



## Outsourcing Deposition Summaries

Approved by the American Bar  
Association, State and Local Bar  
Associations, and National Court  
Reporters Association

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Decisions by the American Bar Association (ABA), State and local bar associations, and the National Court Reporters Association (NCRA) have had a dramatic effect on the legal outsourcing industry. Not only have their decisions established guidelines on what legal work may be outsourced and how to outsource legal work, but their statements also endorse outsourcing deposition summaries to create value and reduce costs to court reporting companies, legal vendors, law firms and insurance companies.

Outsourced deposition summaries are nothing new. Deposition summaries have routinely been outsourced to third-parties, including contract lawyers, staffing agencies, and independent companies whose business is digesting depositions. While the business model for outsourcing deposition summaries is established, the ethical guidelines for such outsourcing have only recently been elaborated.

In the past five years, at least a half-dozen bar associations, including the American Bar Association (ABA) and State and local bar associations, have addressed the ethics of legal outsourcing. (Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline, Opinion 2006–09 (August, 14, 2009); American Bar Association Standing Committee on Ethics and Professional Responsibility, Opinion 08-451 (August, 5, 2008); Florida Bar Association (September 2007); Los Angeles County Bar Association, Opinion No. 518 (June 19, 2008); San Diego County Bar Association, Ethics Opinion 2007-1 (January 2007); Association of the Bar of the City of New York, Commission on Professional and Judicial Ethics, Formal Opinion 2006–3 (August 2006)). These decisions, while not legally binding, are authoritative and consistently conclude that, depending on the nature of the task, legal work may be outsourced not only to lawyers but to non-lawyers as well.

For example, in August 2008, the ABA's Standing Committee on Ethics and Professional Responsibility found that legal outsourcing is a "salutary trend in a global economy," noting that many lawyers already outsource work, using lawyers or non-lawyers as independent contractors, hiring them directly or through intermediaries, and on temporary or ongoing bases.

In its 2008 Opinion, the ABA further notes that outsourcing can, among other things, reduce client costs and enable small firms to provide labor intensive services such as large, discovery intense litigation, even though the firms might not maintain sufficient ongoing staff to handle the work.

While this author encourages you to read these outsourcing decisions, taken as a whole a few rules can be construed from them:

- 1) The outsourced work should be supervised to avoid aiding the non-lawyer in the unauthorized practice of law (UPL);
- 2) The outsourced work should be kept confidential;
- 3) Conflicts of interest should be avoided in outsourcing work;
- 4) Billing for outsourced work should be reasonable and appropriate; and
- 5) When necessary, the client's approval for outsourcing should be obtained.

For purposes of assessing the ethics of outsourcing deposition summaries, these bar decisions distinguish between "substantive" and "administrative" legal support. "Substantive legal work" includes research, drafting, contracts, document review, writing legal memoranda, and drafting patent applications. Outsourced "administrative support" includes clerical duties such as deposition transcription, deposition summaries, and document coding. In law there will always be some way to find overlap

between substantive and administrative work; nonetheless, the bar associations have consistently found deposition summaries to be administrative, non-legal work.

Unlike substantive legal support, administrative legal support, such as the clerical work involved in summarizing depositions, doesn't impinge on UPL. The reasoning behind UPL is that limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Since summarizing depositions does not render substantive legal work, it avoids aiding and abetting UPL. However, it is reasonable to expect outsourced administrative support, such as summarizing depositions, adhere to many of the same outsourcing guidelines taken to avoid UPL. These guidelines include, but are not limited to:

- 1) Educational background;
- 2) Language and writing skills;
- 3) Hiring with reference checks;
- 4) Training generally and to task;
- 5) Ongoing supervision;
- 6) Regular communication;
- 7) Accommodating physical and time zone separation; and
- 8) Site visits

The February 2009 Statement by the National Court Reporters Association (NCRA) builds on the ethical guidelines established by the ABA and State and local bar associations. In its "Statement on Ensuring the Confidentiality and Security of Outsourced Transcription", NCRA compared the need to protect the accuracy, privacy and security of legal transcription with the productivity and economy of outsourcing. NCRA's February 2009 Statement notes: "The practice of outsourcing the transcription of court...information is growing" and NCRA does not impose any bar to such

administrative outsourcing. Rather, as "guardians of the record," NCRA member agencies and reporters are admonished to place the "highest value on the accuracy, impartiality, security and confidentiality of the records they are creating." So, while deposition summaries may be outsourced for efficiency and the client's legitimate desire to manage costs, NCRA members should implement processes that maintain the same level of confidentiality and security of the information contained in the record as though the work was performed onsite.

Based on decisions of the ABA, State and local bar associations, and NCRA, it is suggested that court reporting agencies, legal vendors, law firms, and insurance companies adhere to the following best practices when outsourcing deposition summaries:

- 1) An acknowledgement that the deposition summary does not constitute legal advice or a legal work product and was created solely as a clerical summary of the testimony presented;
- 2) The summary is not intended to replace a full reading of the deposition transcript and no such representation is being made by the creator of the summary;
- 3) The summary should not be relied upon in lieu of a full reading of the deposition;
- 4) The summary was not created by the court reporter; and
- 5) The summary was made with the highest value placed on the accuracy, impartiality, security and confidentiality of the transcript.

In conclusion, outsourcing deposition summaries does not ask new questions, create onerous challenges, or cause insurmountable ethical compliance issues. On the contrary, outsourcing deposition summaries has evolved from a new practice, to an emerging trend, to a catalyst for change.

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