

RECEIVED

OCT 16 2015

Dept of Consumer Affairs
Court Reporters Board of CCA

RICHARD L. MANFORD
Attorney at Law
California State Bar Number 051092
3081 SWALLOWS NEST DRIVE
SACRAMENTO CA 95833-9723
Telephone: 916.923.9333
Facsimile: 916.543.1613
E-Mail: dick.manford@gmail.com

BY HAND DELIVERY TO ADDRESSEES

16 October 2015

COPY

Toni O'Neill, Chair
Yvonne K. Fenner, Executive Officer
Court Reporters Board of California
2535 Capitol Oaks Drive, Suite 230
Sacramento CA 95833-2944

Re: Purported Stipulation Relieving Deposition CSR of Statutory Duties

Dear Ms. O'Neill and Ms. Fenner:

I write at the request and on behalf of the CA Court Reporters Association ("CCRA") concerning an issue which impacts the Board's mission "... to protect the public health, safety and welfare by ensuring the integrity of judicial records through oversight of the court reporting profession." CCRA believes that a current practice utilized at some depositions requires a statement of the Board's position regarding the issue.

The issue is whether CSRs reporting depositions can be relieved of certain statutorily-mandated duties through a stipulation by attending counsel to that effect. The principal statutory duty in question is set forth in Code of Civil Procedure Section 2025.530(a) which provides that

"... the deposition officer shall securely seal that [certified] transcript in an envelope or package endorsed with the title of the action and marked: 'Deposition of (here insert name of deponent),' and ***shall*** promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering." (Bold italics added.)

In some Southern California legal circles, this practice is referred to as "the usual stipulations" aka the Southern California Stipulation. I have had personal experience with this practice, both as a participant and as an objector. It works like this:

Typically at the conclusion of a deposition of a party opponent taken by noticing counsel, the practice includes either a simple statement on the record (assuming no objection) that “the usual stipulations” (although unspecified) will apply, or that attending counsel will stipulate on the record that the deposition reporter “shall be relieved” of her or his statutory duties, that the original transcript shall be delivered (unsealed) to the deponent’s counsel for the deponent’s review, etc., and that a certified copy of the transcript (likely that of noticing counsel who pays for transcription) may be substituted for use at trial in lieu of the original should it be damaged, lost or destroyed. CCRA is concerned that, were a deposition reporter to comply with such a stipulation by delivering the original transcript to non-noticing counsel prior to certification, s/he potentially exposes her or his license to Board discipline. The reasoning for this concern is explained below.

First, deposition reporters are to be independent. They cannot be financially interested in the action, or be related to or employed by a participating attorney or party. (Code Civ. Proc., § 2025.320(a).) Moreover, they are ministerial officers of the court in which the action is pending, subject to the court’s control in order to protect the administration of justice. (*Serrano v. Stefan Merli Plastering Co.* (2008) 162 Cal.App.4th 1014, 1035.) The obvious purpose of these statutory and case law provisions is to ensure the integrity of the judicial record deposition reporters create.

Second, Code of Civil Procedure Section 2016.030 does provide that, absent a court order otherwise, “. . . the parties may by written stipulation modify the procedures provided by this title [Civil Discovery Act] for any *method of discovery* permitted under Section 2019.010.” (Italics added.) The latter section specifies six discovery methods, e.g., interrogatories, depositions, document inspections, et al. Thus, under Section 2016.030, affected parties may, for examples, stipulate to a time longer or shorter than the statutory thirty days within which to respond to interrogatories (Code Civ. Proc., § 2030.260(a)), or stipulate to a time shorter than the statutory minimum of ten days advance notice for a deposition. (Code Civ. Proc., § 2025.270(a).) However, a purported stipulation “relieving” a deposition CSR of mandatory statutory duties regarding transcript certification and transmission does not appear to be a “method of discovery” subject to stipulated modification.

Third, given that a deposition CSR is independent, a ministerial officer of the court, and not a party to the action, authority exists for the proposition that s/he cannot be bound by the purported stipulation. A stipulation has limits both as to scope or subject matter

and who is bound by it. For example, a party may waive the benefit of a statute designed for his own protection (*Lesser v. McGerry & Company, Inc.* (1932) 121 Cal.App. 193, 195), but parties cannot by stipulation preclude a court from enforcing statutes designed to protect the public welfare or public policy. (*Wilson v. Wilson* (1873) 45 Cal. 399, 405; *Mary R. v. B. & R. Corporation* (1983) 149 Cal.App.3d 308, 316-17 [parties' stipulation and court order so based restricting BMQA's ability to investigate doctor for molestation of minor patient were invalid as contrary to public policy and preservation of integrity and efficiency of administration of justice].)

Additionally, persons who are not parties to an action (e.g., deposition CSRs) cannot be bound by a stipulation among parties to that action. (*Tanner v. Title Insurance and Trust Company* (1942) 20 Cal.2d 814, 821; *Nungaray v. Pleasant Valley Lima Bean Growers and Warehouse Association* (1956) 142 Cal.App.2d 653, 668 [plaintiff, not party to declaratory relief action separate from his negligence lawsuit against Association, not bound by stipulation among declaratory action counsel as to what plaintiff would testify if called as witness in declaratory action].)

Finally, there are some statutes imposing statutory duties on deposition CSRs that can be stipulated away because those statutes contain a mechanism for exemption from the otherwise mandatory duty. For examples:

- Deposition testimony shall be taken stenographically "unless the parties agree or the court orders otherwise." (Code Civ. Proc., §2025.330(b).);
- Stenographically-recorded deposition testimony shall be transcribed "unless the parties agree otherwise." (Code Civ. Proc., 2025.510(a).);
- Rules re CSR's notice of transcript availability, and re reading, correcting, and signing transcript or waiver thereof, "unless the deponent and the attending parties agree on the record" to other stated procedures. (Code Civ. Proc., § 2025.520(a).);
- Time for deponent to change form or substance of answer, and sign or not sign transcript "unless the attending parties and the deponent agree on the record or otherwise in writing." (Code Civ. Proc., § 2025.520(b).); and

Toni O'Neill, Chair
Yvonne K. Fenner, Executive Officer
Court Reporters Board of California
16 October 2015
Page 04

• Notice of availability for review of audio or video recording required where deposition testimony not stenographically transcribed “unless the deponent and all these parties agree on the record” to waive review. (Code Civ. Proc., § 2025.530(a).)

However, Section 2025.550(a) does not contain an “unless agree” provision. It unequivocally states that “. . . the deposition officer shall securely seal that [certified] transcript in an envelope or package . . . and shall promptly transmit it to the attorney for the party who noticed the deposition. . . .” Therefore, it appears that any agreement on the record, or even a written stipulation by the parties/lawyers, cannot dispense with the mandatory duty that Section 2025.550(a) imposes on the deposition CSR.

There is another statutory duty, applicable prior to the “transcript transmission” statute’s obligation, imposed on a deposition CSR that also does not contain an “unless agree” provision. Code of Civil Procedure Section 2025.540(a) provides that “[t]he deposition officer shall certify on the transcript of the deposition . . . that the . . . transcript . . . is a true record of the testimony given.” If the original deposition transcript is delivered to non-noticing counsel prior to review, correction, and/or signing, the deposition CSR will be unable to comply with the certification statute.

Because the transcript certification and transcript transmission duties appear incapable of being waived, stipulated away, or ignored, CCRA is concerned that a deposition CSR who transmits an original deposition transcript to anyone other than the noticing attorney, before the deponent’s reading/correction/signing or the stated time therefor passes, exposes her/his license to potential discipline by the Board. Therefore, with respect, CCRA requests that the Board announce a position on this matter in the next issue of CRB Today, and further publicize that position via its general email list to all Board licensees.

Respectfully yours,

Original Signed By:
Richard L. Manford

RICHARD L. MANFORD
Attorney at Law

cc: Brooke Ryan, President
California Court Reporters Association