

January 31, 2006

Dear Ms. Hensel,

I have enclosed a copy of the subpoena duces tecum. The information is from my daughters daycare.. I have been told by the daycare that I have to have a subpoena to get this information even though I have sole custody and I pay the daycare. I have also enclosed a copy of the letter that was sent along to the daycare. It states that they must appear and produce these documents. In the next paragraph Mr. Genet tells them that they may be released from the subpoena if they produce this documentation to his office prior to the deposition. The daycare is not a party to the case (child support). The Colorado Bar Association Ethics Opinion 86:

Use of Subpoenas in Civil Proceedings, 05/19/90: Addendum Issued 1995: Revised 01/17/98 states the following:

In such a civil action, after notice of the deposition has been served on all parties and subpoena duces tecum has been served on the non-party witness, the parties may agree to waive the need for a court reporter. The “deponent” in these stipulated “depositions” is not examined, but essentially acts as a messenger who delivers the documents to the requesting lawyer for review. These stipulated “depositions” are consistent with Colorado Rules of Civil Procedure 30 and 45 and are ethically permissible.

I never waived the need for a court reporter. Since Mr. Genet did serve the subpoena duces tecum on my daycare, per this opinion he would need to have had me waive the need for the court reporter. In the letter he is essentially letting them be a messenger only without having a waiver from myself and as far as I know the Jefferson County Child Support office which would not be consistent with Colorado Rules of Civil Procedure.

In the introduction of this Opinion 86, it states the following:

The Committee has been made aware of instances when lawyers have used subpoenas duces tecum in civil actions to obtain privileged information without complying with the Rules of Civil procedure. In other instances, subpoenas duces tecum have been used in civil actions to obtain an exclusive review of documents or other physical evidence, or a review before opposing counsel or an unrepresented defendant, because no notice has been given to the adversary party. In still other instances, the witness or custodian of records on whom a subpoena duces tecum has been served is knowingly misled into disclosing privileged or confidential information that the witness would not be required to reveal. By Mr. Genet serving the subpoena, the daycare’s records custodian went ahead and produced documents that she thought she had to per the subpoena. However, by telling her that she didn’t have to go to the deposition if the documents were produced prior to the deposition, she didn’t have to attend. In essence Mr. Genet has obtained an exclusive review of documents by this back door tactic that he used.