

# Deposition Stipulations or Do You Know What You're Giving Up?

**By Bill Daniels**

35 Advocate 28 (July 2008)

I was speeding through my standard post-deposition stipulation one day four or five years back, relieving the court reporter of her duties under the Code, etc., when the defense lawyer chimed in with a slight modification.

"I'll only agree to relieve the court reporter of her obligation to maintain the original," he said, "otherwise, so agreed."

Once we were off the record, he told me in a friendly manner, "I don't think you know what you're agreeing to when you relieve the court reporters of *a//* their duties under the Code (or the FRCP, if you're in federal court). They've got all kinds of obligations, being officers of the Court and all that."

The court reporter nodded in agreement and I made a mental note to look into what he was saying at the earliest opportunity. I immediately modified my standard stip, which seemed like a good idea. But it took me until today to really poke around and see what a court reporter's Code-given duties truly entail. Typical plaintiff lawyer, huh?

Court reporters are referred to as "deposition officers" in the Code of Civil Procedure, where the various rules and regulations governing depositions start at section 2025.010.

The Code is rife with duties and obligations a court reporter must follow in carrying out their sacred task of capturing, transcribing and preserving testimony. It covers things like potential conflicts of interest (sec. 2025.320(a) "the officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of the parties, or of any of the parties."), swearing the witness (sec. 2025.330(a) "The deposition officer shall put the deponent under oath or affirmation.") and offering any available additional services to all parties in an evenhanded manner (sec. 2025.340(d) "All services and products offered or provided shall be made available at the same time to all parties or their attorneys.")

While the court reporters I've worked with in the past have been by and large, excellent, professionals, section 2025.460(b) recognizes that some might fall below the standard and puts the burden of policing renegades on the attorneys.

Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, [or] to the conduct of a . . . deposition officer . . .

Section 2025.510(a) commands that all deposition testimony recorded by stenographic means must be transcribed, unless the parties agree otherwise. In other words, if you

stipulate to relieve the court reporter of all Code-imposed duties, then he or she is free to pick and choose what, if any, testimony winds up in the transcript.

Sec. 2025.510(c) provides that any party can buy a copy of the transcript, even if the opposing party hired the court reporter. Definitely don't want to waive that one. Sec. 2025.510(e) requires reporters to hold onto their notes for not less than one year where there is a transcript and not less than eight years where there is no transcript. That's the kind of safety net I'd just as soon keep in place as well.

Section 2025.520 covers the all important reading, correcting and signing of the deposition transcript, which is usually covered in the standard stipulation, so no big deal there. Section 2025.550(a) and (b) cover custody of the original after it is certified by the court reporter, including the duty of the attorney to maintain custody until six months after the final disposition of the action, just in case you didn't know that one.

So, with this wealth of knowledge in mind, I offer the following stipulation:

"That we relieve the court reporter of her (or his) obligation to maintain the original under the Code (or the federal rules). That the original transcript be delivered to the witness' counsel for delivery to the witness and that within 30 days after counsel receives that transcript, she deliver it to the witness for correction and signature of under penalty of perjury and advise all parties in this case as to any changes made and whether or not the transcript is signed. In the event the transcript is not signed under penalty of perjury, or the time constraints aren't met, or the original is not available for any reason, then an unsigned, certified copy shall have the same force and effect as a signed original for any purpose."

So stipulated.

\*\*\*

**Bill Daniels** regularly publishes a variety of articles and videos to keep you abreast of legal developments and case law that affect our society.

**For additional reading and learning:**

[Whole Brained Law](#). We are moving from the Information Age to the Conceptual Age.

[Five Fatal Bad Faith Mistakes and How To Avoid Them](#). The law right now is probably as favorable for carriers as it's been in several generations

These previous and other articles/videos can be found in the Learning Center section of [www.BillDanielsLaw.com](http://www.BillDanielsLaw.com)

William A. Daniels is a Trial Attorney with BILL DANIELS | LAW OFFICES, APC, in Encino, CA. His practice focuses on class actions, employment and serious personal injury cases. A graduate of Loyola Law School of Los Angeles, he is a member of the Consumer Attorney Association of Los Angeles Board of governors and a founding member of the Civil Justice Program and the 21<sup>st</sup> Century Trial School at Loyola. For several consecutive years he has been named a "Super Lawyer" Los Angeles Magazine in Southern California. He can be reached at [William.Daniels@BillDanielsLaw.com](mailto:William.Daniels@BillDanielsLaw.com); [www.BillDanielsLaw.com](http://www.BillDanielsLaw.com)