there are several recent appellate decisions on this issue, such as [Beringer v. Emory](#), 326 Ga. App. 260 (2014); [Norman v. Doby](#), 321 Ga. App. 126 (2013); [Davenport v. Davenport](#), 299 Ga. 136 (2016); and [Undisclosed LLC v. State](#), 302 Ga. 418 (2017). Under that line of cases, the party who retained a court reporter may be able to block the other party's access to the transcript if the trial court rules on the record prior to the start of the hearing that the other party has expressly refused to participate in takedown. *Davenport*, supra, at 138.

Where one party refuses to participate in takedown at the beginning of a hearing, the court reporter shall request that the court rule on the issue of whether one party has expressly refused to participate in takedown. Where a party is represented by counsel, the attorney should clarify on the record whether his or her client is participating in takedown, or whether they are expressly refusing to participate. When a represented party expressly refuses to participate in takedown, the attorney should announce, on the record, that they have advised their client of the consequences of this decision. These consequences include, but are not limited to, the fact that the client will be barred from obtaining a copy of the transcript unless the court orders its release or the adverse party agrees to its release, and that this will negatively impact the party's ability to obtain appellate review. The attorney's announcement should include a statement on the record that they have reviewed these potential consequences with their client. Where a party is not represented by counsel, the court should advise the self-represented party similarly on the record, and then make a ruling on the record regarding the party's decision to participate in takedown. The court should ensure, to the best of its ability, that the self-represented party understands that if they do not participate in takedown, they will be unable to obtain a copy of the transcript and thus, potentially unable to exercise their right to an appeal.

If the court does not rule on the issue prior to the start of the proceeding, under *Beringer*, the transcript should be filed in with the clerk after completion, unless some other law, rule, or policy bars its filing (for example, as mentioned above, a protective order). *Beringer*, supra, at 262-263.

Regarding e-filing, court reporters should consult with the clerk of court of the court in which the matter is pending for instructions on how to e-file in that particular jurisdiction.

**Advisory Opinion
BCR 2018-02**