

Procedural Frequently Asked Questions

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Q. I am currently covering a gang-related murder trial. Some of the testimony is being spoken in Spanish, with witnesses using sentences as well as single words. Am I required to record statements phonetically and research the spelling, or should I use a parenthetical (i.e., speaking in Spanish)?

A. CCP Section 185(a) says, in pertinent part: “Every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.”

This covers depositions as well as court proceedings, since a deposition is a judicial proceeding. In court it is incumbent upon the judge to require everyone to speak in English or provide interpreters so that the record may be captured in English. If a judge fails to follow through on this, the CSR should offer a gentle reminder. In a deposition, the court reporter should clearly inform all parties present that he or she will only be capturing testimony spoken in English.

In the event that Spanish is spoken intermittently, the following simple parentheticals may be used to produce the transcript for proceedings.

Q: Did you see the gun?

A: No. Carlos (speaks in Spanish). I told you.

Q: Did you speak to an investigator from my office?

A: (Speaks in Spanish)

It would be inappropriate for the court reporter, even if he or she spoke Spanish and understood what was said, to act as an interpreter and report the English equivalent or to report the Spanish phonetically and get someone else to translate it later. In the case of more exotic foreign languages, the court reporter may not know what language is being spoken. If this occurs, the following parenthetical may be used: (speaks in a foreign language).

Q. Yesterday I prepared readback for the jury, crossing out sustained questions and answers as well as colloquy of overruled objections. A disagreement arose with one of the attorneys regarding sustained objections. The attorney’s position was that sustained questions and answers should still be read back absent a motion to strike. The jury ended up reaching a verdict while the discussion took place, but I’m still curious as to what correct protocol is in this instance.

A. Reading back only questions and answers to which there was not a sustained objection is correct. Questions and answers which are the subject of a sustained objection, whether or not a motion to strike is granted, are never to be read back to a jury. When a judge sustains an objection, he or she is ruling that the question or answer is legally improper and may not be considered by the jury. Therefore, jurors are not entitled to hear it again during readback.

Q. Is the handling and delivery of a judgment debtor's examination the same as any other deposition? If there is no stipulation, does it go by Code?

A. A judgment debtor's examination is treated like any other court proceeding, even though they are often conducted outside the courtroom. While they usually start out in open court, where the case is called, the judgment debtor is typically placed under oath by the clerk, and then the judge sends the group to a nearby room to conduct the examination. A court reporter is not always present, but may be. If the examination goes smoothly, the parties most often leave without checking back in with the judge. However, if the judgment debtor refuses to answer questions or didn't bring the document requested, they will return to open court for the judge's intervention. Again, any transcript produced is treated like any other court transcript, with no right to read and correct, and no sealing of the original.

Q. What code states that both attorneys have the right to have the court reporter read back? I reported a deposition recently where counsel would not allow the opposing counsel to request readback.

A. There is nothing in the code that addresses readback. Opposing counsel states the objection, and then the deposition proceeds subject to the objection per the code. California Code of Civil Procedure (CCP) 2025.460(b) reads: "Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under Sections 2025.420 and 2025.470, the deposition shall proceed subject to the objection." So, although it would be civil and polite to allow readback, CCP 2025.470 is widely interpreted to mean that everyone involved must agree to go off record or the reporter must stay on the record. By extension, as long as one person keeps talking and refuses to go off the record, readback cannot take place.

Q. I'm an attorney with a question. I recently had a deposition in which a court reporter hired by my opposing counsel routinely inserted the following at breaks (eight times):

"(A discussion was held between the witness and his attorneys out of the deposition room.)" My concern is that this insertion is being made by a court reporter, during a break that should be off the record, and the court reporter has no idea what is occurring outside the deposition room because the court reporter is not there and cannot possibly have known whether a discussion was held or not. In this particular instance, the client is diabetic, and on some of the breaks, the client needed to eat a very small snack. It seems completely inappropriate for a court reporter to place in the record information that is not in the record that indicates behavior that may not have taken place. Is this an appropriate parenthetical for a court reporter to use?

A. It is not. As you correctly noted, unless the court reporter was outside of the deposition room and observed the discussion, he or she could not possibly know that such a discussion occurred. Even if the discussion was observed, because it took place outside of the deposition room, it is inappropriate for the court reporter to insert such an observation into the deposition transcript.

Parentheticals are to be used only when necessary to clarify the record. Court reporters should keep in mind they are there to preserve the spoken record. It is up to counsel to note on the record anything they believe is important to the litigation. The court reporter should avoid parentheticals describing demeanor or behavior except in cases where it is absolutely necessary for clarification of the record. Parentheticals should be brief and show no interpretation by the court reporter. If an attorney wants a record of what is happening beyond the spoken word, he or she has the option of hiring a videographer or making whatever statement he or she wishes in an effort to demonstrate what has been observed.

Q. I reported a deposition of a plaintiff who was a minor child, suing through her guardian ad litem. The questioning attorney advised the witness she would be referred to as Minor A and not by name. However, at one point the attorney mentioned the plaintiff by name. Plaintiff's attorney immediately jumped in and said it should be redacted from the record. Although defense counsel agreed, I mentioned that I cannot redact the record. Plaintiff's attorney explained that he had an order from the court which would authorize me to redact the minor's name. Although everyone agrees to the redaction, I'm just not comfortable. Will I be placing my license in jeopardy if I comply with their request?

A. You are to be commended for your dedication to preserving the integrity of the record, but in this particular case and in light of the court order, you must change the minor's name to Minor A. Minors are very broadly protected under the law, as was probably explained in the court order of confidentiality. It's always a good idea to put any stipulation on the record to avoid questions after the fact.

Q. I have recently been hired as an official, and I have had a non-party request a copy of some transcripts, one of a civil matter, another a criminal case (not juvenile). I have looked everywhere, but can't find anything about whether I am allowed to sell transcripts to non-parties. Can you help?

A. Unless there is a court order otherwise, court transcripts are public records and may be sold to non-parties.

Q. The CRB letter of May 14, 2012, that is on the Internet only addresses transcript fees (Government Code sections 69950 - 69954). Government Code section 69948 addresses court reporter fees of \$55.00 per day. Why was that omitted from the discussion in your May 14th letter?

A. The court reporter fees set out in Government Code section 69948 are what the court charges as part of a cost recovery program and apply only to court reporters that are hired for and paid by the court. The amount that a privately-hired court reporter may charge for an appearance fee to work in court is not set in statute, unlike the transcript rates which apply to every court proceeding.

Q. I understand that the transcript rates set out in Government Code section 69950 apply to court proceedings, but as a freelancer I cannot make it on these rates, paying my own insurance and overhead. To solve this problem I enter into an agreement with the attorneys ahead of time, agreeing to a different rate. Am I correct that as long as everyone agrees beforehand, I'm covered?

A. Unfortunately, no. You cannot make an agreement that is outside the law, even more so when it affects a third-party, in this case the litigant. For example, consider a situation in which a litigant fires his attorney and complains to the Board that he/she did not agree to such an arrangement and was overcharged for the transcript. While the Board investigates and considers each complaint individually, based solely on those facts, the Board would require the court reporter to refund all but the statutory rate.

Q. I recently completed a transcript for a litigant who applied for funds from the Transcript Reimbursement Fund. The Court Reporters Board denied payment on the expedite fees on the copies. When I reported the job, all counsel present asked for their transcripts on an expedited basis, so why is this charge being denied?

A. The Board considers such a practice "double dipping" and as such would be a violation of CCR 2470(b), a violation of any rule or code provision specifically governing shorthand reporting. An unreasonable fee would be anything that violates CCP section 2025.510. On these facts, 2025.510 (b) and (c) provides that the noticing party bears the cost of transcription unless otherwise ordered by the court, and all others get to purchase a copy. Section 2025.510(c) starts off with "notwithstanding 2025.320", this means that the reporter is relieved of treating all parties the same way related to the cost of transcription. The expedite fee is a fee added to the cost of transcription for its early production and delivery. It is a one-time charge, and to charge twice would be unreasonable.

Q. I'm a freelance reporter who is having trouble collecting from one of the agencies I work for. I no longer take work from this agency, but recently I received a back order. I have informed the agency that I won't be producing the transcript until the outstanding invoices are paid, but the agency told me I'd be in trouble with the Board if I did that. Is that true?

A. The Board does not endorse your position. The CRB was formed by the Legislature to help ensure consumer protection. The litigant who is waiting for his or her transcript had nothing to do with your decision to accept work for this agency or any other, nor do they have anything to do with the agency's decision to pay, or not pay, you. The litigant requested a court reporter, one was provided, and the litigant is entitled to his or her transcript, notwithstanding the history you and the agency might have.

You have other avenues available to you for solving the problem of outstanding invoices, including hiring a collection agency or going through small claims court. You may also file a complaint with the

CRB, as the Board considers an agency that does not pay court reporters for subcontracted work to be a violation of Business and Professions Code 8025(d), unprofessional conduct.

Q. After working as a deposition reporter for several years, I recently took a position as an official reporter. I've been told by some co-workers that I can charge "the going rate" on civil matters, yet other co-workers tell me I can only charge the multiplier agreed to with our county. Who's right?

A. The statutory transcript rate applies to all cases affected by California Code of Civil Procedure 269, specifically in a civil case on order of the court or at the request of a party; in a felony case, on order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant; or in a misdemeanor or infraction case, on order of the court, and in those cases identified in Government Code section 69952, namely criminal, juvenile, emancipation of minors, and cases under Welfare and Institutions Code section 5000 et seq. If you have a contract with your county for charges, the Board would have no power to interfere with that contract.

Q. I'm a student in 180s and sat out in court last week to start to get my required intern hours. While there, I overheard a group of official reporters talking about how they talk with attorneys about cases, offering up opinions on how credible certain witnesses appear. I thought reporters weren't supposed to do that. Can you clarify?

A. You are correct. Court reporters are to act without bias toward, or prejudice against any parties and/or their attorneys, per California Code of Regulations, Title 16, section 2475(a)(6).

Q. I recently saw "free deposition summaries" being offered right on a court reporter's business card. Aren't deposition summaries prohibited?

A. California Code of Civil Procedure 2025.320(c) states in part: "The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition." That being stated, if an agency were to hire a paralegal, for instance, to read over a deposition and provide a summary, that would be legal as long as it didn't contain any of the court reporter's observations from the proceeding.

Q. As a deposition reporter, an agency I accepted a job from asked me to upload a complimentary rough draft transcript for the noticing attorney within 48 hours. My first issue is I didn't agree to providing a "free" rough draft. Additionally, both sides requested copies so shouldn't the agency offer a complimentary copy of a rough to the other side as well, not just the client they are trying to "woo"?

A. You did well to question the provision of a complimentary rough draft to only one party. It shows you are well aware of California Code of Civil Procedure § 2025.320(b), which states: Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

Code of Civil Procedure (CCP) § 2025.510(b) provides that the party noticing the deposition bears the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. CCP § 2025.540 further provides that the deposition reporter can provide a noncertified rough draft copy of the transcript. However, there is no exception under either the Government Code or the CCP for rough draft transcriptions to be free of charge.

That being said, there are really two issues to consider. The first is what is meant by "free"? If free means the client is not paying for it, that could be because it's provided as part of some type of package or bundle, where, for example, a party will pay X dollars per page for an original and one certified copy, which includes a "free" word index, condensed transcript and rough copy. If it is not part of a bundled price but merely provided to one side – as part of a marketing incentive, for example – then it must be provided to the other side for the same price.

The second issue is whether free means you provide it at no cost to the agency, who may or may not be charging the client for it. In that case, the Board would refer you to the subcontractor agreement you signed with that particular agency. A comprehensive subcontractor agreement setting out everything from due dates for transcripts to how much and when the reporter will be paid, who pays for parking and what time the reporter is to arrive, is essential to a problem-free business relationship between agency and court reporter.

Q. I have just received an order for the transcript of a court proceeding where they said they did not need a copy, just the original. My understanding of GC 69950 is that the first entity requesting a transcript must pay for the original as well as a copy and that the original stays with the court. Have I been misunderstanding this code all these years?

A. Government Code § 69950 instructs persons as to fees associated with the requested copy (original or copy) but does not place a requirement on the ordering party in terms of what they order, nor does the Government Code require that the originally purchased transcript stay with the court. Any person or entity can ask for and can receive just the original transcript.

Q. I had something come up recently at a videotaped deposition. I was questioned regarding California Rules of Court number 3.1010 (d) Nonparty deponent's appearance: A nonparty deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means with court approval upon a finding of good cause and no prejudice to any

party. The deponent must be sworn in the presence of the deposition officer or by any other means stipulated to by the parties or ordered by the court. Any party may be personally present at the deposition.

My question is: Is it the reporter's responsibility to verify that the noticing attorney received court approval for a nonparty deponent to attend a deposition remotely?

A. No, it is the responsibility of the attorneys to question under what authority such a deposition is being taken if they take issue with it.

Q. I have a civil trial that is on appeal. On this particular trial appeal, the attorney has consolidated all the electronic transcripts, added appeal cover pages, a master index and repaginated the entire trial transcript. He has attached our electronically-signed certificate pages to the back and is, I believe, calling this the original. (There were four reporters on this trial.) Is this proper and according to code? It seems to me the transcript has been altered, but according to the attorney it's acceptable to the Court of Appeals. I have always taken it as my responsibility to prepare a transcript on appeal and turn in the original with the court of the clerk. I'd appreciate any feedback and information you have to share.

A. The Board has no authority over what the Court of Appeals will or will not accept. However, with multiple reporters, each certification page will specify the pages each reporter is certifying, 1 through 100, for example. When you repaginate the full appeal transcript, the certification pages are no longer going to match the transcript, and therefore, it is not a certified transcript. Clearly the attorney has no authorization to change a certification page, and it is the Board's position that the attorney doing the repagination is misrepresenting to the Court of Appeals that the transcript he is submitting in its entirety has been certified by a licensed CSR.

Q. A deposition witness called wanting to review his deposition taken over a year ago. I explained that the time for review and correcting had passed and that the original had been sealed and sent to the noticing attorney. Neither he nor his attorney at the time ordered a copy. He said he simply wants to read it, not make corrections. Opposing counsel sent him correspondence saying, "You state in your deposition on page ... " and he wants to verify he did say that. He was very clear he did not want to pay for a copy. Am I supposed to allow him to come to our office and read it on our screen? Because once I print, I charge. He said he was told by the court reporter and by his attorney that he could read it at any time; he got the impression in perpetuity. Do I have to allow him to read it?

A. At this point the deponent may purchase a copy, but there's nothing that would obligate the reporter to print another copy for the deponent just to read. The explanation to the deponent is very simple. Once the review period has ended, the original is sealed and forwarded to noticing counsel. At this point there is nothing to review unless another certified copy is produced, for which there is a cost.

Q. Does the Board have a definition for “verbatim”? I recently got into a discussion where some reporters were being told to write utterances such as “um.” The reason behind it was because it showed the witness was pausing or thinking. My argument was “um” is a sound not a word and if an attorney wants to make a record about a witness pausing, that’s their job not ours because it takes away our impartiality.

Also, how far do we go with video depositions? Do we include every I – I – I when a witness stutters? Is it OK to just have “I have ...”?

A. Verbatim means word for word, so the Board expects reporters to get all the words. That being said, we move into the realm of accepted practice. As a verbatim reporter, you would do your best to capture every false start, but in a push, that might be the first thing to go, always bearing in mind your obligation to interrupt when the accuracy of the record is in jeopardy. In the case of a stutterer, you must use your own best judgment. To include a false start to reflect that there is a speech pattern, yes. To record each “I – I – I – I” doesn’t seem to serve a purpose. It’s the age-old question of do you clean up the attorney or put it down warts and all?

As far as “um” is concerned, it is not a word and as such does not need to be reported except in the case where its omission would create confusion in the written record. Witnesses make all kinds of sounds that aren’t words, from describing a noise they heard to different exclamations and a variety of “fillers,” from “um” to “ah” to “eh” to a consonant-less hum. Some things just can’t be captured in a stenographic record. An astute attorney will make any comment he feels necessary to reflect the nonverbal proceedings.

Q. At the conclusion of a recent deposition, opposing counsel requested that the transcript be marked confidential. Noticing counsel did not agree, stating there was no stipulation or order of confidentiality in place. Opposing counsel said he would seek an order, and to please mark the transcript confidential. So my question is does there have to be an agreement between the parties to have a transcript deemed confidential?

A. A transcript is deemed confidential pursuant to stipulation of counsel or pursuant to court order. When a request is made to designate the transcript confidential, the reporter needs to know the basis for the request. If it’s a stipulation, it’s best if it’s on the record. If it’s a court order, ask for a copy as it may contain information on exactly what has been agreed to as far as the final transcript. Absent a stipulation or court order, the court reporter would have no authority to designate a transcript as confidential. In this specific case opposing counsel has put you on notice that he intends to seek a court order. It would be best practice to follow up with him and give him a certain date by which you would need the court order before you’re ready to release the transcript.

Q. As a freelance reporter I’ve been hired to report trials and have job-shared those trials with another reporter. During deliberations, if the jury asks for read back, does the code state that it must be read back by the reporter who took the testimony, or can another CSR read it back or e-mail a rough draft of testimony to be read?

A. There is no code section that addresses read back, but it is accepted practice by the courts to allow read back by another court reporter from the original reporter's rough draft. It is certainly best practice to leave either a hard copy or a PDF file of your portion of the trial in case there is a call for anything to be read back.

Q. In a deposition setting, is the court reporter required to list all appearances in the transcript? If a person is "sitting in," that person has to be listed as "also present," right?

A. Historically, everyone present during a deposition is noted as part of the introductory language or on a separate appearance page. It's a time-honored tradition, not addressed by the code, but it certainly is a good practice to follow.

Q. Can you tell me if a reporter's signed certificate has to be an original signature or if a digital signature or stamp can be used?

A. In California, a digital signature may be used. Stamp and electronic signatures are discouraged. A digital signature takes the concept of traditional paper-based signing and turns it into an electronic "fingerprint." This "fingerprint," or coded message, is unique to both the document and the signer and binds both of them together. Digital signatures ensure the authenticity of the signer. Any changes made to the document after it has been signed invalidate the signature, thereby protecting against signature forgery and information tampering. An electronic signature is just a picture of your signature and has no security measures in place to protect your work.

Q. In the case where a witness says "approx-ca-mately" about 75 percent of the time and pronounces it correctly as "approximately" the balance, should I transcribe it both ways in the transcript? It was not a foreign accent and all other pronunciations were made appropriately.

A. This is a case where a reporter's best judgment comes into play. If there is absolutely no chance that the witness could have meant another word, you can simply use "approximately" in each instance. However, if you are presuming that's what he meant, then you have crossed the line and are now interpreting the witness' answer, which is prohibited. Another example would be if the line of questioning has consistently been regarding a letter from 2008 and the attorney or the witness misspeaks and refers to it as 2009, even though you have been following and know it should be 2008, you are required to write exactly what was said, including all misspoken words or phrases.