

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

David Cohen v. Arizona Board of Regents

Cohen · No. CV-21-01178-PHX-GMS · Decided March 10, 2026

SUMMARY

The court addresses Plaintiff-Appellant David Cohen’s certificate asserting that trial transcripts were unnecessary for his appeal. It holds that Cohen failed to establish the transcripts were unnecessary because the trial record could bear on harmless error and overlapping factual and legal issues concerning his retaliation claim and summary-judgment appeal. The court orders Cohen to obtain the additional trial transcripts and requires the parties to share the costs equally, while denying Defendant’s request for oral argument.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	G. Murray Snow
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 10, 2026
DOCKET	CV-21-01178-PHX-GMS
DISPOSITION	other
PROCEDURAL POSTURE	The district court ruled on Plaintiff-Appellant's Certificate of Non-Necessity of the Court Reporter's Trial Transcript in connection with his appeal from the judgment entered after a jury verdict for Defendant.
STANDARD OF REVIEW	The court applied the burden under Ninth Circuit Rule 10-3.1(f), requiring the appellant to establish that disputed transcript portions are unnecessary to the appeal.
PRECEDENTIAL VALUE	Unknown; district-court order with no stated precedential status.
PARTIES	David Cohen v. Arizona Board of Regents

TOPICS

- appellate procedure
- civil procedure
- qualified immunity
- summary judgment
- harmless error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Cohen established under Ninth Circuit Rule 10-3.1(f) that the trial transcripts requested by the appellee were unnecessary to his appeal.
2. Whether the potential for affirmance on an alternative ground, including harmless error based on the jury's no-retaliation finding and overlapping facts and legal standards, made the trial transcripts necessary.
3. Whether the parties should evenly divide the costs of the additional trial transcripts.

HOLDINGS

1. The appellant bears the burden of establishing that disputed portions of the transcript are unnecessary, and Cohen failed to meet that burden.
2. The trial transcripts were necessary to the appeal because the jury's finding of no retaliation and the overlap between the trial claims and the claim against Anderson created substantial potential for arguments based on alternative grounds and harmless error.
3. Cohen must order the trial transcripts designated by the defendant, and the parties must evenly divide the costs.

KEY QUOTATIONS

“the Ninth Circuit may affirm a “district court’s grant of summary judgment . . . if it is supported by any ground in the record, whether or not the district court relied upon that ground.”” (at 3)

“Plaintiff has failed to establish that the trial transcripts are unnecessary.” (at 4)

“IT IS ORDERED that Plaintiff will order the trial transcripts designated in Defendant’s Rule 10-3.1(b) Response (Doc. 216-1 at 20) pursuant to Ninth Circuit Rule 10-3.1(d)-(e), and the parties shall evenly divide the costs.” (at 5)

FACTUAL BACKGROUND

The case proceeded to a seven-day jury trial, resulting in a defense verdict on Cohen's retaliation claim. Cohen appealed the judgment and several interlocutory orders, including the grant of summary judgment to Raymond Anderson on qualified-immunity grounds, but later stated that he would appeal only the summary-judgment dismissal. Cohen ordered transcripts from two motion hearings but not the trial, while the defendant argued that the trial transcript could bear on affirmance, harmless error, and overlapping factual and legal issues.

PROCEDURAL HISTORY

After a seven-day trial, the jury found that Cohen had not proven retaliation, and the court entered judgment for the Arizona Board of Regents on December 12, 2025. Cohen filed a notice of appeal identifying several orders, later narrowed his intended appeal to the summary-judgment dismissal of Raymond Anderson, and declined to order the trial transcripts. The defendant requested that the trial transcripts be included and offered to split their

cost. The district court held that Cohen failed to establish that the disputed transcripts were unnecessary and ordered him to obtain them, with the parties evenly dividing the costs.

DISPOSITION

other

CASES CITED

- Nat'l Steel Corp. v. Golden Eagle Ins. Co., 121 F.3d 496, 500 (9th Cir. 1997)
- United States ex rel. Kelly v. Serco, Inc., 846 F.3d 325, 330 (9th Cir. 2017)
- Summers v. Teichert & Son, Inc., 127 F.3d 1150, 1152 (9th Cir. 1997)
- United States v. \$25,000 U.S. Currency, 853 F.2d 1501, 1504 n.1 (9th Cir. 1988)
- Bruce v. United States, 759 F.2d 755, 758 (9th Cir. 1985)
- Tennison v. Circus Circus Enters., 244 F.3d 684, 691 (9th Cir. 2001)
- Wannamaker v. Mabus, No. 3:16-cv-00549, 2018 WL 2728016, at *2 (D. Idaho June 6, 2018)
- Hudock v. Aventis Pharm., Inc., No. CV-02-583, 2006 WL 1127373, at *1 (D. Ariz. Apr. 26, 2006)
- BNSF Ry. Co. v. Flies Away, No. 05-0386, 2007 WL 926912, at *1 (D. Ariz. Mar. 26, 2007)