



BOARD OF COURT REPORTING OF THE
JUDICIAL COUNCIL OF GEORGIA

Opinions

Disclaimer

The Opinions presented in this section are based upon specific facts as well as Georgia law and the Rules and Regulations of the Board in effect at the time the respective Opinions were rendered. The Opinions presented are provided for convenience purposes only and may not reflect the unique facts of your question, changes to the law, or changes to the Rules and Regulations. Therefore, for these and other reasons, before relying on any Opinion presented in this section, you are encouraged to seek legal counsel regarding the specific facts of your question and the applicability of those facts to Georgia law and/or the Rules and Regulations.

Opinions of the Board of Court Reporting

1. Videotape Transcripts.

It is the opinion of the Board that a videotape technician should be accompanied by a certified court reporter who will take down and transcribe a verbatim transcript and file same. If such procedure is followed, the video-tape technician need not be certified.

Formal Opinion
BCR 77-1
July 13, 1977

Editorial Note: see Mayor of Savannah v. Palmerio, (Section E, Depositions #3)

2. Certified Court Reporters are Qualified to Administer Oaths.

Section 2 of the Georgia Court Reporting Act (Ga. Laws 1974, p. 346) states that court reporters are officers of the court. It is the opinion of the Board that as officers of the court, certified court reporters are thereby qualified to administer oaths.

Formal Opinion
BCR 77-2
September 24, 1977

Editorial Note: see Opinions BCR #89-2

3. Civil Practice Act, [O.C.G.A. § 9-11-29], and Others in Conflict, Are Repealed by the Court Reporting Act.

It is the opinion of the Board that to stipulate to the use of an uncertified court reporter, as provided in [O.C.G.A. § 9-11-29], for use in taking depositions is repealed by Section 20 of the Court Reporting Act (Ga. Laws 1974, p. 351) in that it is clearly in conflict with the provisions of the Act.

Formal Opinion
BCR 77-3
December 10, 1977

4. Fee for Official Reporters Chargeable to County.

It is the opinion of the Board of Court Reporting that the intent of the Fee Schedule of the Judicial Council of Georgia is that the official court reporter's per diem, the \$50.00* for his attendance in court, is a cost chargeable only to the county, and not to the party or parties involved, regardless of whether the request is made by the judge or the attorneys.

Unofficial Opinion
BCR U78-1
June 30, 1978
Reversed by Judicial Council
December 13, 1985

Editorial Note: see Opinions, Judicial Council #14

* See Fee Schedule for current amount, pp. B1-B3.

5. Taking of Depositions for Use by Out-of-State Courts Excluded From Regulation by Court Reporting Board.

The Board of Court Reporting of the Judicial Council of Georgia is of the opinion that the Georgia Court Reporting Act and the requirements for certification contained therein, do not include the taking of depositions in Georgia by out-of-state reporters for use in courts outside Georgia. It is the further opinion of the Board of Court Reporting of the Judicial Council of Georgia that the Court Reporting Act is designed primarily to improve the profession of court reporting in this state as it applies to the operation of the court system of Georgia. In this regard, the taking of depositions for out-of-state courts is a practice falling outside the intent of the Court Reporting Act and is excluded from the realm of responsibility of the Board of Court Reporting.

Formal Opinion
BCR 78-3
October 20, 1978

6. Official's Fee Includes Misdemeanor Takedown.

The Board of Court Reporting is of the opinion that the \$50* per diem paid official reporters for attendance in court [or salary in lieu of the minimum \$50* per diem] includes criminal takedown in misdemeanor cases in the state court in those instances where takedown is required by law or where specially ordered by the court. In these instances, no additional charge may be made by the reporter other than the \$50* per diem [or salary in lieu of the \$50* per diem]. In all other instances, where takedown is not required by law to be recorded, the reporting of the case and the takedown is a matter of private contract between the official reporter and the parties to the litigation.

Unofficial Opinion
BCR U79-1
Approved by the Judicial Council
July 28, 1979

7. Reproduction of Transcript.

The Board of Court Reporting is of the opinion that only the parties to a lawsuit or the deponent have the reproduction rights to a deposition and that a court reporter may not refuse to prepare a transcript and furnish a copy of it to either one of those persons, so long as the person requesting the copy is willing to pay for it. Nor, we believe, may a court reporter prohibit either party to a lawsuit or the deponent from reproducing the copy of the deposition received from the reporter. See *Sams v. Champion*, 184 Ga. App. 444 (1987).

Formal Opinion
BCR 88-1
April 1988

8. Stenomask Reporters.

The Board of Court Reporting is of the opinion that the Stenomask is a legal and legitimate means for reporting in the state of Georgia. Further, since the Court Reporting Act of 1974 defines court reporting to include those things designated in O.C.G.A. § 9-11-30(c)(1), and since O.C.G.A. § 9-11-30(c)(1) was enacted in 1966, the Court Reporting Act amends by implication that section to include takedown by means of the Stenomask.

Formal Opinion
BCR 88-2
November 1988

9. Arbitration Reporting.

The Board of Court Reporting is of the opinion that if reporting at an arbitration is done under the rules of a court, then the rules of that court apply. Otherwise, the Board's position is that all parties must be given the opportunity to participate at the beginning of the proceeding. If the party does not participate in payment for the takedown at the outset, he cannot thereafter order a transcript without the consent of the party or parties who paid for the takedown.

Formal Opinion
BCR 89-1
July 1989

* See Fee Schedule for current amount, pp. B1-B3.

10. Notarization of Witness's Signature.

It has been questioned whether it is necessary to notarize a witness's signature on a deposition. The Board is unanimous that the law does not require that the signature of the witness be notarized on either the deposition jurat or errata sheet.

Formal Opinion
BCR 89-2
July 1989

11. Daily Copy Requires Written Authorization.

The Board of Court Reporting is of the opinion that since a motion for daily copy is required and since all motions have to be served on all parties by the counsel making the motion, opposing counsel will have to know that daily copy is being requested and may either join with the party asking for daily copy or may request that he or she be provided with a copy of the daily transcript. This should obviate any need for the official court reporter to worry about telling the other side when one party orders daily copy. If a party says "I want daily copy," the reporter should suggest that in accordance with the rules that party make a motion and get written authorization from the judge.

With respect to the charge for daily copy, the Board interprets the [fee schedule] so that the *original* transcript may be charged at a per-page rate double that authorized for normal transcript preparation, and the party or parties ordering it must pay that per-page rate. Thus, if only one party moves for and secures written authorization for the preparation of daily copy, that party may be charged by the reporter for the original transcript a per-page rate double that authorized for normal transcript preparation. However, if all parties move the court for daily transcript preparation, and it is authorized by the court, it is the Board's opinion that the reporter may only charge the per-page double rate for the original transcript with the parties ordering the transcript to split the cost however they may agree upon between or among them.

It is the Board's further opinion that the [fee schedule] dealing with the charge for any additional copies of the daily transcript applies either to copies to opposing counsel (if the opposing counsel was not the one ordering the daily transcript) or to additional copies furnished the party ordering the transcript. These additional copies may be charged at the regular rate of \$.95* per page. Since the rule provides how much may be charged for daily transcript preparation per page, the Board sees no reason for the reporter to advise the person ordering the daily transcript of the double rate per page charge.

Unofficial Opinion
BCR U90-1
August 1990
Approved by the Judicial Council
June 12, 1991

12. Required Signature on Copies.

It is the opinion of the Board that all copies of depositions should have evidence that the original deposition was signed and sealed with the court reporter's seal. Further, this can be effected by either photocopies, carbon copies of the original signature, rubber signature stamps, or conformed signatures.

Formal Opinion
BCR 90-2
November 1990

13. Responsibility for Reporting When Counsel Disagree as to Conclusion of Deposition.

Editorial Note: see Common Questions and Answers #4

14. Notification of Transcript Requests.

It is the opinion of the Board of Court Reporting that:

1. It is permissible but not obligatory for a court reporter to advise counsel for the opposite party and/or counsel for the participating party in the litigation when a transcript request for a civil or criminal court hearing or trial is made.
2. It is permissible but not obligatory for a court reporter to advise counsel for the opposite party and/or counsel for the participating party in the litigation when a transcript request for a deposition or an excerpt of same is made.

* See Fee Schedule for current amount, pp. B1-B3.

3. A nonparty to the litigation may receive a copy of a deposition that has not been filed or opened in court when authorization is given by any named party to the litigation, or the attorney for either party, or the deponent. (see also CCR Handbook, page D2, #7.)
4. If a hearing or trial is transcribed and filed, it is a public record and the court reporter may furnish a copy to any person, assuming the record was not previously sealed by the court. (see CCR Handbook, page D9, #10.)

If both sides of a court proceeding share in the civil takedown, they are both entitled to, or either may release, copies of the transcript. (see CCR Handbook, page D9, #9.)

If the transcript of a civil or criminal court proceeding has not been produced, or is not required to be produced, the Judicial Council has stated that the court reporter may do so with the permission of the court. The Board interprets "court" to mean the judge who presided over the case, if available. Otherwise, the Chief Judge in that circuit may be consulted. (see CCR Handbook, page D9, #10.)

5. A court reporter is under no obligation to demand further exhibits from a deponent at the request of a taking attorney after the deposition is concluded. The court reporter's duty is to produce a transcript and evidence from what is furnished by the attorneys.

Formal Opinion
BCR 93-1
April 1993

15. Court Reporter Emeritus.

It is the opinion of the Board of Court Reporting that a court reporter may type a transcript without a current certificate as long as the court reporter was certified at the time the transcript was taken down. In such instances, the court reporter is to be identified on the certificate page as a Court Reporter Emeritus, rather than a Certified Court Reporter.

Formal Opinion
BCR 93-2
April 1993

16. In-state Reporters and Out-of-state Cases

It is the opinion of the Board of Court Reporting that if a person residing in Georgia performs verbatim transcriptions of depositions conducted in Georgia, then that person is practicing court reporting. The Board considers this to be true even if the deposition is for use in a court outside of Georgia.

Formal Opinion
BCR 93-3
May 1993

17. Reporter Must Maintain Impartiality.

Defendant's counsel, who employed your firm, instructed your reporter to only take down the plaintiff's testimony. Plaintiff's counsel asked to participate in the takedown, to which the reporter agreed. Defendant's counsel instructed you not to provide a copy of the transcript to plaintiff's counsel contending that the transcript was his firm's private property. You forwarded the original and one copy of the complete transcript to defense counsel, but only charged for plaintiff's testimony. You did not notify plaintiff's counsel that the transcript has been prepared nor that defense counsel had a copy of the complete transcript until much later, and then did not furnish plaintiff a copy until the date of the complaint hearing. Your actions demonstrated partiality toward one participant in a case over another. You failed to remain neutral in the reported proceeding and thus failed to the ethical standards of your profession. This behavior reflects adversely on the profession of court reporting. You are reminded that a failure to adhere to the Code of Ethics could result in further disciplinary proceedings and other sanctions including suspension or revocation of your certificate to practice court reporting in this state.

Excerpt of Public Reprimand
BCR 97-1
May 1997

* See Fee Schedule for current amount, pp. B1-B3.

18. Withholding Transcript for Payment of Past Due Billing.

This Board is concerned that you have violated the Code of Professional Ethics in force for your profession by not providing the transcript to Mr. Attorney in a timely manner even after he offered to pay for the transcription thereof. A delay in the trial of the case was a direct consequence of your actions, notwithstanding the fact that trial counsel were not aware the transcript had not been transcribed until several months after the deposition.

The Board of Court Reporting has held that it is a violation of COPE to withhold a transcript for payment of outstanding bills in another case. The proper venue for collecting past debts on court reporting invoices is through the courts.

Mr. Reporter, this Board expects you to exhibit professional behavior at all times as a Certified Court reporter, and we trust no further complaints of this kind will be filed with the Board of Court Reporting.

Excerpt of Private Reprimand
BCR 99-1
May 1999

19. Independent Contractor Coverage of Assignments

Is it a violation of O.C.G.A. § 15-14-37 (a) and (b) for an independent contractor to cover an assignment from a Georgia court reporting agency knowing, albeit belatedly, that the “referral” is from a known national contracting network? Does this scenario violate sections B, C, D, and G of the Code of Professional Ethics and Guidelines for Professional Practice (*hereinafter referred to as COPE*)?

The questions have no direct answer. The Board would need more facts to provide other than a generic answer, but the following may provide guidance. Each reporter must look at the following areas commonly associated with contracting issues: transcript production, exhibits, billing, ASCII disks, etc. If the local reporter maintains control of all of the above, then the Board’s position is that it is a legitimate referral and any contract the referring agency may have is not an issue. If, however, the local reporter is asked to meet the referring agency’s criteria for any or all of the above, then the Georgia reporter should exercise heightened scrutiny to be sure there is not a contract involved which could result in disciplinary proceedings.

Advisory Opinion
BCR 99-2
September 1999

20. Forwarding of Complete Transcript in ASCII Format

Are requirements of national contracting agencies such as the forwarding of completed transcripts in ASCII format with unnumbered, signed and sealed certificate pages and exhibits to the contracting agency for production and dissemination in conflict with O.C.G.A § 9-11-30 (f)(1)(A)? Will the Board seek an opinion from the Attorney General about the custody and control provision of the code? Does this scenario violate the COPE?

The Board’s position is that the reporter who provides signed, sealed certificate pages and exhibits along with completed transcripts in ASCII format violates the code by providing for the certification of a transcript and/or copy not produced under the reporter’s supervision. It is also the Board’s position that these actions violate Part I.D. of the COPE.

The Board recognizes, however, that an ASCII diskette provided in addition to a sealed transcript is acceptable.

Advisory Opinion
BCR 99-3
September 1999

21. Contract Arrangement

A court reporter/firm loses all the work from one law firm/attorney through a contract arrangement requiring the lawyer to use a specified provider. Said provider agrees to “refer” all said attorney’s work back to the Georgia reporter on a “case-by-case” basis provided specific contract arrangements are met, including invoicing the contract agency at the pre-arranged rates. Is this a violation of O.C.G.A. § 15-14-37(a)? Does this violate the COPE?

The Board’s position is that O.C.G.A. § 15-14-37 (a) and § 9-11-30 (f)(1)(A) have been violated as have the provisions of the COPE.

Advisory Opinion
BCR 99-4
September 1999

* See Fee Schedule for current amount, pp. B1-B3.

22. Disclosure

The requirement for disclosure in O.C.G.A. § 9-11-28(d) has been widely interpreted since inception. Some reporters are not disclosing at all, others are attaching a disclosure form to the end of the deposition. Attorneys have also been known to waive the requirement. The intent of “financial arrangement” is not clear.

- (1) *Does non-disclosure violate O.C.G.A. § 9-11-28(d)?* The requirement for disclosure in § 9-11-28(d) was abolished by the legislature in 1999. However, not disclosing is in violation of Article 8.B. of the Rules and Regulations of the Board of Court Reporting beginning July 1, 1999.
- (2) *Must disclosure be made on the record prior to commencement of the deposition?* Yes.
- (3) *Is it considered “on the record” if disclosure is made only in the certificate page upon completion of the transcript?* No.
- (4) *Can an attorney waive or stipulate to this disclosure?* No.
- (5) *Will the Board seek clarification from the Attorney General as to the intent of “financial arrangement?”* The Article 8.B. rule no longer specifies ‘financial arrangement’ but does specify that ‘the arrangements made’ must be stated on the record. Refer to the disclosure form shown on page , for the elements deemed necessary in a disclosure.
- (6) *Will the Board seek clarification from the Attorney General regarding the disclosure process?* Disclosure is not a matter of statute, it is a matter of Board of Court Reporting rules and regulations. Under the circumstances, it is not appropriate to request clarification from the attorney general.

Advisory Opinion
BCR 99-5
September 1999

23. Exclusive Agreements by Reporting Network

Large corporations and many insurance companies have entered into exclusive agreements with national court reporting networks to provide reporting services for all depositions in which said insurance companies are parties. The attorneys representing the insurance companies are mandated to use the reporting network or their invoices will not be paid. Although the local attorney does not negotiate the prices for these depositions, they are still being considered as being arranged on a case-by-case basis. Will the Board request a definition of case-by-case basis and whether local law firms following the dictates of insurance companies are in violation of O.C.G.A. § 9-11-28(c), the disqualification for interest clause? Is this practice a violation of the Code of Professional Ethics?

The Board’s position is that this scenario indeed violates the provisions of O.C.G.A. § 15-14-37(a) and § 9-11-28(c). The Board, however, has no control over the actions of insurance companies or attorneys. The COPE is also being violated as this scenario is not fair and impartial and may give the appearance of a conflict of interest.

Advisory Opinion
BCR 99-6
September 1999

24. Request for Transcript Modification

An attorney disagreed with the wording in a transcript and requested that the court reporter change the original. There was no evidence that the opposing attorney knew about the request. The reporter refused to change the original after verifying the transcript accurately reflected the notes taken at the deposition. Is there any section of the Georgia Code that allows a reporter to make changes to the transcript at the request of an attorney *ex parte*? Would changing the transcript at the behest of an attorney *ex parte* violate the Code of Professional Ethics?

The Board’s position is that there is no code section provision for the reporter to change a transcript on an *ex parte* basis. Under the circumstances described, changing the transcript would be a COPE violation. (See also #27 below)

Advisory Opinion
BCR 99-7
September 1999

25. Reporters Providing Affidavits

A reporter is asked, as a neutral party, to sign an affidavit recounting an attorney’s recollection of events at which the reporter was present. The reporter presents her own notarized affidavit reflecting her own recollection of events, which is

* See Fee Schedule for current amount, pp. B1-B3.

disseminated to all parties in the case. As a neutral party to the deposition, how should the CCR respond when the response could possibly benefit one side and not the other? Was the action taken appropriate?

The Board's position is that it is improper to provide an affidavit because it may create an appearance of impropriety or it may compromise the reporter's role as a disinterested party thus violating the COPE.

Advisory Opinion
BCR 99-8
September 1999

26. Form Q & A

A) Does the disclosure apply to sworn statements taken before an attorney or insurance adjuster or both?

Not if done prior to litigation.

B) What option do reporters use for pro bono work?

Use Option A if the arrangement is made through the State Bar or other government agency. Use Option B if done by private arrangement with a party or a party's lawyer.

C) If reporters offer equal discount to both sides, is that OK?

The existence of an arrangement other than your normal and customary fee should be disclosed. An equal discount to both sides would not be a *prohibited* contract, but would be different than the normal or customary.

D) Do reporters attach the disclosure form to the copies as well?

Attach the original to the original and a copy to the copy.

E) A discount for prompt payment is offered. Does that have to be disclosed?

If it is a standard and customary billing procedure for your office, then no. If you apply the discount to a few specific clients, then yes.

F) Does this mean that disclosure on the record is no longer acceptable?

Yes. Oral disclosure *by itself* is no longer acceptable. The written form must be included in the transcript.

G) If the reporter submits the written form, chooses Option A without attorney signatures, and gives an oral disclosure on the record, is the written form still submitted to the attorneys before the deposition or can it just be completed later and attached to the original transcript?

The disclosure form should be shown to the attorneys at the deposition. This may be done in lieu of an oral disclosure or in addition to same. The disclosure form is also included in the transcripts. Providing attorneys a copy of the disclosure for their records at the deposition is optional.

H) Is it OK to add the new disclosure to the certificate page?

The form is not mandatory, the content is. As long as the essential elements of the form are included as shown below it may be incorporated in the certificate page. The physical location of the disclosure within the deposition is not specified.

Advisory Opinion
BCR 99-9
September 1999

* See Fee Schedule for current amount, pp. B1-B3.

27. THE FOLLOWING IS APPROVED BY THE BOARD OF COURT REPORTING. CHOOSE OPTION A OR OPTION B AS THE SITUATION REQUIRES.

(OPTION A - NO CONTRACT)

D I S C L O S U R E

STATE OF GEORGIA,
COUNTY OF _____:

Deposition of : (name of deponent)

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as (a representative of XXX reporting agency; an independent contractor for XXX reporting agency; a sole practitioner, etc.).

(I/the firm) was contacted by the offices of (name of attorney/firm/reporting agency who called court reporter) to provide court reporting services for this deposition. (I /thefirm) will not be taking this deposition under any contract that is prohibited by O.C.G.A. § 15-14-37 (a) and (b).

(I have/the firm has) no contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. (I/the firm) will charge (my/its) usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Dated: _____ ; _____, CCR-B-XXX

Certified Court Reporter

(Signatures or initials of participating attorneys is optional with the reporter)

Return this form to the court reporter after review and/or signature for inclusion in the record.

(OPTION B - CONTRACT)

D I S C L O S U R E

STATE OF GEORGIA,
COUNTY OF _____:

Deposition of (name of deponent)

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as (a representative of XXX Reporting Agency; an independent contractor for XXX Reporting Agency; a sole practitioner, etc.).

(I/the firm) was contacted by the offices of (name of attorney/firm/reporting agency who called court reporter) to provide court reporting services for this deposition. (I/the firm) will not be taking this deposition under any contract that is prohibited by O.C.G.A. § 15-14-37 (a) and (b).

(I have/the firm has) a contract/agreement to provide reporting services with (name of firm/agency/ attorney/insurance company), the terms of which are as follows:

Dated: _____ ; _____, CCR-B-XXX

Certified Court Reporter

Attorney for Plaintiff _____ Attorney for Defendant _____

Return this form to the court reporter after review and/or signature for inclusion in the record.

* See Fee Schedule for current amount, pp. B1-B3.

28. Correction of Transcripts

The Board of Court Reporting was asked what a court reporter should do when requested to make a change in a transcript. Suggestions on handling such a situation:

A) When the attorney asks you to make a correction to a deposition.

If you check your notes/tapes and find that they reflect what you have transcribed and you have no reason to believe you made an error, you should do nothing. If you discover that you have made an error in transcribing, you should prepare an AFFIDAVIT OF TRANSCRIPTION ERROR to accompany the original deposition, a copy of which would be sent to all attorneys who received a copy of the deposition. If the original deposition is still in your possession, i.e., awaiting witness's signature, you could prepare a corrected page to be inserted in the original, provided that you have an agreement by all attorneys to do so, while sending a copy of the corrected page to all attorneys who received a copy of the deposition. If you discover that your notes reflect an accurate transcription but you are absolutely positive that an error was made by you in transcribing, you should prepare an affidavit that reflects an accurate transcription but a probable takedown error. (Example of AFFIDAVIT follows on page 10.)

B) When a judge asks you to make a correction to an official transcript.

The Official Code of Georgia Annotated §15-14-5 addressed a judge requesting a transcript be changed/corrected; however, there is no specific language as to how the correction should be made and filed. Suggestions for handling this situation are as follows:

Should the change be based on a misspelling(s) in the transcript, you should correct the misspelling(s) and file original and one copy of the page(s) under a separate cover with a title page reflecting the style of the case and the fact this is an amended or corrected transcript. The corrected portion(s) of the transcript should also reflect the page and volume number, and there should be a certificate attached attesting to the correctness of the page(s). Copies of the correction(s) should also be sent to the attorneys who obtained copies of the transcript.

C) When an attorney asks you to make a correction to an official transcript.

You should ask the attorney to put in writing the proposed correction(s) that needs to be made. Upon verification from your notes and /or tapes that the transcript is correct, you should notify the attorney that the transcript is in fact correct. If you discover there is an error(s) in transcribing or misspelling(s), follow the procedures set forth above in Paragraph B. Included suggested affidavit.

Advisory Opinion
BCR 99-10
September 1999

29. Certification of Transcript

The following practices acceptable:

The reporter must be the one to make the final draft and certify the transcript.

If a transcript is electronically transmitted for production elsewhere, a change cannot be made without the court reporter's knowledge and expressed approval of the specific changes to be made by production personnel. Signatures have to be original or as provided by law.

An original certificate page with an original signature and CCR seal must be provided with each original, sealed deposition, and the copies must show evidence that the original was signed and sealed. (See BCR Opinion #90-2, page D4 of CCR Handbook concerning signatures on copies.) The certificate page should also indicate the total number of pages of the deposition as produced by the reporter. If the transcript is electronically transmitted, the original certificate page with original signature should be mailed to the office for inclusion in the original.

The following practices unacceptable:

Office personnel may not make any changes to a transcript that the court reporter has not been contacted and specifically approved.

Any changes to formatting of a transcript made of a reporter's final draft must be for the purpose of matching text as downloaded to the screen version the reporter produced.

* See Fee Schedule for current amount, pp. B1-B3.

A rubber stamp of the taking reporter's signature may only be used on copies. It may not be used on the original certificate page.

Advisory Opinion
BCR 99-11
September 1999

30. Example Affidavit of Transcription Error

IN THE SUPER COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN DOE, Plaintiff,)
)
) Civil Action File
vs.)
) No. 5432
)
JANE DOE, Defendant,)

REPORTER'S AFFIDAVIT OF TRANSCRIPTION ERROR
DEPOSITION OF JOHN DOE

I, Sally Jones, Certified Court Reporter and Notary Public within and for the State of Georgia, do hereby state that I reported the deposition of John Doe on January 1, 2000; that I transcribed said deposition; that at the request of Dick Smith, counsel for the Defendant, I reviewed my stenographic notes pertaining to this deposition; and that I hereby state that the following error was made in my transcription and that this affidavit should accompany the original deposition to reflect the necessary change:

Page 50, line 15:	"I did kill my wife."
should be changed to	"I did not kill my wife."

I further state that I am filing the original of this affidavit with Dick Smith, counsel for the Defendant, who took possession of the original deposition upon its completion.

This the 31st day of January 2000.

SALLY JONES, CCR-B-9000
Certified Court Reporter

Notary Public
My Commission Expires:

* See Fee Schedule for current amount, pp. B1-B3.

31. Grand-fathered Reporters Who Wish to Change Methods Must Retest

The Board of Court Reporting realizes that there are some reporters who were granted a license in 1974 by virtue of at least one year's experience prior to the passage of the Act. Those reporters who were given such a license, and who wish to take advantage of new technology and change methods of takedown, are expected to pass the dictation and written portion of the certification exam to become licensed in the new method of takedown.

Advisory Opinion
BCR 99-11
November 1999

32. Guidelines for Certification of Transcript

This Board will find the following practices acceptable:

- A) Taking reporter must be the one to review the final draft and certify the transcript.
- B) If a transcript is electronically transmitted for production elsewhere, a change cannot be made without the taking reporter's knowledge and expressed approval of the specific changes made by production personnel.
- A) Signatures have to be original or as provided by law.
- B) An original certificate page with a lawful signature and CCR seal must be provided with each original, sealed deposition, and the copies must show evidence that the original was signed and sealed. (See BCR Opinion #90-2, page D4 of CCR Handbook concerning signatures on copies.) The certificate page should also indicate the total number of pages of the deposition as produced by the taking reporter. If the transcript is electronically transmitted, the original transcript must include an original certificate with a lawful signature.
- C) Office personnel may not make any changes to a transcript, including but not limited to spelling, punctuation, grammar, formatting, length, density or any other changes in form or substance, unless the taking reporter has approved all such changes.
- D) The failure to abide by these guidelines may subject the taking reporter, the court reporting firm, and any support personnel to legal and/or disciplinary proceedings.

Advisory Opinion
BCR 01-01
May 2001

33. Guidelines for What Constitutes Contracting

The Board of Court Reporting has been asked to expand its previous advisory opinion regarding contracting for court reporting services. Specifically, reporters want to know what a Georgia reporter's responsibility is when accepting referrals from another reporter or from another firm. There is also a question of what constitutes reporting in this state.

As previously stated in the January 2000 issue of "On the Record", the Board is of the opinion that if the "accepting" reporter maintains control over all aspects of the job, then it is a proper referral. If, on the other hand, the "referring" reporter wants to do the billing; wants an ASCII of the transcript to do the printing and binding; wants a signed, blank certificate page with the ASCII or transcript; wants to dictate the fees to be charged for the deposition, etc., then the job has been referred. Under these circumstances, the referring reporter may be engaged in illegal contracting with a third party. (*e.g.*, the charges disclosed may not be charges the parties incur; or the parties may be billed inequitably, etc.) Where the accepting reporter does not maintain control over billing, printing, certification, etc., the accepting reporter is not able to truthfully make the required disclosure under Article 8.B. of the Board Rules and cannot take the job. The accepting reporter also has certified something that can be modified without his or her knowledge. It is more appropriate to offer the referring firm a referral fee.

How does the Board define "reporting in this state?" Booking a job with a Georgia firm (or individual) and maintaining control of the job constitutes reporting. The Board has previously declared in "You Might Be A Firm If..." That part of the definition of a "firm" is "You are a freelance reporter who refers out a job to another reporter or group of reporters, but you do the billing for the whole job. This is true whether or not you pay a percentage to the taking reporter." If you meet this definition, you must register as a firm in Georgia. If a firm in Tennessee, New York, California, etc., calls to book a job and still maintains control over the deposition, then it is operating in the state of Georgia and must be registered as a firm in order to do so.

The registration of firms was a direct response to the contracting issues that have already affected reporting in so many other states. In addition, it provides a means for the Board to hold non-CCR-owned firms accountable. If they

* See Fee Schedule for current amount, pp. B1-B3.

encourage illegal activity such as the use of uncertified reporters, or unethical activities such as the giving of gifts in excess of \$50.

It is your duty as a certified reporter in this state to make sure these rules are followed. Failure to do so may result in disciplinary action to you individually. Compliance with these rules, coupled with everyone cooperating in reporting and punishing violations, will protect all court reporters in this state individually and will strengthen the profession as a whole.

Advisory Opinion
BCR-01-02
June 2002

* See Fee Schedule for current amount, pp. B1-B3.

Opinions of the Board of Court Reporting cont'd

34. Furnishing Transcripts To Indigent Criminal Defendants Without Payment Of Fees

Under decisions of the Georgia appellate courts:

- An indigent criminal defendant is entitled to a transcript at no cost for purposes of a direct appeal of the conviction.
- An indigent criminal defendant is *not* entitled to a transcript at no cost for purposes of collateral post-conviction relief (*i.e.*, a proceeding in a case other than the original case, such as a habeas corpus proceeding), in the absence of a court order requiring that the transcript be furnished.

Shelby v. McDaniel, 266 Ga. 215 (1996); Rodriquez v. State, 256 Ga. 280 (1986); Mydell v. Clerk, Superior Court of Chatham County, 241 Ga. 24 (1978); Orr v. Couch, 244 Ga. 374 (1977); Holmes v. Kenyon, 238 Ga. 583 (1977).

Accordingly, in the absence of a court order requiring that a transcript be furnished, a court reporter who declines to furnish a transcript at no cost to an indigent criminal defendant for use in collateral post-conviction proceedings does not violate any provision of The Georgia Court Reporting Act. Where the reporter is not required to furnish a transcript a no cost, the reporter should, however, promptly respond to any inquiry concerning the availability of a transcript with an explanation of the cost of the transcript.

Advisory Opinion
BCR07-1
December 2007

35. Application of the Code of Professional Ethics To Court Reporting Firms

On April 17, 1994, the Board of Court Reporting of the Judicial Council of Georgia adopted the Board of Court Reporting Code of Professional Ethics. Upon review by the Judicial Council, the Code of Professional Ethics came into enforcement in June 1994 by the Board.

It is the opinion of the Board of Court Reporting that the Code of Professional Ethics applies equally to both Georgia certified court reporters and court reporting firms that are registered with the Board pursuant to O.C.G.A. § 15-14-37(d).

As with individual court reporters, court reporting firms perform court reporting services and have relationships with the public, the bench, and the bar. Therefore, by obvious necessity and

practical implication, court reporting firms are subject to the same ethical standards as individual court reporters in the maintenance of the profession at the highest level in Georgia.

REFERENCES: O.C.G.A. § 15-14-37(d)-(g) (2008); Board of Court Reporting Code of Professional Ethics, *Georgia Certified Court Reporter's Handbook*; Advisory Opinion of the Board of Court Reporting, BCR 01-02, *Guidelines for What Constitutes Contracting*, June 2001.

COMMENTS:

- [1] The definition of “year” referenced in the Code of Professional Ethics is that of a calendar year.
- [2] Paragraph H of the Code of Professional Ethics applies to court reporting firms that are registered with the Board pursuant to O.C.G.A. § 15-14-37(d). Therefore, a court reporting firm shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$50.00 in the aggregate per recipient each year.

Moreover, if a court reporting firm cannot provide a gift, incentive, reward or anything of value to an attorney, client, or their representatives or agents, without exceeding the said \$50.00 limit, an individual court reporter employed by the court reporting firm for services on behalf of the court reporting firm should not provide a gift, incentive, reward or anything of value to the attorney, client, or their representatives or agents, in connection with the court reporter’s services on behalf of the court reporting firm. In other words, limitations applicable to the court reporting firm should not be evaded by allowing an individual court reporter employed by the court reporting firm to be the grantor of a gift that the court reporting firm would be prohibited in making, where likewise limitations applicable to the court reporter should not be evaded by allowing a court reporting firm that employs the court reporter to be the grantor of a gift that the court reporter would be prohibited in making.

Formal Opinion BCR 2008-1
September 5, 2008

36. Methods for certifying transcripts taken down and transcribed by a reporter with a suspended or revoked certificate.

A court reporter with a suspended or revoked certificate may not certify a transcript. The Georgia Code explicitly states that “[n]o person shall engage in the practice of court reporting in this state unless the person is the holder of a certificate as a certified court reporter or is the holder of a temporary permit issued under this article.” O.C.G.A. § 15-14-28 (2009). Moreover, the Georgia Code specifically describes the function of a court reporter to certify a transcript by stating that “[i]t shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law....The reporter...shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct.” O.C.G.A. § 15-14-5 (2009). Thus, the Georgia Code requires a court reporter to certify a transcript and such an act can only be performed if one holds a certificate as a certified reporter or a temporary permit.¹

Nevertheless, “the failure of [a] reporter to certify as to the correctness of the transcript when it [is] filed with the clerk of the trial court” is an “amendable” defect. Harper v. Green, 113 Ga. App. 557 (1966). Therefore, in the event that a court reporter who certifies a transcript is later found to have been operating under a suspended or revoked license at the time of certifying such transcript, such transcript may still be certified through any one of the following under Georgia law:

1. The trial judge may certify the transcript as the full, complete and correct transcript of the proceedings in the trial.

See O.C.G.A. § 15-14-5 (2009); Williams v. Atlanta Gas Light Company, 143 Ga. App. 400 (1977) (Affirmation of a conviction in a case in which a transcript challenged for its accuracy was “certified by the trial judge as the full, complete and correct transcript of the proceedings in the trial.”); Estep v. State, 129 Ga. App. 909 (1973) (“We all know that the trial judge has the final say so as to the correctness of a transcript of evidence.”); Stamey v. State, 194 Ga. App. 305 (1990) (“Trial court’s power and duty to...ensure the accuracy of the record generally.”); See also Pelletier v. Schultz, 157 Ga. App. 64 (1981) and Ross v. State, 245 Ga. 173 (1980).

2. Trial court may utilize another, certified court reporter to carry out the certification process.

See Ga. Att’y Gen. U73-107. (Opined that in the case of a court reporter that died before certifying a transcript that “another reporter may take the transcript and

¹ It should also be noted that “[a]ny person who...continues to practice as a court reporter in this state or uses any title or abbreviation indicating he or she is a certified court reporter, after his or her certificate has been revoked...shall be guilty of a misdemeanor. Each offense is a separate misdemeanor.” O.C.G.A. § 15-14-36.

certify it....Such a transcript would be subject to the judge's power of correction....If a transcript is so made, certified and approved, there would be no need for a new trial.”)

3. The agreement of the parties as to their recollection of what transpired at trial, or if the parties cannot agree, based upon the recollection of the trial judge.

See O.C.G.A. § 5-6-41(g) (2009) (“[W]here for any other reason the transcript of the proceedings is not obtainable and a transcript of evidence and proceedings is prepared from recollection, the agreement of the parties thereto or their counsel, entered thereon, shall entitle such transcript to be filed as a part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter....In case of the inability of the parties to agree as to the correctness of such transcript, the decision of the trial judge thereon shall be final and not subject to review; and, if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact.”)²

Advisory Opinion
BCR 2009-1
June 10, 2009

² Although the statute references a transcript prepared from recollection, there is seemingly no prohibition against the parties adopting the transcript prepared by the suspended or revoked court reporter as being true based on their recollections. As long as the parties agree to its accuracy, or the judge verifies its accuracy, from their recollections the transcript would be in conformity with the statutory requirements of O.C.G.A. § 5-6-41(g) and therefore have the same binding effect as a transcript prepared by a certified court reporter.

37. Applicability of the Georgia Uniform Electronic Transactions Act to the Electronic Certification of Transcripts.

The *Georgia Uniform Electronic Transactions Act* applies to transactions which are defined as “. . . an action or set of actions occurring between two or more persons relating to conduct of business, commercial, or governmental affairs.” O.C.G.A. § 10-12-2(16). Code section 10-12-3(a) provides:

Except as otherwise provided in subsection (b) of this Code section, this chapter shall apply to electronic records and signatures relating to a transaction.

(Subsection (b) defines certain transactions to which the Act does not apply, and is not applicable to this issue).

Nowhere in the *Act* does it in any way indicate that it applies to court matters, e.g., trial transcripts, depositions, etc., none of which fit the definition of **transactions**. Although various judicial or quasi-judicial bodies within the state permit the use of electronic records, transactions, and signatures in certain proceedings, these bodies have authorized the use of such electronic media pursuant to specific enabling statutes, rules, and regulations. *See, e.g.*, O.C.G.A. § 15-10-53 (providing for the filing of electronic documents in magistrate courts); *Uniform Juvenile Court Rule 29.4* (providing for electronic filing generally in juvenile courts); *2009 Rules and Regulations of the State Board of Worker’s Compensation*, Rule 60 (providing for the use of electronic filings and signatures with the State Board of Worker’s Compensation); *see also Federal Rules of Civil Procedure*, Rules 5 and 83 (establishing practices and procedures for electronic filings); *Federal Rules of Criminal Procedure*, Rule 57 (establishing practices and procedures for electronic filings); and *United State Bankruptcy Rules*, LBR 5005-4 (establishing practices and procedures for electronic filings).

Therefore, absent specific statutes, rules, or regulations, that enable court reporters to electronically certify court related transcripts, court reporters cannot rely on the *Georgia Uniform Electronic Transactions Act* to electronically certify court related transcripts.

Advisory Opinion
BCR 2010-1
July 23, 2010

38. Custodian of Records Evidence Log

The language of O.C.G.A. § 17-5-55(a) requires the court to designate “either the clerk of court, the court reporter, or any other officer of the court to be the custodian of any property that is introduced into evidence during the pendency of the case,” and requires that the custodian create an evidence log.

Specifically, O.C.G.A § 17-5-55 requires the log to contain: “case number, style of case, description of the item, exhibit number, name of person creating the evidence log, and location where the physical evidence is stored,” as well as – when evidence gets transferred to “any other party,” an annotation showing “the identity of the person or entity receiving the evidence, the date of transfer, and location of evidence.”

Therefore, below is a sample form for use by court reporters in fulfilling the requirements of O.C.G.A. § 17-5-55. The form below is not an official model form and has not been sanctioned by statutory law nor by any court; but it does provide guidance and conceptual framework for complying with the evidence log requirements of O.C.G.A. § 17-5-55.

Advisory Opinion
BCR 2010-02
August 3, 2010

EVIDENCE LOG SHEET

STYLE: _____

COUNTY: _____

JUDGE: _____

vs. _____

CASE NO.: _____

CT. RPTR: _____

Initial
Log-in date: _____

By: _____

Evidence Location: _____

_____ Exhibit Description Attached
-or-
_____ Exhibit Description Below:

Subsequent Transfer of Evidence:

Date: _____

By: _____

Exhibits: _____

Location: _____

Date: _____

By: _____

Exhibits: _____

Location: _____



IN THE SUPERIOR COURT OF _____ COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

VS.

)
)
) CASE NO.: _____
)

Defendant.

)
)
)

RECEIPT OF EVIDENCE

Receipt is hereby acknowledged of the following exhibit(s):

in the above-styled case.

This _____ day of _____, _____

39. Payment of Transcription Fees To Court Reporters Employed As Full-Time County Employees- Withdrawn by The Georgia Board of Court Reporting on 9/8/2017

40. Disclosure Forms, Certification of Transcript and their Relation to Contracting

In order for the Board of Court Reporting to properly enforce O.C.G.A. § 15-14-37 and Article 7.C. of the Rules and Regulations of the Board of Court Reporting, the Board shall place a regulatory emphasis on the Disclosure and Certification Requirements under Article 10.B. of the Rules and Regulations of the Board. By insisting that every certified court reporter and court reporting firm properly complies with the Disclosure and Certification Requirements, it is the Board's expectation that improper contracting in court reporting services will not take place and that integrity and impartiality in the preparation of the record for cases filed in Georgia courts is preserved. Additionally, information on court reporting contracts that are prohibited under Georgia law is attached to this Opinion as an appendix.

The disclosure requirements are as set out in Articles 7.C. and 10.B. of the Rules and Regulations of the Board of Court Reporting. That Rule was clarified and emphasized in Advisory Opinion 99-5 of the Board of Court Reporting.

Approved Disclosure forms can be found in the appendix to this Opinion. In emphasis and clarification of the Disclosure Rule, the following is strictly required:

1. Disclosure must be provided to the parties and/or their attorneys prior to the deposition and cannot be waived. A written disclosure form must be included in the transcript.
2. Any and all financial arrangements beyond the certified court reporter's and/or court reporting firm's usual and customary rates must be disclosed, including any discounts or preferred rates given to any party in interest to the matter.
3. A properly completed Disclosure form must be attached to the deposition transcript for the certified court reporter or court reporting firm who originally accepted the job from the attorney's office, as well as a separate one for each certified court reporter and court reporting firm who arranges, schedules, provides, and/or facilitates court reporting services, including the production, billing, or delivery of transcripts, or otherwise receives any financial benefit, for the reporting event.

The providing of a transcript in electronic format¹ is not specifically prohibited. However, the certified court reporter providing such electronic transcript should pay close attention that all aspects of certification are complied with. See Advisory Opinion 01-01.

In addition to the electronic transcript, the certified court reporter must include a certificate page with original signature and CCR seal. The original deposition must include a proper Disclosure as set forth above and exhibits, along with the properly numbered transcript. Special attention should be made to the fact that the Certification page sets forth the exact page numbers included in the original deposition transcript. This will ensure that no changes are made without the approval and supervision of the certified court reporter taking the deposition. It is imperative that any and all changes are made by the certified court reporter.

Advisory Opinion
BCR 2013-01
January 10, 2013

¹ The Board of Court Reporting is working toward providing additional clarification regarding the use of electronic/digital signatures.

WHAT IS PROHIBITED CONTRACTING?

It is prohibited for certified court reporters or court reporting firms to enter into an oral or written contractual agreement for more than one case, action, or proceeding with any attorney, party to an action, party having a financial interest in an action, including an insurance company, or an agent for any such parties. Such cases, actions, or proceedings would include a deposition, court proceeding, administrative hearing, arbitration hearing, examination under oath, or sworn statement.

To maintain professional and ethical conduct within the practice of court reporting, the following are a non-exhaustive list of further prohibited activities:

- Giving any economic or other advantage to any party, or any party's attorney, representative, agent, insurer, or employee, without offering it to all parties. This includes failing to offer comparable services, including price or credit terms, to all parties or the certified court reporter or court reporting firm otherwise providing financial terms or other services that are not offered at the same time and on the same terms to all other parties in the legal proceeding – except that different time-of-payment terms may be offered based on payment experience and credit worthiness.
- Basing the compensation for the court reporting services on the outcome of the proceeding or otherwise giving the certified court reporter or court reporting firm an interest, financial or otherwise, in the action.
- Entering into an agreement for court reporting services that restricts the noticing attorney from using the certified court reporter or court reporting firm of the attorney's choosing.
- Including a court reporter or business, entity, or firm providing or arranging for court reporter services on any list of preferred providers of court reporting services that is maintained by any person, business, entity, or firm that has entered into an oral or written contractual agreement for more than one case, action, or proceeding with any attorney, party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in the case, action, or proceedings.
- Allowing the format, content, or body of the transcript as submitted by the certified court reporter to be manipulated in a manner that increases the cost of the transcript.
- Providing additional advocacy or litigation support services including, but not limited to, trial preparation assistance, deposition summaries, and non-published transcript databases

WHAT IS NETWORKING?

There is some confusion between the terms "contracting" and "networking" when taken in the context of court reporting. Networking and contracting by their nature imply an agreement between two parties, but there is a clear and substantial difference between the two.

"Contracting" in the court reporting vernacular is simply an agreement between a court reporter or reporting firm and a party to an action, an insurance company, a law firm, or a third-party administrator to provide financial or other advantages to one party to a proceeding.

"Networking" in the court reporting profession is generally thought of as an agreement that a freelance court reporter or court reporting firm will provide services to another court reporting firm's client. The court reporting firm providing the service essentially becomes the referring court reporting firm's subcontractor. Terms are generally negotiated beforehand, including pricing; a referral fee or networking discount being offered, if any; transcript format; production and delivery; and the required completion of certain paperwork. Succinctly, networking is an arrangement between two service providers. Obviously, there can be abuses in the networking arrangement, but these networking arrangements occur between court reporting firms, and the firms themselves are not a party to the litigation. When "Networking" strict adherence to the Board of Court Reporting's Disclosure and Certification requirements are essential.

DISCLOSURE OF NO CONTRACT

I, _____, do hereby disclose pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that (I/firm) was contacted by the party taking the deposition to provide court reporting services for this deposition and there is no contract that is prohibited by O.C.G.A. §§ 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board for the taking of this deposition.

There is no contract to provide reporting services between (myself/firm) or any person with whom (I/firm) (have/has) a principal and agency relationship nor any attorney at law in this action, party to this action, party having a financial interest in this action, or agent for an attorney at law in this action, party to this action, or party having a financial interest in this action. Any and all financial arrangements beyond (my/our) usual and customary rates have been disclosed and offered to all parties.

This XXXX day of XXXX, 20XX,

Court Reporter/Firm Representative
(Firm)

(CASE VENUE HEADING)

(CASE CAPTION)

CASE CONTRACT DISCLOSURE

I, _____ do hereby disclose pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that (I/firm) was contacted by the party taking the deposition to provide court reporting services for this deposition; there is no disqualification for a relationship of interest under the provisions of O.C.G.A. § 9-11-28(c); (I/firm) will not be taking this deposition under any contract that is prohibited by O.C.G.A. §§ 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board; (I/firm) have a negotiated contract or fee arrangement for rates that apply in this case only; and any and all financial arrangements beyond (my/our) usual and customary rates have been disclosed and offered to all parties.

This *XXXX* day of *XXXX*, 20*XX*,

Court Reporter/Firm Representative
(Firm)

CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA)

COUNTY OF (XXXXX))

I hereby certify that the foregoing deposition was reported as stated in the caption and the questions and answers thereto were reduced to writing by me; that the foregoing XXXX pages represent a true, correct, and complete transcript of the evidence given on (date) by the witness, (name), who was first duly sworn by me.

I certify that I am not disqualified for a relationship of interest under O.C.G.A. § 9-11-28(c); I am a Georgia Certified Court Reporter here as a (sole practitioner/representative of XXXX court reporting firm /an independent contractor of XXXX court reporting firm); I was contacted by (the party taking the deposition/XXXX court reporting firm) to provide court reporting services for this deposition; I will not be taking this deposition under any contract that is prohibited by O.C.G.A. §§ 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board; and by the attached disclosure form I confirm that (I/XXXX court reporting firm) (am/is) not a party to a contract prohibited by O.C.G.A. § 15-14-37 or Article 7.C. of the Rules and Regulations of the Board.

This XXXX day of XXXX, 20XX,

(Name)
Certified Court Reporter
Georgia Certificate # XXXXX

DISCLOSURE OF NO CONTRACT

I, *XXXX*, Certified Court Reporter, do hereby disclose pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that I am a Georgia Certified Court Reporter; I was contacted by the party taking the deposition to provide court reporting services for this deposition; I will not be taking this deposition under any contract that is prohibited by O.C.G.A. §§ 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board; and I am not disqualified for a relationship of interest under O.C.G.A. § 9-11-28(c).

There is no contract to provide reporting services between myself or any person with whom I have a principal and agency relationship nor any attorney at law in this action, party to this action, party having a financial interest in this action, or agent for an attorney at law in this action, party to this action, or party having a financial interest in this action. Any and all financial arrangements beyond my usual and customary rates have been disclosed and offered to all parties.

This *XXXX* day of *XXXX*, 20*XX*,

XXXX
Certified Court Reporter
Certificate Number *XXXX*

(CASE HEADING)

(CASE CAPTION)

CASE CONTRACT DISCLOSURE

I, _____, do hereby disclose pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that I was contacted by the party taking the deposition to provide court reporting services for this deposition; there is no disqualification for a relationship of interest under the provisions of O.C.G.A. § 9-11-28(c); I will not be taking this deposition under any contract that is prohibited by O.C.G.A. §§ 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board; and I have a negotiated contract or fee arrangement for rates that apply in this case only; and any and all financial arrangements beyond my usual and customary rates have been disclosed and offered to all parties.

This XXXX day of XXXX, 20XX,

(Court Reporter/Firm Representative)
(Firm)

CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA)

COUNTY OF XXXX)

I hereby certify that the foregoing deposition was reported as stated in the caption and the questions and answers thereto were reduced to typewriting by me; that the foregoing (number) pages represent a true, correct, and complete transcript of the evidence given on (date) by the witness, (name), who was first duly sworn by me.

This the XXX day of XXXX, 20XX.

XXXX
Certified Court Reporter
Georgia Certificate XXXX

41. Applying the Uniform Electronic Transactions Act to Court Reporting

On July 23, 2010, the Board issued Advisory Opinion 2010-1, entitled “Applicability of the Georgia Uniform Electronic Transactions Act to the Electronic Certification of Transcripts.” In the opinion, the Board made clear that the Uniform Electronic Transactions Act (UETA) did not apply to the electronic certification of transcripts and could not be relied upon by court reporters in support of such certifications. The Board did, however, recognize the possibility of a future statute, rule, or regulation that might enable court reporters to electronically certify transcripts and could consequently trigger the applicability of the UETA.

In 2014, the Judicial Council of Georgia approved new policies relating to court reporting in criminal cases. Policy 2.3(B), which allows for the electronic certification of criminal transcripts, provides:

Transcripts may be electronically certified. Any transcript electronically certified must include a certificate as described by O.C.G.A. § 15-14-5 and must include the electronic signature of the court reporter. The electronic signature shall be unique to and under the sole control of the court reporter using it and constitute evidence of a legal signature of the court reporter.

Because of the enactment of this policy, the Board believes certain provisions of the UETA should apply to the electronic certification of criminal transcripts. Interpretation of the UETA may lend instructive guidance to court reporters and court personnel as to whether a criminal transcript is properly electronically certified.

An electronic signature, as specified by the policy, must meet two criteria before being authenticated: (1) it must be unique, and (2) it must be under the sole control of the court reporter using it. The test for verification of the signature lies in the statutory language of the UETA:

(a) An electronic record or electronic signature shall be attributable to a person if such record or signature was the act of the person. The act of the person *may be shown in any manner*, including a showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this Code section shall be determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

O.C.G.A. § 10-12-9 (emphasis added). “Electronic signature” is defined simply as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” O.C.G.A. § 10-12-2(8).

Thus, a court reporter using an electronic signature would have a variety of options for signing a document so long as the reporter is intending to be bound by his or her signature. In some jurisdictions, something as simple as a typed name suffices. *See, e.g., Bishop v. Norrell*, 88 Ariz. 148, 151. The Board believes a typed name is sufficient to meet the UETA’s requirements. Other than a typed name, a court reporter may wish to take a picture of his or her signature and upload it to his or her computer, which would enable the reporter to place the image at the end of a document as a unique identifier. Further, under the UETA, even sounds and symbols would be acceptable.

In conclusion, a court reporter electronically certifying a criminal transcript may choose his or her own method – whether a typed signature, an uploaded image, a sound, or a symbol – of certifying a transcript, so long as the identifier is unique and under the sole control of the court reporter.

Advisory Opinion
BCR 2015-01
January 15, 2015

42. Definition of “Close of Court” in the Criminal and Civil Fee Schedules

The term “close of court” is used in the schedules of fees that court reporters may charge courts for contract services in criminal¹, civil, and juvenile² court cases. However, the term is not defined in the Board rules, in statute, or in any other statewide resource. This opinion will provide that definition.

“Close of court,” for the purposes of calculating the deadlines for daily and expedited copies specified in the court reporter fee schedules, means the time court adjourns or concludes on a given day. For example, on some days, court might adjourn at noon, so the 24-hour/48-hour clock starts at noon. On other days, court might adjourn at 7 p.m., so the clock starts at 7 p.m. This definition only applies when the transcript is requested on the day that the proceeding ends.

If the transcript is requested on any day after the proceeding ends, the term “close of court” refers to when the request is made. For example, if a transcript is requested days, weeks, or years after the proceeding has ended, the daily and expedited rates still apply if the reporter finishes the transcript within 24 or 48 hours of the request.

Moreover, the 24-hour/48-hour clock for daily and expedited copies runs only on business days and does not include weekends or holidays.

This definition applies to all current and future fee schedules unless specifically contradicted.

Advisory Opinion
BCR 2018-01

¹ The Judicial Council of Georgia Policies and Fees for Court Reporting Services in Criminal Cases, effective January 1, 2015, footnote 2, states: “Daily copy is furnished within 24 hours from the close of court. Expedited copy is produced within 48 hours from the close of court. The transcript page rate is in addition to these fees.”

² The civil and juvenile fee schedule, effective July 1, 2008, footnote 4, states: “Daily copy is furnished within 24 hours from the close of court. Expedited copy is produced within 48 hours from the close of court. The transcript page rate is in addition to these fees.”

43. Procedures for Court Reporters to Follow When a Party Who Has Not Participated in Takedown Requests a Transcript:

Court reporters should be aware that there are several recent appellate decisions that touch on this issue, such as Beringer v. Emory, 326 Ga. App. 260 (2014); Norman v. Doby, 321 Ga. App. 126 (2013); Kent v. Kent, 289 Ga. 821 (2011); Davenport v. Davenport, 299 Ga. 136 (2016); and Undisclosed LLC v. State, 302 Ga. 418 (2017). Under this line of cases, a party who has not participated in the takedown is not later entitled to order or request a transcript from the court reporter if the trial court rules on the record before the start of a court proceeding that that party has expressly refused to participate in takedown. Davenport, *supra*, at 138.

This line of cases only applies to court proceedings that are not required to be taken down by law. In these proceedings, if one party expressly refuses to participate in takedown, the trial court must make a ruling on the record to that effect at the beginning of the proceedings. The trial court must have made its ruling at the beginning of the proceeding for it to be valid, and the trial court must have found specifically that the refusing party has “expressly refused” to participate in takedown by “direct and appropriate language.” Kent, *supra*, at 824. Under these circumstances, the refusing party does not have a right to order or request the transcript from the court reporter. If the transcript is filed with the clerk’s office, the refusing party may obtain a copy from the clerk.

If the court does not make this ruling at the start of the proceeding, or if the court did not rule that the refusing party expressly refused to participate in takedown by direct and appropriate language, then, under Beringer, the court reporter should complete the transcript regardless of whether the party ordering it participated in takedown. Of course, the reporter may collect half of the takedown fee (or an appropriate portion in a multi-party case) and refund half the fee to the other party. Additionally, as always, the reporter has no duty to begin production of the transcript until an appropriate deposit is received by the court reporter from the ordering party, pursuant to OCGA § 15-14-5.

44. Advisory Opinion Regarding Seals.

The Board has been asked whether a court reporter is required to affix a raised seal to the transcript of a court proceeding or deposition. There is no code section or appellate decision that requires a court reporter's seal, either a raised seal or a flat, ink-only seal, on the certificate page of a transcript of either a court proceeding or a deposition. However, there are Board of Court Reporting Advisory Opinions that require court reporters to place their seal on deposition transcripts (see Advisory Opinions 12, 29, 32, and 40). These Opinions do not require that court reporters use a raised seal, and thus, a flat, ink-only seal is acceptable.

However, transcripts of both court proceedings and depositions are required to be **certified** pursuant to O.C.G.A. § 15-14-5, which states the following (emphasis supplied):

It shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law whenever requested so to do by counsel for any party to such case and upon being paid the legal fees for such transcripts. The reporter, upon delivering the transcript to such counsel, **shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct.** Subject only to the right of the trial judge to change or require the correction of the transcript, the transcript so certified shall be presumed to be true, complete, and correct.

Additionally, the Georgia Supreme Court has held that the certification of a court reporter on the transcript of a guilty plea hearing was sufficient even where it did not contain a seal because the law did not require a seal (see [McIntyre v. Balkcom](#), 229 Ga. 81, 81 (1972)). There has not been another case on that issue since that time, and the relevant parts of the code have not changed substantively. Thus, the law is clear that court reporters are not required to affix a seal to the transcripts of court proceedings. However, the Board sees no harm in the routine use of a seal in this context as this appears to be common practice at this time.

However, as discussed above, the requirements for deposition transcripts are different. There are four separate Board of Court Reporting Advisory Opinions that address the issue of certification of deposition transcripts, and all of them require that the reporter affix a seal on the original deposition transcript (see Advisory Opinions 12, 29, 32, and 40). Thus, a seal is required on the original of a deposition transcript.

Additionally, as discussed above, there is no Georgia legal authority requiring that a court reporter utilize a **raised** seal. The Board Advisory Opinions regarding deposition transcripts do not require that the seal be a stamped, raised seal. Furthermore, Georgia law does not require that a raised seal be used on the transcripts of court proceedings. Where court reporters use a seal, they may use a flat, ink-only seal, of this style:



Regardless of the precise style used, the Board recommends that the seal contain the following information:

- The seal of the State of Georgia,
- The words “State of Georgia,”
- The words “Certified Court Reporter,” and
- The reporter’s license number.

The use of a flat, ink-only seal in lieu of a raised seal may expedite filing of transcripts of court proceedings in e-filing jurisdictions. However, Georgia law still requires a court reporter taking a deposition to “securely seal the deposition in an envelope marked with the title of the action, the court reporter certification number, and ‘Deposition of (here insert name of witness),’” which implies that the original deposition must be issued in a paper format. O.C.G.A. § 9-11-30(f)(1)(A). Accordingly, particularly before the advent of e-filing, it had been common practice for court reporters to provide a sealed paper original of a deposition transcript to the taking attorney. However, an original paper deposition transcript is not required if the parties stipulate in writing to the creation and use of an electronic, digital original, pursuant to O.C.G.A. § 9-11-29. This procedure may expedite and streamline the ability of the party taking the deposition to file the original deposition in an e-filing jurisdiction.

**Advisory Opinion
2019-01**

45. Duties of Court Reporters under [OCGA § 15-14-21](#)

O.C.G.A. § 15-14-21 states that “court reporters are officers of the courts.” Once a court reporter is granted a certificate by this Board, they are an officer of the court under this code section. Officers of the court are held to a higher ethical standard than other persons appearing before the court. [In re Beckstrom](#), 295 Ga. App. 179, 182 (2008). Court reporters are governed by the Board of Court Reporting’s Code of Professional Ethics, Guidelines for Professional Practice, the Board’s Rules and Regulations, and Georgia law. Whether inside or outside the courtroom, court reporters are bound by their ethical duties in all conduct arising out of the practice of court reporting. Court reporters are bound by their ethical duties in all activities related to court reporting, including but not limited to, scheduling appearances, taking down testimony, attending depositions, transcript production, billing practices, and communicating with parties, attorneys, court personnel, scopists, other court reporters, and any other persons.

Similarly, a court reporter is an officer of the court regardless of whether a court or a party has retained their services. Thus, all court reporters taking down proceedings in a Georgia court must abide by the Judicial Council’s fee schedule regardless of whether they have been retained by the court or by a party.

**Advisory Opinion
2019-03**

46. Billing Practices Where Multiple Codefendants Are Tried Together

The Board of Court Reporting has been asked to clarify the appropriate billing procedures for utilizing the Judicial Council's fee schedule for criminal cases where multiple codefendants are tried jointly in one jury trial. Specifically, the Board has been asked to clarify whether the fee schedule permits a court reporter to bill the original page rate for each codefendant's transcript where one or more codefendants were tried in one jury trial.

The fee schedule does not permit a court reporter to bill multiple codefendants for an original transcript where only one jury trial occurred. One trial results in only one "original" transcript, regardless of the number of codefendants or indictment numbers handled at that proceeding. If one or more codefendants are tried jointly, regardless of how many indictment numbers apply to their cases, that one jury trial results in one original transcript for the purposes of the fee schedule. As a rule of thumb, one trial only results in one original transcript.

This holds true for all court proceedings in which multiple codefendants' matters are heard in the same court proceeding. For example, if multiple codefendants with multiple indictment numbers all join in the same motion to suppress, which is argued at one motion hearing, that motion hearing should only be billed as one original transcript. Obviously, where codefendants are severed and tried separately, an original transcript will be generated for each jury trial or court proceeding. In that scenario, a court reporter may bill for producing an original transcript for each separate jury trial.

Where a separate cover page is required by the local court for each codefendant, then the original page rate may be billed for just that one page of a codefendant's transcript. An example may be illustrative. Hypothetically, four indigent codefendants are tried together in superior court in a felony jury trial, indicted with different indictment numbers, and separate cover pages will be necessary based on the style of that court's case numbering. In this hypothetical, the transcript is 200 pages, but three unique cover pages will be needed in addition to the first original (since we have four total). A reporter may bill for 203 pages of transcript at the original page rate, to reflect the work involved in altering the cover page for each codefendant. This example happens to involve a felony jury trial, however, this principle holds true for any application of the criminal fee schedule to multiple codefendants, and would apply in state court and any other class of court where the fee schedule applies.

Additionally, where multiple codefendants are tried together and one or more are not indigent, the cost of producing the original transcript may be split between the codefendants equally. For example, in the hypothetical above involving four codefendants tried jointly, if one codefendant is not indigent, the court would be billed for seventy-five percent (75%) of the cost of the original 203 page transcript, and the non-indigent defendant may be billed for twenty-five percent (25%) of the cost of the original. If the trial court orders otherwise, however, the court reporter should follow the direction of the court.

Ultimately, regardless of how many indictment numbers are handled in one court proceeding, one court proceeding should only ever result in billing for one original transcript (though the cost may be split between or amongst multiple parties). The original page rate in criminal cases is higher

than a traditional copy page rate (such as the copy page rate in the civil and juvenile fee schedule) to reflect the fact that producing an original transcript from stenographic notes requires valuable skill and training. To produce an “original” transcript of the same exact jury trial for multiple codefendants simply involves photocopying the original transcript that was produced for the first codefendant, or even more simply making a copy of a PDF file. The intent of the revised fee schedule, effective January 1, 2015, was to eliminate copy charges and set a rate sufficient to reflect the work involved in creating the transcript of a court proceeding from stenographic notes.

The Board understands that an alternative view is that where there are multiple indictment numbers, each indictment number needs an “original” copy of the transcript, and thus each transcript filed into each indictment number may be billed at the original rate. However, the Board does not endorse this interpretation of the fee schedule as it applies to multiple codefendants who are tried jointly in one jury trial. While there is a surface logic to the concept that “one case number equals one original,” in this context, this interpretation ignores the fact that only one original trial transcript is generated by a multi-codefendant trial, regardless of whether those codefendants each have their own indictment number. The Judicial Council did not intend court reporters to be able to bill the original page rate for the task of simply making a duplicate of a transcript.

Advisory Opinion 2019-02

47. Remote Swearing-in of Witnesses in Depositions in Civil Cases.

The Board was asked whether a certified court reporter can administer an oath to a witness remotely. Currently, there is no clear legal authority expressly barring a court reporter from administering an oath remotely, nor is there authority expressly permitting it. Remote depositions, in general, are permitted by Georgia's Civil Practice Act. "[A] deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or by order of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions." [OCGA § 9-11-30\(b\)\(4\)](#). However, the Act does not address whether a court reporter must be physically present with a witness in order to swear the witness in. No appellate legal authority interpreting this code section to impose a live swearing-in requirement could be located; however, no legal authority interpreting it to bar remote swearing-in was located either.

In contrast to the lack of available authority on court reporters, there is voluminous appellate legal authority on the administration of oaths by notaries. Generally, notaries must be in the same physical location as a witness in order to administer the oath for an affidavit. [Sambor v. Kelly](#), 271 Ga. 133 (1999); [Keane v. Annice Heygood Trevitt Support Trust](#), 285 Ga. Ct. App. 155, (2007). Indeed, one case involving notaries uses some very broad language that could be read to prohibit the remote administration of oaths generally. [Redmond v. Shook](#), 218 Ga. App. 477 (1995). In [Redmond](#), the Court of Appeals considered the validity of an expert affidavit that had been "signed by the expert in Pennsylvania and notarized by the notary public in Georgia." *Id.* at 477. The court held that the affidavit was invalid, stating "[i]n order to make an affidavit, there must be present the officer, the affiant, and the paper, and there must be something done which amounts to the administration of an oath. There must be some solemnity, not mere telephone talk. Long-distance swearing is not permissible. Thus, an oath cannot be administered over the telephone in Georgia. This is the rule in most jurisdictions." *Id.* (internal citations omitted). The case cited for this proposition by the court in [Redmond](#) was [Carnes v. Carnes](#), 138 Ga. 1 (1912). *Id.*

Read broadly; this language would appear to bar the remote administration of oaths generally. However, this case examined the requirements for the oath administered by notaries to create a valid affidavit, not the oath administered by court reporters during depositions or court proceedings. Additionally, in this case, the oath was administered over a telephone line in which only the notary and affiant were on the call. The sophisticated videoconferencing software available today did not exist in 1995, and it is possible that a court today would rule differently if presented with a case hinging on the use of the sophisticated videoconferencing systems available today. Regardless, the case dealt with the notarial oath, not the oath administered by a court reporter, and this Board distinguishes it on those grounds.

While Georgia law is clear that notaries must administer oaths in-person, court reporters are not always notaries and are not generally subject to the same requirements or laws as notaries. Notaries have their section of the code in Chapter 17 of Title 48, while court reporters are regulated by the Court Reporting Act, found in Chapter 14 of Title 15. No appellate legal authority could be located requiring court reporters to become notaries in order to fulfill their duties, nor could we locate any authority holding that court reporters were subject to the same legal requirements as notaries. In fact, a Board of Court

Reporting Advisory Opinion from 1977 opines that the ability of court reporters to administer an oath to a witness is inherent in their power as officers of the court. BCR Advisory Opinion [77-2](#), 1977. Court reporters are officers of the court by statute. [O.C.G.A. § 15-14-21](#). While many court reporters are also notaries, it appears that their ability to swear witnesses inflows from their status as officers of the court, not from their status as notaries.

Additionally, the Civil Practice Act contains a broad provision allowing parties to alter discovery procedures, including depositions, by written stipulation. [O.C.G.A. § 9-11-29](#) states that “[u]nless the court orders otherwise, the parties may, by written stipulation . . . [p]rovide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions.” No legal authority could be located that indicated that the remote administration of an oath was not a procedure that could be stipulated in writing under this code section. This language is quite broad and states explicitly that a deposition may be taken “in any manner” so long as the parties agree in writing. Id.

Thus, certified court reporters may administer oaths remotely so long as the parties stipulate in writing pursuant to O.C.G.A. § 9-11-29. Further, the oath should be administered via videoconference system, not by telephone, to satisfy any concerns raised by Redmond. While the Board feels that Redmond does not apply to court reporters taking down depositions by videoconferencing system because Redmond dealt with a notarial oath administered by telephone in the mid-1990s, since there is no appellate legal authority expressly limiting Redmond to notaries, the Board recommends that reporters administer oaths remotely only via videoconference and not by telephone. Additionally, where the defending attorney is present in the room with the witness/deponent, the attorney, as an officer of the court, may administer the oath; however, both parties must consent to the oath’s administration by the attorney. Finally, the fact that some reporters are notaries does not change this analysis for those reporters; they may still administer oaths in their capacities as court reporters remotely as described above, but if they administer an oath to a witness signing an affidavit in their capacity as a notary, they must do so in-person.

**Advisory Opinion
2020-01**

Opinions of the Judicial Council

1. Reporter is not Eligible for Per Diem on Days he is "available" for Court, Even if Required to be in the Courthouse Every Day.

A court reporter attends court by being physically present in the courtroom and taking down the evidence presented in the matters before the court. Merely being present in the courthouse is not attending court, even though the court reporter's presence in the courthouse may be required by the court.

Approved March 18, 1976

2. Responsibility for Payment of Transcript Costs in Non-indigent Felony Cases.

In non-indigent felony cases the defendant must pay \$ 1.65* for each page of transcript requested, and the court reporter must file the original and one copy with the clerk and deliver the other copy to the moving party. The court reporter cannot charge the appellee \$.55* for the additional copy. It is the feeling of the Judicial Council that the appellee should be able to use the copy of the transcript which is in the clerk's office.

Approved March 16, 1982

3. Application of the Official Court Reporters' Fee Schedule to Contracted Reporters; Definition of "Official" Court Reporter.

"Official" reporters are those reporters who have been appointed by the courts to which they serve and who are required to be in attendance at all proceedings. We hold that the swearing in of the reporter by the judge is only one element of his official capacity; the other must be his commitment for service to the court on a when-needed basis.

"Free-lance" reporters are those who are being hired on a purely independent basis by the attorneys or litigants on a case-by-case commitment to produce transcripts of depositions; testimony at trials or hearings, or any other judicial or non-judicial matter. This is the nature of matters contemplated by the exclusionary phrase "nor to any independent contracts of any reporters." [O.C.G.A. § 15-5-21(c)]

We must construe the last phrase ("nor to any independent contracts of any reporters") to mean those contracts of reporters with others rather than the court for which they serve on a regular basis. Otherwise, the Act would have no application to the many reporters who have contracted their time on a regular basis to the courts they serve.

To that extent, we are of the opinion that the "Reporter" obligated by contract to the Atlanta Municipal Court is bound by the fee structures established by the Judicial Council of Georgia.

Approved June 8, 1983

4. Jurisdiction of Board of Court Reporting in Fee Schedule Disputes.

The Board of Court Reporting has the authority, on a verified complaint, to hear matters involving fee disputes arising out of certified court reporters' actions when the complaint alleges the actions to fall within one or more of the four reasons specified in O.C.G.A. § 15-14-33(b).

Approved March 24, 1984

Editorial note: see Opinions, Judicial Council #13

5. Application of Fee Schedule to Stranger to Litigation; Definition of 'party'.

The official reporter is bound by the fee schedule in all work done in his or her capacity as an official court reporter and in all work growing out of reporting done as a result of holding that position. The fee schedule was adopted to provide consistency to parties, to governmental agencies, and to the general public for the costs of accessing records of court proceedings. Party as defined in 2.A.(1) does not necessarily mean a party to the litigation, but can refer to any interested person ordering the transcript or a part thereof in accordance with the fee schedule.

Approved March 24, 1984

* See Fee Schedule for current amount, pp. B1-B3.

6. Application of Fee Schedule to Substitute Official Court Reporter.

A certified court reporter is bound by the fee schedule in all work done in his or her capacity as an official court reporter and in all work growing out of reporting done as a result of holding that position, even temporarily.

It is the responsibility of the county or the judge to see that the court reporter is provided with travel expense reimbursement.

Approved March, 24, 1984

7. Who Owns Trial Transcript in an Indigent Criminal Case?

The original transcript in indigent criminal convictions becomes the property of the court when filed. Assuming there is an obligation to produce the indigent transcript (a criminal conviction that is required by law to be reported) the official reporter, when directed by the court, is required to produce an original and up to two copies of the transcript of the proceedings, and to file the original and one copy with the Clerk of the Court. The reporter is paid by the appropriate county governing authority at a rate of \$1.75* per page for this original and up to two copies. (See section 2.A. of court reporter's fee schedule.)

Additional copies of the transcript can be secured from the reporter, in accordance with the fee schedule, at a rate of \$.55* per page. However, once the transcript is filed with the Clerk of the Court, it becomes a matter of public record. (See O.C.G.A. § 50-18-70 through § 50-18-74.)

In an indigent criminal case resulting in an acquittal, the transcript becomes the property of any individual ordering the document from the official court reporter. Since the official reporter is not routinely required by law to prepare and file the transcript in acquittal cases, the time for production of the document is a matter between the requesting party, the reporter, and the trial court. Once the transcript has been prepared, the reporter retains the right to provide additional copies to parties or to interested individuals at the fee schedule rate for copies of \$.55* per page.

The county governing authority is under no statutory obligation to pay transcription costs in indigent criminal cases resulting in an acquittal.

Approved March 24, 1984

8. Who Owns Trial Transcript in Non-indigent Criminal Case?

The original transcript in criminal convictions becomes the property of the court when filed. The defendant's participation in transcript costs entitles him to have the record produced with a copy for his use. The transcript becomes a matter of public record when filed with the Clerk of Court regardless of who may have participated in the transcription costs. The reporter retains the right, subject to the fee schedule, to provide additional copies of the transcript to anyone ordering it at the approved copy rate. (See Unofficial Opinion of the Attorney General, U78-1.)

When a non-indigent case results in an acquittal, the same general rules would apply as stated in the opinion above. There is no statutory requirement that the transcript copy of a criminal acquittal be filed.

Approved March 24, 1984

9. Who Owns Trial Transcript in a Civil Case?

The party or parties participating in the cost of transcription of the original record and/or those who do not specifically waive access rights to the transcript, upon payment of the appropriate fees, may cause a transcript to be produced. (See *Harrington v. Harrington*, 224 Ga. 305, and *Giddings v. Starks*, 240 Ga. 496.)

When filed with the Clerk of Court, the transcript becomes a public document and a matter of public record.

Approved March 24, 1984

10. Circumstances Under Which Civil and Criminal Transcripts Can Be Divulged to the Public.

A civil or criminal transcript that has been filed with the Clerk of Court is considered a public record pursuant to O.C.G.A. § 50-18-70, unless the record is of a court activity protected by law from public access or sealed by order of the court. (Examples of these may be custody hearings, juvenile proceedings, first offender pleas where the defendant has successfully completed his/her conditions of probation.) When no transcript is required to be produced or filed, the court reporter may do so with the approval of the court. *Approved March 24, 1984*

* See Fee Schedule for current amount, pp. B1-B3.

11. If a Transcript is Filed in the Clerk of Superior Court's Office, Does it Become a Public Record So That it Can Be Photocopied by a Party in Lieu of Payment to the Court Reporter Under the Fee Schedule?

Yes, except in those situations where access to the record is restricted by the court or by law as in the examples previously cited. However, in charging a fee for photocopying transcripts on file with the clerk of the appropriate court, the clerk should be made aware that personnel time can also be included in the photocopying charge. (See O.C.G.A. § 50-18-70.)

Approved March 24, 1984

12. Rates to Be Charged for Transcripts.

The fee schedule provides that the rate to be paid court reporters for the transcripts of the proceedings and evidence in both civil and criminal cases shall be \$1.75* for the original and two copies of each page, to be paid by the party requesting that transcript or as required by law. The schedule further states that requests for the original only or for the original plus one copy shall also be charged at the rate of \$1.75* per original page. The number of copies to be produced is a matter between the requesting party and the reporter, as provided by law.

Approved March 24, 1984

13. Supreme Court Order; Authority to Hear Fee Disputes.

On the recommendation and request of the Judicial Council of Georgia, the Supreme Court issued the following order:

The Supreme Court of Georgia hereby confers upon the Board of Court Reporting of the Judicial Council the authority to hear verified complaints regarding and to resolve fee disputes involving official court reporters, with discretionary appeal to the Judicial Council of Georgia.

The authority to hear and resolve fee disputes will be in addition to the authority and powers heretofore conferred upon the Board. In addition to its authority to revoke or suspend certificates issued by the Board for unprofessional conduct or other sufficient cause, the Board may, after notice and hearing, in the instance of a fee dispute only, require monetary adjustment of the disputed fee, subject to suspension in the event the adjustment is not made.

The grievance procedures promulgated by the Board of Court Reporting and approved by the Judicial Council will apply to fee dispute matters as well as other matters. These may be amended from time to time as the Board and Council see fit.

Ordered May 15, 1984

Editorial note: see Opinions, Judicial Council #4.

14. Responsibility for Payment of Per Diem.

Whereas,

- (a) Only a trial judge can designate a court reporter to serve as an official court reporter for his/her court.
- (b) Only official court reporters are governed by the fee schedule of the Board of Court Reporting [sic].
- (c) The fee schedule provides that official court reporters or court reporters serving in that capacity at the direction of a judge be paid an appearance fee of \$75.00* by the county governing authority.
- (d) Any court reporter appearing to report an action without the express authorization of the trial judge is not entitled to the \$75.00* appearance fee.
- (e) In civil cases and certain non-indigent criminal cases, the parties are responsible for takedown and transcription costs pursuant to the fee schedule.

Therefore, if an attorney brings in a court reporter who happens to be the official court reporter when the judge has not requested that one be present, no per diem should be chargeable to the county, since, in that situation, the official court reporter would not be acting "officially" but "freelance" and should seek a fee from the requesting attorney.

This reverses an opinion of the Board of Court Reporting issued in 1978.

Approved December 13, 1985

* See Fee Schedule for current amount, pp. B1-B3.

15. Certain Takedown Not Included in Per Diem.

The compensation of \$75.00* per day paid to a court reporter includes all of the takedown in a criminal case, not only the trial testimony, but also the voir dire, opening statements, and closing arguments as well as any additional motions prior to trial and the court reporter is not entitled to any amount in addition to that per diem, provided, however, the court orders that the voir dire, opening statements, closing arguments and additional motions be taken down.

If counsel requests that the court require the takedown of these proceedings and the court declines to order that this be done, then it would be up to counsel to make financial arrangements to pay for the takedown and this would not be covered under the regular per diem.

Approved July 1987

* See Fee Schedule for current amount, pp. B1-B3.

Opinions of the Attorney General of Georgia

1. Death Before Certification of Record.

Normally court reporters affix certification to transcripts to the effect they are true, complete, and correct. If a reporter dies before completing a transcript, another reporter may make the transcript and certify it. Such a transcript would be subject to the Judge's power of correction.

Unofficial Opinion
U 73-107
November 1, 1973

2. The Judge of a Superior Court has the Authority to Appoint a Reporter for His Court and to Employ a Secretary for His Office. There is Nothing in the Law of Georgia Which Would Prohibit Him From Appointing the Same Person to Fill These Two Positions, Provided That the Person so Appointed Had the Qualifications Necessary for Each Position.

It is the *unofficial opinion* that there is nothing to prohibit appointing the same person as reporter and secretary.

Unofficial Opinion
U 74-1
January 2, 1974

3. The Judge of a State Court of a County May Appoint More Than One Court Reporter.

The law states that court reporting personnel shall be made available, and that appointment of a reporter or reporters for court proceedings shall be made by the judge. The express use of the plural in reference to reporters is sufficient to authorize the appointment of another court reporter for the state court.

Unofficial Opinion
U 74-33
April 19, 1974

4. Local Laws and Georgia Laws of Local Application Providing Compensation to Court Reporters.

The remedy provided by Ga. Laws 1975, p. 875 (O.C.G.A. § 15-5-21) was to require that the Judicial Council provide a uniform rate to be charged parties and their attorneys throughout the state by court reporters. However, it does not appear that the legislature intended to cut off supplements being paid court reporters by various governmental units. The General Assembly contemplated that some counties would supplement the minimum per diem fees provided by the Judicial Council.

It is the unofficial opinion of the Attorney General that the Judicial Council has the authority to promulgate rules and regulations which would allow local governing authorities to pay a supplement in addition to the minimum per diem otherwise provided.

Unofficial Opinion
U 76-11, March 22, 1976

5. Certain Income Generated by the Judicial Branch of Government May be Retained by the Judicial Branch.

Certain income generated by the judicial branch of government, including fees paid by court reporters to the Board of Court Reporting of the Judicial Council, may be retained by the judicial branch.

Official Opinion
77-77
November 4, 1977

* See Fee Schedule for current amount, pp. B1-B3.

6. Fees Collected by the State Board of Court Reporting Need Not be Deposited in the State Treasury.

The legislative characterization of court reporters as officers of the court dictates the unofficial opinion that the fees collected by the State Board of Court Reporting are not required to be deposited in the State Treasury.

Unofficial Opinion
U 77-55
November 7, 1977

7. Fees Collected by the Board of Court Reporting Are Not Subject to Appropriation Lapse.

Fees collected by the Board of Court Reporting of the Judicial Council during the fiscal year 1978, which were unexpended at the end of the fiscal year, are not subject to appropriation lapse.

Official Opinion
78-68
October 24, 1978

8. Notes and Recordings Taken by a Court Reporter in Felony Cases Remain in His Custody but Are Subject to Control by the Court.

In preparing transcripts in non-felony matters, the court would have no reason for getting involved. It is simply a matter of contract-business transactions between one or more of the parties and the court reporter. {Of course, if the court directs pursuant to [O.C.G.A. § 15-14-5] that the testimony in a non-felony case be taken down, the court certainly has the power to compel the court reporter to prepare a transcript where the conditions of [O.C.G.A. § 15-14-5] have otherwise been met, i.e., where a request for the transcript and an offer of payment have been made by counsel.}

In felony cases, the court has an absolute duty to preserve the testimony in a case where a guilty verdict results. Thus the court's interest in retaining control over the court reporter's notes and recordings unquestionably outweighs any interest the court reporter may have in them. The matter of an official transcript is no longer a matter of contract but a requirement of law.

Furthermore, being an officer of the court, the court has control over the court reporter and can use its contempt powers to insure that the court reporter performs official duties. Although unable to find any law or cases which clearly subjects a court reporter to the rule and order of the court, as [O.C.G.A. § 15-13-8] provides for sheriffs, deputy sheriffs, coroners, clerks of the superior courts, Magistrate, and constables, there certainly appears to be no reason why the court, in a felony case where it and the court reporter have a legal duty to have a record of the testimony in that case preserved in the records of the court, cannot in the exercise of its inherent powers exert sufficient control over the court reporter's notes and recordings to have a transcript of these notes and recordings prepared, either by the court reporter or a personal representative.

Unofficial Opinion
U 78-1
January 9, 1978

9. Judicial Branch Agencies Are Not Subject to the Sunshine Law.

The Sunshine Law does not apply to the Board of Court Reporting or any other agency of the Judicial branch of government.

Official Opinion
79-25
April 23, 1979

* See Fee Schedule for current amount, pp. B1-B3.

10. Ordering Transcript of All Proceedings is Discretionary With Superior Court Judge in Criminal Cases.

A judge of a Superior Court may, in his discretion and on such terms as may be prescribed by him, direct that all proceedings in a criminal case before him be recorded and transcribed.

Unofficial Opinion
U 79-1
January 10, 1979

11. Recording of Certain Transcripts by Superior Court Clerks Not Required.

Transcripts of testimony and other evidence in administrative law cases on appeal to superior court are not required to be recorded by the clerks of the superior courts.

Unofficial Opinion
U 79-3
January 1, 1979

12. When a Non-indigent Criminal Case is Appealed, the Appellant is Responsible for Paying the Court Reporting Fees for the Preparation of the Transcript of the Evidence.

It is the unofficial opinion that in the case of an appeal of a non-indigent felony case, the party requesting the transcript is required to pay the court reporter's fees. In the case of an appeal, the appellant becomes the party requesting the transcript, as he requests that the transcript be sent to the appropriate appellate court.

Under the Provisions of the Fee Schedule, the Court Reporter is Only Entitled to \$1.65* for the Original and Two Copies of Each Page of the Transcript.

Under the provisions of the fee schedule adopted by the Board of Court Reporting of the Judicial Council, the court reporter is only entitled to \$1.65* for the original and two copies of each page of the transcript. It is the unofficial opinion that the schedule entitles an appellant to a copy of the transcript without having to pay 55* cents a page for an extra copy. Once again, the appellant becomes the requesting party and may request two copies, one to be filed with the clerk along with the original, and the other for the appellant's own use.

Unofficial Opinion
U 79-15
July 27, 1979

13. Where the Appellant Requests that the Transcript be Filed as Part of the Record on Appeal in a Non-indigent Criminal Case, He is Responsible for the Payment of the Court Reporter Fees for the Preparation of the Transcript.

The Supreme Court's decision in *Hart v. State*, is consistent with this office's opinion number U79-15. As we have previously concluded, it should be the responsibility of the person requesting the transcript to pay for the transcript. The provisions of [O.C.G.A. § 17-8-5] just make it the duty of the Court, or county officials, to require that the testimony be taken down and that a written record be filed with the clerk. It does not require that all transcripts be paid for by the county. If no appeal were filed by the defendant, then the county would be the requesting party responsible for the preparation of the transcript and also responsible for the payment of the court reporter fees under [O.C.G.A. § 17-8-5].

Unofficial Opinion
U81-22
May 18, 1981

14. Under Current Law State Court Reporters are Entitled to Receive \$80.00 Per Month as a Contingent Expense and Travel Allowance, Which is to be Paid from County Funds.

The basic statute in this area is [O.C.G.A. § 15-7-13], which provides in pertinent part as follows:

... the compensation and allowances of reporters for said courts shall be the same as for

* See Fee Schedule for current amount, pp. B1-B3.

the superior courts of this State.

It is my unofficial opinion that under current law state court reporters are entitled to receive \$80.00 per month as a contingent expense and travel allowance, the amount prescribed by Ga. Code Ann. § 24-3107 (O.C.G.A. § 15-14-6), for reporters of judicial circuits consisting of one county only. This allowance is to be paid from county funds.

Unofficial Opinion
U81-24
June 4, 1981

15. It is Inappropriate to Decide on the Basis of Contract Whether a Party Who did not Participate in the Takedown of Preliminary Hearing May have a Copy of the Transcript. The Court Reporter Should Look to the Court Before Which the Inquiry is Conducted for Direction on Whether or Under What Circumstances the Nonparticipating Party May Have a Copy of the Transcript.

Even in the context of a civil trial, considerations of the administration of justice are given more weight than private contractual rights. Thus, since the preliminary hearing is a "critical stage" of a criminal trial, at which certain due process rights of the defendant attach, a contractual analysis is inappropriate to the question at hand.

Official Opinion
82-14
March 12, 1982

16. Questions Concerning the Status of Court Reporters Employed by the State Board of Workers' Compensation.

It is the official opinion that the State Board court reporters are full-time State employees, and that the State Board may permit its court reporters to work hours other than typical office hours. Although a court reporter may not hold simultaneous employment with the State Board and a Superior court or state court, he may provide court reporting services to those courts provided his role is that of an independent contractor. A State Board court reporter may provide court reporting services to the public provided the Agency determines there is no conflict between his outside employment and his State employment. Finally, O.C.G.A. § 45-10-42 authorizes State Board court reporters to sell to State agencies workers' compensation transcripts prepared pursuant to O.C.G.A. § 34-9-102(g).

Official Opinion
83-56
August 25, 1983

17. Conditions Under Which Court Reporters Employed by the State Board of Workers' Compensation May Sell Transcripts.

Transcripts which are produced by court reporters employed by the State Board of Workers' Compensation are the property of the State Board of Workers' Compensation. Court reporters for the Board may sell workers' compensation transcripts to state agencies at any time when providing such transcripts to a party to the case. Court reporters for the State Board of Workers' Compensation may not sell transcripts of workers' compensation hearings to third parties which are not state agencies.

Official Opinion
86-47
November 19, 1986

* See Fee Schedule for current amount, pp. B1-B3.

18. Authority of Board of Court Reporting to Regulate Verbatim Court Reporting.

With the exception of official federal court reporters, the Board of Court Reporting of the Judicial Council of Georgia has authority to regulate the practice of verbatim court reporting for use in the federal courts within the State of Georgia pursuant to O.C.G.A. §§ 15-14-22 and 15-14-28.

Official Opinion
86-27
June 20, 1986

19. O.C.G.A. § 9-11-30(e) Places no Limitations on the Type of Changes That May Be Made By a Witness Before Signing a Deposition.

The court reporter's role throughout the deposition process remains that of a neutral scrivener. The court reporter should record the witness' changes and, of course, must transcribe any further examination which the party taking the deposition deems necessary. The deposition is then certified, sealed, and filed pursuant to subsection (f) of Rule 30. In the event the witness returns the deposition with the changes to the court reporter after the deposition has been certified, sealed, and filed, the court reporter should file the changes as a separate document and notify the party taking the deposition. The party taking the deposition then decides whether to seek further examination based upon the changed answers or to seek to have the changed answers suppressed as untimely.

Official Opinion
87-17
June 11, 1987

20. There is No Georgia Law or Statute Which Governs Retention of Notes, Tapes, Transcripts, or Computer Copies of Depositions.

In determining the appropriate length of time a court reporter should be required to maintain notes, tapes, transcripts, or computer copies of depositions, the reporter needs to ensure that the records are maintained for a sufficient length of time so that the matter has been concluded and there is little or no possibility that the records would need to be retrieved.

There is also no law which governs the retention of the [official] court reporter's notes and tapes prior to the reporter leaving the state or upon retirement, or if the reporter is deceased.

Advisory Letter
March 1, 1991

Editorial note: This advisory letter predates the 1996 changes to O.C.G.A. § 9-11-30.

21. Citizenship Not Required for Certification as a Court Reporter.

O.C.G.A. § 15-14-29 cannot be constitutionally applied so as to prohibit an individual who is not a U.S. citizen from being certified as a court reporter.

Official Opinion
U92-23
September 16, 1992

22. A Court Reporter May Enter into Contracts for Reporting Depositions So Long as the Contract Does Not Render the Reporter an "Employee" or "Financially Interested in the Action." Court Reporters May Not Provide Kickbacks to a Party.

An exclusive contract for reporting depositions between a court reporter and a party may not be impermissible on its face provided it does not infringe on the court reporter's legal duties. However, if the terms of the contract and surrounding circumstances render the court reporter an employee of the party or attorney or create a financial interest in the action on the part of the court reporter, the court reporter cannot report the deposition unless all parties waive the disqualification in writing. If the contract provides a discount to the contract party, then charging the other party a higher fee for the transcript could be deemed an "unreasonable" fee, and therefore subject the court reporter to discipline by the Board. Finally, if a court reporter provides

* See Fee Schedule for current amount, pp. B1-B3.

kickbacks to parties or their attorneys in return for hiring that court reporter to report a deposition, such actions constitute unprofessional conduct.

Official Opinion
93-18
July 23, 1993

Editorial note: This opinion predates the changes to Georgia Law which prohibit contracting.

23. Immunity of the Board and Whether such Immunity Extends to the Georgia Certified Court Reporters Association.

The Georgia Certified Court Reporters Association would not constitute an arm of the State for purposes of immunity, and its officers would not be public officials entitled to qualified immunity. Since the Association is a nonprofit entity, however, it may want to determine whether it is entitled to any other type of immunity from civil liability under Georgia law. *See, e.g., O.C.G.A. § 51-1-20.*

Advisory Letter
October 19, 1994

24. Disclosure Requirements.

A court reporter is required to make the disclosure required by O.C.G.A. § 9-11-28(d) at the beginning of the deposition. Requirement of disclosing the complete arrangements includes disclosing the costs to be charged to the person making the arrangements for the court reporter's services.

Unofficial Opinion
U95-10
March 2, 1995

Editorial note: O.C.G.A. § 9-11-28 (d) was abolished in the 1999 legislative session. Disclosure is still required however, under Article 8.b. of the rules of the Board of Court Reporting.

* See Fee Schedule for current amount, pp. B1-B3.