

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-251
Issued: September 1981

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a lawyer who receives a notice of taking of the deposition of his client send a nonlawyer to observe the deposition and make notes?

Answer: No.

References: DR 6-101(A)(3), DR 7-101(A)(3)

OPINION

It is assumed that the lawyer in this case desires to send a nonlawyer to attend the deposition rather than a member of the law firm or another lawyer with consent of his client.

Obviously, a lawyer may very well send another member of the law firm to the taking of the deposition of his client and/or with the consent of his client employ counsel outside of the firm to accompany the client to the deposition.

Absence of the above, it is the feeling of the Ethics Committee that a lawyer who represents a client should attend the deposition of the client. The fact that the lawyer may very well be prejudicing or damaging his client under DR 7-101(A)(3) is a direct violation of the Code. However, it is the feeling of this Committee that it is a direct violation of DR 6-101(A)(3) which provides as follows: "A lawyer shall not neglect a legal matter entrusted to him."

Although a lawyer may choose not to attend depositions of witnesses from time to time, it is the feeling of this Committee that the client has entrusted the legal matter to the lawyer, and that the lawyer (or a member of the law firm) must at least observe the taking of the client's deposition in all cases.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.