COURT REPORTERS BOARD OF CALIFORNIA

Best Practice Pointer No. 5

Confidential Depositions

If an attorney at a deposition asks for the deposition transcript (or any portion of it) to be marked confidential, ask for a copy of the protective order because it often contains specific directions, such as each page of the confidential transcript shall contain the header "Attorneys' Eyes Only." If there is no protective order, ask for a stipulation on the record identifying exactly how the confidential transcript is to be marked.

The attorneys may designate the entire transcript as confidential or specific portions.

If a portion or multiple portions of the transcript are designated as confidential, two transcripts are created, one containing the confidential testimony and one containing the nonconfidential testimony.

SCENARIOS

1. The attorney clearly states when she/he is about to begin a confidential portion and clearly states when she/he is finished with the confidential portion, or opposing counsel clearly states that an answer just given should be designated confidential.

   In this case, the reporter excerpts the confidential portion out into a separate transcript.

2. The attorney clearly states when she/he is about to begin a confidential portion, but forgets to note when she/he is finished and starts a new topic. In this case, the reporter may interrupt to clarify the record by asking, "Excuse me, Counsel, is this still part of the confidential portion?"

3. Nobody mentions anything about confidentiality until the deposition is finished.

   It's very important for the reporter to clarify specifically what is required. The reporter may use the realtime screen to find the exact questions and answers that are to be designated confidential. Alternatively, a rough draft may be provided for the attorneys to review in order to designate portions confidential, but the reporter should be very clear on who has the authority to designate, when the reporter needs it back for transcript production, and informing all parties that if designations are not received by the agreed-upon date, the transcript will be delivered as an open transcript.

   If an attorney objects to another attorney's designation as confidential, the reporter will treat the designation as confidential and a judge would make a ruling on the appropriateness of the designation.

Best practice pointers are not regulations or statutorily mandated. They are a way for the Board to provide guidance on situations not expressly set out in statute or regulation. Although the pointers may be used by licensees as a guide, the Board will not use them as a basis for discipline or enforcement of any type.

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