

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-8**  
Issued: November 1962

**Question:** May an attorney pay a court reporter for a copy of the transcript of testimony in a case in which the attorney represented one of the parties?

**Answer:** Yes.

**References:** Canon 42

**OPINION**

A question has arisen as to the propriety of an attorney's paying a court reporter for a copy of the transcript of testimony in a case in which the attorney represented one of the parties. The attorney ordered a copy of the transcript from the reporter and forwarded the statement to his client. The client was unsuccessful in the litigation and has failed to pay the reporter. The reporter contends that he would not have furnished the transcript had she not expected the attorney to arrange that she be paid, but the attorney contends that it would be unethical for him to pay for the transcript from his personal funds.

The question is primarily concerned with Canon 42, wherein it is said that a lawyer may not properly agree to pay the expenses of litigation for his client, though he may, in good faith, advance expenses as a matter of convenience, but subject to reimbursement.

There have been a number of opinions handed down by the American Bar Association and by Associations in other states bearing upon this question. Their general effect is that it is proper for an attorney to advance the actual expenses of litigation for his client, but only where he has a reasonable belief that he will be reimbursed. In this instance, it would have been proper for the attorney to pay for the transcript when it was delivered to him, if he then had good reason to believe his client would reimburse him for it, even though the client might later refuse to do so.

An attorney owes a duty to Court officers and employees to see that they are not imposed upon by his clients. It is undoubtedly true that the reporter would not have furnished the copy of the transcript had she not believed that the attorney would arrange that she be paid. In ordering the transcript, the attorney impliedly represented to her that she would be paid, either by himself or by his client. If he had expected her to look solely to his client for payment, he should have told her that at the time.

It is our opinion that in this instance the attorney would not be guilty of improper conduct in paying for the transcript. We add this word of caution: An attorney should not pay the costs or expenses of litigation for his client unless he has reasonable expectation of being reimbursed therefor. If he does not intend to guarantee payment, he should make that clear at the time he incurs the expense.

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***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). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."*