



COURT REPORTERS BOARD OF CALIFORNIA

2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
Fax (916) 263-3664 / www.courtreportersboard.ca.gov



Memorandum

Date: December 23, 2015
To: Certified Shorthand Reporters and Related Stakeholders
From: Court Reporters Board of California
Subject: Legal Opinion Regarding Southern California Stipulation

Background

California Code of Civil Procedure (CCP) provides 30 days for a deponent to review his/her deposition transcript. After this time, the deposition officer shall securely seal the transcript and transmit it to the noticing attorney, who shall protect it from loss, destruction, or tampering. When depositions are handled "per Code," the court reporter retains control over the original transcript from production through sealing and delivery to the noticing counsel and, therefore, can attest to its integrity.

In Southern California, there is a longstanding stipulation used by attorneys whereby they stipulate to relieve the court reporter of his/her duties under the CCP. The attorneys stipulate that the court reporter will send the original of the transcript to the witness or the witness' attorney, who agrees to notify opposing counsel of any changes within 30 days. Further, the attorneys stipulate that a certified copy may be used as if it were the original if for any reason the original is not available. While no one knows exactly when it began being used, the so-called Southern California stipulation or So. Cal stip has been in practice since at least 1976.

In the mid-1990s, the Court Reporters Board of California (Board) requested that staff counsel from the Department of Consumers Affairs Legal Office review the practice of the So. Cal stip. A memo was created in answer to the specific question related to the So. Cal stip, a topic that is before the Board again.

Board Decision

At its September 14, 1996 meeting, the Board voted to make public a July 31, 1996 legal opinion regarding the So. Cal stip. In researching the Board archives, it is not readily apparent that the legal opinion was ever published. In an effort to continue the Board's mission of protecting consumers, this oversight is now being corrected, and the legal opinion is as follows:

Memorandum to Certified Shorthand Reporters and Related Stakeholders

December 23, 2015

Page 2

To: RICHARD BLACK, Executive Officer, Court Reporters Board of California

From: Department of Consumer Affairs Legal Office

Date: July 31, 1996

Subject: Southern California Attorneys Stipulating to Waiving Certain Court Reporter Duties

This is in response to the Court Reporters Board of California's request for an opinion regarding the Southern California practice of attorneys stipulating to waive certain court reporter duties as found in the Code of Civil Procedure. (Unless otherwise indicated, all section references are to the Code of Civil Procedure.)

Question

If a court reporter does not adhere to a waiver of his or her duties by counsel at a deposition, can the board discipline that court reporter for unprofessional conduct?

Conclusion

The board can only discipline a court reporter if he or she is a party to the stipulation waiving his or her duties. If the court reporter is not a party to the stipulation, the board may not discipline the court reporter for his or her failure to follow the stipulation.

Analysis

The analysis provided in this memorandum is limited to the following facts. Apparently, it is common practice in Southern California for attorneys at the end of a deposition to stipulate on the record to waiving the court reporter's duties to retain custody of the transcript for review and correction of the original by the deponent. This practice in theory saves the attorneys from purchasing copies from the court reporter. Such copies are significantly higher than the costs of copying the transcript. To the best of my knowledge, Southern California judges have not objected to this practice.

Additionally, you have informed me that the above practice in Southern California does not take place in Northern California resulting in a substantial difference in practice between the north and south areas of the state.

Section 2025(q)(1) reads:

If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, **unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript testimony will be waived** or that the reading, correcting, and signing of a transcript of

Memorandum to Certified Shorthand Reporters and Related Stakeholders

December 23, 2015

Page 3

the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it... (Emphasis added.)

Section 2021 reads:

Unless the court orders otherwise, the parties may by written stipulation (a) provide that depositions may be taken before any person, at any time or place, on any notice, **any manner**, and when so taken may be used like other depositions, and (b) modify the procedures provided by this article for other methods of discovery. (Emphasis added.)

Section 2021 contains extremely broad language. Even though Section 2025(q)(1) uses the term "shall" it is not mandatory if another statute allows for exceptions. Section 2021 is a very broad exception to the general statutes governing the duties of court reporters.

Section 8025 of the Business and Professions Code reads in pertinent part:

A certificate issued under this chapter may be suspended or revoked, or certification may be denied, for one or more of the following causes: ... (c) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetency in practice, or unprofessional conduct.

"Unprofessional conduct" includes, but is not limited to, **acts contrary** to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and **any provision of law substantially related to the duties of a certified shorthand reporter**. (Emphasis added.)

As cited above, Section 2021 allows the parties to an action to stipulate to conduct the deposition "in any manner" as agreed upon. A court reporter is not a party to a lawsuit, however, if the court reporter is a party to the stipulation waiving his or her court reporting duties, it would constitute unprofessional conduct for him or her not to follow the stipulation. On the other hand, if the court reporter is not in agreement with the stipulation of the parties to waive his or her court reporter duties, the board cannot discipline the reporter. Section 2021 does not address whether or not the court reporter has a duty to follow the parties' stipulation. In absence of such language, the board would not be able to prove by clear and convincing evidence that the reporter acted contrary to a provision of law, a necessary element to a charge of unprofessional conduct.