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MEMORANDUM

DATE: April 5, 2018
TO: Assemblywoman Irene Bustamante Adams
FROM: Cesar Melgarejo, Senior Policy Analyst
Research Division
SUBJECT: **Certified Court Reporters and Videography**

This memorandum responds to the questions that arose during the January 22, 2018, Sunset Subcommittee meeting regarding certified court reporters and videotaped depositions. Specifically, the questions asked were: (1) How do other states regulate videotaped depositions; (2) Are the licensing boards for court reporters regulating the production of transcripts from videotaped depositions; and (3) How do other states ensure protection for the public, confidentiality of testimony, and reliability of content?

SUMMARY

Rules for videotaped depositions are provided by each state through individual *Rules of Civil Procedure* (RCP) that are typically adopted by the state's Supreme Court. Additionally, the boards that oversee certified court reporters do not commonly regulate the production of transcripts. Instead, state statutes govern the cost of transcribing testimony and the transcripts' overall makeup. Lastly, one practice used to protect the deposed is to omit or redact personal identifiable information. During a deposition, the operators, both video and stenographic, will not capture these details. When they come back on the record, the attorneys and officers present confirm the person being deposed is the person in question, and this acknowledgement is entered into the record.

By way of background, in this memorandum I have included information on the role of a certified court reporter, as well as of a legal videographer.

CERTIFIED COURT REPORTER

A certified court reporter is a person who is technically qualified and registered under *Nevada Revised Statutes* (NRS) [Chapter 656](#) (“Certified Court Reporters; Court Reporting Firms”) to practice court reporting. The legislative history of Chapter 656 indicates the predecessor of the certified court reporters' board was established to address specific instances of incompetency and gross error in the area of shorthand reporting.

Typically, a court reporter must complete a court reporting certification approved by either the National Court Reporters Association (NCRA) or National Verbatim Reporters Association (NVRA). In practice, a court reporter uses voice writing or any system of manual or mechanical shorthand writing to record grand jury proceedings, court proceedings, pretrial examinations, depositions, motions, and proceedings of any agency if the final decision of the agency is subject to judicial review. A court reporter licensed under the chapter may administer oaths and affirmations.

Additionally, Chapter 656 states that a person appointed as an official reporter of any court in this state must be licensed under the chapter. *Nevada Revises Statutes* [3.320 to 3.380](#) governs the duties, responsibilities, and compensation of an official reporter of the court. The official reporter of any court must take and subscribe the constitutional oath of office.

LEGAL VIDEOGRAPHERS

According to the NCRA, the use of video in the legal environment is growing. A legal videographer, also known as a forensic videographer or court videographer, is responsible for the use of video equipment to record courtroom proceedings, depositions, and other civil court related proceedings. Because of the importance of quality work, NCRA has established the [Certified Legal Video Specialist](#) (CLVS) as their primary certification. Certification entails a seminar and written examination, to include a production exam with a staged deposition in order to test the ability and quality of the videotaped deposition.

In a videotaped deposition, the court reporter and the legal videographer work together, but they each have individual responsibilities. The legal videographer is responsible to provide all necessary equipment, instruct participants where to sit during the deposition, and ensure any required introduction is read on video at the beginning of the deposition and any other required times. Many states have established guidelines in their *Rules of Civil Procedure* (RCP) for the camera placement, introductory remarks, and who must introduce themselves while the deposition is being recorded.¹

At the conclusion of a deposition the legal videographer is responsible for determining the custody of the recorded media, proper handling of that recorded media, all videotape/media orders received by counsel, and provide audio back-up tapes/media to the court reporter to ensure that the transcript conforms to the videotapes/recording media.

¹ *New Mexico Rules Annotated*, Section 1-30 (B), “Depositions upon oral examination,” <http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm>

Professional Licensing

The National Court Reporter's Association is silent regarding state licensure of videographers. However, as a [key issue](#) they opine that although electronic recording may be used in certain environments, such as courts that do not have frequent transcript requests, real-time court reporters, often described as "Guardians of the Record," remain the most reliable and accurate method to create the record. Additionally, the [Certified Legal Video Specialist Council](#), within NCRA, holds that a court reporter should be present during a deposition and should be responsible for creating and maintaining the written testimony. The videographer's role should be to capture testimony via audiovisual means.

In 2012, the Utah Legislature introduced [House Bill 154](#) proposing to add legal videographers as a category of licensure under the Certified Court Reporters Licensing Act. However, the bill never received a hearing. In New Mexico, there are no existing provisions for the licensure and certification of persons who operate audiotape and videotape equipment to record depositions, but certified court monitors of "in-court" proceedings are currently regulated and certified. A court monitor records judicial proceedings by audio or digital recording.² No further legislation to license legal videographers was found.

RULES FOR VIDEOTAPED DEPOSITIONS

As mentioned above, states do not regulate legal videographers as they do certified court reporters. However, a state's statutes or RCP do grant the authority to conduct videotaped depositions and court proceedings. [Rule 30](#) of the federal RCP governs when a deposition may be conducted, as well as establishes the authority for testimony to be recorded by audio, audiovisual, or stenographic means. Rule 30 also establishes the duties and requirements of the officer who is conducting the deposition. Most states have adopted rules similar to Rule 30, either in whole or in part.

The *Rules of Civil Procedure*, for both federal and state courts, also establish what constitutes an "official record" in court. Federal Rule 26 (a) (3) (B) and Rule 32 (c) state that a party choosing to record a deposition only by videotape or audiotape should understand that a transcript will be required.

In Nevada, Rule 30 (b) (2) of the [Nevada Rules of Civil Procedure](#) allows, with proper notice, depositions to be recorded by sound, sound-and-visual, or stenographic means. Rule 32 (c) also states that a deposition being submitted in court proceedings, which is offered in nonstenographic form must be accompanied by a transcript.

Regarding the protection and confidentiality of those deposed, most states require the removal of personal identifiable information from any deposition record whether taken stenographically or by audio and video. In New Mexico, court reporters are [subject to disciplinary action](#) for unprofessional conduct if they furnish depositions without consent. In Alabama, those deposed in

² State of New Mexico Judiciary, "Court Monitor Users Manual," <https://ccrboard.com/Resources/Documents/Monitors%20Manual%20final.pdf>

a [criminal prosecution](#) may be subject to an order to protect the privacy of a victim or witness until presented as evidence at trial.

The attached table provides a sampling of states' rules relating to videotaped depositions and information pertaining to the authority of the regulatory boards that oversee court reporters.

CONCLUDING REMARKS

I trust this memorandum is responsive to your request. If you have any questions or would like to discuss other information in detail, please do not hesitate to contact me at cesar.melgarejo@lcb.state.nv.us or at (775) 684-6825.

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State	Board of Court Reporters		Authority and rules to conduct videotaped depositions	Protection for the Public, Confidentiality of Testimony, Reliability of Content	Who owns the transcript record?	What constitutes the official record?
	Regulate transcripts of videotaped depositions	License Court Reporters				
Nevada	The Board does not establish rules for transcript format.	The Board licenses court reporters.	Rule 30 (b) (2) of the Nevada Rules of Civil Procedure : Allows, with proper notice, depositions to be recorded by sound, sound-and-visual, or stenographic means.	Rule 30 (f) of RCP requires the officer to certify on the deposition that the deposition is a true record of the testimony given by the witness. NRS 656.250 : Any alteration or failure to accurately transcribe the proceeding may be grounds for suspension or revocation of license.	NRS 656.335 : The court reporter must retain notes for eight years if it concerns matter subject to judicial review.	Pursuant to Rule 32 (c), a transcript must accompany a deposition offered in non-stenographic format.
Alabama	The Board does not establish rules for transcript format.	The Board licenses court reporters.	Rules of Civil Procedure, Rule 30 (b) (4) : The testimony at a deposition may be recorded on videotape, or by other equivalent technology, in addition to the stenographic record.	Rule 30 (f) of RCP requires the officer to certify that the deposition is a true record of the testimony. Pursuant to <i>Code of Alabama, Section 12-21-264</i> : Witnesses deposed in a criminal prosecution may be subject to a protective order for protecting the privacy of the victim of the offense or a witness.	The party who notices a deposition will retain the original transcript of the deposition and be responsible for its safekeeping in the event it is requested by the trial court or ordered by the appellate court on appeal.	Pursuant to Rule 30 (b) (4): The written transcript by the court reporter shall constitute the official record of the deposition.

California	The Board does not establish rules for transcript format.	The Board licenses court reporters.	<i>California Law, Code of Civil Procedure (CCP) Section 2025.340</i> : Governs the production of a videotaped deposition.	CCP Section 2025.340 (e): Prohibits the officer conducting the deposition from providing any party or any other person 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. Additionally, no personal identifying information about the witness may be collected. Lastly, subsection (g) prohibits from any distortion of the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.	CCP Section 2025.560 : The attorney or operator who has custody of the recording must retain an audio or video recording of deposition, for six months after the final deposition or longer by motion of the court.	CCP 2025.510 (g): If the testimony at the deposition is recorded both stenographically and by audio or video technology, the stenographic transcript shall be the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.
Kentucky	There is no board overseeing court reporters.	There are no licensure requirements.	Kentucky Rules of Civil Procedure (CR) Rule 30.02 (4) : States that video-recorded depositions may be taken in pending actions and the video recording equipment shall be operated by a person qualified to operate such recording equipment. Also outlines the conditions for a videotaped deposition.	CR Rule 7.03 : Privacy protection for filings made with the court. All personal identifiable information of the deposed must be redacted before filing.	Rule 30.02 (4) (c): The video recording shall be kept in the possession of the attorney taking the deposition and will be available for the court and any and all counsel to view, copy, or compare with a stenographic transcript, if any.	Rule 30.02 (4) (c): A stenographic transcript, in addition to the video recording, is not necessary.

Massachusetts	There is no board overseeing court reporters.	There are no licensure requirements.	Civil Procedure Rule 30A : Any oral deposition may be recorded by stenographic and audio-visual means.	Rule 30A (h): Requires any portion of audio to be submitted as evidence to also include a verbatim transcript, as well as any edited and unedited video shall be marked for identification.	Rule 30A (e): The officer shall take custody of each recording unit upon its completion and shall retain custody of all completed units throughout the deposition.	Rule 30A (a): At the taking of any deposition there shall also be prepared a simultaneous stenographic record of the deposition.
New Mexico	The Board does establish rules for transcript format. (Certified Court reporters Manual)	The Board licenses court reporters.	New Mexico Rules Annotated (NMRA) 1-30 (B) : Notice of deposition must state method of recording testimony, which unless the court orders otherwise may be recorded by sound, sound-and-visual or stenographic means. NMRA 1-030.1 (C) : Provides rules and procedures that the officer must follow during a videotaped deposition.	NMRA 1-030 (F): Requires the officer to certify the deposition is a true record of the testimony. Certified Court Reporter Manual (CCRM) Rule 22-503 : A certified reporter or court monitor shall be subject to disciplinary action for unprofessional conduct if the reporter or monitor furnishes, for pay or otherwise, a copy of any deposition or portion thereof to any person other than the deponent, a party or an attorney in the matter in which the deposition was taken, without the consent of the parties in the case in which the deposition was taken or is to be filed, or without a written order of the court.	NMRA 1-030 (F): The attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering or deterioration.	CCRM Rule 22-201 (C) - In the event judicial proceedings are tape recorded, the audio/digital recording shall be the official record of proceedings. NMRA 1-032 (C) : Deposition testimony may be offered in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the court with a transcript of the portions offered.

New York	The Board does not establish rules for transcript format.	The Board licenses court reporters.	<i>Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts Uniform Rules of the Trial Courts, Section 202.15 Videotape recording of civil depositions:</i> Depositions may be taken, as permitted by section 3113(b) of the <i>Civil Practice Law and Rules</i> , by means of simultaneous audio and visual electronic recording, provided such recording be made in conformity with this section.	<i>Uniform Rules of the Trial Courts, Section 202.5(e):</i> Requires attorneys to omit or redact certain confidential personal information from court filings in Supreme and County Court.	All information received by the certified shorthand reporter in the course of providing services to a client is confidential unless the client authorizes its release in writing.	Section 202.15 (g)(1): If no objections have been made by any of the parties during the course of the deposition, the videotape deposition may be filed by the proponent with the clerk of the trial court and shall be filed upon the request of any party.
Ohio	There is no board overseeing court reporters.	There are no licensure requirements.	Ohio Rules of Civil Procedure 30 (b) : The notice for deposition must specify if the deposition is to be recorded by other than stenographic means. The court may require stenographic taking or make any other order to ensure that the recorded testimony will be accurate and trustworthy.	Rules Of Superintendence For The Courts Of Ohio, Rule 13 (8) : The officer must confirm that the witness was fully sworn or affirmed by the officer and that the videotape is a true record of the testimony given by the witness. (12) Editing alternatives. The original videotape shall not be affected by any editing process.	Ohio Revised Code 2301.20 : The notes and electronic records shall be filed in the office of the official reporter and carefully preserved	Ohio requires each court to maintain its own rules regarding the storage of stenographic notes and/or electronic records.