



Dear Bar Association Leaders and Counselors:

The COVID-19 pandemic has had profound effects on the way legal proceedings such as depositions are conducted. Necessary and beneficial adjustments have been made to procedural rules across the nation to allow the litigation process to continue safely via remote web conferencing platforms such as Zoom, Teams, WebEx, etc.

Unfortunately, this distanced and virtual practice has spawned a tactic by some vendors that is often not in compliance with the intent, either implicit or explicit, of the deposition notice and, indeed, may be contrary to your state's laws and regulations. The practice that is being employed is that rather than a certified stenographic court reporter keeping a full and accurate record of deposition proceedings, a digital recorder (audio recording conducted by an operator) is instead being assigned. This substitution is often not disclosed until the deposition is ready to begin, at which time a stipulation is demanded to allow this previously unannounced and non-noticed anomaly to proceed. Due to a lack of understanding of these two entirely different means of capturing the record and the commonplace oath and stipulations standardly read, we have grave concern that this does not rise to a level that meets the threshold of a duty to inform. Counsel, facing the prospect of lost time and further costs, are being asked to stipulate that transcripts produced by the **digital recorder** of the proceeding can be used for all uses permitted under applicable procedural and evidentiary rules and laws even though many states require final certification by a **certified stenographic court reporter**.

If a **digital recorder** is assigned to a deposition without advanced disclosure and then demands a stipulation that may not comply with the legal requirements in your state, the client should not have to accept any such stipulation and risk the consequences that the transcript may be held invalid.

As an integral part of the record-making process, it is imperative that the members of the Bar in your state be made aware of these practices so that they can be protected from being forced by circumstances to enter into a potentially unlawful stipulation. If you are practicing in a state that requires your discovery transcripts be prepared and certified by a **certified stenographic court reporter**, be careful to designate that the deposition will be reported by stenographic means, verify the authority of the deposition officer, if appropriate in your jurisdiction, **before** the proceedings begin, and never stipulate away the clients' rights by potentially putting their record in jeopardy.

Out of an abundance of caution to protect your attorneys from entering into a potentially unlawful stipulation and to protect the public we respectfully request that you share this information with members of your bar association and those within your legal community who may be impacted by its effects.

A handwritten signature in blue ink that reads 'Debbie Dibble'.

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2021-2022 NCRA President