

You have advised that your wife is engaged in the business of being both a court reporter and a videographer. The firm with which she works records testimony by use of a tape recorder and a steno mask while the videotape work utilizes both videotape and audiotape. All such methods of preserving testimony therefore result in recordings of the actual proceedings rather than secondary transcription. You indicate that you wish to continue to use your wife's firm at both depositions and trials in which you are involved.

You ask that the Committee opine, first, as to any potential conflict of interest in the circumstances described, and second, as to the propriety of your engaging another member of your wife's firm to record testimony or trial.

The appropriate and controlling disciplinary rule to the circumstances you describe is DR:5-101(A), which requires that a lawyer obtain the consent of his client after full and adequate disclosure if the lawyer's judgment on behalf of the client may be affected by his own financial, business, property, or personal interests.

With regard to your first inquiry, the Committee is of the opinion that there would be no impropriety in your engaging your wife to provide court reporting services for your cases provided that the appropriate full disclosure was made to your client who then gave consent. In order for the client to give informed consent, the Committee has previously opined that the required disclosure should specifically include information regarding commissions or fees received, directly or indirectly by your wife and, therefore, indirectly by you, as a result of your client's employment of your wife as a court reporter. (LE Op. 1198, LE Op. 187) Furthermore, the Committee believes that the information you indicated as to the potential for absolute veracity of the testimony may also be included in the full disclosure. Finally, since there is no vicarious disqualification of your firm required as a result of your own personal disqualification under DR:5-101(A), it is the Committee's opinion that no such disclosure or consent would be required if your wife were to be employed as a court reporter by any other attorney in your firm.

As to your engaging another member of your wife's firm to serve as court reporter in your cases, the Committee is of the opinion that a similar informed consent would be required from your client only if your wife has an ownership interest in the court reporting firm. Should she have such an interest, which would then result in her receiving indirect commissions or fees based upon the services provided by other employees of her firm, then it is the Committee's opinion that your client's informed consent would be required to similarly cure any impropriety. Conversely, however, if your wife is only an employee of the court reporting firm, with no ownership interest, it would be proper for you to utilize the services of any other employee of the firm without the necessity of any informed consent from your client.

Committee Opinion  
May 18, 1990