

ALASKA BAR ASSOCIATION

ETHICS OPINION 88-4

Instructions to Court Reporters Regarding Transcriptions

The Committee has been asked whether it is unethical for an attorney to instruct a court reporter not to inform opposing counsel that the attorney has requested transcription of a deposition.

Whether such request will constitute unethical conduct depends on the facts and circumstances at the time the request is made. There is no ethical requirement that an attorney disclose to opposing counsel that he/she has requested transcription of a deposition. Therefore, in the normal course of events an instruction to a court reporter not to contact opposing counsel to ask if counsel wants a copy is not unethical.

However, if the attorney knows that opposing counsel expects notice from the court reporter if transcription is made, then the request would be unethical. DR1-102(A)(4) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The Committee believes it would be a violation of this disciplinary rule to instruct a court reporter not to inform opposing counsel of the request where the lawyer knows opposing counsel expects to receive notice. Counsel's knowledge that opposing counsel

expects notice might arise in several ways. The most common situation is likely to arise at the conclusion of the deposition since often, if counsel taking the deposition does not order its transcription, opposing counsel may instruct the court reporter to provide him with a copy only if it is ordered by counsel taking the deposition. In such a case the court reporter would have a duty to provide opposing counsel with a copy when the counsel taking the deposition requests it. However, to the extent the court reporter, for business reasons, simply makes a practice of contracting opposing counsel to inquire whether counsel wishes a copy, it would not be unethical for counsel to instruct the court reporter not to do so.

Similarly, a lawyer who orders a daily transcript during a trial may instruct the court reporter not to inform opposing counsel that the lawyer has ordered the transcript.

This opinion does not affect any obligation of disclosure which might exist under any law, rule of judicial procedure, or court order.

Submitted by the Alaska Bar Association Ethics Committee on September 1, 1988.

Adopted by the Board of Governors on September 9, 1988.