IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS
ILLINOIS WORKERS' COMPENSATION COMMISSION
SUBPOENA

_____ Case # _____ WC _____

Employee/Petitioner

v.

_____

Employer/Respondent

TO: _____

YOU ARE COMMANDED TO PROVIDE THE FOLLOWING ITEMS THAT ARE IN YOUR POSSESSION OR CONTROL:

☐ **YOU MUST APPEAR TO TESTIFY BEFORE THE HONORABLE** _____ **OF THE COMMISSION AT THE ADDRESS** _____

ON THE DATE _____ **AT THE TIME** _____**, AND TO BRING THE ITEMS WITH YOU.**

☐ **MAIL THE ITEMS TO THE ADDRESS** _____

BY THE DATE _____**. YOU DO NOT NEED TO APPEAR AT THE COMMISSION.**

DO NOT MAIL THE ITEMS TO THE COMMISSION.

_____

Name of person requesting this subpoena Telephone number Email address

FAILURE TO RESPOND TO THIS SUBPOENA MAY SUBJECT YOU TO THE PENALTIES PRESCRIBED BY LAW. (SEE STATUTES: 820 ILCS 305/16; RULES: 7030.50)

_____

Signed by IWCC Chairman, Mitch Weisz

_____

Date

The legislature changed the name of the Illinois Industrial Commission to the Illinois Workers' Compensation Commission, effective 1/1/05. The law states that any reference to the Industrial Commission, such as those that appear below, shall be considered a reference to the Workers' Compensation Commission.

From the *Rules Governing Practice Before the Industrial Commission*
50 Illinois Administrative Code

Section 7030.50 Subpoena Practice

a) Issuance
A blank form of subpoena for the attendance of witnesses or the production of documents will be furnished by the Secretary of the Commission upon request of the parties or their attorneys.

b) Use
Unless otherwise agreed by the parties, witnesses or documents may only be subpoenaed to appear or be produced at the time and place set for hearing of the cause.

c) Service
Personal service of the subpoena is required and payment of statutory fee and travel expense must accompany the service.

d)

1) Upon failure of any person, firm or organization to obey a subpoena of the Illinois Industrial Commission, a party seeking enforcement of the subpoena, or his attorney, shall prepare an application to the Circuit Court of the county in which the hearing or claim is pending requesting enforcement of the subpoena pursuant to Section 16 of the Illinois Workers' Compensation Act and shall present, file and serve on opposing party said application together with the original subpoena and proof of service to the Arbitrator or Commissioner designated to hear the said claim, or if no Arbitrator or Commission has been designated, then to the Chairman of the Commission.

2) A hearing pursuant to Section 7020.70 shall be held at which the Commissioner or Arbitrator to whom the application is presented shall determine if the subpoena requested relevant information, and was properly issued and served and if the application is proper in form. If the said Commissioner or Arbitrator shall so find, then, he or she shall sign the application. The party seeking enforcement of the subpoena, or his attorney, may then file and prosecute the application in the Circuit Court.

ILLINOIS WORKERS' COMPENSATION COMMISSION
PROOF OF SERVICE

ATTENTION. If the person who signed the *Proof of Service* is not an attorney, this form must be notarized.
Service for documents related to Section 19(b-1) of the Workers' Compensation Act must be made by personal service or certified mail.

I, _____ , affirm that I

☐ mailed a copy of this form with proper postage in the city of _____

☐ sent a copy of this form by certified mail (return receipt requested)

☐ delivered a copy of this form

at _____ AM on _____ to each party at the address(es) listed below.

_____

_____
Signature of person completing *Proof of Service*

Signed and sworn to before me on _____

_____
Notary Public

Synopsis: A simple and safe method to forever end the misstatement of ***Clayton*** by the Illinois workers' compensation bar. Return to sender--**start sending their stuff back.**

Editor's comment: We have had a rush of responses from medical providers across Illinois who have asked what to do with the enormous influx of what they call ***Clayton*** letters seeking unlimited photocopies of medical records in exchange for a witness fee of $20. We are certain there may be readers outside Illinois who read the last sentence and think Illinoisans are somewhat coo-coo—why would anyone have to create 500-1,000-15,000 or more photocopies of medical records for only $20?? Why do you have to make even one photocopy in exchange for a "witness fee?" Where did that concept come from?

Well, we have an unusual state in which to practice law or medicine. And we truly feel the whole ***Clayton*** concept is awful and is based upon shady ethics. This legal concept starts with a patently defective document and ends with a threat. What is the patently defective document? Well, the ***Clayton*** concept works like this:

The law firm mails a doctor or health care provider a Workers' Compensation Commission subpoena form with a $20 check. The subpoena form or cover letter says:

- In response to this subpoena, you need to bring your medical records to the Commission for hearing;

- You don't have to come to come to the Commission in response to this subpoena if you make [free] photocopies and send them to me.

If you work for a doctor, hospital or other health care provider and you didn't know what you were dealing with, you are pretty sure you don't want to go to the Commission to hang around with one patient's medical records. You probably have hundreds of patients and rooms full of medical records and, if you may feel if you get enough of these subpoenas, you might spend the rest of your working life at the Commission. Therefore, in response, most of the uninitiated in medical practice simply send unlimited photocopies for the $20 check. **Stop doing that—please.** You are encouraging and promulgating this dysfunctional process.

What is wrong with the scenario above? Well, the initial document, the Commission's subpoena form, is almost always completely worthless!! What do we mean worthless—well, the subpoena for medical records is always **mailed** to the deponent or medical records keeper. The process of mailing subpoenas, even via certified mail, is completely dysfunctional—it only works if you let it work. Rule 7030.50(c) of the Rules Governing Practice before the Illinois Workers' Compensation Commission clearly states:...

Under ***Clayton***, the deponent receiving the subpoena didn't know what they were doing and accepted it as if it complied with the Rules. Based on the Rules, our vote when anyone receives a Commission subpoena by mail from now on is to start sending all such subpoenas and the enclosed checks back to the sender via return mail. We suggest you send this letter or fax on your letterhead to assist you to return it:

This will confirm receipt of the Commission subpoena with a $20 fee for certified medical records that we are returning to you. We assume you are aware Illinois workers' compensation subpoenas have no legal effect when mailed.

If you want photocopies of such records now or in the future, we need a draft certification for our use, a signed HIPAA compliant release and a check for [insert your calculation of the amount due under Comptroller Hynes' photocopying cost schedule]. Upon receipt of those documents and payment in the proper amount, we will immediately forward the records requested. Thank you.

We are happy to assist in any way with this process. You can decide whether it would be appropriate to start to report and/or complain about the practice of mailing knowingly defective Commission documents or pleadings to otherwise innocent medical record keepers to the Attorney Registration and Disciplinary Commission or the Illinois Workers' Compensation Commission. While we consider the practice of mailing defective subpoenas to be deceptive and misleading, we are confident the Commission won't take action to stop it and we truly have no idea what the ARDC might do. Whatever happens, this questionable practice isn't going to end until it stops "working" and providing medical records in this fashion. The easiest way to stop it is to start demanding counsels for workers' comp litigants follow the Rules.

Clayton v. Ingalls Clarifies $20 Medical Records Fee

by Chris Rocks on July 6, 2010

Editor's comment: We are happy to report our view the Appellate Court got this one right! Please remember it may still be appealed to a very liberal Supreme Court—watch this space for ongoing news.

By way of history, in 2000, a ruling from the Appellate Court in *Clayton v. Ingalls Memorial Hospital* has created confusion for the last decade. In *Clayton*, the Court ruled a witness who had to bring 'medical records' to court was entitled to a $20 witness fee and mileage. The ruling confusingly states the witness is not entitled to copying costs to bring 'medical records' to court. Numerous WC attorneys, on both sides of the bar, seized upon this ruling to create an "urban legend"—if a medical provider didn't want to come to court with records, you would receive only $20 and provide unlimited copies of medical records!!

The logical glitch that was promulgated by *Clayton* proponents is the ruling obfuscates the difference between original medical records and copies of medical records. Please note Illinois physicians, hospitals and healthcare givers are required by law to create and store original medical records for all care. Disclosure of private health information in original medical records is guided by HIPAA and has to be followed; inappropriate disclosure may violate federal law. Health care givers cannot allow original medical records to be brought to a hearing and casually left lying around or to be kept for an indefinite period by the patient, their counsel, the employer or the Arbitrator. While our law contemplates original medical records can be inspected by an Arbitrator—to follow state and federal law, the keeper of the original records has to then bring them back for safe and secure storage. What followed the *Clayton* ruling was form correspondence from numerous respondent and petitioner's WC firms across Illinois who would send a subpoena with a $20 check to a healthcare giver or hospital and tell them they were forced to come to court with the 'records' or avoid a court appearance by sending unlimited copies of 'records' for the $20. We consider it preposterous for an Illinois hospital to have to make copies of 500, 1,000 or 10,000 pages of original medical records for only $20. We received numerous complaints and inquiries from health care providers across Illinois protesting the concept. Dr. David Fletcher at *Safeworks Illinois* had the guts and brains to say no and be willing to put the money on the line and fight it. Dr. Fletcher estimates he was losing $20,000-30,000 a year in costs to process record copying requests in excess of the sums of $20 checks issued with subpoenas that misstated the *Clayton* ruling.

Dr. Fletcher hired KC&A to represent him and *Safeworks* in the challenging this mischaracterization of the *Clayton* ruling.

We assure all of our readers the attorneys who made this request and similar requests did not want anyone to come to court with original medical records for inspection by the Arbitrator to then have the original medical records brought back—the claimant attorneys all want effectively free copies of the original medical records that can be used to prepare for hearing and when the hearing is convened, submitted into evidence and made part of the record. Remember the vast majority of Illinois WC claims settle year-in and year-out; the records need to be in the attorneys' hands to facilitate the process. We have written and called numerous Plaintiff/Petitioner law firms to advise they were misleading the public to make the claim that a witness fee is a payment for copying costs. We filed not one but two requests with the Illinois Workers' Compensation Commission asking them to tell attorneys to stop modifying the Commission's official subpoena form to mislead folks by asserting they were entitled to unlimited copies of medical records for a $20 witness fee. The Commission did what they usually do with such requests—nada. We assure everyone in the industry on both sides there is no provision in Illinois workers' compensation law or rules that set a medical records copying charge—the Act was drafted long prior to the invention and promulgation of photocopying machines and it has never been updated.

In two recently published decisions rendered by the Appellate Court, Fourth District, *Holtkamp Trucking v. David Fletcher*, Gen No. 4-09-0587 and *Safeworks IL Occupational et al. v. Julia Wills*, Gen No. 4-09-0827, the Appellate Court clarified exactly what the Commission can and cannot do under the Act when it comes to subpoena power. Prior to these two decisions, *Clayton* confirmed the unassailable position that if you serve a subpoena and pay a witness fee and mileage, the witness has to bring original medical records to the Commission for inspection by the Arbitrator at the hearing. It also paradoxically says you don't have to pay copying costs for a witness to bring original medical records to the Commission for inspection by the Arbitrator at the hearing. We here at KC&A have always agreed with that position and feel it accurately states the law of the land in our fair state. What numerous lawyers have "mis-stated" about *Clayton* is their unusual requirement the witness, having been served a witness fee only, make unlimited copies of the original medical records at their own cost and forward them to the person sending the subpoena. Neither Illinois law nor the *Clayton* ruling says that. In both of the underlying claims in *Holtkamp v. Fletcher* and *Safeworks v. Wills*, a medical provider was served with a subpoena and we agreed to bring original medical records but would not create or bring copies. When counsels learned we refused to make and deliver photocopies at our expense, the Arbitrators ordered us to do so and an application was filed in the respective Circuit Court to enforce the subpoena.

In *Holtkamp v. Fletcher*, the Circuit Court held Dr. Fletcher and *Safeworks Illinois* in contempt for failure to provide the records, ordered the medical provider to furnish photocopies and ordered the requesting party to pay for the copies at 15 cents per page. Where they got the .15 cents per page number, we cannot say—no evidence was taken or presented on the issue and with respect to the Court, we think the judge simply made it up as his view of a fair number. In *Safeworks v. Wills*, the Circuit Court ruled the medical provider was in contempt for not presenting the records, and ordered us to turn over unlimited photocopies of the original medical records at our cost. The two decisions rendered by the Appellate Court on appeal were well thought out and confirmed our position on behalf of Dr. Fletcher and Safeworks. The Appellate Court confirmed it was not overruling *Clayton*, and in fact the decisions were entirely consistent with that ruling. The Court stated the Commission does not have the power to force a medical provider to create and turn over photocopies for free. The Court stated in *Holtkamp* "The subpoena might just as well have commanded [the medical provider] to mail a stethoscope to plaintiff's attorney, because the medical records were [the medical provider's] property, the same as a stethoscope. The Commission cannot confiscate [the medical provider's] property by commanding [them] to mail it to plaintiff's attorney, as the Commission did in its subpoena in this

Search...

The Court went on in *Holtkamp* to analyze Section 8(a) of the Act which states "every physician tendering treatment shall upon written request furnish full and complete reports thereof to, and permit their records to be copied by, the employer." The Court held furnishing reports meant furnishing for inspection, and not giving them away – they also noted the requirement of permitting the records to be copied would be superfluous, a finding courts are loathe to assign to portions of a statute. In both cases, the Court ruled the only thing the Commission was able to enforce, as a power it was given under the Act, was to compel a provider to appear with original documents in hand. In both cases, the Appellate Court notes there is a provision of Illinois law that deals with reimbursement for copying charges, and that is 735 ILCS 5/8-2001(d) (West 2008). The Court stated it well in *Safeworks v. Wills*: "...Section 16 of the Workers' Compensation Act did not require the subpoenaing party to pay any per-page copy fees or retrieval fees. That is true. Because section 16 does not require the making of any copies, section 16 does not require any copy fees. To the extent, however, that the law does require [the provider] to copy records, the law entitles [the provider] to reimbursement."

The Court summed up situation perfectly in the *Holtkamp* decision:

No doubt, most doctors would conclude that they have better things to do than sit in a workers' compensation hearing all day while the arbitrator and parties go through the original medical records page by page. By the same token, most doctors probably think they have better things to do than operate a photocopying center as a side business that does not even pay for itself...

One would expect that most employers would manage to reach an agreement with doctors to arrange for the duplication and mailing of medical records in return for a reasonable fee, that is, a fee over and above the standard witness fee of $20, which, one may reasonably assume, does not even come close to paying for the [costs associated therewith]...

Perhaps the Commission should consider promulgating a rule whereby a subpoena issued by the Commission could offer an alternative to appearing at the hearing with the original records in hand. The alternative, for example, might be photocopying the records at a certain price per page, which the Commission could specify, and mailing the photocopied records by a certain date. Or perhaps a simpler solution would be to require the employee to sign an authorization for his or her medical records to be released to the employer. Then the employer could avail itself of section 8-2001. We assume that in practice, most medical providers do photocopy records for purposes of workers compensations. While it is likely time for the rules of workers' compensation to correspond more closely to the modern practice of litigation, that is for the Commission to determine.

While we again feel the Court is again rehashing the weird thought of busy physicians being forced to sit in court with their original records, we feel they got it mostly right—we do foresee instances in which the medical recordkeepers for Illinois doctors and hospitals may have to bring original records to hearings or try to work out an agreement to copy records at a mutually agreed cost. We also point out to all Illinois doctors and hospitals, the vast majority of Illinois medical records subpoenas are defective the minute you see them because attorneys always mail them in derogation of the rules which requires them to be personally served on you.

As such, in practice, the Court has set the landscape as follows:

- **If medical record-keeping staff is subpoenaed, they will have to bring the original medical records to the hearing and then take them back after inspection;**
- **The requesting party can pay for photocopies of original medical records per State**

Search**Comptroller Hynes' published rates;**

- **We can all agree like grown-ups to any other path to get records copied at any reasonable cost; so the sole cost of photocopying and mailing copies isn't dumped on doctors and hospitals;**
- **Press for doctors and hospitals to move to electronic records that are much easier to handle.**

In our view, in workers' compensation claims, hospital and medical caregivers will now be able to easily price and recover the reasonable State Comptroller's rates when photocopying of medical records is required. Until, that is, the Commission changes the rules or posts their own rate for copying charges, which they could easily do. It would certainly be a "shake up" for the new administrations!

For the current State Comptroller's rates, see below for easy reference:

Record Copy Fees for 2010

The Illinois Comptroller has announced the annual inflation adjustment to the maximum fees which may be charged for paper copies of patient medical records. The following are the new maximum amounts for paper record copies, effective January 20, 2010:

Fee for Paper Copies 2010

- **Handling charge $24.44**
- **Copy pages 1 through 25 $0.92**
- **Copy pages 26 through 50 $0.61**
- **Copy pages in excess of 50 $0.31**
- **Copy made from microfiche or microfilm $1.53**

Source: http://www.ioc.state.il.us/office/fees.cfm

Please don't act unprofessional and/or "threaten" Doctor Fletcher or anyone else about this issue

We are advised numerous claimant firms may now be distressed by having to pay these moderately higher medical record copying costs as they may no longer be able to get unlimited copies of medical records for $20. We urge them to get over it. We don't feel it was ever appropriate for anyone to misstate the law or rules as many people were doing in Clayton. We point out claimant attorneys who order photocopies of medical records always recover those costs either at settlement or when they receive payment of an award. We also strongly suggest that anyone on either side who objects to the rates posted by the State Comptroller should complain about it to the appropriate authorities. We are also confident you may be able to contact numerous copy services and obtain copies at rates that are lower than the State Comptroller's rates. We also invite anyone to contact the great folks at Safeworks Illinois to seek a volume photocopying discount at fair values. Finally, we were advised some folks feel doctors and hospitals should have to pay effectively all medical record photocopying costs because they are wildly profitable—if you feel that way, you are being childish because many doctors and hospitals, particularly in central and southern Illinois are hanging by a thread in this rotten economy.

We are advising all of our hospital, physician, nursing and other clients, if you get another form letter asking you for unlimited copies of original medical records for $20, you should send them pricing under the State Comptroller's guidelines along with the links to these two rulings. If you need the web link to the rulings, send a reply.

LEXSEE 311 ILL. APP. 3D 135

ERNESTINE CLAYTON, Plaintiff-Appellee, v. INGALLS MEMORIAL HOSPITAL, Defendant-Appellant.

No. 1-98-3689

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FOURTH DIVISION

311 Ill. App. 3d 135*; *724 N.E.2d 222*; *2000 Ill. App. LEXIS 2*; *243 Ill. Dec. 913

January 6, 2000, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication February 25, 2000.

PRIOR HISTORY: APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. No. 97 L 51313. HONORABLE ALEXANDER WHITE, JUDGE PRESIDING.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant hospital appealed the order of the Circuit Court of Cook County (Illinois) requiring it to comply with plaintiff's subpoena duces tecum and finding that *820 Ill. Comp. Stat. 305/16* (1996) required plaintiff to pay only a $ 20-per-day witness fee and a $ .20-per-mile travel fee to the deponent.

OVERVIEW: Plaintiff sustained an accidental injury out of and in the course of her employment. She received treatment for the injury at defendant, a hospital. Plaintiff's counsel received a letter informing him that he could review plaintiff's medical records at defendant's facilities or photocopies would be provided for a fee. Plaintiff's counsel refused to pay. The lower court found that no fees other than $ 20-per-day witness fee and $ .20-per-mile travel fee provided for in Workers' Compensation Act could be demanded. The court held that the normal civil procedure and supreme court rules governing discovery were not applicable in a Workers' Compensation Act case. The court held that the legislature clearly intended that *820 Ill. Comp. Stat. 305/16* (1996) required only the payment of a $ 20-per-day witness fee and $ .20-per-mile travel fee. It did not require the subpoenaing party to pay any per-page copy fees.

OUTCOME: Order affirmed; subpoena duces tecum in a Workers' Compensation Act case required plaintiff to pay only the $ 20-per-day witness fee and $ .20-per-mile travel fee, and did not require plaintiff to pay any per-page copy fees. Therefore, defendant had to provide copies of medical treatment records free of charge.

JUDGES: JUSTICE HALL delivered the opinion of the court. HOFFMAN, P.J., and SOUTH, J., concur.

OPINION BY: HALL

OPINION

[*136] [**223] JUSTICE HALL delivered the opinion of the court:

Defendant, Ingalls Memorial Hospital, appeals from the circuit court's August 5, 1998, order requiring it to comply with plaintiff's subpoena *duces tecum* and finding that section 16 of the Workers' Compensation Act (the

Act) (*820 ILCS 305/16* (West 1996)) requires a person issuing an Illinois Industrial Commission (Commission) subpoena *duces tecum* to pay only a $ 20-per-day witness fee and a $ .20-per-mile travel fee to the deponent and that section 16 of the Act does not require the subpoenaing party to pay any per-page copy fees, retrieval fees, or any other expenses claimed by the subpoenaed entity. On August 26, 1998, defendant filed a motion to reconsider, which was denied on September 3, 1998. On September 29, 1998, defendant filed a timely notice of appeal. For the reasons that [***2] follow, we affirm.

Background:

Plaintiff, Ernestine Clayton, sustained an accidental injury on October 15, 1995, that arose out of and in the course of her employment by Oak Forest Hospital. She received treatment for this injury at defendant, Ingalls Memorial Hospital. In 1996, plaintiff filed a workers' compensation claim against Oak Forest Hospital. This claim is currently pending before the Commission.

On November 12, 1996, plaintiff issued a Commission subpoena to defendant requiring defendant to produce plaintiff's original medical records and itemized bills before a Commission arbitrator on November 22, 1996, at 2 p.m. This was not the date set for hearing on the case. Accompanying the subpoena was correspondence from [*137] plaintiff's counsel telling defendant that it could comply with the subpoena by sending copies of the documents to plaintiff's counsel. Also accompanying the subpoena was a $ 25 check made payable to defendant for statutory witness and mileage fees.

[**224] On November 21, 1996, plaintiffs counsel received a letter from Midwest Medical Records Associates, Inc. (MMRA), informing him that he could review plaintiff's medical records at defendant's facilities or photocopies [***3] would be provided for a fee. The copying charges for the requested documents would be $ 203.25 (189 pages at $ 1.00 per page, $ 17 base rate, $ 20.75 postage and handling, less the $ 25 check previously tendered to defendant). Plaintiff's counsel refused to pay.

On January 29, 1997, plaintiff presented a petition to enforce the subpoena to the arbitrator at the Commission. On January 31, 1997, the arbitrator entered an order granting plaintiff leave to file an action in the circuit court for enforcement of the subpoena, including a request for declaratory judgment as to the effect of section 16 of the Act and the requirement of a subpoenaing party to pay any costs beyond those for witness and mileage expenses. Plaintiff's complaint was filed on December 17, 1997.

On June 19, 1998, defendant filed an answer and six affirmative defenses. On June 26, 1998, plaintiff filed a motion to strike the affirmative defenses. On August 5, 1998, the circuit court entered an order striking defendant's affirmative defenses, ordering defendant to comply with plaintiff's subpoena, and finding that no fees other than those provided by the Workers' Compensation Act shall be demanded, those being $ 20-per-day [***4] witness fee and $ .20-per-mile travel fee. The order was entered *nunc pro tunc* July 27, 1998.

DISCUSSION:

The sole issue in this case is whether section 16 of the Act (*820 ILCS 305/16* (West 1996)) requires a person issuing a Commission subpoena *duces tecum* to pay only a $ 20-per-day witness fee and a $ .20-per-mile travel fee to the deponent, or whether section 16 also requires the subpoenaing party to pay per-page copy fees.

Defendant first argues that plaintiff's subpoena was improper. Section 16 of the Act provides that the Commission or any arbitrator designated by the Commission has the authority, on the request of either party, to issue subpoenas for the attendance of witnesses and the production of documents. *820 ILCS 305/16* (West 1996). *Section 7030.50* of Illinois Administrative Code (*50 Ill. Adm. Code § 7030.50(b)*(1996)) provides: "Unless otherwise agreed to by the parties, witnesses or documents may only be subpoenaed to appear or be produced at the time and place set for hearing of the cause." The subpoena at [*138] issue in this case was returnable on a date other than the date of the hearing on the merits. [***5] However, neither defendant nor the employer objected to the subpoena or moved to quash it. Therefore, any argument regarding the propriety of the subpoena has been waived.

Defendant next argues that the Act does not provide for pretrial discovery of medical records. Therefore, if a workers' compensation plaintiff attempts to use section 16 as a pretrial discovery tool, he must comply with the applicable discovery rules in civil cases. According to defendant, this court must look to the Code of Civil

Procedure (*735 ILCS 5/1-101 et seq.* (West 1996)), and the supreme court rules to determine the applicable procedure to be followed in issuing a subpoena *duces tecum* for medical records in a Commission case.

We find that the Code of Civil Procedure and the supreme court rules regarding discovery are inapplicable in this case. The law is clear that the Code of Civil Procedure and the supreme court rules do not apply to cases under the Act insofar as or to the extent that the procedure in question is regulated by the Act. *Elles v. Industrial Comm'n, 375 Ill. 107, 30 N.E.2d 615 (1940).* The subpoena process employed by plaintiff in this [***6] case is governed by section 16 of the Act.

Section 16 provides in pertinent part:

> "The Commission, or any member thereof, or any Arbitrator designated by the [**225] Commission, shall on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and the production of such books, papers, records and documents as shall be designated in the applications, and the parties applying for such subpoena shall advance the officer and witness fees provided for in civil actions pending in circuit courts of this State***." *820 ILCS 305/16* (West 1996).

In interpreting a statute out primary goal is to ascertain and give effect to the true intent and meaning of the legislature. *Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 561 N.E.2d 656, 149 Ill. Dec. 286 (1990).* Our search for legislative intent appropriately begins with the language of the statute. *In re Liquidations of Reserve Insurance Co., 122 Ill. 2d 555 524 N.E.2d 538, 120 Ill. Dec. 508 (1988).* By employing this language, the legislature clearly intended that section 16 would be read and enforced in conjunction with *section 4.3* of the Circuit [***7] Courts Act (*705 ILCS 35/4.3* (West 1996)), which governs the fees payable to witnesses who are compelled to attend depositions or trials in Illinois circuit courts. This section requires the payment of a $ 20-per-day witness fee and $ .20-per-mile travel fee. It does not require the subpoenaing party to pay any per-page copy fees.

We find that the circuit court correctly found that section 16 of the Act requires a subpoenaing party to pay a witness only a $ 20-per-day witness fee and a $ .20-per-mile travel fee, not any per-page copy [*139] fees, retrieval fees, or any other expenses claimed by the subpoenaed party.

Accordingly, for the reasons set forth above, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

HOFFMAN, P.J., and SOUTH, J., concur.

Filed 6/24/10

NO. 4-09-0587

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

HOLTKAMP TRUCKING COMPANY, Plaintiff-Appellant, v. DAVID J. FLETCHER, M.D., L.L.C., d/b/a SAFEWORKS ILLINOIS, Defendant-Appellee.	)	Appeal from Circuit Court of Macon County No. 09MR300 Honorable Albert G. Webber, Judge Presiding.

JUSTICE APPLETON delivered the opinion of the court:

Plaintiff, Holtkamp Trucking Company, brought this action against defendant, David J. Fletcher, M.D., L.L.C., d/b/a Safeworks Illinois, to compel defendant to comply with a subpoena issued by the Illinois Workers' Compensation Commission (Commission). See 820 ILCS 305/16 (West 2008). The subpoena commanded defendant to mail to plaintiff's attorney the medical records of one of plaintiff's employees, Jimmy Pease, who was claiming workers' compensation. The circuit court found that by disobeying this administrative subpoena, defendant was in direct civil contempt, and the court ordered defendant to purge itself of the contempt by providing plaintiff a copy of the requested medical records.

Even though the circuit court enforced the subpoena, plaintiff appeals for two reasons: (1) the court ordered plaintiff to pay 15 cents for each page of the photocopied medical records, and (2) the court denied plaintiff's request to assess costs, attorney fees, and a fine against defendant, its attorney, or both of them.

As both parties agree, the requirement that plaintiff pay 15 cents per page has no basis in law; therefore, we reverse the portion of the circuit court's judgment imposing that requirement. Otherwise, we affirm the judgment because we find no contumacious behavior of defendant toward the circuit court and, hence, no justification for sanctions.

I. BACKGROUND

In the course of his employment by plaintiff, Pease sustained an injury. He filed a claim for workers' compensation and obtained medical treatment from defendant.

Because of Pease's claim for workers' compensation, plaintiff wished to review his medical records. To that end, plaintiff's attorney, Melinda M. Rowe, obtained a subpoena from the Commission and on March 31, 2009, mailed the subpoena to defendant. The subpoena commanded defendant, by April 20, 2009, to mail to Rowe all records of the examination and treatment of Pease (excluding records pertaining to alcohol or drug abuse, sexually transmitted diseases, or mental-health problems). In a cover letter, Rowe explained that pursuant to Clayton v. Ingalls Memorial Hospital, 311 Ill. App. 3d 135, 724 N.E.2d 222 (2000), she was enclosing a check in the amount of $20 for "subpoena fees." See 705 ILCS 35/4.3(a) (West 2008) ("Every witness attending in any county upon trials in the courts shall be entitled to receive the sum of $20 for each day's attendance and $0.20 per mile each way for necessary travel"). As if to forestall an objection by defendant that $20 was not enough, Rowe asserted that in Clayton, the appellate court held that "the subpoenaed party [was] not entitled to per-page copy fees, retrieval fees, or any other claimed expenses." (Emphasis in original.)

On April 8, 2009, defendant's attorney, Eugene F. Keefe, responded to Rowe with an e-mail disagreeing with her interpretation of Clayton. Keefe disputed Rowe's

assertion that the law required defendant to copy and mail the medical records to her in return for $20. He did not understand Clayton as "defin[ing] the costs payable for copying medical or other records."

One way of saving defendant the expense of copying the medical records might have been to allow plaintiff or a third party to do the copying when defendant made the records available for inspection. Keefe declared, however, that defendant "would not allow [its] original records to be copied as part of such inspection," and he asserted that the law did not require defendant to allow such copying. Rather, Keefe interpreted Clayton and section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)) as "requir[ing] the keeper of medical records for [defendant] to appear at a hearing and present original records for inspection by the [a]rbitrator," nothing more. Nevertheless, Keefe offered a compromise: he said that defendant would be "happy to comply with any medical records request and copy and mail records based upon the schedule posted by the Illinois State Comptroller" on the Internet, and Keefe gave a Web address.

Rather than accept that offer, plaintiff decided to seek enforcement of the subpoena. Section 7030.50(d)(1) of the Commission's rules provided that if a person or organization failed to comply with a subpoena issued by the Commission, the party wishing to obtain enforcement of the subpoena should prepare an application to the circuit court for enforcement of the subpoena, pursuant to section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)). 50 Ill. Adm. Code §7030.50(d)(1) (1996). Before filing the application in the circuit court, however, the party had to serve a copy of the application on the opposing party and present the application to the arbitrator assigned to hear the claim. 50 Ill. Adm. Code §7030.50(d)(1) (1996). The arbitrator then would hold a hearing

to "determine if the subpoena requested relevant information[] and was properly issued and served and if the application [was] proper in form." 50 Ill. Adm. Code §7030.50(d)(2) (1996). If the arbitrator so found, the arbitrator would sign the application, and the party then could file and prosecute the application in circuit court. 50 Ill. Adm. Code §7030.50(d)(2) (1996).

On April 27, 2009, after a hearing, the arbitrator in this case, Neva Neal, signed an order allowing plaintiff to file an action in circuit court for enforcement of the Commission's subpoena. Accordingly, on April 29, 2009, plaintiff filed its application in circuit court. The application requested the following relief: (1) enforcement of the subpoena, (2) a finding of civil contempt against defendant, (3) attorney fees and costs, (4) a fine against defendant and Keefe for each day they had willfully refused to comply with the subpoena, and (5) an order for defendant's commitment (evidently meaning Fletcher's commitment) until defendant complied with the subpoena by hand-delivery of the medical records.

On June 1, 2009, defendant challenged the application by filing a motion for summary judgment. In its motion, defendant argued that despite plaintiff's failure to pay mileage, defendant had fully complied with Clayton and section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)) by appearing at the administrative hearing on April 27, 2009, with the original medical records in hand. Defendant insisted that no law entitled plaintiff to "free photocopies" in lieu of inspection of the original records and that, in fact, the Workers' Compensation Act and the administrative rules governing practice before the Commission predated the invention of photocopying machines.

On June 17, 2009, plaintiff filed a cross-motion for summary judgment, maintaining, to the contrary, that Clayton and sections 8.2(d) and 16 of the Workers' Compensation Act (820 ILCS 305/8.2(d), 16 (West 2008)) required a medical provider to provide a copy of the medical records to the subpoenaing party upon receipt of the statutory witness fee of $20. See 705 ILCS 35/4.3(a) (West 2008). Plaintiff argued that if, in response to a subpoena issued by the Commission, the medical provider did not have to provide a copy of the medical records to the employer but, instead, only had to bring the original records to the arbitrator, the system of workers' compensation would collapse under the weight of unresolved claims. Because employers would possess no documentary evidence on which to base a settlement, all of the 70,000 workers' compensation claims that were filed each year would have to be tried by the Commission—an impossible task for the 32 arbitrators in Illinois.

After hearing these arguments, the circuit court agreed with plaintiff that appearing in the subpoena hearing with the original medical records instead of providing a copy of them to the employer, as the subpoena commanded, failed to satisfy the Workers' Compensation Act. The court further held that paying mileage was unnecessary to the enforcement of a subpoena duces tecum. Therefore, the court found defendant to be in direct civil contempt of court for willfully and contumaciously refusing to make a copy of the medical records and mail the copy to plaintiff, as the administrative subpoena required. Because defendant had acted, however, in good-faith reliance on the advice of its attorney (Keefe), the court declined plaintiff's request to order defendant to pay attorney fees, a fine, and costs. Instead, the court required defendant to purge itself of the contempt by delivering a copy of the medical records to plaintiff within seven days and without charging

plaintiff any hourly rate or handling fee. The court allowed defendant, however, to give plaintiff an invoice charging 15 cents a page, and plaintiff was to pay that invoice within seven days after receiving a photocopy of the medical records.

In its notice of appeal, plaintiff disagrees with the circuit court's requirement that plaintiff pay defendant 15 cents a page for the photocopied medical records. Plaintiff also disagrees with the court's denial of costs and attorney fees and the court's refusal to impose a fine on defendant and Keefe. Otherwise, plaintiff agrees with the circuit court's judgment.

II. ANALYSIS

A. The Scope of This Appeal

As we have noted, plaintiff appeals from some, but not all, of the circuit court's judgment. Plaintiff agrees with the portion of the judgment finding defendant to be in direct civil contempt of court and requiring defendant to purge itself by providing plaintiff a copy of Pease's medical records, but plaintiff disagrees with the portion of the judgment requiring plaintiff to pay defendant 15 cents a page and declining to assess costs, attorney fees, and a fine against defendant.

In its brief, defendant challenges the portion of the circuit court's judgment finding defendant to be in direct civil contempt of court; but, unlike plaintiff, defendant has not appealed. Consequently, plaintiff argues that defendant can address only the issues that plaintiff raises on appeal; defendant cannot challenge any other part of the judgment, because defendant did not appeal from the judgment.

In support of its argument that defendant is limited, on appeal, to the issues that plaintiff raises, plaintiff cites our decision in National Bank of Bloomington v. City of

Lexington, 138 Ill. App. 3d 805, 809, 486 N.E.2d 967, 970 (1985). In National Bank, 138 Ill. App. 3d at 809, 486 N.E.2d at 970, we held: "The rule is uniformly interpreted by our reviewing courts to require that in the absence of a cross-appeal, the reviewing court is not authorized to examine or modify a portion of the order of the trial court. [Citation.] In such circumstances the reviewing court is confined to the errors raised by the appellant. [Citation.]" Also, plaintiff cites two other decisions to the same effect. In Greco v. Coleman, 176 Ill. App. 3d 394, 401, 531 N.E.2d 46, 51 (1988), the Fifth District held: "In the absence of a cross-appeal, this court is not authorized to examine or decide an issue raised by [the] appellee, but is confined to the issues raised by [the] appellant." Similarly, in Phelps v. Seeley, 3 Ill. 2d 210, 218, 119 N.E.2d 923, 927 (1954), the supreme court held: "[I]n the absence of a cross[-]appeal[,] [a] matter [raised by the appellee] is not open to consideration." Thus, plaintiff insists that because defendant filed no cross-appeal, defendant is confined to the issues that plaintiff raises in this appeal and those issues do not include the propriety of the finding of direct civil contempt or the enforcement of the Commission's subpoena.

In opposition to plaintiff's argument that defendant is confined to the issues that plaintiff raises, defendant observes that in Fillpot v. Midway Airlines, Inc., 261 Ill. App. 3d 237, 241, 633 N.E.2d 237, 240 (1994), we overruled National Bank, on which plaintiff's argument heavily relies. Defendant interprets Fillpot as allowing defendant to challenge the finding of direct civil contempt even though defendant never filed a cross-appeal. To evaluate this counterargument by defendant, we will take a careful look at the facts and holdings in National Bank and Fillpot.

In National Bank, 138 Ill. App. 3d at 806, 486 N.E.2d at 968, the

administrator of the estate of John Homan sued the city of Lexington for Homan's wrongful death. The plaintiff's theory was that the city had engaged in an ultrahazardous activity by hiring an independent contractor, Charles Lowery, to cut down a tree on city property. National Bank, 138 Ill. App. 3d at 806, 486 N.E.2d at 968. Homan was at the site of the tree-cutting in order to gather firewood, and the trunk of the tree fell on him, killing him. National Bank, 138 Ill. App. 3d at 807, 486 N.E.2d at 968. Although the trial court agreed with the plaintiff that the felling of the tree was an ultrahazardous activity (National Bank, 138 Ill. App. 3d at 806, 486 N.E.2d at 968), the court granted the defendant's motion for summary judgment because by gathering the cut branches for firewood, Homan had participated in the ultrahazardous activity and therefore was barred from recovery (National Bank, 138 Ill. App. 3d at 807, 486 N.E.2d at 968). The plaintiff appealed, and we reversed the summary judgment because we found a factual dispute as to where Homan was standing and what he was doing when the tree trunk fell on him. Consequently, it was not inevitable that a reasonable trier of fact would draw the inference that Homan was participating in the tree-felling at the moment of his death. National Bank, 138 Ill. App. 3d at 808-09, 486 N.E.2d at 969.

The defendant in National Bank argued that even if we found a question of fact as to whether Homan was participating in the tree-felling, we nevertheless should affirm the summary judgment in the defendant's favor because the trial court erred in its conclusion that the cutting of the tree trunk was an ultrahazardous activity. National Bank, 138 Ill. App. 3d at 809, 486 N.E.2d at 969. In other words, the defendant agreed (obviously) with the summary judgment in the defendant's favor, but the defendant disagreed with a legal conclusion the trial court had drawn in the plaintiff's favor—namely,

that the tree-cutting was an ultrahazardous activity--and if one took away that erroneous conclusion, the case for affirmance became even stronger, so the defendant argued. We held, however, that because the defendant never filed a cross-appeal, we could not consider the question of whether the tree-cutting was an ultrahazardous activity but, instead, we were confined to the issues that the plaintiff raised. National Bank, 138 Ill. App. 3d at 809, 486 N.E.2d at 970.

Nevertheless, the conclusion that defendant was engaged in an ultrahazardous activity was merely part of the trial court's rationale in National Bank, and judgments are appealed, not the trial court's reasons. If, in trial court, a party wins a judgment that is entirely favorable to that party but the party disagrees with the trial court's rationale for the judgment, it makes no sense to require the party to appeal from the completely favorable judgment on pain of losing the right to challenge the trial court's rationale should the opponent appeal. After all, we can affirm a judgment for any reason the record supports, regardless of whether the trial court relied on that reason. Material Service Corp. v. Department of Revenue, 98 Ill. 2d 382, 387, 457 N.E.2d 9, 12 (1983). In Fillpot, we recognized this fallacy of National Bank.

The plaintiff in Fillpot slipped and fell on a natural accumulation of ice on the tarmac of an airport after she got off the defendant's airplane. Fillpot, 261 Ill. App. 3d at 238, 633 N.E.2d at 238. She sued the defendant for her personal injuries, alleging that the defendant, as a common carrier, owed her the highest duty of care and that the defendant had breached that duty by failing to protect her from, or warn her against, the danger of the ice. Fillpot, 261 Ill. App. 3d at 238, 633 N.E.2d at 238. The trial court agreed with the plaintiff that the defendant, as a common carrier, owed her the highest duty of care while

she was getting off the plane, but because the plaintiff fell on a natural, rather than an unnatural, accumulation of ice, the court held that the defendant had not breached its duty; therefore, the court granted the defendant's motion for summary judgment. Fillpot, 261 Ill. App. 3d at 238, 633 N.E.2d at 238.

The plaintiff appealed, and on appeal, the defendant challenged the trial court's finding that the plaintiff and defendant were in a passenger-carrier relationship at the time the plaintiff fell. Fillpot, 261 Ill. App. 3d at 240, 633 N.E.2d at 239. According to the defendant, when the plaintiff slipped on the icy tarmac and fell, she had exited the plane and thereby had reverted to the status of a pedestrian. Fillpot, 261 Ill. App. 3d at 242, 633 N.E.2d at 241. On the authority of National Bank, the plaintiff moved to strike the portion of the defendant's brief in which the defendant made that argument, because the defendant had filed no cross-appeal. Fillpot, 261 Ill. App. 3d at 240, 633 N.E.2d at 239. We denied the plaintiff's motion to strike, for we concluded, on the authority of Landmarks Preservation Council of Illinois v. City of Chicago, 125 Ill. 2d 164, 174, 531 N.E.2d 9, 13 (1988), that National Bank was incorrect and that the defendant could question the carrier-passenger relationship without filing a cross-appeal. Fillpot, 261 Ill. App. 3d at 241, 633 N.E.2d at 240. We overruled National Bank as irreconcilable with Landmarks, because in Landmarks, 125 Ill. 2d at 174, 531 N.E.2d at 13, the supreme court held that even though the trial court made findings that were adverse to the appellee, the appellee did not have to cross-appeal unless the judgment was, at least in part, adverse to the appellee. Fillpot, 261 Ill. App. 3d at 240, 633 N.E.2d at 240. Since the summary judgment in the defendant's favor was entirely favorable to the defendant, the defendant did not have to cross-appeal as a condition of challenging the trial court's finding of a carrier-passenger relationship

after the plaintiff exited the airplane. Fillpot, 261 Ill. App. 3d at 240-41, 633 N.E.2d at 240.

In the present case, defendant denies that the trial court's judgment is in any way adverse to defendant, and therefore defendant argues it should not be confined to the issues that plaintiff raises in this appeal. Defendant points out that the record contains no ruling on the cross-motions for summary judgment, and defendant observes that the court made decisions unfavorable to plaintiff, namely, the denial of costs and attorney fees and the refusal to impose a fine.

It is true that plaintiff did not get everything it requested, but by the same token, the judgment was at least partly unfavorable to defendant. Plaintiff brought an action against defendant to enforce the Commission's subpoena, and the circuit court enforced the subpoena. Also, the court found defendant to be in contempt.

Because the circuit court's judgment was at least partly unfavorable to defendant and defendant has filed no cross-appeal, defendant is confined to the issues that plaintiff raises. See Phelps, 3 Ill. 2d at 218, 119 N.E.2d at 927; Fillpot, 261 Ill. App. 3d at 240, 633 N.E.2d at 239. Plaintiff does not challenge the finding that defendant was in direct civil contempt of court or the order that defendant purge itself of the contempt by copying the medical records and delivering the copy to plaintiff. Therefore, the finding of contempt and the corresponding purge order are indelible features of the landscape in this appeal. Absent a cross-appeal by defendant, we will not consider any of defendant's arguments against the finding of direct civil contempt or the court's enforcement of the subpoena.

B. Attorney Fees, Costs, and a Fine

As we have explained, we lack authority to reverse the finding of contempt,

because (1) defendant did not appeal and (2) plaintiff does not challenge the finding of contempt. Plaintiff does challenge, however, the circuit court's denial of its request for costs, attorney fees, and the imposition of a fine against defendant, Keefe, or both of them. To address those challenges by plaintiff, we must examine the record to see if it reveals any basis for awarding costs and attorney fees and for imposing a fine. By examining the record to see if it contains any basis for sanctions, we necessarily will subject the finding of contempt to critical scrutiny, despite our jurisdictional inability to actually overturn that finding.

Even though a court finds a party to be in contempt, the court does not have to impose a sanction. See People v. Bailey, 235 Ill. App. 3d 1, 4, 600 N.E.2d 1267, 1269 (1992); In re Marriage of Elies, 248 Ill. App. 3d 1052, 1058, 618 N.E.2d 934, 939 (1993). The types of sanctions and whether to impose any sanction at all lie within the sound discretion of the court. Multiut Corp. v. Draiman, 359 Ill. App. 3d 527, 541, 834 N.E.2d 43, 54 (2005). There are degrees of contumacious behavior, and a court could reasonably make the sanctions depend on how egregious or persistent the contumacious behavior is. On the record before us, we find no evidence that defendant or its attorney has ever behaved contumaciously toward the circuit court in this case, and therefore we find no abuse of discretion in the court's denial of plaintiff's request for sanctions in the form of costs, attorney fees, and a fine.

Plaintiff seems to assume that section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)) equates contumacious behavior toward the Commission with contumacious behavior toward the circuit court. That is a misinterpretation of the statute. The relevant paragraph of section 16 reads as follows:

"The Commission, *** any member thereof, or any [a]rbitrator designated by the Commission shall have the power to administer oaths[;] [to] subpoena and examine witnesses; to issue subpoenas duces tecum[] requiring the production of such books, papers, records[,] and documents as may be evidence of any matter under inquiry[;] and to examine and inspect the same and such places or premises as may relate to the question in dispute. The Commission, *** any member thereof, or any [a]rbitrator designated by the Commission, shall[,] on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and production of such books, papers, records[,] and documents as shall be designated in the applications, and the parties applying for such subpoena shall advance the officer and witness fees provided for in civil actions pending in circuit courts of this [s]tate, except as otherwise provided by [s]ection 20 of this Act [(820 ILCS 305/20 (West 2008))]. Service of such subpoena shall be made by any sheriff or other person. In case any person refuses to comply with an order of the Commission or subpoenas issued by it[,] *** any member thereof, or any [a]rbitrator designated by the Commission or to permit an inspection of places or premises, or to produce any books, papers, records or documents, or [if] any witness refuses to

testify to any matters regarding which he or she may be lawfully interrogated, the [c]ircuit [c]ourt of the county in which the hearing or matter is pending, on application of any member of the Commission or any [a]rbitrator designated by the Commission, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein." 820 ILCS 305/16 (West 2008).

This statute does not say that disobeying a subpoena issued by the Commission is contempt of court. The statute does not require the reader to pretend that the court issued an order and that someone disobeyed it. There is no such thing as contempt of Commission. Instead of treating the Commission as if it were a court, the statute says that if a person refuses to comply with a subpoena issued by the Commission, the circuit court, on application of a member of the Commission or an arbitrator, "shall compel obedience by attachment proceedings, as [the court would do] for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein." 820 ILCS 305/16 (West 2008). The "as for" and "as in" constructions signify that the court may use a tool from the law of contempt, i.e., attachment. The statute does not say the court is to hold the person in contempt merely because the person disobeyed a subpoena issued by an administrative agency. Instead, the statute says the court shall order the arrest of the person, if necessary, "as in" a case of contempt of court. There is a difference between convening a contempt proceeding and following a procedure "as in" a contempt proceeding. Suppose, for example, that A tells B: "Throw this apple into

that basket as in a game of basketball." A is not telling B to play a game of basketball. Instead, A is telling B to do something that one would do in a game of basketball, namely, throwing an object into a basket. Similarly, section 16 does not direct the court to initiate contempt proceedings because a person disobeyed a subpoena issued by the Commission (although contempt proceedings could become appropriate if the person subsequently disobeyed the court's order to comply with the Commission's subpoena). Rather, section 16 directs the court to do something that a court would do in contempt proceedings: compel obedience to the Commission's subpoena by a writ of attachment.

An attachment is merely an arrest and does not imply a finding of contempt. Ex Parte Mason, 16 Mo. App. 41, 46 (1884). It is simply a means of bringing a person before the court so that the person can show cause, if any, why the subpoena issued by the Commission should not be enforced. See Ex parte Petrie, 38 Ill. 498, 501-02 (1865). In the context of contempt proceedings, attachment usually is a method of last resort. Typically, it is only after a person fails to respond to a notice to show cause that the court issues a writ of attachment—and then the attachment is not punishment (noncompliance with a notice to show cause is not contempt of court, because the notice is not a court order), but, rather, it is merely a necessary method to bring a person before the court so that the person will have an opportunity to be heard. Petrie, 38 Ill. at 501-02; First Midwest Bank/Danville v. Hoagland, 244 Ill. App. 3d 596, 608, 613 N.E.2d 277, 286 (1993); 5 Nichols, Illinois Civil Practice §91.16, at 570 (2004). (We say "typically" because there might be rare exceptions, such as when the person is about to abscond. Mason, 16 Mo. App. at 45-46.) Therefore, it is fairly implied in section 6 that before the court orders the attachment of the defendant, the defendant must have disregarded a notice to appear in court at a designated time to

respond to the application for enforcement of the Commission's subpoena.

In the present case, defendant complied with plaintiff's notice to appear in circuit court. Further, we find no evidence in the record that defendant disobeyed any order by the court or that defendant was in any way contumacious or disrespectful toward the court. Consequently, we find no abuse of discretion in the court's denial of plaintiff's request for costs and attorney fees or in its refusal to impose a fine.

The dissent maintains, to the contrary, that defendant should have been sanctioned for three reasons. First, the dissent insists that the circuit court was correct in finding defendant to be in direct civil contempt. Slip op. at 25. That is not for us to say. As we have explained, we lack subject-matter jurisdiction to review the finding of contempt, because defendant has not appealed from that finding. Therefore, the finding stands, regardless of whether it is incorrect. But a finding of contempt does not automatically require sanctions.

Second, the dissent argues that "defendant continues to be in direct contempt because he admitted at oral argument he has not moved for a stay of [the circuit court's] order nor has he complied with that order." Slip op. at 25. Then, plaintiff may file in circuit court a notice to show cause, and defendant may appear in circuit court and show cause, if any, why defendant should not be found to be in contempt. The dissent is skipping over those essential steps of due process. See City of Quincy v. Weinberg, 363 Ill. App. 3d 654, 664-65, 844 N.E.2d 59, 68-69 (2006).

Third, the dissent contends the circuit court was correct in finding that defendant "did not comply with the relevant provisions of the Workers' Compensation Act and rules governing practice before the Commission." Slip op. at 25. More precisely, the

issue before us is whether a particular subpoena that the Commission issued on March 31, 2009, in case No. 09-WC-9590 is legally enforceable--not whether defendant followed the Act and the Commission's rules in general. We must keep in mind that this is an action to enforce that subpoena and, hence, the only question before us is whether the subpoena is lawful. See 820 ILCS 305/16 (West 2008).

The subpoena commanded defendant to mail medical records to plaintiff's attorney. The subpoena might just as well have commanded defendant to mail a stethoscope to plaintiff's attorney, because the medical records were defendant's property, the same as the stethoscope. See Young v. Murphy, 90 F.3d 1225, 1236 (7th Cir. 1996); Clouser v. Johns Manville Corp., 48 Pa. D. & C. 3d 667, 668 (1988); In re Culbertson's Will, 57 Misc. 2d 391, 392-93, 292 N.Y.S.2d 806, 807 (1968); McGarry v. J.A. Mercier Co., 272 Mich. 501, 503, 262 N.W. 296, 297 (1935). The Commission cannot confiscate defendant's property by commanding defendant to mail it to plaintiff's attorney, as the Commission did in its subpoena in this case. Even if the subpoena should be interpreted as commanding defendant to mail a copy of the medical records rather than the original records, the paper and ink of the photocopies would belong to defendant, and it would be defendant's money that paid for the photocopying machine, electricity, and clerical labor. Regardless of whether the medical records are original or a copy, they are defendant's property, and the subpoena purports to confiscate them.

The dissent seems to interpret section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)) as giving the Commission this confiscatory power. Slip op. at 26-27. Admittedly, section 8(a) says: "Every *** physician *** rendering treatment *** shall upon written request furnish full and complete reports thereof to, and permit their records to be

copied by, the employer ***." 820 ILCS 305/8(a) (West 2008). "Furnishing reports," however, means furnishing them for inspection (see 820 ILCS 305/16 (West 2008); 50 Ill. Adm. Code §7030.50(b) (1996)), not giving them away. If section 8(a) meant that a physician had to give away medical records, the requirement of "permitting records to be copied" would be superfluous--and we strive to interpret statutes so that no phrase is superfluous (Yang v. City of Chicago, 195 Ill. 2d 96, 106, 745 N.E.2d 541, 546 (2001)). Permitting the records to be copied implies that the physician retains ownership of the records and also that someone other than the physician is responsible for doing the copying.

The subpoena in this case, however, says nothing about arranging to have the medical records copied, and it says nothing about plaintiff's paying for the copying; it merely says to mail them to plaintiff's attorney. It is true that in his e-mail to Rowe, Keefe announced that defendant would not allow its records to be copied and that the law did not require defendant to do so. In this absolute assertion, Keefe was mistaken. But, again, this is an action to enforce a particular subpoena, and we are scrutinizing the legal enforceability of that subpoena, not the correctness of Keefe's views. We cannot reasonably hold that defendant and Keefe should be sanctioned unless we can cite statutory law that (1) empowers the Commission to command a physician to mail medical records to anyone and (2) empowers a court to sanction a physician for disobeying such a command by the Commission (as opposed to disobeying a court order). We are aware of no such statute.

It is true, as the dissent points out, that section 8-2001(g) of the Code of Civil Procedure (Code) (735 ILCS 5/8-2001(g) (West 2008)) makes a doctor liable for reasonable attorney fees and expenses if the doctor refuses to make medical records available for copying. Slip op. at 30. Section 8-2001 is a promising statute; it might offer a way of

preventing the sort of impasse that we encounter in this appeal. Section 8-2001(g) is inapplicable to the present case, however, for two reasons. First, section 8-2001(c) (735 ILCS 5/8-2001(c) (West 2008)) requires a physician or other "health care practitioner" to permit the copying of a patient's medical records only "upon the request of any patient who has been treated by the health care practitioner, or any person, entity, or organization presenting a valid authorization for the release of records signed by the patient or the patient's legally authorized representative." In other words, there is a condition precedent to the doctor's statutory duty to permit the copying of medical records, namely, (1) a request by the patient, in writing (735 ILCS 5/8-2001(d) (West 2008)); or (2) a written request by a person or entity possessing an authorization signed by the patient or the patient's representative. In the present case, that condition precedent appears to be unfulfilled. In fact, Rowe stated in her letter to defendant: "Please be advised that, as this is a workers' compensation Subpoena, HIPPA [sic] privacy regulations requiring a signed release by the patient do not apply. See 45 CFR 164.512(e)(ii) and 45 CFR 164.512(l)." (Emphasis in original.) While it is true that federal privacy regulations make an exception for workers' compensation, section 8-2001 of the Code makes no such exception, and the condition precedent in section 8-2001(c) of the Code (735 ILCS 5/8-2001(c) (West 2008)) must be satisfied. States are free to adopt more stringent regulations than the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d et seq. (2006)). 45 C.F.R. §160.203(b) (2009).

Second, even if we disregarded the nonfulfillment of the condition precedent in section 8-2001(c) of the Code (735 ILCS 5/8-2001(c) (West 2008)), plaintiff would not be entitled to reasonable attorney fees and expenses under section 8-2001(g) (735 ILCS

5/8-2001(g) (West 2008)), because plaintiff announced to defendant, ahead of time, that plaintiff would not pay a per-page copying fee. According to section 8-2001(d) (735 ILCS 5/8-2001(d) (West 2008)), the person requesting copies of the medical records shall pay a per-page fee "at the time of such copying" (and we note that it is substantially higher than 15 cents a page). The person also shall pay a "handling charge" of up to $20 as well as "the actual postage or shipping charge." 735 ILCS 5/8-2001(d) (West 2008). Rowe declared to defendant that plaintiff would pay only the witness fee of $20 and that plaintiff refused to pay any "per-page copy fees, retrieval fees, or any other claimed expenses" (to quote her letter). A reasonable reader would have to interpret the attorney fees and expenses in section 8-2001(g) (735 ILCS 5/8-2001(g) (West 2008)) as being subject to plaintiff's willingness to meets its own statutory obligations.

C. No Authority To Order Anyone To Make Photocopies and Mail Them

In reliance on Clayton, plaintiff challenges the portion of the circuit court's judgment requiring plaintiff to pay defendant 15 cents for each page of photocopied medical records. In Clayton, 311 Ill. App. 3d at 138, 724 N.E.2d at 225, the First District held that section 4.3 of the Circuit Courts Act (705 ILCS 35/4.3 (West 1996)), which section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 1996)) impliedly referenced, "[did] not require the subpoenaing party to pay any per-page copy fees" to obtain documents pursuant to a subpoena duces tecum issued by the Commission. Defendant concedes that the charge of 15 cents per page has no basis in law.

We agree with defendant's concession. This is not to say that persons subpoenaed by the Commission must copy and mail documents for free. On the contrary, absent compliance with sections 8-2001(c) and (d) of the Code (735 ILCS 5/8-2001(c), (d)

(West 2008)), we are convinced that the circuit court lacked authority to order defendant to make photocopies and sell them to plaintiff at any price. The court had authority to enforce the Commission's subpoena insomuch as the subpoena was lawful, but the subpoena in this case was unlawful because it required defendant to do that which the Commission lacked authority to order anyone to do: photocopy documents and mail them. (If the conditions precedent in section 8-2001 were fulfilled, a physician would have to make the medical records available for copying upon written request, and a subpoena by the Commission would be unnecessary. If the physician refused, the requesting party could bring an action pursuant to section 8-2001 and recover reasonable attorney fees and expenses.)

Section 16 (820 ILCS 305/16 (West 2008)) authorizes the Commission to "issue subpoenas duces tecum requiring the production of such books, papers, records[,] and documents as may be evidence of any matter under inquiry and to examine and inspect the same," but it does not authorize the Commission to order anyone to photocopy, or create duplicates of, the records. A subpoena duces tecum is "'[a] writ or process of the same kind as the subpoena ad testificandum, including a clause requiring the witness to bring with him and produce to the court books, papers, etc., in his hands, tending to elucidate the matter in issue.'" (Emphasis added.) People ex rel. Metropolitan Casualty Insurance Co. of New York v. Calumet National Bank, 260 Ill. App. 603, 611 (1931), quoting 3 J. Bouvier, Bouvier's Law Dictionary 3165 (8th ed. 1914). In other words, a subpoena duces tecum is like a subpoena ad testificandum, which requires a witness to appear and testify, except that a subpoena duces tecum requires the witness to bring along existing documents in his or her possession. It does not require the witness to copy documents and

mail them. Section 7030.50(b) of the Commission's rules conforms to the traditional understanding of the subpoena duces tecum: "Unless otherwise agreed by the parties, witnesses or documents may only be subpoenaed to appear or be produced at the time and place set for hearing of the cause." 50 Ill. Adm. Code §7030.50(b) (1996). In other words, the parties are free to agree to some alternative method of providing documents, such as photocopying them and mailing them in return for a fee, but absent such an agreement, the subpoena shall require the person to bring the documents to the hearing of the workers' compensation claim.

No doubt, most doctors would conclude that they have better things to do than sit in a workers' compensation hearing all day while the arbitrator and parties go through the original medical records page by page. By the same token, most doctors probably would think they have better things to do than operate a photocopying center as a side business that does not even pay for itself. Since settling a workers' compensation claim is virtually impossible without a copy of the medical records, one would expect that most employers would manage to reach an agreement with doctors to arrange for the duplication and mailing of medical records in return for a reasonable fee, that is, a fee over and above the standard witness fee of $20, which, one may reasonably assume, does not even come close to paying for the photocopying machine, copy paper, mailing container, postage, and employee operating the photocopying machine and mailing the records. In cases such as this one, in which the employer and doctor do not reach an agreement, the default option is a subpoena duces tecum, a highly impractical option, it would seem.

We can see plaintiff's point that if subpoenas duces tecum were the norm in workers' compensation proceedings, the system would soon become dysfunctional under

the weight of unresolved claims. Perhaps the Commission should consider promulgating a rule whereby a subpoena issued by the Commission could offer an alternative to appearing at the hearing with the original records in hand. The alternative, for example, might be photocopying the records at a certain price per page, which the Commission could specify, and mailing the photocopied records by a certain date. Cf. Official Reports Advance Sheet No. 13 (July 1, 2009), R. 204(a)(4), eff. June 11, 2009 (production of documents in lieu of appearance of deponent). Or perhaps a simpler solution would be to require the employee to sign an authorization for his or her medical records to be released to the employer. Then the employer could avail itself of section 8-2001. We assume that, in practice, most medical providers do photocopy records for purposes of workers' compensation. While it is likely time for the rules of workers' compensation to correspond more closely to the modern practice of litigation, that is for the [illegible] to determine.

For the foregoing reasons, we reverse the portion of the circuit court's judgment requiring plaintiff to pay 15 cents per page of photocopied medical records. Otherwise, we affirm the judgment.

Affirmed in part and reversed in part.

STEIGMANN, J., concurs.

MYERSCOUGH, P.J., dissents.

PRESIDING JUSTICE MYERSCOUGH, dissenting:

I respectfully dissent. It is time to put an end to this nonsense in workers' compensation cases.

Initially, the issues raised by defendant are encompassed by the judgment challenged by plaintiff. As plaintiff is appealing the trial court's denial of attorney fees and costs, as well as appropriateness of sanctions, this court should address defendant's direct civil contempt.

Defendant was found in direct contempt by the trial court. That court did not abuse its discretion because defendant failed to follow the trial court's order to deliver the medical records to plaintiff within the required time frame. Further, defendant continues to be in direct contempt because he admitted at oral argument he has not moved for a stay of that order nor has he complied with that order.

The trial court correctly found defendant did not comply with the relevant provisions of the Workers' Compensation Act and rules governing practice before the Commission.

> "3. This [c]ourt rules the attendance and presence of a representative and counsel for [d]efendant David J. Fletcher, M.D., LLC, who both appeared at a workers[']' compensation hearing with original medical records for inspection by the Arbitrator in response to the [s]ubpoena duces tecum does not satisfy the relevant provisions of the Illinois Workers[']' Compensation Act and Rules Governing Practice before the Commission."

First and foremost, the legislature has mandated that defendant upon written request shall furnish complete reports of treatment or services and permit his records to be copied by the employer, employee, any party to any proceeding for compensation before the Commission, or their attorneys.

> "Every hospital, physician, surgeon or other person rendering treatment or services in accordance with the provisions of this [s]ection shall upon written request furnish full and complete reports thereof to, and permit their records to be copied by, the employer, the employee or his dependents, as the case may be, or any other party to any proceeding for compensation before the Commission, or their attorneys." 820 ILCS 305/8(a) (West 2008).

In contrast to the statute, the Commission has promulgated a rule to the contrary, that unless the parties agree otherwise, witnesses may only be required to appear and documents produced at the time and place of hearing.

> "Unless otherwise agreed by the parties, witnesses or documents may only be subpoenaed to appear or be produced at the time and place set for hearing of the cause." 50 Ill. Adm. Code §7030.50(b) (1996).

This administrative regulation is in direct conflict with section 8(a) of the Workers' Compensation Act and is therefore invalid. The workers' compensation statute trumps the administrative regulation insofar as the regulation may conflict with the statute. "Whenever an administrative rule conflicts with a statute, the rule will be held invalid and

the statute followed." Greaney v. Industrial Comm'n, 358 Ill. App. 3d 1002, 1026, 832 N.E.2d 331, 352 (2005), citing Montgomery Ward Life Insurance Co. v. Department of Local Government Affairs, 89 Ill. App. 3d 292, 302, 411 N.E.2d 973, 980 (1980). Further, applying the statute as written increases the efficiency of the process in keeping with the purposes of the Act.

> "The Act is a humane law of a remedial nature, whose fundamental purpose is to protect employees by providing efficient remedies, and prompt and equitable compensation for their injuries. [Citation.] By its very nature, the Act mandates a duty of due diligence." (Emphasis in original.) Contreras v. Industrial Comm'n, 306 Ill. App. 3d 1071, 1076, 715 N.E.2d 701, 705 (1999).

Therefore, defendant should have produced the records for copying upon the written request. Obviously, this would logically have to be done in a timely fashion prior to the hearing. In this case, the letter request and accompanying subpoena were issued March 31, 2009, with a reply date of April 20, 2009. Of note, the subpoena is actually a form issued by the Commission. That form has two choices to pick from:

> "□ You must appear to testify before the Honorable _____ of the Commission at the address _____ on the date _____ at the time _____, and to bring the items with you.
>
> ☒ Mail the items to the address 411 Hamilton Blvd, Suite 1[,] Peoria[,] IL 61602 by the date [April 20, 2009]. You do not need to appear at the Commission."

Clearly, the selection of the second option does not reflect any written agreement of the parties to produce the documents at that location or time.

Further, the Commission's subpoena rule is nonsensical. The rule places production of medical--indeed all relevant evidence--in the control of petitioners' attorneys. Additionally, if the medical records requested must be provided at the hearing, this would require respondents' attorneys to request a continuance or request that proofs be left open so respondents' attorneys could review the medical records, perhaps have a further examination of petitioners, perhaps settlement discussion, and hearing of respondents' evidence, time which will further complicate the arbitrator's recollection of petitioners' cases, time for petitioners' recovery, if any, and further payment of temporary total disability.

I do agree with the majority to the extent no specific authority then existed for ordering payment of copying costs under the workers' compensation statute because of the Clayton decision. However, I believe Clayton was wrongly decided insofar as it found the Code (735 ILCS 5/1-101 et seq. (West 1996)) inapplicable to the subpoena process under the Workers' Compensation Act. Indeed, the legislature amended the Code (735 ILCS 5/8-2001 (West Supp. 2001)) the year following the Clayton decision to explicitly allow facilities to be reimbursed for copying fees and costs incurred in providing medical documentation. Pub. Act 92-228, §5, eff. September 1, 2001 (2001 Ill. Legis. Serv. 2623, 2624 (West)). The legislative change brings into question the validity of the holding of Clayton and was meant to address the confiscatory issues which are criticized by the majority. Slip op. at 17-18.

Sanctions are clearly authorized under both the Worker's Compensation Act (by the arbitrator or commissioner) or by means of contempt in circuit court.

> "The Commission is empowered to enforce its rules with appropriate sanctions when they have been violated. (See 50 Ill. Adm. Code §7030.70, at 5739 (1985).)" Jones v. Industrial Comm'n, 227 Ill. App. 3d 161, 166, 591 N.E.2d 33, 36 (1992).

Here, the defendant continued to remain in noncompliance with section 12 before the circuit court. While I agree with the majority that a body attachment is an option here, it is just not the only option. To subject the medical profession to arrest for untimely or incomplete records, production, or even noncompliance where a dispute over statutory language exists seems draconian.

Here, the administrative regulations have adopted the common-law rules of evidence and the Illinois evidence act (735 ILCS 5/8-101 through 8-2701 (West 2008) (article VIII of the Code of Civil Procedure) to the extent they do not conflict with the Workers' Compensation Act or the administrative regulations.

> "a) The Illinois common[-]law rules of evidence and the Illinois [e]vidence [a]ct (820 ILCS 305 [sic]) shall apply in all proceedings had before the Industrial Commission, either upon arbitration or review, except to the extent they conflict with the Workers' Compensation Act, the Workers' Occupational Diseases Act (820 ILCS 310), or the Rules Governing Practice Before the Industrial Commission." 50 Ill. Adm. Code §7030.70(a) as amended by 20 Ill. Reg. 4053, 4059, eff. February 15, 1996.

Nothing therein conflicts with section 8-2001(a) of the Code (pertaining to examination of

records).

> "(g) Failure to comply with the time limit requirement of this [s]ection shall subject the denying party to expenses and reasonable attorneys' fees incurred in connection with any court ordered enforcement of the provisions of this [s]ection."

735 ILCS 5/8-2001(g) (West 2008).

The majority finds the Commission subpoena unlawful because it is confiscatory of defendant's property. However, this subpoena is lawful and comports with the statutes and regulations. All subpoenas, whether issued by the Commission or a court, are to be accompanied by a $20 handling charge. See Solon v. Midwest Medical Records Ass'n, 236 Ill. 2d 433, 925 N.E.2d 1113 (2010) (interpreting sections 8-2001 and 8-2003 of the Code (735 ILCS 5/8-2001, 8-2003 (West 2004)). The statutes contemplate a later bill for copying expenses at the time of production.

> "The person *** requesting copies of records shall reimburse the facility or the health care practitioner at the time of such copying for all reasonable expenses, including the costs of independent copy service companies, incurred in connection with such copying ***." 735 ILCS 5/8-2001(d) (West 2008).

Because section 7050.5(b) of Title 50 of the Administrative Code is invalid, section 8-2001(d) of the Code (735 ILCS 5/8-2001(d) (West 2008)) applies and the statutory costs for copying should have been awarded as set forth therein.

Further, the rules of civil procedure apply as stated so long as they do not conflict with the Worker's Compensation Act. The provision for patient authorization in

the Code the majority references does so conflict. Moreover, the physician-patient privilege does not apply to these records since these records are exempted by virtue of the employee having filed his workers' compensation cause of action.

> "No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except *** (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue ***." 735 ILCS 5/8-802 (West 2008).

The majority concedes that HIPAA does not apply.

Clearly, defendant failed to timely comply since, as plaintiff stated at orals, the records were produced at the hearing but plaintiff was neither shown the records nor permitted to copy them. The best practice in the future would be for all parties to agree in advance to reasonable copying costs being charged by the medical provider. However, the Commission also needs to amend its standard regulations to so state. Many statutes require fees of witnesses to be the same as fees for witnesses before the circuit court (see, e.g., 225 ILCS 320/22 (West 2008) (Illinois Plumbing License Act provision relating to witnesses at hearings, subpoenas, and fees), 210 ILCS 125/17 (West 2008) (Swimming Facility Act provision providing for subpoenas and witness fees), 55 ILCS 5/3-14043 (West 2008) (Counties Code pertaining to officers and employees in Cook County providing for

subpoenas and witness fees)), yet the Workers' Compensation Act does not. The Commission needs to clearly establish specific appropriate fees for witnesses, production of medical records, and photocopies consistent with the workers' compensation statute and Code of Civil Procedure.

For these reasons, this matter should be remanded for the assessment of sanctions, including fees and costs.

NO. 4-09-0827

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JULIA WILLS, Plaintiff-Appellee, v. SAFEWORKS ILLINOIS OCCUPATIONAL HEALTH SERVICES, LTD., and KINDAL WERNZ, Defendants-Appellants.	)	Appeal from Circuit Court of Vermilion County No. 09MR102 Honorable Joseph P. Skowronski, Judge Presiding.

ORDER

Plaintiff, Julia Wills, obtained a subpoena from the Workers' Compensation Commission (Commission) commanding Kindal Wernz, an administrative assistant of Safeworks Illinois Occupational Health Services, Ltd. (Safeworks), to appear before an arbitrator of the Commission and to bring along plaintiff's medical records. Wernz failed to show up at the administrative hearing, and plaintiff brought this action pursuant to section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)) to enforce the subpoena. Plaintiff named Wernz and Safeworks as defendants. The trial court found defendants to be in contempt of court for disobeying the administrative subpoena (the court did not say what kind of contempt, civil or criminal), ordered defendants to provide a copy of the medical records to plaintiff's counsel within 14 days, and awarded plaintiff $2,355 in attorney fees and $247.36 in court costs. Defendants appeal.

Because the record reveals no contemptuous behavior of defendants toward the trial court as of the date of entry of its order, we reverse the finding of contempt along with the award of attorney fees and costs. We also reverse the order that defendants make a copy of plaintiff's medical records, because we are aware of no law which, under the circumstances of this case, required defendants to copy any documents.

Nevertheless, we remand this case with directions to enforce the subpoena that the Commission issued on April 30, 2009. Obviously, the date of the administrative hearing referenced in the subpoena (May 18, 2009) has passed, so it will be impossible for the trial court to order Safeworks to appear at that hearing. Therefore, we direct the trial court to issue an order for the attachment of David J. Fletcher pursuant to section 16 of the Worker's Compensation Act (820 ILCS 305/16 (West 2008)), and when Fletcher is personally before the court, the court shall order him to appear at an administrative hearing to testify before an arbitrator of the Commission (specifying the time, date, and place of the hearing) and to bring to the hearing the items described in the subpoena that the Commission issued on April 30, 2009. The trial court's order shall contain a provision that if the parties so agree, Fletcher may furnish plaintiff's attorney a copy of the medical records by a certain date, at his own cost, in lieu of appearing at an administrative hearing.

I. BACKGROUND

On February 9, 2009, plaintiff filed an application for workers' compensation, and the Commission gave her case the number 09-WC-05584. The application stated that Gary J. Stokes was her attorney.

On March 16, 2009, at the request of Stokes, the Commission issued a subpoena in case No. 09-WC-05584, captioned as Wills, petitioner, versus Hawkeye Food Service, respondent. The subpoena was directed to Safeworks of 1806 North Market Street, Champaign, and commanded it to appear at the Vermilion County Annex in Danville, Illinois, on April 20, 2009, at 9 a.m., and testify before an arbitrator of the Commission,

Douglas Holland. The subpoena further commanded Safeworks to bring the following items in its possession and control: "Any and all medical records, reports, office notes, nurses notes, physical therapy records, X-ray reports, correspondence to and from insurance companies, attorneys, itemized billings, etc. produced in the examination, care and/or treatment of Mrs. Julia L. Wills from 01/01/07 through the date of this production." Further down, next to a box with an X in it, the subpoena said: "The petitioner and respondent have agreed that, instead of appearing, you may mail the items to the person listed below." The "person listed below" was Stokes, at 5022 Olivet Road, Georgetown, Illinois.

The record does not contain a return of service for this subpoena, but apparently Safeworks received it, because on April 20, 2009, Safeworks wrote Stokes a letter declining to give him any records. The letter was signed by Kindal Wernz, administrative assistant, and it stated as follows:

> "I am returning your request for records to you, as we do not provide records for patients that we have not treated. Julia Wills was seen at our facility for an Independent Medical Evaluation, not for treatment. Please request the IME report and any subsequent reports from the person who requested the evaluation:
>
> Liberty Mutual Insurance
>
> 2815 Forbes Ave., Suite 200
>
> Hoffman Estates, IL 60192."

On April 23, 2009, Stokes responded to Wernz with the following letter:

> "You are misinformed. Please read the correspondence before returning it. The previous material, which we enclose again, is not a request, it is a subpoena, a Court Order. You do not have the discretion to choose whether you will comply or not, you must comply.
>
> The date of production has already passed. I am providing your office with two additional weeks to produce these materials. If I do not have the materials in my office by May 7th, I will seek a contempt of Court citation. Feel free to have your attorney contact me if you desire."

On April 28, 2009, Wernz wrote Stokes again. She said: "I am returning your second request for Julia Wills' Independent Medical Evaluation, including the $20 subpoena fee. Please request the IME report from the person who requested the evaluation as indicated in our prior letter. If you have need for further discussion, please direct your inquiries to our attorney Gene Keefe of Keefe and Associates LLC at (312) 756-1800."

It does not appear from the record whether Stokes ever contacted Keefe, but on April 30, 2009, Stokes obtained a second subpoena from the Commission. This subpoena was directed to Wernz of Safeworks at Champaign and commanded her to provide the following items: "Any and all medical records, reports, office notes, nurses notes, physical therapy records, X-ray reports, correspondence to and from insurance companies, attorneys, itemized billings, etc. produced in the examination, care and/or treatment of Mrs. Julia L. Wills from 01/01/07 through the date of this production." This time, the subpoena did not give Wernz the option of mailing the items to Stokes but simply

required her to appear and testify before Holland at the Vermilion County Annex on May 18, 2009, at 9 a.m., and to bring along the specified items. The record contains a return of service indicating that the subpoena was served on Wernz on May 5, 2009.

On May 1, 2009, Stokes mailed a notice to the employer's attorney, Lawrence Cozzi of 27201 Bella Vista Parkway, Suite 410, Warrenville, that on May 18, 2009, at 9 a.m., Stokes would appear before Holland at the Vermilion County Courthouse Annex in Danville and present a motion for "subpoena enforcement." Holland granted the motion on May 18, 2009.

So, on May 21, 2009, Wills filed in the trial court an "Application for Enforcement and Petition for Rule To Show Cause." This pleading alleged that Wernz and Safeworks willfully failed to appear before Arbitrator Holland on May 18, 2009, in disobedience of the subpoena of April 30, 2009. Citing section 16 of the Workers' Compensation Act (820 ILCS 305/16 (West 2008)), Wills requested the following relief:

> "A. Defendant Kindal Wernz and Defendant Safeworks Illinois be ordered to show cause why each should not be held in willful and contumacious contempt of Court for their refusal to comply with a duly issued subpoena of the Illinois Workers' Compensation Commission,
>
> B. Defendant Kindal Wernz and Defendant Safeworks Illinois be held in willful and contumacious contempt of Court for their failure to comply with a duly issued subpoena of the Illinois Workers' Compensation Commission,
>
> C. Defendant Wernz and Defendant Safeworks Illinois

> be directed to immediately comply with the production of records commanded in said subpoena by delivering certified copies to Plaintiff's counsel,
>
> D. Reasonable attorney's fees and costs incurred in the filing, presentation and enforcement of this subpoena be awarded against Defendant Wernz and Defendant Safeworks, and enforcement of this subpoena be awarded against Defendant Wernz and Defendant Safeworks, and
>
> E. Whatever further relief or sanctions the Court deems just and equitable be entered in favor of Plaintiff and against Defendant Wernz and Defendant Safeworks Illinois."

On June 24, 2009, defendants, Wernz and Safeworks, filed a "Response to Application for Enforcement and Petition for Rule To Show Cause." Therein, they requested denial of plaintiff's petition for three reasons. First, although plaintiff had tendered to them the witness fee of $20, she had tendered no fee for the travel expense (mileage). Defendants quoted the Commission's Rule 7030.50(c): "Personal service of the subpoena is required and payment of statutory fee and travel expense must accompany the service." 50 Ill. Adm. Code §7030.50(c) (1996). They argued that without the fee for the travel expense, the subpoena was never perfected and was without effect. Second, defendants argued that the subpoena had to be served on the keeper of the records and Wernz was not that person. Third, defendants argued they were "not provided notice of the hearing to perfect the subpoena duces tecum and therefore were denied the opportunity to respond at that time." Nevertheless, defendants offered to "allow the original medical

records to be photocopied by SafeWorks Illinois staff at the current cost provided by Comptroller Daniel Hynes and published on the web at http://www.ioc.state.il.us/office/fees.cfm." They objected to any attempt to force Dr. Fletcher and his staff to make free photocopies when they had no legal duty to do so.

On August 20, 2009, the trial court held a hearing on plaintiff's petition, and Stokes himself testified (his associate, Jacob Jackson, performed the direct examination). Stokes testified that contrary to defendants' assertion, he had tendered $36.36 for mileage along with $20 for the witness fee. He calculated the distance from defendant's office in Champaign to the Vermilion County courthouse in Danville to be a 72-mile round trip, and at 50 cents a mile, that came to $36.36. So, he stapled a check in the total amount of $56.36 to the subpoena of April 30, 2009 (the witness fee of $20 plus $36.36 for mileage), and he had a deputy sheriff in Champaign serve the subpoena and attached check on Wernz. He further testified that neither Wernz nor anyone else from Safeworks appeared at the arbitration hearing on May 18, 2009.

On October 7, 2009, the trial court entered an order finding defendants to be "in willful and contumacious contempt of Court for their failure to comply with a duly issued subpoena of the Illinois Workers' Compensation Commission." The court further found that plaintiff had incurred reasonable attorney fees in the amount of $2,355 and costs in the amount of $247.36 "as a direct result of Defendants' willful refusal to obey a duly issued subpoena of the Illinois Workers' Compensation Commission." Consequently, the court ordered defendants to pay these attorney fees and costs and also ordered defendants "to produce to Plaintiff's counsel, within fourteen days from entry of this Order, copies of all records, reports and other documents demanded in the Illinois Workers' Compensation

subpoena issued April 30, 2009."

This appeal followed.

II. ANALYSIS

A. The Finding of Contempt

Defendants argue that the trial court erred in finding them to be in contempt of court. We will reverse a finding of contempt only if the finding is against the manifest weight of the evidence or an abuse of discretion. People v. Covington, 395 Ill. App. 3d 996, 1002, 917 N.E.2d 618, 624 (2009). We conclude that the finding of contempt is against the manifest weight of the evidence because defendants never did anything contemptuous toward the court.

Contempt of court, or being contemptuous toward the court, is "a despising of the authority, justice[,] or dignity of the court." Dahnke v. People, 168 Ill. 102, 107, 48 N.E. 137, 139 (1897). Contemptuous acts include "'all acts calculated to impede, embarrass[,] or obstruct the court in the administration of justice.'" Dahnke, 168 Ill. at 106, 48 N.E. at 138-39, quoting People v. Wilson, 64 Ill. 195, 211 (1872). We find no evidence in the record that defendants ever disobeyed a court order, impeded the court in its administration of justice, or otherwise challenged the dignity and authority of the court. It is true that by ignoring the subpoena issued by the Commission on April 30, 2009, defendants impeded the Commission in its performance of its duties, but the Commission is not the court, and contempt of the Commission is not contempt of court. See Holtkamp Trucking Co v. Fletcher, No. 4-09-0587, slip op. at 14-15 (June 24, 2010), ___ Ill. App. 3d ___, ___, ___ N.E.2d ___, ___.

Section 16 of the Workers' Compensation Act provides that if someone refuses

to comply with a subpoena issued by the Commission, the arbitrator or a member of the Commission may apply to the circuit court for enforcement of the subpoena. 820 ILCS 305/16 (West 2008). According to this statute, the circuit court "shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein." 820 ILCS 305/16 (West 2008). As we explained in Holtkamp, slip op. at 13-15, ___ Ill. App. 3d at ___, ___ N.E.2d at ___, this language in section 16 does not authorize a court to find someone to be in contempt of court on the basis of contemptuous behavior toward the Commission. Rather, section 16 directs the circuit court, if necessary, to use a procedure from contempt proceedings--attachment--to compel the recipient of the subpoena to appear in court and respond to the application for enforcement of the subpoena. Holtkamp, slip op. at 15, ___ Ill. App. 3d at ___, ___ N.E.2d at ___.

B. Attorney Fees

Absent a finding of contempt, we apply the American Rule, which says that unless a statute requires defendants to pay plaintiff's attorney fees or unless they have contractually agreed to do so, the parties must bear their own attorney fees. See Negro Nest, LLC v. Mid-Northern Management, Inc., 362 Ill. App. 3d 640, 641-42, 839 N.E.2d 1083, 1085 (2005). We are aware of no such contract or statute and therefore reverse the award of attorney fees.

C. Costs

A prevailing party may recover costs only insomuch as a statute or supreme court rule provides. Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co., 356 Ill. App. 3d 471, 485, 825 N.E.2d 1246, 1259 (2005). We are aware of no statute or supreme

court rule that entitles plaintiff to an award of costs in this case. Section 5-108 of the Code of Civil Procedure provides that "[i]f any person sues in any court of this state in any action for damages personal to the plaintiff, and recovers in such action, then judgment shall be entered in favor of the plaintiff to recover costs against the defendant." 735 ILCS 5/5-108 (West 2008). Plaintiff has not sued for damages personal to herself; she has sued to enforce a subpoena. Therefore, we reverse the award of costs.

D. Motion for Sanctions

1. Demand for Copies

On appeal, plaintiff moves for sanctions pursuant to Illinois Supreme Court Rule 137 (155 Ill. 2d R. 137) because, in their brief, defendants make arguments that plaintiff deems not to be well grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

First, defendants assert in their brief that plaintiff has demanded Safeworks to "make and send certified copies of unlimited medical records to [plaintiff] at no charge" and that plaintiff is "hoping to bully or bluff [Safeworks] into making unlimited copies at [Safeworks's] sole cost." Plaintiff argues that these assertions are frivolous because "[p]laintiff has never demanded copies of medical records, never." (Emphases in original.) Instead, plaintiff observes, the original subpoena of March 16, 2009, required the production of original records at the administrative hearing and gave Safeworks the alternative option (not a mandate, but an option) of mailing the records to plaintiff's attorney, if Safeworks wished to do so. Further, plaintiff notes, the subpoena of April 30, 2009, required Wernz's personal appearance in the administrative hearing, with the original medical records in hand, and did not even give Safeworks the option of mailing the

records. Thus, according to plaintiff, "[n]o matter how hard this Court may search the Record for a demand for copies, it will find none."

We find such a demand in plaintiff's "Application for Enforcement and Petition for Rule To Show Cause." Therein, she requests the trial court to order defendants "to immediately comply with the production of records commanded in said subpoena [of April 30, 2009,] by delivering certified copies to Plaintiff's counsel." This could be fairly characterized as a "demand," defined as "[t]he assertion of a legal *** right." Black's Law Dictionary 462 (8th ed. 2004); see also Pope v. Speiser, 7 Ill. 2d 231, 234, 130 N.E.2d 507, 509 (1955) ("The complaint demanded the following relief"); Barber v. American Airlines, Inc., No. 1-09-0952, slip op. at 40 (February 11, 2010), ____ Ill. App. 3d ____, ____, ____ N.E.2d ____, ____ ("relief demanded by the complaint"); In re Paternity of Rogers, 297 Ill. App. 3d 750, 756, 697 N.E.2d 1193, 1198 (1998) ("demand presented by the complaint"); 71 C.J.S. Pleading §110, at 159 (2000) ("complaint shall contain a demand for the relief to which plaintiff deems himself or herself entitled"). Considering that plaintiff overstates her own case, we are not inclined to impose sanctions on defendants.

2. Copying Charges

Plaintiff contends that "[e]ven if plaintiff had demanded copies of original records, which she did not, Defendant's argument that the law requires payment of copying charges is wholly without merit." According to plaintiff, the appellate court has already decided this issue in Clayton v. Ingalls Memorial Hospital, 311 Ill. App. 3d 135, 724 N.E.2d 222 (2000). Actually, in Clayton, 311 Ill. App. 3d at 138, 724 N.E.2d at 225, the First District held that section 16 of the Workers' Compensation Act (see 820 ILCS 305/16 (West 1996)) did not require the subpoenaing party to pay any per-page copy fees or retrieval fees.

That is true. Because section 16 does not require the making of any copies (820 ILCS 305/16 (West 2008); Holtkamp, slip op. at 22-23, Ill. App. 3d at ____, ____ N.E.2d at ____), section 16 does not require the payment of any copy fees. To the extent, however, that the law does require Safeworks to copy records, the law entitles Safeworks to reimbursement. See 735 ILCS 5/8-2001(d) (West 2008).

Therefore, contrary to plaintiff's assertion, defendants can make a reasonable argument that Safeworks should not be required to photocopy medical records for free. It costs money to photocopy documents. If it cost, say, $50 to duplicate plaintiff's medical records and mail the copy to her attorney, requiring Safeworks to do so free of cost would effectively be no different from requiring Safeworks to write plaintiff's attorney a check in the amount of $50.

3. Notice of the Hearing

In their brief, defendants make the following representation: "The matter appeared before Arbitrator Douglas Holland at the Illinois Workers' Compensation Commission on May 18, 2009. Appellant Safeworks Illinois and Keefe, Campbell and Associates were not notified of this hearing date and therefore could not file any response, present any documents or appear at the hearing." Defendants cite the "Notice of Motion and Order," which, according to the proof of service, plaintiff's attorney served on Holland and on the employer's attorney but not on Safeworks or its attorney.

Plaintiff maintains, however, that defendants' representation is false because on May 5, 2009, the Champaign County sheriff's office served upon them the subpoena that the Commission issued on April 30, 2009, and the subpoena commanded Wemz to appear at the hearing scheduled for May 18, 2009, and to bring the medical records with her.

Nevertheless, when defendants speak of not being notified of "this hearing date," they apparently mean the hearing on plaintiff's motion pursuant to section 16 (820 ILCS 305/16 (West 2008)), not the hearing referenced in the subpoena. Admittedly, defendants overstate their case when they argue that they could not "present any documents or appear at the hearing." If they had obeyed the subpoena, they would have appeared at the hearing and could have presented some documents, namely, the medical records. Because plaintiff, however, likewise has overstated her case, we deny her motion for sanctions.

III. CONCLUSION

For the foregoing reasons, we reverse the trial court's judgment and remand this case with directions to issue an order for the attachment of the body of David J. Fletcher pursuant to section 16 of the Worker's Compensation Act (820 ILCS 305/16 (West 2008)), and when Fletcher is personally before the court, the court shall order him to appear at an administrative hearing to testify before an arbitrator of the Commission (specifying the time, date, and place of the hearing) and to bring to the hearing the items described in the subpoena that the Commission issued on April 30, 2009. The trial court's order shall contain a provision that if the parties so agree, Fletcher may furnish plaintiff's attorney a copy of the medical records by a certain date, at his own cost, in lieu of appearing at an administrative hearing.

Reversed and remanded with directions.

APPLETON, J., with McCULLOUGH, J., concurring.

MYERSCOUGH, P.J., specially concurring.

PRESIDING JUSTICE MYERSCOUGH, specially concurring:

I respectfully specially concur. I agree that a body attachment is authorized, but I also believe other sanctions are permitted for contempt. See Holtkamp, slip op. at 29, 31-32, ___ Ill. App. 3d ____, ____ N.E.2d ____ (Myerscough, P.J., dissenting).

For this reason, I specially concur.