

Blog #7:

Attorneys – What to do with the original in California?

California is a huge state, and when it comes to Northern California and Southern California, the state becomes even more huge. The California Code of Civil Procedure Section 2025 is interpreted by Northern California reporters in a much different manner than Southern California reporters.

Northern California reporters believe that the original cannot be stipulated away by law. Southern California reporters allow the original to be stipulated away for 98% of the depositions. Who is right? Who is wrong? What does that mean to attorneys when it comes to the bottom line - \$\$\$\$?

I would suggest that anyone reading this blog and wants to know the language of the law to Google CCP 2025 and read.

But for people who want to know what is happening in the real world, here we go.

Southern California: Typically, at the end of a deposition an attorney will say, “Usual stipulations?” The other side will say, “Sure.” Then it is up to the reporter to say, “And what are the ‘usual stipulations’ in your world?”

Everyone will usually go off the record to come up with some time frames and who gets what. Then the attorneys go back on the record and state something like this, “We stipulate to relieve the court reporter of her duties under the Code. The witness may sign the transcript under penalty of perjury rather than going to the reporter’s office and having to sign it before a notary. The original will go to the witness’ attorney who will have 30 days to get the transcript read and signed, and then the original will be lodged with the witness’ attorney. The witness’ attorney will provide the original upon request for any hearing or trial. If the original is lost or destroyed, a certified copy may be used in lieu of the original. Is that stipulated?” The other counsel all agree, “So stipulated.”

What does that mean exactly? Number one, many younger attorneys think this is something they have to do by law, relieve the reporter of her duties. Number two, the notary thing doesn’t apply in California any longer, but attorneys don’t realize it and put it in the stip anyway. Number three, many times the witness’ attorney will take the original transcript, tear it apart, copy it, and never buy a certified copy. Tearing apart an original has destroyed the integrity of the original – but it is common practice that happens every day. Some attorneys who receive the original then call the court reporting agency who produced the original and ask for the ASCII insisting they have a right to it since they received the hard copy original or they want the original re-bound, blah, blah, blah.

What else does this mean? This means that attorneys are helping to finance their opponent’s lawsuits. If an attorney goes by CCP 2025, it creates the situation in which

the other party's counsel needs to buy a copy or have the witness go to the reporter's office to read/sign the transcript. Otherwise, one side is paying for all of the transcripts, and the other side is tearing apart originals to create copies.

Northern California: Reporting firms/reporters don't allow the stipulation away of the original. The reporter many times doesn't want to get into a verbal disagreement with counsel and will just sit there, write down the stipulation, and not say anything. Then the firm that that reporter works for will either (a) keep the original in-house and write the standard go by code CCP letter, ignoring the stipulation; or (b) send out the original to the witness' attorney and charge the noticing attorney for an extra copy without saying anything at the deposition. (This practice also happens in other states around the U.S.)

Attorneys Be Warned: If you travel to Northern California or any other state, if you take a deposition geographically anywhere in the USA other than Southern California, your stipulation is probably going to cost you money. It is going to cost you the price of a certified copy. Going by the California Code of Civil Procedure

Is this fair? Is this a good business practice for court reporting firms to implement this? That is not for me to espouse to. This is the way it is.

Therefore, I suggest that noticing attorneys coming out of Southern California go by the California Code of Civil Procedure when it comes to handling the original transcript. There is a provision in the Code which allows a witness to read a certified copy and to send to the reporter any changes he/she wishes to make via certified letter.

Southern California is the only place in all the United States of America where the "California stip" is used. Everywhere else the attorneys and reporters don't know what you are talking about, and you might be charged lots of \$\$\$\$\$\$\$ for saying, "Let's relieve the court reporter of her duties under the Code..."

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