



HAWAII COURT REPORTERS & CAPTIONERS ASSOCIATION

HO`OMUA

"To Push Forward"

*A publication of the Hawaii Court Reporters
and Captioners Association*



*The Hawai'i Court Reporters and
Captioners Association (HCRCA) is a
non-profit professional organization
founded for the purpose of promoting
excellence in court reporting in the state
of Hawai'i. Ho`omua is published by
HCRCA, P.O. Box 4681
Honolulu, Hawai'i 96812*

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## **PRESIDENT'S MESSAGE**

Dear Reporters – To those of you who missed our February 2<sup>nd</sup> gathering at the Elks Club, we missed you. You missed a beautiful evening with a fantastic sunset. We all had a very enjoyable evening chatting with Justice Paula Nakayama and her husband. It was a great opportunity to meet with her one-on-one, answering some of her questions and asking her some of ours. Hopefully we'll be able to do this again in the future. Meeting socially lends a certain relaxed and friendly atmosphere that can lead to resolving a lot of issues. If you are not yet a member of HCRCA, please consider joining. There is power in numbers!

I am very proud to report that the current Board has been very active. We have been able to provide the opportunity to get CEUs more frequently and with greater ease – and have provided outer-island venues of great interest. Instituting the Brown Bag Mini-Seminars has been well received. There were 23 attendees at our Art Academy/Doris Duke Tour seminar on December 1<sup>st</sup>, which earned .3 CEUs (3 hours), and by the time you receive this missive, our Pacific Whale Foundation March 15<sup>th</sup> seminar on Maui will have been another success story. We are planning and will have an event on the Big Island in July; not definite yet, but something along the lines of "Petroglyphs of West Hawaii on the Big Island: Their History and Impact on Culture." Our upcoming May 17/18 annual seminar at the Sheraton Waikiki will offer 1.1 CEUs (11 hours).

We have made our Association more user-friendly, which was one of our primary goals. Your current Board has three officers that are outer-island folk and one now lives on the mainland. By using telephone conferencing, holding meetings with outer-island members is no longer a challenge. Valerie Swiderski, our VP, due to extenuating circumstances, is presently serving from Modesto, California. Anyone can serve from anywhere. Remember that as you prepare for our May seminar when thinking of whom to nominate for office. We will have the election of new officers during lunch at that time, and we do encourage outer-island reporters to run for office.

Another accomplishment has been the development of an extensive email list of

*Cont'd on Page 2*

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*President's Message, cont'd from Page 1*

CSRs to facilitate the dissemination of information via our newsletter and other notices easily, quickly, and as cheaply as possible. With each emailing the Association saves a lot of *kala* on postage, copy/collating charges, and saves hours of hands-on labor of folding, stapling, and processing. If we do not have your current email address, please submit it to [Lcarnazzo@carnazzo.com](mailto:Lcarnazzo@carnazzo.com) as soon as possible.

As many of you may be aware, our profession is going through some very serious and far-reaching changes. As a group effort, and with the cooperation of our many attorney clients/friends, we were able to hold off the proposed changes to Rule 2(b) until further study and input could be made. A solution to this problem is still needed. Your future as a court reporter may be at stake. We need all of our CSRs to come forward and help in resolving this issue. ER is, as always, a threat; and today, with digital technology, that threat is even more serious. We KNOW we can do a better job as live reporters, but it's up to us to prove that to our administrators and our clients. Keep informed. Be involved. Don't take your profession for granted. Subscribe to, at no charge, *Managers of Freelance Reporters Community* – [managersfc@milepost1.com](mailto:managersfc@milepost1.com) – to read (and contribute) information relative to your profession, whether freelance or official.

Lastly, in this issue there are reprints of two articles from DPR, The Deposition Reporter, the newsletter of the Deposition Reporter Association of California. The article *Playing Jeopardy with your License* points out some of the dangers facing licenced agencies by non-licensed activities. Kudos are given to Hawaii for having rules in place to take care of these problems; however, a closer look at what is going on in Hawaii indicates our rules need more teeth in them to be effective. The second article, *Countering the "Usual Stipulation,"* is also a good read and reminds us to be on our guard when it comes to attorneys' agreements on the record and how those agreements may affect us.

*Lou Carnazzo, HCRCA President*

## HCRCA CLASSIFIEDS

**New  
Feature**

**EQUIPMENT FOR SALE:** Smartwriter for sale - very good condition. Paper tray, tripod and carrying case included. \$700 obo. contact Priscilla at [pelekila@hawaii.rr.com](mailto:pelekila@hawaii.rr.com). Pictures can be emailed upon request.

**CATEGORIES INCLUDE:** *Equipment for sale, Equipment needed, Position available, Position wanted, Software for sale, Software needed*

To post an ad, contact the newsletter editor at [valerie.swiderski@gmail.com](mailto:valerie.swiderski@gmail.com) with "HCRCA ad" in the subject line

(Ho'omua reserves the right to edit or not publish submitted material. Statements or expressions of opinion appearing herein are those of the authors and not necessarily the views of the editorial staff, or officials of the Hawaii Court Reporters And Captioners Association. Publication of advertising herein does not imply endorsement of any product, service, or opinion advertised. The HCRCA disclaims any liability arising from reliance upon information contained herein.)

**Join Now !!!**

**HAWAII COURT REPORTERS AND CAPTIONERS ASSOCIATION**

Professional Membership.....\$65.00  
(Save On Seminars!!)

Associate Membership.....\$45.00  
(Scopists, Proofreaders, etc.)

Student Membership.....\$35.00

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

HAWAII CSR #: \_\_\_\_\_ RPR#: \_\_\_\_\_

CHECK ENCLOSED: \$ \_\_\_\_\_

**MAIL TO:**

**Hawaii Court Reporters and Captioners Association  
P.O. Box 4681  
Honolulu, Hawai`i 96812**

The following two articles have been reprinted by permission from *The Deposition Reporter*, a publication of the Deposition Reporters Association of California. Please visit their website at <http://www.caldra.org/>

## ***Countering the "Usual Stipulation"***

by Holly Moose & Lynda Goddard

*Below is a letter to the editor which we have submitted to Los Angeles Lawyer magazine in response to an article entitled "The Dangers of the 'Usual Stipulation' in Deposition Practice." The underlying article is written by an L.A. lawyer, Steven D. Archer, who discusses the dangers of the all-encompassing stipulation to "relieve the reporter of his/her duties," pointing out that it means stipulating away such things as the reporter's responsibility to maintain stenographic notes.*

*In our reply to this article, we endeavored to expand on the "dangers," to clarify some misconceptions and to challenge the practice itself of stipulating away the duties of the independent deposition officer. It is our hope that reporters will join us in reasserting our position as guardians of the record.*

*We give unqualified permission to reprint our letter for publication or distribution. Both the original Los Angeles Lawyer article and our response letter can be viewed on the DRA. website, caldra.org, under Articles of Interest.*

Dear Editor: As licensed court reporters and past presidents of Deposition Reporters Association of California, we sincerely appreciate Steven Archer's article *The Dangers of the "Usual Stipulation" in Deposition Practice* that appeared in the *Los Angeles Lawyer*. It is a good discussion of the hazards of the all-too-common practice of stipulating away proper handling of the transcript by the deposition officer. We would like to add some additional thoughts, from the perspective of the reporter, both for consideration and clarification.

Mr. Archer mentions that reporters follow different customary rules, depending on whether they are in Northern or Southern California. We wish to emphasize that the difference arises from the fact that in Northern California attorneys generally choose to follow the law as written, the provisions in the California Code of Civil Procedure, whereas in Southern California it has become almost unheard of to go "per Code"; it's not a matter of whether to do a stipulation, but rather what the stipulation should say.

It is a mystery how this practice of relieving the reporter of his/her statutory duties began, but it has resulted in many attorneys in Southern California believing – as we have actually heard stated in depositions – that a stipulation must be done before they can close the record. A favorite line was, "We have to do a stipulation, otherwise the reporter will just keep writing." Perhaps it was said in jest, but no one so much as chuckled, and no one challenged the assertion.

Mr. Archer writes, "In Southern California, court reporters will usually agree to abide by a stipulation entered into between all counsel present at the deposition that calls for their release of the original transcript." Our silence should not be interpreted as agreement. If reporters don't interject regarding the stipulation in a deposition, it is because we are in no

*Usual Stipulation, cont'd from Page 4*

position to educate attorneys on the law, are ethically bound not to comment on the proceedings in any way, and that we certainly don't want to jeopardize working relationships by being labeled as a "troublemaker" because we refuse to accommodate the wishes of the parties.

Unfortunately, it appears that the stipulation has become so universal in Southern California that even well-respected attorneys and publications are unclear about how the transcript would actually be handled "per Code." Under the section entitled "Where," Mr. Archer writes, "The court reporter then maintains custody of the original transcript and lodges it directly with the court upon request by one or more parties." With all due respect, that is not the practice in any area of the state, nor is it the Code per CCP Section 2025.550(a). Realistically, no reporter would (or should) accept responsibility for maintaining the original transcript, let alone lodging a deposition transcript with the court.

That faulty premise makes Mr. Archer's statement that "In Northern California, court reporters are loath to release possession, custody and control of the original transcript" also inaccurate. The objection to deviating from the Code requirements stems from an uncertainty whether attorneys have the right to stipulate away a deposition officer's duties, either with or without agreement by the reporter. The CCP clearly states that there are certain provisions that can be modified by stipulation; for instance, method of recordation of the deposition, CCP 2025,330(b), and the ability to waive signature or change the time period for review and signing, CCP 2025.520(a) and (b). Absent specific language that parties alone have discretion to modify procedures, many would contend that, at a minimum, the court reporter must be a party to the stipulation. Just as the Code provides that a witness must agree to waive signature, it seems reasonable that a reporter must agree to waive his/her duties.

Following that line of thought and adding to Mr. Archer's nightmare scenario that a blanket stipulation "relieving a reporter of his/her duties under the Code" has many unintended ramifications, consider that by entering into either the "usual stipulation," or one along the lines of Mr. Archer's suggestion that "the reporter shall provide a preposted and preaddressed envelope so that the witness may then send the reviewed, corrected, and executed original transcript and errata page to [counsel]," it effectively removes the deposition reporter from any responsibility regarding review, corrections, signature, and notification to the parties thereof. Under that scenario, the reporter has no ability to certify the witness's execution of the original transcript and cannot ensure that all parties are notified of corrections, if any. Reporters have often discussed the propriety of attorneys themselves assuming duties that, by law, are required to be done by the independent officer of the court.

Perhaps more importantly, when opposing counsel is made responsible for overseeing corrections and signature, any certified transcript provided by the reporter at a later date, either to a party or a nonparty, will not reflect such corrections or changes made by the witness. It then becomes

*Usual Stipulation, cont'd from Page 5*

incumbent on the attorney to seek out important information regarding witness review.

Lastly, we wish to express our belief that stipulating away the original to opposing counsel effectively means the noticing attorney is subsidizing his/her opponent's case. Antitrust laws prohibit reporters from discussing specific rates; however, our combined personal experience of working for deposition firms throughout the state seems to bear out that rates for an O&I are generally significantly higher in Southern California as compared to Northern California. It appears that Southern California rates reflect the fact it is customary for the noticing attorney to provide opposing counsel a "free" transcript (the original). In contrast, lower rates in Northern California for the O&I reflect an expectation that opposing counsel will order a certified copy of the transcript, which would seem to be a proper allocation of expenses in civil cases.

A byproduct of opposing/witness's counsel receiving essentially a free copy (the original) is that they have no financial stake in the length of the deposition transcript. Some have been known to take that opportunity to ask endless questions, sometimes exceeding that of the noticing attorney, to make his/her record. Perhaps it is a style; perhaps it is a tactic to increase costs for the noticing attorney. In either case, it has at times resulted in argument, with the reporter being asked by the noticing attorney to close the record, only to be reopened on opposing counsel's dime, so to speak. Per CCP 2025.470, a reporter may not go off the record without agreement of the witness and all parties present unless a party or the witness states an intention to move for a protective order. Reporters cannot rule on whether the examination is "outside the scope." Reporters do not "work" for the noticing attorney, so the admonition that "I'm paying you, and I instruct you to go off the record" will fall on deaf ears. Just another consideration in deciding whether to release a "free" transcript to opposing counsel.

In closing, we offer two thoughts: First, we repeat our appreciation that Mr. Archer's article raised the topic and covered significant points. Second, should the current law need revision, perhaps attorneys and reporters can work together to change it, creating uniform practices throughout the state and eliminating the need to determine whether a stipulation protects or jeopardizes the integrity of the deposition transcript.

In the interim, given that procedures in the CCP seem to work well in Northern California, we would advocate that Southern California attorneys rethink the custom and practice of a stipulation at the end of every deposition.

***Lynda Goddard, CSR No. 10670, Los Angeles***  
***Holly Moose, CSR No. 6438, San Francisco***

Please visit their website at <http://www.caldra.org/>

# Playing *Jeopardy* with your License

by Lynda Goddard

DRA has been a long-time advocate of requiring court reporting firms to be held accountable for violations of the law in the same way that individual licensees are. The Court Reporters Board (CRB) recently enacted the Professional Standards regulations, which unfortunately create an inequity by allowing nonlicensee-owned firms to engage in practices that would result in disciplinary action if done by an individual CSR or CSR-owned firm. During the public comment period prior to adoption of the regulations, DRA submitted in writing to the Board its concerns that these Professional Standards contain provisions, such as limitations on gift-giving and truth-in-advertising requirements, which result in a double standard when applied only to individual licensees and CSR firm owners and not to all court reporting firms doing business in California.

It certainly didn't take long before a complaint was filed against a reporting firm for an advertising promotion in which it offers — not sure what to call them: gifts? incentives? rewards? kickbacks? — let's just call them items of value for the first deposition taken and a "frequent-depo" program for depositions taken thereafter, likely exceeding the \$100 gift-giving limitation that became effective February 2007.

The CRB's response to the complaint was that it had no jurisdiction to take any action since there was no license-holder involved. Not unexpected. To its credit, the CRB appreciated DRA's concerns and identified in its Strategic Plan the need to address the issue of jurisdiction over nonlicensee-owned firms. It slated the problem as a specific agenda item for the July 13, 2007, CRB meeting. After discussion, the CRB voted to create a task force to examine this inequity, moving up the timetable initially set out in its Strategic Plan, with an eye toward seeking a remedy within the next year, either via legislation or regulations.

In addition to the issue of nonlicensee-owned firms offering "perks" in excess of \$100 per year, the CRB also noted incidents where firms have reformatted transcripts, leaving the CSR on the hook for noncompliance of the Minimum Transcript Format requirements, and an incident where a firm inadvertently attached a different CSR's certificate page to the original transcript, subjecting the CSR to disciplinary action. Just imagine if a firm were to attach to *your* transcript the wrong exhibits, say those from a confidential transcript. There is also the issue of firms providing a certified copy of *your* transcript to a third party without following the law in CCP 2025.570, which requires notifying the deponent and all parties present of the request for the transcript and allowing them 30 days to file for a protective order before making the transcript available to that third party

The scenarios are endless. Since currently it is only licensees who are subject to discipline by the CRB for failure to comply with the laws and regulations governing them, it is important that reporters know and trust the firms for which they work. While there

*Jeopardy, cont'd from Page 7*

is nothing which dictates that a person must be a CSR in order to operate a firm with integrity and in compliance with the law, neither is there anything which dictates that because a firm is owned by a CSR that (s)he is familiar with all the laws and abides by them in the performance of his/her business. It is best to educate yourself on the codes that govern your profession and to be aware that you ultimately are responsible for the duties a firm performs on your behalf, DRA will continue to work with the CRB to address the inequity that currently exists in California between licensees and nonlicensees operating in the same arena. Currently a handful of states do have procedures in place to eliminate this double standard:

Nevada licenses reporting firms; if the owner is not a reporter, (s)he must take a written test and pay the same yearly license fees that are required to be paid by reporters.

Hawaii rules provide that any entity offering court reporting services intended to be filed in any judicial proceeding in the State of Hawaii must be (i) a duly certified Hawaii certified shorthand reporter or (ii) must designate a Hawaii certified shorthand reporter who is a resident of the State of Hawaii as "Managing CSR" to be accountable to the board for the entity's actions.

Texas's Government Code requires freelance firms to be registered with its Certification Board to conduct any type of business in Texas and sets forth how firms will be disciplined for noncompliance. New Jersey's licensing board requires firms to register and be subject to the same rules, regulations and sanctions as licensees.

Delaware's Supreme Court Directive No. 132 holds court reporters and the firms for which they work to the standards of conduct provided for therein.

DRA would like to see California among this list of states which regulate reporting firms. If you have examples to share with DRA of court reporting firms in California not conducting business in accordance with the rules and regulations which govern court reporting in California, these would be helpful in documenting the need for firms to be subject to the same oversight and potential for discipline as are licensees. Please send your examples to our:

Deposition Reporters Association  
Attn: Vicki Squires - Executive Director  
7172 Regional Street, Suite 111  
Dublin, CA 94568

**or e-mail them to [cal\\_dra@yahoo.com](mailto:cal_dra@yahoo.com). Thank you!**

Please visit their website at <http://www.caldra.org/>

*From NCRA's February 2008 Tech Tracker:*

## **"A Focus on Customer Service"**

NCRA's ER Task Force would like to bring to your attention a very obvious yet valuable fact. One of the most important things a court reporter can do in today's competitive marketplace is focus on customer service. Court reporters are service providers whether you work in the courtroom, freelance, CART or captioning setting. It is your responsibility to ensure you are providing exceptional customer service every single day. Your competition is out there attempting to undercut you in every way imaginable. They want to be cheaper, more technologically savvy, efficient and appealing. You must learn how to counter their aggressive marketing efforts by providing customer service that leaves no choice but you for the decision-maker. Show the decision-makers who choose to utilize your services that they truly can't "live" without you! Some examples of ways you can ensure you are providing outstanding customer service include:

- Making sure you offer 100% customer satisfaction
- Always providing a timely work product
- Guaranteeing as perfect a product as possible
- Ensuring access to and control of the record
- Demonstrate value; adequate doesn't compare to accurate
- Be a good team player
- Offer realtime services
- Make yourself indispensable
- Reiterate that you are the only service provider that can give them an instantaneous voice-to-text translation.
- Achieve certification

Everyone needs to be involved in this effort. Exceptional customer service is a must! If you are looking for advice on how to provide great customer service, don't hesitate to reach out to NCRA's ER Task Force. We are here for you as a resource. Feel free to contact Nate Smith, NCRA's ER Task Force Staff Liaison, at [nsmith@ncrahq.org](mailto:nsmith@ncrahq.org).

**To receive NCRA's "Tech Tracker," e-mail Nate Smith, NCRA's ER Task Force Staff Liaison, at [nsmith@ncrahq.org](mailto:nsmith@ncrahq.org).**

Hawaii Court Reporters and Captioners Association  
*Annual Seminar ~ May 17<sup>th</sup> & 18<sup>th</sup>, 2008*

*Saturday, May 17<sup>th</sup>, 2008*

*Sheraton Waikiki Hotel, 2255 Kalakaua Avenue, Honolulu, Hawai'i*

8:00 a.m. Registration at Sheraton Waikiki

8:30-10:00 Session 1: Media in Litigation with New Technology,  
 Rob Whitman, Certified Legal Video Specialist (.15 CEUs)

10:15-11:45 Session 2: How Hawaiian Custom and Tradition Inform Life in  
 Hawaii Today, Moses Haia, Esq.  
 Native Hawaiian Legal Corp (.15 CEUs)

**Saturday  
 CEUs  
 .7**

11:45 to 1:00 Lunch and 2008-2009 Election

1:00 to 2:30 Session 3: Ready, Set, Go: An Overview of  
 Real-Time, CART, and Closed Captioning,  
 Sharon Mujtabaa and Brooke Hernandez (.15 CEUs)

2:45 to 3:45 Session 4: Me and Him Are Killing English,  
 Doug Carlson (.1 CEUs)

**Sunday  
 CEUs  
 .4**

4:00 to 5:30 Session 5: How to Stave Off Pain Through Exercise and Post  
 John Stepien, M.P.T. (.15 CEUs)

*Sunday, May 18<sup>th</sup>, 2008*

*Pearl Harbor, Hawai'i*

8:00 a.m. Registration at USS ARIZONA Memorial

8:45-11:00 USS ARIZONA Memorial Lecture and Tour (.15 CEUs)  
 Steve Kooiman, Director of Education

**Saturday & Sunday Total CEUs 1.1**

11:15- 1:15 USS B... (EUUs)

Charles Hinman, Director of Education (7 groups, 34 people)



## UPCOMING EVENTS

*Big Island Brown Bag Seminar*

Saturday July 19<sup>th</sup>, 2008

*Petroglyphs of West Hawai'i,*

*with Phil Kwiatkowski*

*(Details coming soon!)*

| ~ WinCalendar July 2008 ~ |     |     |     |     |     |                                                   |
|---------------------------|-----|-----|-----|-----|-----|---------------------------------------------------|
| Sun                       | Mon | Tue | Wed | Thu | Fri | Sat                                               |
| 29                        | 30  | 1   | 2   | 3   | 4   | 5                                                 |
| 6                         | 7   | 8   | 9   | 10  | 11  | 12                                                |
| 13                        | 14  | 15  | 16  | 17  | 18  | 19<br><i>Big Island<br/>Brown Bag<br/>Seminar</i> |
| 20                        | 21  | 22  | 23  | 24  | 25  | 26                                                |
| 27                        | 28  | 29  | 30  | 31  | 1   | 2                                                 |

# Hawaii Court Reporters and Captioners Association

## Board of Directors

## Nomination Ballot

The HCRCA 2007-2008 session is coming to a close. At our May Seminar we will be voting for and inaugurating a new board. We need HCRCA members to submit nominations for board positions. ***Please confirm with your prospective nominees*** that they are HCRCA members and are willing to serve. Now is a perfect time to volunteer for service, and an even better time to join HCRCA if you are not already a member!

PRESIDENT \_\_\_\_\_

VICE PRESIDENT \_\_\_\_\_

SECRETARY/TREASURER \_\_\_\_\_

OFFICIAL DIRECTOR \_\_\_\_\_

(two positions)  
\_\_\_\_\_

FREELANCE DIRECTOR \_\_\_\_\_  
(two positions)  
\_\_\_\_\_

Please submit your nominations to:

**Hawaii Court Reporters and Captioners Association  
P.O. Box 4681  
Honolulu, Hawai`i 96812**

HCRC  
P.O. Box 4681  
Honolulu, Hawai'i 96812