

VOLUME NO. 37

OPINION NO. 85

COURT REPORTERS - Court reporters may only charge 7-1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court; COURTS - Court reporters may only charge 7-1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court; APPEAL AND ERROR - Court reporters may only charge

7-1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court; FEES - Court reporters may only charge 7-1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court; REVISED CODES OF MONTANA, 1947 - Sections 93-1901, 93-1904.

- HELD: 1. The 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, does apply to transcripts furnished for use to the Montana Supreme Court;
2. Charges in addition to the 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, are not allowable;
3. The 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, applies to each page of the original and copies, including the title pages and the index pages; and
4. The term "folio," as used in section 93-1904, R.C.M. 1947, is defined in the same manner as the definition provided in section 25-215, R.C.M. 1947.

7 November 1977

John G. Winston, Esq.  
Silver Bow County Attorney  
Silver Bow County Courthouse  
Butte, Montana 59701

Dear Mr. Winston:

You have requested my opinion as to the amount allowed a court reporter for transcripts prepared for use on appeal to the Montana Supreme Court. The specific questions you have asked are as follows:

1. Does the 7-1/2 cents per folio fee, as provided in section 93-1904, R.C.M. 1947, apply to transcripts to be used on appeal to the Montana Supreme Court?
2. If so, are charges in addition to the 7-1/2 cents per folio under section 93-1904, R.C.M. 1947, allowable?

3. Does the 7-1/2 cents per folio apply to each page of the original and copies including the title page and index pages? and
4. What is the definition of "folio" as used in section 93-1904, R.C.M. 1947?

A court reporter is appointed by the judge of each district court, and serves as an officer of the court at the pleasure of the appointing judge. Section 93-1901, R.C.M. 1947. The compensation received by a court reporter for performance of his official duties is governed by section 93-1906(1), R.C.M. 1947, which states in part:

Each reporter is entitled to receive an annual salary of not less than \$12,500 or more than \$16,000 and no other compensation except as provided in 93-1904....(Emphasis added.)

Section 93-1904, R.C.M. 1947 in turn states:

(1) Each reporter must furnish, upon request, with all reasonable diligence, to the defendant in a criminal case or a party or his attorney in a civil case in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings upon the trial or hearing, or a part thereof, upon payment by the person requiring the same of 7-1/2 cents per folio.

(2) If the county attorney, attorney general, or judge requires a copy in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished without cost.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a copy, it shall be furnished to him and paid for by the county.

The Montana Supreme Court discussed the duties of a court reporter and the compensation allowed in State ex rel. Kranich v. Supple, 22 Mont. 184, 188, 56 P. 20 (1899):

An officer is always entitled to compensation for performing the duties to which the law attaches compensation. When the law provides no extra compensation, as in this case, he is not entitled to any. He must nevertheless perform the duty just as promptly and efficiently. He must not be permitted to evade or shirk his duty in the least, however unpleasant and onerous it may be. If he does not care to perform the duties of his office for the compensation fixed by law, he is not compelled to retain it. Someone else can be found to take his place.

Neither, on the other hand, will the law permit the officer to be imposed upon by the citizen who demands more of him than the law enjoins. It is not permissible for the relator, or any other citizen, to demand of the respondent, under claim of right to the memorandum provided for by the statute a transcript of the testimony, or any substantial part thereof. The one can be demanded as of right without compensation. The other can be demanded only upon tender of the lawful fees. (Emphasis added.)

Furthermore, the Court stated in Pelletier v. Glacier County, 107 Mont. 221, 225, 82 P.2d 595 (1938):

In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer clearly and unequivocally to show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary....

To find that section 93-1904, R.C.M. 1947, is inapplicable to transcripts to be used on appeal to the Montana Supreme Court and that a court reporter is entitled to fees in excess of the 7-1/2 cents per folio, would necessitate a finding that furnishing copies of the trial proceedings for an appeal is not a duty or service to be performed by the court reporter. This would directly conflict with the spirit of the legislation defining the duties and services to be performed by the court reporter. Section 93-1904, R.C.M. 1947, as previously set forth makes no mention whatsoever of making the reporter's duty to furnish a transcript conditional upon any particular use to be made thereof.

It may be suggested that Sullivan v. County Commissioners, 124 Mont. 364, 224 P.2d 135 (1950), renders section 93-1904, R.C.M. 1947 totally inapplicable to the situation at hand. However, a complete reading of that decision, in light of the issue that was before the Court, indicates that the holding was not intended to affect the duties of court reporters. In Sullivan, the court reporter had been ordered to make available six copies of a transcript for an indigent defendant in a criminal case. When his claim was presented to the county, the county contended that section 93-1904, R.C.M. 1947, made the county liable for only one copy. In response to this contention the Montana Supreme Court stated, at 367:

It will be observed from the terms of section 93-1904, supra, and the history thereof, that this section only governs the furnishing of copies of the transcript of record for use in the trial court and that it has nothing to do with appeals to the Supreme Court.

We find that the legislature has studiously refrained from enacting any statute in regard to the number of copies of the transcript, briefs, or other such matters necessary on appeal to this court, and rightly so, recognizing the fact that this court is better qualified to judge its needs in this respect and it is amply empowered to promulgate the necessary rules to require that such needs be supplied. (Emphasis added.)

Consequently, Sullivan, supra, does not address the scope of the court reporter's duty under section 93-1904, R.C.M. 1947. but the inapplicability of section 93-1904, R.C.M. 1947, in limiting the number of copies of a transcript

required by the Montana Supreme Court to perfect an appeal. To give Sullivan the broad interpretation that section 93-1904, R.C.M. 1947, imposes a duty upon the court reporter to furnish a copy of the transcript when, and only when, the transcript is to be used in the district court, would insert a conditional duty where none is contemplated by the statute. The only contingency set forth in section 93-1904, R.C.M. 1947, is the payment of the fees prior to the furnishing of the transcript in certain circumstances. It would be ludicrous, to say the least, to create a situation wherein the court reporter has a statutory duty to furnish a transcript for use in the district court, but no duty to provide the same transcript if the use intended was to perfect an appeal to the Montana Supreme Court.

It is clear from a plain reading of sections 93-1902 through 1904, R.C.M. 1947, that the court reporter must attend all court proceedings and record the testimony given, unless excused by the district judge, file with the clerk a report of all objections, rulings, and decisions made, and to furnish a transcript of the proceedings when requested by the persons enumerated in section 93-1904, R.C.M. 1947. The court reporter is, however, entitled to the statutory fee when a transcript is furnished, unless requested by the judge or the county in a civil case. The duty to furnish a transcript exists regardless of the use contemplated by the requesting party. As stated in York v. Steward, 30 Mont. 367, 369, 76 P.756 (1904):

The right to rely upon him (court reporter) is granted under these provisions of the statute, and he may be compelled to perform the resulting duty to furnish copies upon proper application (cite omitted);.... (Emphasis added.)

Therefore, the furnishing of transcripts, regardless of the use intended, being within the statutory duties of a court reporter, the court reporter is not entitled to compensation in excess of the amount provided by law. State ex rel. Kranich v. Supple, supra. In answer to your first two questions 1) section 93-1904, R.C.M. 1947, does apply when computing the compensation allowed for transcripts to be used on appeal to the Montana Supreme Court; and 2) additional charges in excess of the 7-1/2 cents per folio are not allowable.

The answer to your third question is provided by Sullivan v. County Commissioners, supra, wherein the county was required to pay the lawful fees for all the copies furnished for the

appeal. Furthermore, the title page and index being necessary to adequately utilize the transcript, it is apparent the fees provided in section 93-1904, R.C.M. 1947, also apply to those pages.

As for your fourth question, the term "folio" is not defined within the statutes addressing court reporters and their duties. However, "folio" is defined in section 25-215, R.C.M. 1947, which states:

The term "folio," when used as a measure for computing fees, means one hundred words, counting every two figures, necessarily used, as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

As stated in section 12-215, R.C.M. 1947:

Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

No contrary intention plainly appears in section 93-1904, R.C.M. 1947, especially since the Montana Supreme Court has held that the court reporter is an officer of the court and the sums paid to him for copies are designated as "fees." State ex rel. Donovan v. Ledividge, 27 Mont. 197, 70 P. 511 (1902). Therefore, the definition as found in section 25-215, R.C.M. 1947, would apply. The exact method of determining the number of "folios" on a certain piece of paper, is not defined, and is therefore left to the discretion of the parties involved.

THEREFORE, IT IS MY OPINION:

1. The 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, does apply to transcripts furnished for use on appeal to the Montana Supreme Court;
2. Charges in addition to the 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, are not allowable;

3. The 7-1/2 cents per folio, provided in section 93-1904, R.C.M. 1947, applies to each page of the original and copies, including the title pages and the index pages; and
4. The term "folio," as used in section 93-1904, R.C.M. 1947, is defined in the same manner as the definition provided in section 25-215, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General