

THE DEPOSITION REPORTER

Deposition Reporters Association OF CALIFORNIA, INC.



SUMMER
2008

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President's Message

Toni Pulone, President

In keeping with the theme introduced in my last newsletter message of using this opportunity to reach you all with what are hopefully useful reminders about codes and laws you may not be entirely familiar with, I thought it might be helpful in this issue to discuss some of the key differences in the procedures required by our California Code of Civil Procedure – the “CCP” from here on – as compared with the Federal Rules of Civil Procedure. Also, I should note that the Federal Rules were just amended and reorganized to some extent in December of 2007, and while the sections I refer to here have not been significantly modified in terms of content or instruction, they have been reworded and reshuffled a bit, apparently to make the language clearer

and more understandable, and the reorganization has changed some of the subsection numbering.

Probably the most critical distinction between the requirements of the CCP and Federal Rules, as far as our obligations as deposition officers are concerned, is the fact that a deponent in a Federally-venued case is not automatically given the opportunity to review and correct his/her original transcript as the deponent is in a California-venued case. I realize this has been discussed as a topic in a Depo Diplomat article in the past, not to mention in DRA seminars, but because this is an important point that many depo reporters may not be familiar with, I think it's worth revisiting. And for those reporters who have always worked in Southern California, where your originals are likely to be stipulated away, you may not still be acquainted with the witness-review procedures required by the CCP, if the attorneys' stipulation generally directs you to skip that procedure.

To review the language in the CCP regarding the witness' right to review the original transcript, we refer to Section 2025.520(a):



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2025.520. (a) 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 of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), 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.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

By comparison, Federal Rule 30(e) does not automatically provide the witness this review but requires that such review be requested, as follows:

(e) Review by the Witness; Changes.

(1) Review; Statement of Changes.

On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by [Rule 30\(f\)](#) (1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

Now I will say here that I generally interpret the "on request" rather broadly, meaning that if an attorney includes in the admonitions any reference to the witness reviewing the transcript, or if there's any suggestion during the depo that the witness might add missing information later, that those comments could constitute a request for review. If, however, you determine that there has been no such request, either directly or indirectly, then much like the CCP requirement, you securely seal the original transcript and promptly send it to the attorney who took the depo for his/her storage and safekeeping.

Another section in the 12/07 revision of the Federal Rules regarding reporter procedure that has been reordered and modified slightly is what is now Rule 30 (b) (4), which was previously (b) (7), and allows for a depo to be taken telephonically or otherwise remotely:

(4) By Remote Means.

The parties may stipulate — or the court may on motion order — that a deposition be taken by telephone or other remote means. For the purpose of this rule and [Rules 28\(a\)](#), [37\(a\)](#) (2), and [37\(b\)](#) (1), the deposition takes place where the deponent answers the questions.

I think what's particularly interesting about this language is that it clearly specifies that the depo location is wherever the witness is, and that's a question that isn't clearly answered by our CCP in the section that allows for remote or telephonic depositions. Also, unlike our CCP 2025.310(b), this language allows for any deposition to be taken remotely and does not require that a party witness appear in person and be in the presence of the deposition officer.

One more point of distinction between the CCP and Federal Rules that I'd like to call to your attention is one that I suspect is little known to most depo reporters, and that is the procedure required by Federal Rule 30(b) (5), which previously appeared as Subsection (b) (4), and which

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requires that the deposition begin with a statement on the record by the depo officer or reporter as follows:

(5) Officer's Duties.

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under [Rule 28](#). The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

It's my guess that very few reporters are aware of this provision and make any such verbal statement at the start of every Federal-case depo; I have to say that I never did. However, it has been suggested to me that for the reporter to include all of the above information at the beginning of the transcript, for instance on the cover and appearance pages, would satisfy this requirement to begin the depo with this on-the-record statement, and I agree that including that could meet the letter of this law. I would just point out that reporters do need to remember to include this information in either an oral statement at the outset of the depo or as part of the written record in the initial pages of the transcript.

If you'd like to read through the entire Rule 30 of the Federal Rules, you can find the complete section at Cornell University's website at:

www.law.cornell.edu/rules/fcrp/Rule30.htm.



Wendy's World

Wendy Corcoran, Newsletter Editor



Welcome

to DRA's first online newsletter.

We are going green! Because of this, we have increased the online editions to four times a year instead of the current three, so please expect them January, April, July and October. We welcome input, so if you have ideas, please email or fax them to me.

There are several hot issues this month, the most important being DRA's consideration by NCRA for affiliation status. I truly hope that all of our members who belong to NCRA make their vote count – either by attending the meeting or by voting online. You can find all of the information you need in the “Whether in Person . . .” article on page 8. I hope to see you at NCRA's convention July 24th at Disneyland.

Please also note the mentor/mentee application. We are in need, and it is such a valuable way to give and receive in our profession.

It is with great sadness that we mark the passing of John Zandonella. Please read our “In Memoriam” in our next edition. He will be greatly missed in both the legal community and court reporting profession.

Best wishes to everyone for a fun-filled summer.



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Whether in person, or on the Web

JOIN US AND VOTE ON JULY 24th

DRA is advocating an NCRA bylaws amendment in order to have the opportunity to be considered an affiliate. This amendment will be discussed and voted on at the NCRA annual business meeting in Anaheim on July 24th.

DRA is seeking inclusion for our NCRA members who have chosen DRA to represent them in their state and who wish that representation to be extended to the national arena. There is no avenue to do so without a bylaws amendment.

If you are an NCRA member, please join us in Anaheim on July 24th at the annual business meeting from 10:30 to 1:00 and vote to support our proposed NCRA bylaws amendment.

If you are an NCRA member who cannot make it to Anaheim and would like to view the video feed and/or vote, you can do so via the Web. By July 15th, verify NCRA

has a current email address for you. You can do this by going to www.ncraonline.org. Look for the "View/Edit Member Information" comment in the left-hand column or call Member Services at (800) 272-6272. Approximately one week prior to the business meeting, eligible voting members will be sent an email with a user ID and unique PIN. These members will be able to sign on to the secure website, review the transcript and video feed for the meeting and vote, during a 12-hour voting period, through a private, secure link. Results will be verified by a third party.

DRA has hundreds of NCRA members. Wouldn't it be nice to have DRA included, recognized and able to fully participate on their behalf at the national level? With your vote of support, DRA can reach that goal.

THANK YOU FOR YOUR CONSIDERATION.



Voting Members

As provided in Article XVII, Section 1, of the NCRA Constitution and Bylaws, the undersigned NCRA members request the following amendment be presented to the membership at the next annual meeting:

Amend Article XVI, Section 3(c) to read: (Added language underlined and in bold type.)

"Only one affiliated unit ~~shall~~ **may** be recognized from any one state, **with the exception of states wherein the number of NCRA members exceeds ten percent (10%) of total NCRA membership.**"

RATIONALE:

California has approximately 3800 NCRA members, more than twice the membership of any other state and more than ten times that of over half the states in the country; however, fewer than a third of them belong to the single recognized California affiliate.

The purpose of this amendment is to allow those members the opportunity to have their chosen state association represent their interests on a national level. It is about bringing new ideas and input to the table and having the opportunity to participate in charting the course of our profession. It is about fairness in securing for their state association the same affiliate benefits their NCRA dues are helping to finance for all state associations nationwide.

This amendment is based on a belief that geographic boundaries alone should not prevent consideration of large, dynamic state associations being included as a partner with NCRA, equal to other state associations around the country. The proposed change from "shall" to "may" is intentional, to give the NCRA Board discretion to decide which, if any, additional state association(s) will be offered the opportunity to affiliate. The language does not guarantee affiliation; it just unlocks the door for the chance to be invited in.

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Voting Members
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This amendment is about enhancing NCRA, not about taking anything away from existing affiliates. It is about including fellow NCRA supporters, a change which would

strengthen NCRA rather than dilute it. The undersigned 168 members from eight states hope you will see it in the same light and vote in favor of this amendment.

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**This letter to the Editor was submitted by long-term DRA members
Mary Bardellini, Lynda Goddard, Rosalie Kramm, Lisa Michaels, Holly Moose,
Antonia Pulone, Christine Randall & Katherine Wayne.**

Dear Editor:

With regard to the proposed NCRA affiliate bylaws amendment discussed in previous newsletter issues, we wish to offer our reasons for supporting DRA's decision to seek this amendment on behalf of its members.

DRA represents over 500 NCRA members, vastly more than a majority of other states. We believe these members deserve to be heard through DRA, to participate in the direction of NCRA, and to be guaranteed the benefits granted to state affiliates, which are financed, in part, by the NCRA dues they contribute to our national association.

Recently NCRA unveiled its Member Value Proposition (MVP), applying the Blue Ocean strategy. There has been speculation by some that NCRA might be heading in the direction of an all-inclusive association, which would mean representing the interests of both stenographic reporters and our competitors, those using nonstenographic means, with the same dues dollars. Obviously, we would not support that direction and believe that would create a conflict of interest.

One viewpoint is that DRA should sit back and wait for stenographic members to "rise up" against the MVP. If it truly is the threat that some see it as, it seems logical that a concerted voice of members represented by a large state association would have more impact than individual NCRA members.

An undisputed fact is that NCRA's membership and revenues are declining. Another fact is that many DRA members have not renewed their membership in NCRA. There are various reasons, one of which is that they do not want to support a national association that cannot, under the current bylaws, accept their chosen state association as a recognized affiliate, when their dues are subsidizing the benefits enjoyed by other recognized affiliate associations both within and outside of California.

Unfortunately, NCRA leadership cannot offer DRA affiliate status without a bylaws change approved by two thirds of the membership voting at the annual business meeting. Voting against the proposed bylaws amendment, in our opinion, perpetrates the "Catch-22" and downward spiral of NCRA membership. It is hard for us to see where that is helpful to the profession as a whole.

Many of us are concerned about the shift in our field toward electronic recording and alternate forms of capturing the record which are perceived to be cheaper than the stenographic means. Those trends are happening in other areas of the country. California reporters need to be aware of what is occurring in the nation and need to support other states in fighting these trends, through offering our ideas and experiences. Without that, those trends may soon be at our borders. An effective means of accomplishing this is through interaction in our national forum, NCRA.

In closing, we recognize there are some DRA members who see little value in NCRA, but there are many who do and who choose to belong to National. These fellow reporters are requesting the opportunity to have a consolidated voice as an NCRA affiliate, which requires no fee.

We wholeheartedly support the effort to allow DRA to advocate stenographic reporting and to be part of shaping the future of the profession on a nationwide scale.

Respectfully,

Mary Bardellini	Holly Moose
Lynda Goddard	Antonia Pulone
Rosalie Kramm	Christine Randall
Lisa Michaels	Katherine Wayne



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Toni Pulone's Depo Diplomat

Dear Depo Diplomat:

I have a quick question for you. I don't have a current copy of the Code of Civil Procedure, and an attorney I was working with the other day said that he thinks the Code is different for expert witnesses as far as turnaround time on transcripts and reading and signing, I guess because the experts are usually taken too close to trial to give them thirty days to review their transcripts. Do you know anything about that?

Dear Reporter:

The answer to this attorney's question is no, there is no special language in the Code of Civil Procedure re the reading and signing of the original as regards expert witnesses. Actually, as for the turnaround on transcript preparation that he mentioned, there is no language in the Code at all about specifically how quickly a transcript must be produced of any depo, expert witness or otherwise. But the same 30 days, plus the additional five days for mailing as always applies, for a witness to review, correct and sign a depo transcript is true for expert witnesses just as all other witnesses. Now I don't mean to imply that the Code says anything about expert depositions in this regard; it's just that

there is no other or special provision given for experts.

I understand that this attorney might wonder if there is a special provision for these expert depositions, since they are most often taken less than 30 days from the trial date, as he says, but the Code doesn't take that into account. For that reason, it would be advisable for reporters to always check on trial dates, especially when taking expert depositions, because if there is a trial date approaching soon which would make the standard 30-day review period impractical, then the reporter could perhaps clarify with the attorneys at the depo if they wish to shorten the review time or ask the witness if he/she elects to waive signature, or find out how they want to proceed since there's not sufficient time to follow the usual witness notification procedure and retention of the original by the reporter.

And, by the way, there is a fair amount of instruction in the CCP re the noticing of expert depositions, sharing of expert info, naming experts, et cetera, but no special mention of expert depositions re the reading and signing of originals.



Deadbeat Judgments

As a service to our members, DRA will continue to publish in our newsletter and on our website any final, formal court judgments in connection with court reporting services, whether obtained against an attorney, law firm, court reporting firm, or any other person or entity. If you are aware of any judgments within the last two-year time period, fax us the paperwork or email us the attached documents or a link to *LexisNexis*, and we will publish it. Here is what we have received so far:

BAY AREA COURT REPORTERS

v.

BRIAN Y.K. CHING, ESQ.

Case No. FS06260423, Alameda County, CA
Judgment date: 4/26/06, **\$454.00 + court costs**

MALIBU COURT REPORTERS

v.

RICHARD L. KNICKERBOCKER LAW

Case No. SM 07A01249, Santa Monica, CA
Judgment date: 7/6/07, **\$4003.41 + court costs**

VIDEO INSTANTER

v.

BESCR INC./EASTWOOD-STEIN

Case No. 2007-MI-156243, Cook County, IL
Judgment date: 7/20/07, **\$3,611.30**

ABRAMS, MAH & KAHN REPORTING SERVICES

v.

MIGUEL LORENZO INUMERABLE

Case no. 30-2007-00013442-SC-SC-HNB,
Orange County, CA
Judgment date: 8/20/07, **\$3,150.54**

ABRAMS, MAH & KAHN REPORTING SERVICES

v.

RAUL B. GARCIA

Case no. 30-2007-00013437-SC-SC-HNB,
Orange County, CA
Judgment date: 8/20/07, **\$439.00**

PRIME LASALLE

v.

BESCR INC/Elizabeth Eastwood, et al.

Case No. 2007-MI-718893, Cook County, Illinois
Judgment date: 9/17/07, **\$467,780.77**

STEPHANIE L. McMURTRIE

v.

MAXIMILIAN J.B. HOPKINS

Case No. 173170, Sonoma County, CA
Judgment date: 11/9/07, **\$450.60 + court costs**



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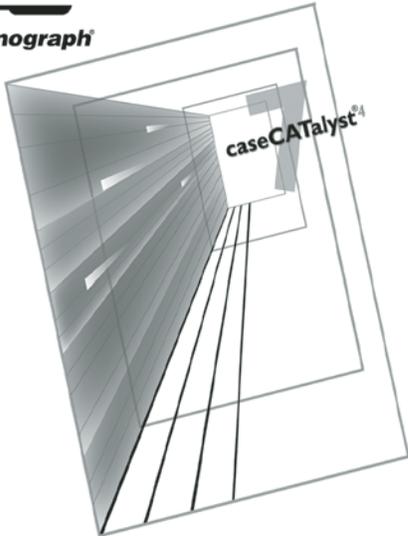
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Calendar of Events

- July 24-27 NCRA Anaheim Convention (Please vote)
- Sept. 18-20..... Stenocat Users Group Fall Conference
- Sept. 27 Stenovations Digitalcat Users Group – Sunnyvale
- Feb. 20-22, 2009 DRA 13th Annual Convention – Newport Beach

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Information packets are being sent to the court reporting schools in California. See your school director. You may also access the information from our Website at www.caldra.org or e-mail us at cal_dra@yahoo.com.



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Our Message About ER is Loud and Clear

On June 12th COCRA and CCRA asked for The Deposition Reporters Association's help with contacting our Senate Representatives in Sacramento to urge their NO vote on the Senate's ER expansion proposal. DRA got the word out immediately.

Within one day, both Senators' offices responded that our message had been received LOUD and CLEAR and to please stop the calls!! This was grassroots at its best. We appreciate all of you who took the time to call and register

your concern and opposition to ER expansion. DRA will continue to protect our profession by joining in the fight against ER through every available means.

Stay tuned for further information on how YOU can help.



Mentors & Mentees

In 2007 DRA launched its Mentor Program. Our Mentor Coordinator, Casey Dechter, very carefully geared it for success by creating specific criteria which would enable us to find good matches. One such criterion is that both mentor and mentee be located in the same geographical area, for ease of communication and for familiarity with local practices.

Although we have several successful matches so far, we have an additional four seasoned reporters who have generously offered to share their valuable time and experience with a student or a new reporter in need, and we have four students or new reporters who have asked for help, *but tragically they are in opposite ends of the state!*

Won't you help us establish successful matches for these participants? We are looking for a CSR mentor from area codes 714, 805, 310 and 951 to come to the aid of the mentees in those areas who are waiting for a match, and for

a student/new reporter mentee from area codes 818, 650, 916 and 925 to be matched with the experienced CSR mentors in those areas who are waiting to help them.

If you know of any 200-level students or new reporters who could use the guidance of a veteran reporter who's been through it all before, or of any experienced CSRs who are willing to share their wisdom and support, please encourage them to contact our Mentor Coordinator at caseydechter@hotmail.com; (949) 233-0606

The more mentors and mentees we can get on board, the more success our program will have and the better off our profession will be! THANK YOU FOR YOUR EFFORTS TO CONTRIBUTE!



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A. May I give an example of this?

Q. Sure.

A. Okay. If you look – And the example is this. Our brains are a miracle. Okay. They're a miracle that needs to be protected. And if you look at the court reporter right now, as an example, okay, this is a miracle in progress happening right before your eyes.

Let me just explain what she needs to do. I am speaking, so the information has to come in through her ear into her temporal lobe, and it has to go log itself into the language center. She has to be able to comprehend what I'm saying. Then it has to get rerouted to the prefrontal cortex where it has to hold – she has to be able to hold the information, because, you know, I continuously talk so she has to hold it. Right? Then she has to analyze it, integrate it and synthesize it. Then it has to go back to the cerebellum and she has to be able to execute this,

and she has to be able to then convert my words into those little squiggly marks. Have you ever seen court reporters have little squiggly language things?

So she has to convert it into a different language, and the white matter tracks allows her to reroute all of this information simultaneously without effort. Okay.

We take our brains for granted. She's sitting here. I'm probably talking too fast for her, but she's able to do this simultaneously. Seamlessly. Okay.

No animal on the planet can do this. All right. That's why I believe court reporters will never be replaced. Because no technical – no technology could replace the beauty of that brain and the miracle of that brain. And that's why your brain should always be protected and you should take care with it.



“Reasonable Fees” Case may go to Supreme Court

DRA has just learned of an update in the Serrano/Coast Reporters matter involving expedited fees for copies of deposition transcripts.

By way of a brief review, the Serranos filed an application with the Trial Court for an order requiring *Coast Reporters* to provide them with copies of deposition transcripts without expedited service fees, once the noticing party had ordered these transcripts expedited. The Trial Court, although it expressed sympathy with the Serranos, denied them relief, citing a lack of authority, and ordered them to pay the full amount charged by *Coast*.

The Serranos appealed the Trial Court's ruling. The Court of Appeal concluded, because of the Code of Civil

Procedure and the inherent authority of the Court to control its ministerial officers and other persons connected with a judicial proceeding, that the Court does have the authority to “require a deposition reporter to provide a copy of a deposition transcript to a non-noticing party in a pending action for a reasonable fee which, in the absence of an agreement between the interested parties, may be set by the court upon a proper evidentiary showing.”

The Court of Appeal further concluded that a reasonable fee for a copy of the transcript would not include any amount that compensates the deposition reporter for the cost to expedite the transcription, citing CCP 2025.510, “The cost of transcription must be borne by the party

cont'd on page 19

Reasonable Fees Case
cont'd from page 18

noticing the deposition, unless the court on motion and for good cause orders otherwise,” and it reversed the Trial Court’s order.

Coast then filed a petition for rehearing, which the Court of Appeal denied. DRA has just learned that *Coast*

will now petition the Supreme Court to review the case and hopefully reverse the decision of the Court of Appeal.

DRA will continue its efforts to support *Coast Reporters* in this matter via a letter to the Supreme Court and through any other available means. Stay tuned!



WE NEED YOU ALL VOTE "YES" ON JULY 24th



From the Desk of Vicki Squires, Executive Director

I would like to take this opportunity to thank you and to also ask for your help. I was a freelance reporter for 18 years before I developed problems in my wrists that eventually led to surgery and the necessity to go into another profession. The pain was more than physical; I really missed reporting. Thank you for the opportunity to once again be involved in this profession. I would also like to thank each of you for belonging to DRA. Your profession has threats to address, such threats as gift-giving loopholes and alternative means of making the record. It

is expensive and time consuming to fight these threats and it would not be possible without your support.

Now I would like to ask for your help. If you know a reporter who does not belong to DRA, please explain how important it is that they join. Explain the threats, explain how to battle the threats, and ask them why they are not part of that battle, why they feel *you* should fight for them.



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