



State of Nevada
CERTIFIED COURT REPORTERS BOARD

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LORI JUDD – Board Member
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May 25, 2018

FILED

MAY 31 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Ms. Elizabeth Brown
Supreme Court of Nevada – Clerk's Office
201 S. Carson Street, Suite 200
Carson City, Nevada 89701

RE: Nevada Rules of Civil Procedure Committee
ADKT-0522

Dear Ms. Brown,

The State of Nevada Certified Court Reporters Board is the regulatory agency, duly empowered to license, supervise and regulate the conduct and practice of court reporting in the state of Nevada. The authority for the Board is granted by the Nevada Revised Statutes Chapter 656 and the Nevada Administrative Code Chapter 656.

On behalf of the State of Nevada Certified Court Reporters Board, per Justice Mark Gibbons, please accept our submission for committee review. We are also including a copy (thumb drive) for each committee member.

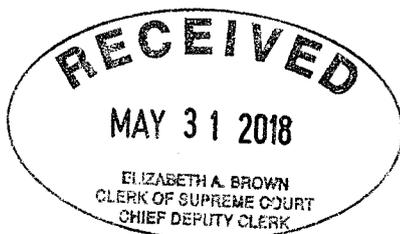
Please feel free to contact me with any questions or should you need further information.

Thank you very much.

Respectfully,

[Signature]

Debbie Uehara
Executive Secretary



18-20650

PRESENTATION
BY THE NEVADA CERTIFIED COURT
REPORTERS BOARD
TO THE
STATE OF NEVADA
SUPREME COURT RULES COMMITTEE

I N D E X

I. Legislative History

- A. Legislative Declaration
- B. Senate Committee on Judiciary Excerpt - 1995 Session
- C. State of Nevada Notary Handbook
- D. FAQ Page from the Nevada Secretary of State Website

II. NRS 240 - Notaries Public and Commissioned Abstracters

- A. Chapter 240 Potential Violations
- B. Assembly Bill No. 148 - Assemblyman Flores

III. Discovery Commissioner Hearing - Lockhart vs. Boyd Gaming

- A. Defendant Coast Hotels and Casinos, Inc.'s Opposition to Plaintiff's Motion to Compel Coast to Produce a 30(B)(6) Witness and for an Award of Fees and Costs
- B. Motion by Las Vegas Defense Lawyers for Leave to File Brief as Amicus Curiae in Opposition of the Motion to Compel Coast to Produce a 30(b)(6) Witness and for an Award of Fees and Costs
- C. Transcript of Proceedings Before the Honorable Bonnie Bulla, Discovery Commissioner, Friday, April 20, 1018

IV. Cox vs. Renown Regional Medical Center Trial in Reno

- A. Defendants' Ex Parte Motion to Exclude the Deposition Transcripts and Videotaped Depositions of Brandi Kindig, MD and Reginald Low, MD
- B. Partial Transcript of Proceedings
- C. Reno Trial Rough Draft Transcript

X. Miscellaneous Documents

- A. Blog by Michael Lowry, Esq., Entitled "Can a Notary Take a Deposition?" January 2, 2018
- B. Some of the letters or comments received/gathered from Nevada Bar lawyers regarding videographer-only depositions for the 2017 Nevada Legislative Session in support of SB 406; specifically, a definition written by the Nevada Certified Court Reporters Board and submitted under NRS 656.030 Definitions, 12 "Officer" before whom depositions may be taken means a Certified Court Reporter or a Certified Voice Writer.
 - i. *Said language was withdrawn by the Board and may be resubmitted at the 2019 session if the Supreme Court rules that a notary cannot take a deposition.
- C. Signature pages sent to an attorney with signature of notary but no notary stamp affixed nor notary number
- D. Excerpt from Deposition of Kenneth Stimpson showing transcribed by a Certified Court Reporter Julie C. Filiberti, CCR 718, taken by Notary Lars Bangen, and certified by Peter Hellman saying he recorded the taking of the deposition of the witness.
- E. Excerpt from Deposition of Casey Cahill showing overtyping on pages of the deposition showing the quality of the final deposition transcript
- F. Card from notary showing her title as Deposition Officer, not Notary Public
- G. Advertisement from e-depositions representing themselves as Deposition Officers under their notary authorized to administer oaths with certified transcripts. Attached email from same company claiming they are legal experts and experts in the rules of civil procedure.
- H. Price List for Services - Nevada from Elevate Reporting Showing Prices Equal or In Excess of Court Reporting Firm Rates

XI. Proposed Changes to NRCP Rule 28, 29 and 30



NRS 656.020 Legislative declaration.

1. It is hereby declared to be the policy of the Legislature to:

(a) Encourage proficiency in the practice of court reporting as a profession;

(b) Promote efficiency in court and general reporting; and

(c) Extend to the courts and public the protection afforded by a standardized profession by establishing a standard of competency for those engaged in it.

2. The practice of court reporting in the State of Nevada is declared to affect the public health, safety and welfare and is subject to regulation and control in the public interest.

(Added to NRS by 1973, 1315; A 1993, 1404)

NRS 656.140 Board to aid profession. The Board may aid in all matters pertaining to the advancement of the practice of court reporting, including but not limited to all matters that may advance the professional interests of certified court reporters and such matters as concern their relations with the public.

(Added to NRS by 1973, 1316; A 1993, 1405)

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: June 21, 1997
TIME : 10:50 am
LEG. DAY IS: 116
PAGE : 1 OF 1

N E L I S

1995

AB 722 By Judiciary COURT REPORTERS

Makes various changes to provisions governing certified court reporters. (BDR 1-1703)

Fiscal Note: Effect on Local Government: Yes. Effect on the State or on Industrial Insurance: No.

- 06/12 96 Read first time. Referred to Committee on Judiciary. To printer.
- 06/13 97 From printer. To committee.
- 06/13 97 Dates discussed in committee: 6/19, 6/21 (A&DP)
- 06/22 105 From committee: Amend, and do pass as amended.
- 06/22 105 (Amendment number 1193.)
- 06/22 105 Placed on Second Reading File.
- 06/22 105 Read second time. Amended. To printer.
- 06/23 106 From printer. To engrossment.
- 06/23 106 Engrossed. First reprint. ✓
- 06/23 106 Placed on General File.
- 06/23 106 Read third time. Passed, as amended. Title approved. (39 Yeas, 0 Nays, 3 Absent, 0 Excused, 0 Not Voting.) To Senate.
- 06/23 106 In Senate.
- 06/23 106 Read first time. Referred to Committee on Judiciary. To committee.
- 06/23 106 Dates discussed in Committee: 6/26 (A&DP)
- 06/28 111 From committee: Amend, and do pass as amended.
- 06/28 111 (Amendment number 1341.)
- 06/28 111 Placed on Second Reading File.
- 06/28 111 Read second time. Amended. To printer.
- 06/29 112 From printer. To re-engrossment.
- 06/29 112 Re-engrossed. Second reprint. ✓ Placed on General File.
- 06/29 112 Read third time. Passed, as amended. Title approved. (19 Yeas, 2 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
- 06/29 112 In Assembly.
- 06/29 112 Senate amendment concurred in. To enrollment.
- 07/01 114 Enrolled and delivered to Governor.
- 07/02 115 Approved by the Governor.
- 07/03 116 Chapter 489.
Sections 4 to 8, inclusive, of this act effective 12:01 a.m. October 1, 1995. Remainder of this act effective October 1, 1995.

(* = instrument from prior session)

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

1 from the right edge of the paper. Each sheet must be numbered on the left
 2 margin and must contain at least 24 lines of type. The first line of each
 3 question and of each answer may be indented not more than five spaces from
 4 the left margin. The first line of any paragraph or other material may be
 5 indented not more than 10 spaces from the left margin. There must not be
 6 more than one space between words or more than two spaces between
 7 sentences. The type size must not be larger than 10 characters per inch. The
 8 lines of type may be double spaced or one and one-half spaced.

9 2. If the services of more than one reporter are required by the court in a
 10 criminal proceeding, each reporter is entitled to receive the [fee] fees set
 11 forth in [paragraph] paragraphs (a) and (b) of subsection [1.] 1, as appropri-
 12 ate. Each reporter in a criminal proceeding is entitled to receive an additional
 13 fee equal to one-half of the fee to which he is entitled pursuant to paragraph
 14 [(b)] (c) of subsection 1 for transcribing a proceeding of which the transcripts
 15 are ordered by the court to be delivered on or before the start of the next day
 16 the court is scheduled to conduct business.

17 3. The [fee] fees specified in [paragraph] paragraphs (a) and (b) of sub-
 18 section 1, the fees for transcripts in criminal cases ordered by the court to be
 19 made and the fees specified in subsection 2 must be paid out of the county
 20 treasury upon the order of the court. When there is no official reporter in
 21 attendance and a reporter pro tempore is appointed, his reasonable expenses
 22 for traveling and detention must be fixed and allowed by the court and paid in
 23 the same manner. The respective district judges may, with the approval of the
 24 respective board or boards of county commissioners within the judicial dis-
 25 trict, fix a monthly salary to be paid to the official reporter in lieu of per diem.
 26 The salary, and also actual traveling expenses in cases where the reporter acts
 27 in more than one county, must be prorated by the judge on the basis of time
 28 consumed by work in the respective counties and must be paid out of the
 29 respective county treasuries upon the order of the court.

30 4. In civil cases the fees prescribed in paragraph [(c)] (d) of subsection 1
 31 and for transcripts ordered by the court to be made must be paid by the
 32 parties in equal proportions, and either party may, at his option, pay the
 33 whole fee. In either case all amounts so paid by the party to whom costs are
 34 awarded must be taxed as costs in the case. The fees for transcripts and copies
 35 ordered by the parties must be paid by the party ordering them. No reporter
 36 may be required to perform any service in a civil case until his fees have been
 37 paid to him or deposited with the clerk of the court.

38 5. Where a transcript is ordered by the court or by any party, the fees for
 39 it must be paid to the clerk of the court and by him paid to the reporter upon
 40 the furnishing of the transcript.

41 6. The testimony and proceedings in an uncontested divorce action need
 42 not be transcribed unless requested by a party or ordered by the court.

43 Sec. 2. NRS 3.380 is hereby amended to read as follows:
 44 3.380 1. The judge or judges of any district court may, with the
 45 approval of the board of county commissioners of any one or more of the
 46 counties comprising such district, in addition to the appointment of a court
 47 reporter as in this chapter provided, enter an order for the installation of
 48 sound recording equipment for use in any of the instances recited in NRS

1 3.320, for the recording of any [and all] civil and criminal proceedings,
 2 testimony, objections, rulings, exceptions, arraignments, pleas, sentences,
 3 statements and remarks made by the district attorney or judge, oral instruc-
 4 tions given by the judge and any [and all] other proceedings occurring in civil
 5 or criminal actions or proceedings, or special proceedings whenever and
 6 wherever and to [like] the same extent as any of such proceedings have
 7 heretofore under existing statutes been recorded by the official reporter or any
 8 special reporter or any reporter pro tempore appointed by the court.

9 2. For the purpose of operating such sound recording equipment the court
 10 or judge may appoint or designate the official reporter or a special reporter or
 11 reporter pro tempore or the county clerk or clerk of [such] the court or
 12 deputy clerk. The person so operating such sound recording equipment shall
 13 subscribe to an oath that he will well and truly operate the [same] equipment
 14 so as to record all of [such] the matters and proceedings.

15 3. The court may then designate [such person so] the person operating
 16 such equipment or any other competent person to read the recording and to
 17 transcribe [the same] it into typewriting. The person [so transcribing such]
 18 transcribing the recording shall subscribe to an oath that he has truly and
 19 correctly transcribed [the same].

20 4. Such] it.
 21 4. The transcript may be used for all purposes for which transcripts have
 22 heretofore been received and accepted under then existing statutes, including
 23 transcripts of testimony and transcripts of proceedings as constituting bills of
 24 exceptions or part of the bill of exceptions on appeals in all criminal cases and
 25 transcripts of the evidence or proceedings as constituting the record on appeal
 26 in civil cases and including transcripts of preliminary hearings before justices
 27 of the peace and other committing magistrates, and [shall be] are subject to
 28 correction in [like] the same manner as transcripts under existing statutes.

29 5. In civil and criminal cases when the court has ordered the use of such
 30 sound recording equipment, any party to the action, at his own expense, may
 31 provide a certified court reporter to carry out the duties described in NRS
 32 3.320. A transcript produced by the certified court reporter may, in addition
 33 to the transcript produced by the sound recording equipment, be used as the
 34 official record of the proceedings.

35 Sec. 3. Chapter 240 of NRS is hereby amended by adding thereto a new
 36 section to read as follows:

37 *CA-certified court reporter who receives a certificate of appointment as a*
 38 *notary public with limited powers pursuant to subsection 3 of NRS 240.030,*
 39 *may only administer oaths and affirmations and may not perform the other*
 40 *powers and is not required to perform the other duties of a notary public*
 41 *specified in NRS 240.040, 240.060 and 240.120.*

42 Sec. 4. NRS 240.030 is hereby amended to read as follows:
 43 240.030 1. [Each] Except as otherwise provided in subsection 3, each
 44 person applying for appointment as a notary public shall:

- 45 (a) At the time he submits his application, pay to the secretary of state \$35.
- 46 (b) Take and subscribe to the oath set forth in section 2 of article 15 of the
- 47 constitution of the State of Nevada as if he were a public officer.

Pre 1995

1 (c) Enter into a bond to the State of Nevada in the sum of \$10,000, to be
 2 filed with the clerk of the county in which the applicant resides.
 3
 4 2. In completing an application, bond, oath or other document necessary
 5 to apply for appointment as a notary public, an applicant who is employed as
 6 a peace officer and is required to be a notary public as a condition of that
 7 employment must not be required to disclose his residential address or tele-
 8 phone number on any such document which will become available to the
 9 public.

10 ~~3. [The A court reporter who has received a certificate of registration~~
 11 ~~pursuant to NRS 656.180 may apply for appointment as a notary public with~~
 12 ~~limited powers. Such an applicant is not required to enter into a bond to~~
 13 ~~obtain the limited power of a notary public to administer oaths or~~
 14 ~~affirmations.~~

15 4. If required, the bond, together with the oath, must be filed and recorded
 16 in the office of the county clerk of the county in which the applicant resides
 17 when he applies for his appointment. On a form provided by the secretary of
 18 state, the county clerk shall immediately certify to the secretary of state that
 19 the required bond and oath have been filed and recorded. Upon receipt of the
 20 application, fee and certification that the required bond and oath have been
 21 filed and recorded, the secretary of state shall issue a certificate of appoint-
 22 ment as a notary public to the applicant.

23 4. J. 5. Except as otherwise provided in this subsection, the secretary of
 24 state shall charge a fee of \$10 for each duplicate or amended certificate of
 25 appointment which is issued to a notary. If the notary public does not receive
 26 an original certificate of appointment, the secretary of state shall provide a
 27 duplicate certificate of appointment without charge if the notary public
 28 requests such a duplicate within 60 days after the date on which the original
 29 certificate was issued.

30 Sec. 5. NRS 240.040 is hereby amended to read as follows:

31 240.040 1. [Each] Except as otherwise provided in section 3 of this act,
 32 each notary public shall authenticate all his acts, including any acknowledg-
 33 ment, jurat, verification or other certificate, by:

34 (a) Setting forth the following:

- 35 (1) The venue;
- 36 (2) His original signature; and
- 37 (3) A statement imprinted in indelible, photographically reproducible
 38 ink with a rubber or other mechanical stamp setting forth his name, the
 39 phrase "Notary Public, State of Nevada," the date on which his appointment
 40 expires, the number of his certificate of appointment and, if he so desires, the
 41 Great Seal of the State of Nevada; and

42 (b) Including all applicable information in the acknowledgment, jurat, ver-
 43 ification or other certificate.

44 2. After July 1, 1965, an embossed notarial seal is not required on nota-
 45 rized documents.

46 3. As used in this section, "mechanical stamp" includes an imprint made
 47 by a computer or other similar technology.

Sec. 6. NRS 240.060 is hereby amended to read as follows:

1 240.060 [A] Except as otherwise provided in section 3 of this act, a notary
 2 public may, during normal business hours, perform notarial acts in lawful
 3 transactions for a person who requests the act and tenders the appropriate fee.
 4 Sec. 7. NRS 240.120 is hereby amended to read as follows:

5 240.120 1. [Each] Except as otherwise provided in section 3 of this act,
 6 each notary public shall keep a journal in his office in which he shall enter for
 7 each notarial act performed, at the time the act is performed:

8 (a) The fees charged, if any;

9 (b) The title of the matter;

10 (c) The date on which he performed the service;

11 (d) The name and signature of the person whose signature is being nota-
 12 rized; and

13 (e) A description of the evidence used by the notary public to verify the
 14 identification of the person whose signature is being notarized.

15 2. If the notary verifies the identification of the person whose signature is
 16 being notarized on the basis of a credible witness, the notary public shall:

17 (a) Require the witness to sign the journal in the space provided for the
 18 description of the evidence used; and

19 (b) Make a notation in the journal that the witness is a credible witness.

20 3. The journal must:

21 (a) Be open to public inspection.

22 (b) Be in a bound volume with preprinted page numbers.

23 4. A notary public shall keep his journal for the entire period of his
 24 appointment.

25 5. Any notary public who violates any of the provisions of this section
 26 shall be fined not more than \$1,000.

27 Sec. 8. Section 5 of Assembly Bill No. 280 of this session is hereby
 28 amended to read as follows:

29 Sec. 5. "Notarial act" means any act that a notary public of this state
 30 is authorized to perform. The term includes:

31 1. Taking an acknowledgment;

32 2. Taking a deposition;

33 3. Administering an oath or affirmation;

34 4. Taking a verification upon oath or affirmation;

35 5. Witnessing or attesting a signature;

36 6. Certifying or attesting a copy;

37 7. Executing a jurat;

38 8. Noting a protest of a negotiable instrument; and

39 9. Performing such other duties as may be prescribed by a
 40 specific statute.

41 Sec. 9. Sections 4 to 8, inclusive, of this act become effective at 12:01
 42 a.m. on October 1, 1995.

Free 1995
 Was Removed

**MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
June 19, 1995**

The Committee on Judiciary was called to order at 8:20 a.m., on Monday, June 19, 1995, Chairman Anderson presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

Bob Feldman, President, Nevada General Insurance Co.
Anne Cathcart, Deputy Attorney General
Mark Ghan, Deputy Attorney General
Bob Larsen, Clark County Public Defender
John Kadlic, Justice of the Peace, City of Reno
Mary Bell, Nevada Court Reporters Association
Bob Hadfield, Nevada Association of Counties

Ann Cathcart, Deputy Attorney General (AG), provided a letter pertaining to A.B. 714, attached hereto as (Exhibit G). Ms. Cathcart stated earlier in the session the committee heard testimony on Assembly Bill 2 which requested a one year statute of limitations on all negligence and wrongful death actions filed by anybody against anybody, private or public. Through that testimony, it appeared the committee was inclined to do something to alleviate the burden of the state in regards to civil rights lawsuits filed by inmates. A.B. 714 is a reflection of that goal. The AG appreciates the committees' attempt to address the burden on the state and support A.B. 714.

Ms. Cathcart announced civil rights actions filed by inmates fluctuates every day. Presently, they have approximately 450 such cases. For example, 20 identical lawsuits were filed last week claiming the AG conspired to enforce a lock down situation at the Ely State Prison one year ago. Ms. Cathcart explained approximately 97% of these cases are frivolous. Ms. Cathcart concluded A.B. 714 promotes positive public policy as these lawsuits consume a tremendous amount of resources from the state. Ms. Cathcart declared the two year statute of limitations creates a burden on the AG as well because of the length of time these cases take to go through litigation.

Mark Ghan, Deputy Attorney General (AG), stated there would be little effect on non-inmate lawsuits filed against the state under the passage of A.B. 714. Chairman Anderson interrupted Mr. Ghan to inform him in order to give a proper hearing to A.B. 714 he would ask them to come back to conclude their testimony on another day as there were people present who have traveled some distance to present Assembly Bill 722. Chairman Anderson apologized for any inconvenience presented to their office. Ms. Cathcart acknowledged the committee has accommodated their office many times so they are happy to reciprocate.

ASSEMBLY BILL 722 **Makes various changes to provisions governing certified court reporters.**

Mary Bell, court reporter and owner of Capitol Reporters, having been in business in Carson City since 1969, stated she currently is the co-chair of the Nevada Court Reporters Association Legislative Committee which was formed in 1978 with approximately 160 members. In the audience today, she announced, were ten court reporters who have travelled to hear A.B. 722. Ms. Bell testified they have not received an increase in their fees in six years. Ms. Bell emphasized court reporters are required to be certified, licensed, and obtain continuing education

credits to maintain their licensure. Ms. Bell stated court reporters are independent and therefore are required to pay their own supplies, equipment, fees & dues, travel, benefits, and taxes, and other costs involved in doing business. Court reporter fees are determined by statute and therefore they request an increase to meet the increasing cost of doing business.

Morgan Baumgartner, representative, Nevada Court Reporters Association, concurred the court reporters have not had an increase in six years. Ms. Baumgartner submitted amendments proposed pursuant to negotiations with the counties. The amendments are attached hereto as (Exhibit H). Ms. Baumgartner continued Section 1 addresses the fee increase in the per diem rate from \$120 to \$140 per day, a \$30 per hour "overtime" pay in addition to the per diem rate, and an increase to \$3.25 per page for the original draft and one copy, and \$.50 after that, and went on to explain the amendments thereto.

Mr. Carpenter asked if the counties agree with the proposed increases. Ms. Baumgartner stated yes they have. Mr. Carpenter asked if the counties have so budgeted. Ms. Baumgartner deferred that answer to the counties.

~~Ms. Baumgartner addressed technical areas of the bill including Sections 3-8 which make changes to the notary requirements for court reporters resulting in no fiscal impact on the counties or state.~~

Bob Hadfield, Nevada Association of Counties, stated they have been working very hard for the past several hours to amend A.B. 722 to meet the concerns of the counties that responded to their request for information. Mr. Hadfield recognized the important work performed by court reporters and the court systems' reliance on that work so they were motivated to come to an agreement. Mr. Hadfield confessed there will be an impact on counties somewhere in excess of several hundred thousand dollars statewide. Mr. Hadfield concluded they support the amendments and they will continue to work with everyone to keep the court system as effective as possible.

Mr. Carpenter asked which area of increase in fees would have the greatest impact on the counties. Mr. Hadfield stated there are many changes between county to county but overall it would be fair to say the per diem rate would have the most impact. Mr. Hadfield concluded there is much flexibility in this legislative measure as everyone is trying to best meet the needs of the court reporters and the court system while still addressing the cost to the counties.

Senate Committee on Judiciary
June 26, 1995
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Ms. Baumgartner confirmed that was the compromise reached at the suggestion of the members of the Assembly Committee on Judiciary. She recalled the committee had concern that indigent litigants would have to bear the cost, who usually only buy the original copy. She said the counties traditionally buy two copies.

Ms. Bell told the chairman court reporters normally charge \$3 per page for an original and one copy for depositions, although reporters in Clark County charge from \$.75 to \$1 more per page.

When asked by Senator James, Ms. Baumgartner said the county agreed to a fee of \$140 per diem as well as to the other terms in the first reprint of A.B. 722. She related Robert Hadfield, director of the Nevada Association of Counties, gave her permission to express the counties' agreement with the changed version of A.B. 722.

Senator James requested an explanation of the part of the bill referring to notary oaths. Ms. Baumgartner explained that the majority of certified court reporters only use their notary powers to swear in people when they are taking depositions, and they do not attest to anything beyond that. However, she said, under the notary statutes they are required to post a bond. She stated they are requesting that they be exempt from the bond requirement as well as from keeping a journal, since their use of the notary power is so limited. She explained they will still be required to pay the same license fees.

In response to a query about sound recording, Ms. Baumgartner called attention to an amendment (Exhibit F) designed to allay concerns by the Clark County Courts and the Supreme Court regarding their interpretation of section 2 in the bill. She explained they feared allowing two official transcripts could lead to potential litigation problems. She said the Nevada Court Reporters' Association has accepted the amendment submitted by Ben Graham.

According to Ms. Baumgartner, the section was included in the bill to accommodate attorneys who occasionally wish the presence of a court reporter in the room because they may need a transcription on an expedited basis. It will enable an attorney to receive daily transcripts without putting the burden on the official court reporter, but it is not supposed to provide a second "official" transcript, she said.

June 26, 1995

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Ms. Baumgartner stated the last section of the bill contains an amendment to the definition of "notarial acts." She said it removes "taking a deposition" as a notarial act, which will prevent notaries who are not certified court reporters from taking legal depositions. She reiterated certified court reporters go through extensive training and continuing education, which notaries do not, and are subject to licensing.

There being no further testimony, Senator James closed the hearing on A.B. 722.

SENATOR ADLER MOVED TO AMEND AND DO PASS A.B. 722.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR PORTER WAS ABSENT FOR THE VOTE.)

STATE OF NEVADA

NOTARY HANDBOOK

CHAPTER 240 OF NRS



2013-2014

COURTESY OF

ROSS MILLER
SECRETARY OF STATE

101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4786
(775) 684-5708

1050

ROSS MILLER
Secretary of State
NOTARY DIVISION
101 N. Carson Street
Carson City, Nevada 89701



Notary Divisions

FAQ on SOS
website

- The Notarial Act
- Identifying the Client
- Keeping the Journal
- The Notarial Stamp
- Certifying to a Copy
- Legality
- Carrying out the Business of being a Notary
- Fees
- Your Appointment

THE NOTARIAL ACT

What is a notarial act?

As defined in the notary statutes, a notarial act is any act that a notary public of this state is authorized to perform, including taking an acknowledgment, administering an oath or affirmation, executing a jurat or taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

Are both my stamp and my signature required for a notarial act?

Yes. However, you also need to complete the notarial wording. Your signature and stamp by themselves do not constitute a complete notarization. You also need to complete the notarial wording.

When affixing my signature and using the stamp, how close together must they appear on the paper?

No certain distance is required by law. Both must appear on the document somewhere. Use reasonable judgment.

Does the document need to be signed in front of me?

Yes. The statutes require that you see the signer actually sign the document when the notarial wording is that of a JURAT. In the case of an acknowledgment, the person is simply acknowledging (declaring, stating) that he or she signed the document. If you not know the signer, he or she must present identification along with signing your journal.

Do I have to know what type of document I am notarizing?

Yes. The type of document is almost always described by its title e.g., affidavit, etc. This information must be entered in your journal.

Can I notarize a document that is written in a foreign language?

In most instances, yes. All you need is a title to put in your journal, and you can use the title the person gives you. However, you may not be able to witness a signature because you must be able to tell if that person is named in the document. If you are asked to certify a copy, you should make the photocopy yourself rather than try to compare two copies. You may need to check with an interpreter as to the type, or title, of the document. If this document is false or endorses or promotes a product, you will not know that. Finally, if the document is written in a language you can not read, you must add the notarial wording in English.

What if I am asked to notarize a signature that is on a blank piece of paper (no text)?

You must ask your customer to write an explanation as to why they want their signature notarized in addition to their signature. This statement may be as simple as: " I have been asked to have my signature notarized for verification"

If a person needs help formulating a document, can I give advice?

No.

Must I be concerned with whether the form is properly filled out, as long as the notarial certificate is correct?

It's not the notary's responsibility to check that the form is properly filled out, but it is the notary's responsibility to make sure the notarial wording is correct and complete.

What should I do if I determine a document is forged or fraudulent?

Don't notarize it. As a responsible citizen, you should also report the crime to law enforcement although nothing in the notarial law requires this.

Can I take a deposition?

~~The authority to take a deposition was removed from the list of notarial acts in the law by the 1995 Legislature. Certified court reporters who have been appointed notaries public with limited powers take depositions.~~

How do I notarize a signature on a document that has carbons? Do I have to notarize each copy of the original document?

If the document signer wants original signatures on each of the carbons, then you notarize each page just as if each page was an original. If the document signer does not want original signatures on each of the carbons, but only wants to show that the original was notarized, then stamp each carbon with your stamp and write next to your stamp the words "conformed copy."

IDENTIFYING THE CLIENT

How many pieces of ID should I require?

As many as necessary to give you satisfactory evidence that the person whose signature is on the document is that person. One may be sufficient. If you rely on an identifying document, that document must contain a signature and a photograph.

Should I note which ID was used in my journal?

Yes. The law requires that the notary enter into the journal a description of the evidence used to verify the identification of the signer.

If a credible witness is used, that person must also sign your journal. If you personally know the document signer, write "personally known" in the proper column.

Does a credible witness need to be present or can he or she verify identity by phone or letter?

The credible witness needs to be present.

Is a photo ID required?

The law requires a identification card with a photo and signature.

Are there any exceptions?

In 1997 the law was changed regarding identification of a person who is 65 years of age or older. If such a person does not have a picture ID, the person can be identified with a card issued by a governmental agency or senior citizen center. Use this method of identification only if there is absolutely no other way to identify the document signer.

Can I use an expired photo ID if the signature and photo match the person before me?

The statute doesn't address expired IDs. You, the notary, have to make the determination of whether the ID presented is satisfactory or not. You must be satisfied that the person making the acknowledgment/verification is the person whose signature is on the document.

How do I notarize the signature of someone who is from another country if that person's ID has been stolen?

The standard for determining identity is the same. If no written ID is available, a credible witness can be used. Remember, the credible witness must be present and known to you.

If I'm asked to notarize a document that is already signed, can I have the signer sign another piece of paper so I can compare the signatures?

The best procedure is to have the signer sign the document again in your presence, either above or below the original signature. You need not cross out the original signature. You may also have the person sign another piece of paper so that you may compare signatures. (Remember, however, this is not necessary when taking an acknowledgment.)

Can a "mark" be accepted as the individual's signature?

Yes, Nevada law, NRS 52.305 (1991) states:

1. The signature of a party, when required to a written instrument, is equally valid if the party cannot write, if:
 - a. The person makes his mark;
 - b. The name of the person making the mark is written near it; and
 - c. The mark is witnessed by a person who writes his own name as a witness.
3. In order that a signature by mark may be acknowledged or may serve as the signature to any sworn statement, it must be witnessed by two persons who must subscribe their own names as witnesses thereto.

KEEPING THE JOURNAL

Do I have to purchase a special kind of journal? If so, where?

Yes, a special journal is required: one that is bound and has pre-printed pages. You may purchase one from an office supply store.

May two notaries share one journal?

No. Each notary is responsible for his or her own work and must be ready to stand accountable for the information entered in the journal.

During what hours must my journal be open for public inspection?

During the hours you would normally be at work.

How public is the notary journal? Exactly who can inspect it?

Anyone can inspect your journal.

Do I have to open my journal for public inspection when it may include confidential information such as social security numbers, account numbers, or address?

The journal is open to public inspection. According to law, the only seven pieces of information that must be in the journal are: the fee charged (if any), the title of the document, the date the service was performed, the name and signature of the person whose signature is being notarized, a description of the evidence used by the notary to verify the identification of the person whose signature is being notarized, and whether an oath was administered.

May I refuse to notarize for someone who refuses to sign my journal?

Yes, because the notary law requires that the journal be signed.

How long must I keep my journal?

You must keep your journal(s) during the entire period of time for which you are a notary public in this state. After your commission(s) expire and you are no longer a notary, you must keep all your journals for an additional 7 years.

If I stop being a notary or if I die, what happens to my journal?

Notify the Secretary of State writing as to the location of the journal if it is within the time frame described in the previous question. After this time frame, your estate may dispose of the journal(s). The stamp must be destroyed immediately.

Can I "hide" a document in my journal by giving it a false title in an effort to protect a client who does not want, for example, anyone to know he/she adopted a child?

No. The title of the document and person's name is required by statute to be in your journal.

Does every single transaction need to be recorded even if they are all for the same person?

Yes.

What does "title of the matter" mean in NRS 240.120? Would it be "acknowledgment" or "loan agreement"?

It's the title of the document, so it would be "loan agreement."

THE NOTARIAL STAMP

May I have more than one stamp made to keep one at home and one at the office?

Yes. Remember, you need your Certificate of Appointment to get a stamp according to law.

How important is it that I use black ink for my stamp as opposed to some other color?

The notary law states that you may use any color ink as long as it is indelible and photographically reproducible.

When there is no room for the notarial certificate (such as on many DMV documents), may I use my stamp on the back or attach one on another piece of paper? How should I indicate that this is what I have done?

The notary stamp must be readable, and the 1997 law prohibits placing your notary stamp or your signature over printed material. You may use the back of the document or use an attached sheet. Note on the document that a notarial certificate is attached and note on the notarial certificate the kind of document to which it is attached.

May I, or must I, change the venue if it is printed with the wrong state or county?

You, the notary, authenticate all your acts by, among other things, setting forth the venue. This implies that the venue be true and correct, so if a document has an incorrect venue, you must correct it.

Should I keep my notary stamp locked away at all times?

It's a good idea to keep your notary stamp secure at all times, whether that's locked in your desk or someplace else.

CERTIFYING TO A COPY

Must I see the original document when notarizing a certified copy?

No, the law allows you to certify to a document presented to you. The notarial wording used to certify a copy does not indicate that you are certifying to an original document.

When I am asked to "certify to a copy" of a document and I notice that the notarial stamp on the original had in fact expired before the document was notarized, can I still certify to the copy?

Yes, as long as the copy is complete, accurate, and authentic. The notary does not determine the legality of any document.

If I am asked to make a certified copy, but the document is in a foreign language, can I refuse to do so on the grounds that I may actually be photocopying a document that cannot be legally photocopied?

Yes. However, you cannot refuse to notarize an affidavit or acknowledgment as long as all the other requirements are met.

Is it legal to certify a copy of a birth, death, or marriage certificate, or a decree of divorce, as being true and correct?

No, and the new law reflects this. Current Nevada law, NRS 440.175(2)(1993), states:

- 1. No person may prepare or issue any document which purports to be an original, certified copy, certified abstract or official copy of:
 - 1. A certificate of birth, death or fetal death, except as authorized in this chapter or by the state board of health.
 - 2. A certificate of marriage, except a county recorder or a person so required pursuant to NRS 122.120 (the person solemnizing the marriage).

3. A decree of divorce or annulment of marriage, except a county clerk or the judge of a court of record.

LEGALITY

Does the law require that I photocopy the document after it's notarized for my file?

No, the law does not require it. Because of copyright laws, we don't recommend that you do this.

What is the difference between a jurat and an acknowledgment? Are they interchangeable?

No, the terms are not interchangeable. A "jurat" is that part of a affidavit in which you, the notary, state that it was sworn to before you. "Acknowledgment" means a declaration by a person that he or she executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that he or she signed the instrument with proper authority and executed it as the act of the person of entity represented and identified therein.

(May I notarize my own signature?)

No.

May I notarize for a relative?

You cannot notarize for your spouse or anyone to whom you are related by blood. The law addresses this complicated question in detail. Please see NRS 240.065 for specifics.

What is meant by the term "executed" in NRS 240.065 and to whom does it apply?

"Executed" means signed and refers to the notary.

I am a loan officer. May I notarize my own documents?

The statute says, "a notary public cannot perform any act where he/she will receive directly from the transaction relating to the instrument any commission, fee, advantage, right, title, interest, property or other consideration in excess of the authorized fees."

May I notarize my own work if I am a secretary?

If you type a document, you may then notarize the signature as long as all legal requirements regarding ID are met. Remember, you cannot notarize your own signature.

Must I determine if the person signing before me understands what he or she is signing?

You are not obligated to make this determination. If you are not comfortable performing a notarial service, you may refuse (see NRS 240.060).

If the document does not have the printed information for a notarial act, what wording am I allowed to type in or affix, and how do I determine which notarial act is required?

See "What a Notary Does" in this handbook for suggested wording and a definition of each notarial act.

On a holographic will, do the witnesses' signatures need to be notarized as well as the signer?

Each state's laws regarding holographic wills are different. In Nevada, NRS 133.090(1) states that "[a] holographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state and need not be witnessed." So there are not necessarily any witnesses to a holographic will and no signatures need to be notarized in Nevada.

How is a notary's signature authenticated on a document in this country?

The act of authenticating a notarial officer's signature can be done only by the Secretary of State's office. You must let the individuals appearing before you know that they are responsible for sending their notarized document to the Secretary of State's office along with the appropriate fee of \$20.00. The Secretary of State prepares the authentication and will then mail it and the notarized document back to the sender.

How is a notarized document authenticated for use overseas?

Most foreign countries insist that the notary's signature be authenticated and, again, this can only be accomplished through the Secretary of State's office. The act of authenticating the notarial officer's signature on

documents going overseas is called an "Apostille" or "certification." You must let the individuals appearing before you know that they are responsible for sending their notarized document to the Secretary of State's office along with the appropriate fee of \$20.00. The Secretary of State prepares the authentication and will then mail it and the notarized document back to the sender.

CARRYING OUT THE BUSINESS OF BEING A NOTARY

Can my employer deny me the right to notarize after hours?

No, your appointment belongs to you, the notary, not your employer (see NRS 240.010, 240.100(4), and 240.143).

May I set aside certain hours to notarize documents for the general public and limit notarization to those hours? (Example: 1 p.m. to 2 p.m. only)

This is a business decision to be made by each notary. The law does not prohibit such a practice.

Do I have to declare that I am a notary if a person off the street asks, "Where can I find a notary?"

No. The notary law simply states that "a notary public may, during normal business hours, perform notarial acts in lawful transactions for a person who requests the act and tenders the appropriate fee" (see NRS 240.060).

If I leave my current job and that employer paid for my becoming a notary, am I no longer a notary?

No, you are still a notary. However, be aware that the employer may cancel your bond, and you would be required to get a new one. If you are not allowed to take your stamp with you, it must be destroyed and you can purchase a new one. The stamp, journal, and Certificate of Appointment are the property of the notary (see NRS 240.143).

FEES

Do I have to post the fees?

If you are going to charge, you must post the fees. If you don't charge fees, you don't have to post the fees (see NRS 240.100).

What may I charge?

Current Fees as of October 1, 1999 (see NRS 240.100)

| | |
|--|--------|
| For taking an acknowledgment, for the first signature of each signer | \$5.00 |
| For each additional signer | \$2.50 |
| For administering an oath or affirmation without a signature | \$2.50 |
| For a certified copy | \$2.50 |
| For a jurat, for each signature on the affidavit | \$5.00 |

Can I charge one person and not the next?

The statute doesn't require that you charge a fee. But if you charge one person and not another, other laws such as those prohibiting discrimination may be applicable. Check with an attorney.

If my employer pays for my notary appointment and equipment, who gets to keep the fees collected?

The statutes state that the notary can charge a fee. The issue of who keeps the fee in this example can be negotiated between you and your employer.

Why is it so cheap to notarize documents in Nevada; isn't it as good as in other states?

The Nevada Legislature determines the fees without reference to the notary policies of other states. The 1993 Nevada Legislature did increase the fees you can charge.

As a notary, can I make a "house call" to notarize a document?

Yes, but if a travel fee is going to be assessed, it cannot exceed the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax, full disclosure of the travel fee must be made in advance of the travel and be agreed to by the person requesting the service (see NRS 240.100(3)).

YOUR APPOINTMENT

**Can another notary administer the notarial oath to swear me in--as required by NRS 240.030(1)?
-or must the county clerk perform this function?**

Another notary can administer this oath. So could the Secretary of State or a Deputy Secretary of State or another notarial officer such as a judge. Remember, the oath and bond must be filed with the county clerk of the county in which you reside.

What is the oath I administer when swearing in a notary?

You may use the following oath:

State of Nevada
County of _____

I, _____, do solemnly swear or affirm that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State notwithstanding, and that I will and faithfully perform all the duties of the office of Notary Public on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

Subscribed and sworn to before me this _____ day of _____, 19____
by _____ (name of person making statement)

Notary Public

May I be appointed in more than one county in Nevada?

Your appointment authorizes you to notarize anywhere in the State, and the venue will reflect the county in which the notarial act is carried out. There is no need to be appointed in more than one county.

Must I transfer my bond and appointment if I move from one county to another?

The law requires that you amend your appointment by notifying the Secretary of State within 30 days of changing your county of residence. Consult your insurance company for the requirements of your bond.

I was recently married. Do I need to change my stamp, bond, and application on file with the Secretary of State?

If you change your name, you must amend your appointment by notifying the Secretary of State. You must purchase a new stamp to reflect your changed name with the same expiration date. Consult your insurance company regarding your bond.

Under what circumstances can my appointment be revoked? What are the penalties?

Your notary appointment may be revoked or suspended for a period of time to be determined by the Secretary of State for misconduct, willful violation, or neglect of duty. The fines range from \$200 to \$2,000 and are determined according to the reason your appointment was revoked. See the statutes for specifics NRS 240.150.

If my appointment is revoked, can I ever be a notary again?

Whether your appointment is revoked or suspended is determined by the Secretary of State following a formal hearing for misconduct or neglect. The finding will give specific instructions on future appointments.

How does one file a complaint about a notary?

Contact the Notary Division in the Secretary of State's office.

Who is covered by my bond?

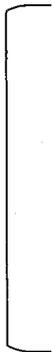
The person who may incur a loss as a result of a notary's misconduct. This bond is not insurance for you and will not protect you from a lawsuit. You may want to purchase errors and omissions insurance. Consult an insurance agent for clarification.

Questions We Haven't Answered?

Please contact us:

Secretary of State Notary Division

101 North Carson Street #3
Carson City, Nevada 89701
Phone: 775-684-5708
FAX 775-684-7141



CHAPTER 240 - NOTARIES PUBLIC AND COMMISSIONED ABSTRACTERS

NOTARIES PUBLIC

GENERAL PROVISIONS

| | |
|--------------------------------|--|
| <u>NRS 240.001</u> | Definitions. |
| <u>NRS 240.002</u> | "Acknowledgment" defined. |
| <u>NRS 240.0025</u> | "Credible witness" defined. |
| <u>NRS 240.0028</u> | "Domestic partners" defined. |
| <u>NRS 240.003</u> | "In a representative capacity" defined. |
| <u>NRS 240.0035</u> | "Jurat" defined. |
| <u>NRS 240.004</u> | "Notarial act" defined. |
| <u>NRS 240.005</u> | "Notarial officer" defined. |
| <u>NRS 240.0055</u> | "Notarial record" defined. |
| <u>NRS 240.0063</u> | "Notary public" defined. |
| <u>NRS 240.0065</u> | "Person" defined. |
| <u>NRS 240.0067</u> | "State" defined. |
| <u>NRS 240.007</u> | Information and documents filed with or obtained by Secretary of State: Public examination; confidentiality; disclosure. |

APPOINTMENT AND PRACTICE

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| <u>NRS 240.010</u> | Appointment by Secretary of State; cancellation of appointment; unlawful acts; injunctive relief. |
| <u>NRS 240.015</u> | General qualifications; expiration of appointment after termination of lawful admission for permanent residency in United States; conditions for appointment of resident of adjoining state. |
| <u>NRS 240.017</u> | Regulations of Secretary of State. |
| <u>NRS 240.018</u> | Courses of study for mandatory training of notaries public; fees; persons required to enroll in and successfully complete course of study; Notary Public Training Account; disposition of excess fees. |
| <u>NRS 240.020</u> | Powers limited to areas within this State; term of office. |
| <u>NRS 240.030</u> | Application for appointment; oath and bond; fingerprints; additional requirements for resident of adjoining state; commencement of term; fee for original, duplicate or amended certificate of appointment. |
| <u>NRS 240.031</u> | Annual submission of copy of business registration by resident of adjoining state. |
| <u>NRS 240.033</u> | Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment. |
| <u>NRS 240.036</u> | Amended certificate of appointment: Required for certain changes in information; suspension for failure to obtain; fee; issuance. |
| <u>NRS 240.040</u> | Use of stamp; embossed notarial seal not required; requirements of stamp; storage of stamp. |
| <u>NRS 240.045</u> | Replacement of lost or inoperable stamp; prerequisite to production of stamp. |
| <u>NRS 240.051</u> | Actions required upon resignation or death of notary public. |
| <u>NRS 240.060</u> | Powers of notary public. |
| <u>NRS 240.061</u> | Performance of authorized notarial acts; restricted notarial acts. |
| <u>NRS 240.062</u> | Personal knowledge of identity. |
| <u>NRS 240.063</u> | Evidentiary effect of signature; limitations on evidentiary effect of certification of documents. |
| <u>NRS 240.065</u> | Restrictions on powers of notary public; exception. |
| <u>NRS 240.075</u> | Prohibited acts. |
| <u>NRS 240.085</u> | Advertisements in language other than English to contain notice if notary public is not an attorney; use of certain non-English terms in advertisements prohibited; penalties. |
| <u>NRS 240.100</u> | Fees for services; additional fees for travel expenses; notarial acts performed within and outside scope of employment. |
| <u>NRS 240.110</u> | Posting of table of fees. |
| <u>NRS 240.120</u> | Journal of notarial acts: Duty to maintain; contents; verification based upon credible witness; copy of entry; storage; period of retention; report of loss or theft; exceptions. |
| <u>NRS 240.130</u> | Only authorized fees to be charged. |

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| <u>NRS 240.143</u> | Unlawful possession of certain personal property of notary public. |
| <u>NRS 240.145</u> | Unlawful reproduction or use of completed notarial certificate; penalty. |
| <u>NRS 240.147</u> | Unlawful destruction, defacement or concealment of notarial record. |
| <u>NRS 240.150</u> | Liability for misconduct or neglect; liability of employer; penalties for willful violation or neglect of duty; procedure upon revocation or suspension. |
| <u>NRS 240.155</u> | Notarization of signature of person not in presence of notary public unlawful; penalty. |

UNIFORM LAW ON NOTARIAL ACTS

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| <u>NRS 240.161</u> | Short title; uniformity of application and construction. |
| <u>NRS 240.1635</u> | Notarial acts in this State. |
| <u>NRS 240.164</u> | Notarial acts in other jurisdictions of United States. |
| <u>NRS 240.1645</u> | Notarial acts under federal authority. |
| <u>NRS 240.165</u> | Foreign notarial acts. |
| <u>NRS 240.1655</u> | Notarial acts. |
| <u>NRS 240.1657</u> | Authentication of signature of notarial officer by Secretary of State; limitation on actions brought against Secretary of State; prohibited acts; penalties; regulations. |
| <u>NRS 240.166</u> | Short form for acknowledgment in individual capacity. |
| <u>NRS 240.1663</u> | Short form for administering oath or affirmation of office. |
| <u>NRS 240.1665</u> | Short form for acknowledgment in representative capacity. |
| <u>NRS 240.1667</u> | Short form for acknowledgment containing power of attorney. |
| <u>NRS 240.167</u> | Short form for execution of jurat. |
| <u>NRS 240.168</u> | Short form for certifying copy of document. |
| <u>NRS 240.1685</u> | Short form for jurat of subscribing witness. |
| <u>NRS 240.169</u> | Short form for acknowledgment of credible witness. |

ELECTRONIC NOTARY PUBLIC AUTHORIZATION ACT

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|--------------------|--|
| <u>NRS 240.181</u> | Short title. |
| <u>NRS 240.182</u> | Definitions. |
| <u>NRS 240.183</u> | "Electronic" defined. |
| <u>NRS 240.184</u> | "Electronic document" defined. |
| <u>NRS 240.185</u> | "Electronic notarial act" defined. |
| <u>NRS 240.186</u> | "Electronic notary public" defined. |
| <u>NRS 240.187</u> | "Electronic seal" defined. |
| <u>NRS 240.188</u> | "Electronic signature" defined. |
| <u>NRS 240.189</u> | Applicability. |
| <u>NRS 240.191</u> | Appointment by Secretary of State; cancellation of appointment; unlawful acts; injunctive relief. |
| <u>NRS 240.192</u> | Application for appointment; oath and bond; additional requirements for resident of adjoining state; commencement of term; fee for original, duplicate or amended certificate of appointment. |
| <u>NRS 240.193</u> | Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment. |
| <u>NRS 240.194</u> | Term of office; suspension of appointment by operation of law; changes of information. |
| <u>NRS 240.195</u> | Courses of study required; persons required to successfully complete course of study; fees. |
| <u>NRS 240.196</u> | Powers of electronic notary public. |
| <u>NRS 240.197</u> | Fees for services; additional fees for travel expenses; notarial acts performed within and outside scope of employment. |
| <u>NRS 240.198</u> | Notarization of signature of person not in presence of notary public unlawful; penalty; notarization of certain electronic documents prohibited; powers limited to areas within this State. |
| <u>NRS 240.199</u> | Evidence of electronic notarial act. |
| <u>NRS 240.201</u> | Duty to keep journal of electronic notarial acts; suspension of appointment for failure to produce journal entry; delivery of notarial records to Secretary of State upon resignation, revocation or expiration of appointment. |
| <u>NRS 240.202</u> | Use of electronic signature and electronic seal; safeguarding of electronic signature, electronic seal and notarial records; maintenance of technology or device used to create electronic signature. |
| <u>NRS 240.203</u> | Notice to Secretary of State of resignation or death of notary public or revocation or expiration of appointment; duty to erase, delete, destroy or otherwise render ineffective the notary's electronic signature technology or device. |
| <u>NRS 240.204</u> | Unlawful acts. |
| <u>NRS 240.205</u> | Authentication of signature of electronic notary public by Secretary of State. |
| <u>NRS 240.206</u> | Regulations. |

COMMISSIONED ABSTRACTERS

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| <u>NRS 240.240</u> | Creation of office. |
| <u>NRS 240.250</u> | Appointment and commission. |
| <u>NRS 240.260</u> | Term of office. |
| <u>NRS 240.270</u> | Fee for commission; oath and bond. |
| <u>NRS 240.280</u> | Seal. |
| <u>NRS 240.290</u> | Acts may be performed anywhere in State. |
| <u>NRS 240.300</u> | Powers. |
| <u>NRS 240.310</u> | Fees. |
| <u>NRS 240.320</u> | Revocation of commission. |
| <u>NRS 240.330</u> | Penalties. |

NOTARIES PUBLIC

General Provisions

NRS 240.001 Definitions. As used in NRS 240.001 to 240.206, inclusive, unless the context otherwise requires, the words and terms defined in NRS 240.002 to 240.0067, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 187; A 1997, 930; 1999, 74; 2001, 652; 2003, 606; 2005, 2274; 2009, 3026; 2013, 1376)

NRS 240.002 "Acknowledgment" defined. "Acknowledgment" means a declaration by a person that he or she has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(Added to NRS by 1995, 187)

NRS 240.0025 "Credible witness" defined. "Credible witness" means a person who:

1. Swears or affirms that the signer of a document is the person whom he or she claims to be; and
2. Is known personally to the signer of the document and the notarial officer.

(Added to NRS by 2003, 606)

NRS 240.0028 "Domestic partners" defined. "Domestic partners" has the meaning ascribed to it in NRS 122A.030.

(Added to NRS by 2013, 1375)

NRS 240.003 "In a representative capacity" defined. "In a representative capacity" means:

1. For and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;
2. As a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;
3. As an attorney-in-fact for a principal; or
4. In any other capacity as an authorized representative of another.

(Added to NRS by 1995, 188)

NRS 240.0035 "Jurat" defined. "Jurat" means a declaration by a notarial officer that the signer of a document signed the document in the presence of the notarial officer and swore to or affirmed that the statements in the document are true.

(Added to NRS by 2003, 606)

~~NRS 240.004 "Notarial act" defined.~~ "Notarial act" means an act that a notarial officer of this state is authorized to perform. The term includes:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Certifying a copy;
4. Executing a jurat;
5. Noting a protest of a negotiable instrument; and
6. Performing such other duties as may be prescribed by a specific statute.

(Added to NRS by 1995, 188; A 1995, 1597; 1997, 930; 2003, 606)

~~NRS 240.005 "Notarial officer" defined.~~ "Notarial officer" means a notary public or an officer authorized to perform notarial acts.

(Added to NRS by 1995, 188)

NRS 240.0055 "Notarial record" defined. "Notarial record" means:

1. The journal that a notary public is required to keep pursuant to NRS 240.120;
2. The journal that an electronic notary public is required to keep pursuant to NRS 240.201; and
3. A document or other evidence retained by a notary public or an electronic notary public to record the performance of a notarial act or an electronic notarial act.

(Added to NRS by 2009, 3018)

NRS 240.0063 "Notary public" defined. "Notary public" means a person appointed to perform a notarial act by the Secretary of State pursuant to NRS 240.010.

(Added to NRS by 2013, 1375)

NRS 240.0065 "Person" defined. "Person" means a natural person.

(Added to NRS by 2013, 1375)

NRS 240.0067 "State" defined. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(Added to NRS by 2013, 1375)

NRS 240.007 Information and documents filed with or obtained by Secretary of State: Public examination; confidentiality; disclosure.

1. Except as otherwise provided in subsections 2 and 3, information and documents filed with or obtained by the Secretary of State pursuant to NRS 240.001 to 240.206, inclusive, are public information and are available for public examination.

2. Information and documents filed with or obtained by the Secretary of State pursuant to or in accordance with subsection 3 of NRS 240.010 are not public information and are confidential.

3. Except as otherwise provided in subsections 4 and 5 and in NRS 239.0115, information and documents obtained by or filed with the Secretary of State in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.206, inclusive, are not public information and are confidential.

4. The Secretary of State may submit any information or evidence obtained in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.206, inclusive, to the appropriate district attorney for the purpose of prosecuting a criminal action.

5. The Secretary of State may disclose any information or documents obtained in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.206, inclusive, to an agency of this State or a political subdivision of this State.

(Added to NRS by 1999, 74; A 2005, 2274; 2007, 2066; 2009, 3026)

Appointment and Practice

NRS 240.010 Appointment by Secretary of State; cancellation of appointment; unlawful acts; injunctive relief.

1. The Secretary of State may appoint notaries public in this State.
2. The Secretary of State shall not appoint as a notary public a person:
 - (a) Who submits an application containing a substantial and material misstatement or omission of fact.
 - (b) Whose previous appointment as a notary public in this State or another state has been revoked for cause.
 - (c) Who, except as otherwise provided in subsection 3, has been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to:
 - (1) A crime involving moral turpitude; or
 - (2) Burglary, conversion, embezzlement, extortion, forgery, fraud, identity theft, larceny, obtaining money under false pretenses, robbery or any other crime involving misappropriation of the identity or property of another person or entity,
↪ if the Secretary of State is aware of such a conviction or plea before the Secretary of State makes the appointment.
 - (d) Against whom a complaint that alleges a violation of a provision of this chapter is pending.
 - (e) Who has not submitted to the Secretary of State proof satisfactory to the Secretary of State that the person has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.
3. A person who has been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a crime involving moral turpitude may apply for appointment as a notary public if the person provides proof satisfactory to the Secretary of State that:
 - (a) More than 10 years have elapsed since the date of the person's release from confinement or the expiration of the period of his or her parole, probation or sentence, whichever is later;
 - (b) The person has made complete restitution for his or her crime involving moral turpitude, if applicable;
 - (c) The person possesses his or her civil rights; and
 - (d) The crime for which the person was convicted or entered a plea is not one of the crimes enumerated in subparagraph (2) of paragraph (c) of subsection 2.
4. A notary public may cancel his or her appointment by submitting a written notice to the Secretary of State.
5. It is unlawful for a person to:
 - (a) Represent himself or herself as a notary public appointed pursuant to this section if the person has not received a certificate of appointment from the Secretary of State pursuant to this chapter, or if his or her appointment is expired, revoked or suspended or is otherwise not in good standing.
 - (b) Submit an application for appointment as a notary public that contains a substantial and material misstatement or omission of fact.
 - (c) Violate any provision of this chapter, including, without limitation, the provisions of NRS 240.085.
6. Any person who violates a provision of paragraph (a) of subsection 5 is liable for a civil penalty of not more than \$2,000 for each violation, plus reasonable attorney's fees and costs.
7. Any person who is aware of a violation of this chapter by a notary public or a person applying for appointment as a notary public may file a complaint with the Secretary of State setting forth the details of the violation that are known by the person who is filing the complaint.
8. The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection 5 and recover any penalties, attorney's fees and costs.
[1:22:1907; RL § 2762; NCL § 4732] + [Part 1:108:1866; B § 2599; BH § 1636; C § 1782; RL § 2765; NCL § 4765] + [4:22:1907; added 1913, 31; 1919 RL § 2764; NCL § 4735]—(NRS A 1959, 220; 1975, 1519; 1979, 24; 1995, 190; 1997, 930; 2005, 2275; 2007, 1097; 2009, 3027; 2015, 928, 2615)

NRS 240.015 General qualifications; expiration of appointment after termination of lawful admission for permanent residency in United States; conditions for appointment of resident of adjoining state.

1. Except as otherwise provided in this section, a person appointed as a notary public must:
 - (a) During the period of his or her appointment, be a citizen of the United States or lawfully admitted for permanent residency in the United States as verified by the United States Citizenship and Immigration Services.
 - (b) Be a resident of this State.
 - (c) Be at least 18 years of age.
 - (d) Possess his or her civil rights.
 - (e) Have completed a course of study pursuant to NRS 240.018.
2. If a person appointed as a notary public ceases to be lawfully admitted for permanent residency in the United States during his or her appointment, the person shall, within 90 days after his or her lawful admission has expired or is otherwise terminated, submit to the Secretary of State evidence that the person is lawfully readmitted for permanent residency as verified by the United States Citizenship and Immigration Services. If the person fails to submit such evidence within the prescribed time, the person's appointment expires by operation of law.

3. The Secretary of State may appoint a person who resides in an adjoining state as a notary public if the person:

- (a) Maintains a place of business in the State of Nevada that is registered pursuant to chapter 76 of NRS and any applicable business licensing requirements of the local government where the business is located; or
- (b) Is regularly employed at an office, business or facility located within the State of Nevada by an employer registered to do business in this State.

↪ If such a person ceases to maintain a place of business in this State or regular employment at an office, business or facility located within this State, the Secretary of State may suspend the person's appointment. The Secretary of State may reinstate an appointment suspended pursuant to this subsection if the notary public submits to the Secretary of State, before his or her term of appointment as a notary public expires, the information required pursuant to subsection 2 of NRS 240.030.

(Added to NRS by 1985, 1204; A 1993, 261; 1995, 190; 1997, 931; 2005, 1581; 2009, 3027; 2015, 929)

NRS 240.017 Regulations of Secretary of State. The Secretary of State:

1. May adopt regulations:
 - (a) Prescribing the procedure for the appointment and mandatory training of a notary public.
 - (b) Establishing procedures for the notarization of digital or electronic signatures.
2. Shall adopt regulations prescribing the form of each affidavit required pursuant to subsection 2 of NRS 240.030.

(Added to NRS by 1985, 1204; A 1995, 191; 1997, 931; 2001, 652; 2007, 1098)

NRS 240.018 Courses of study for mandatory training of notaries public; fees; persons required to enroll in and successfully complete course of study; Notary Public Training Account; disposition of excess fees.

1. The Secretary of State may:
 - (a) Provide courses of study for the mandatory training of notaries public. Such courses of study:
 - (1) Must include at least 3 hours of instruction and an examination relating to the functions and duties of notaries public; and
 - (2) May be conducted in person or online by the Secretary of State or a vendor approved by the Secretary of State.
 - (b) Charge a reasonable fee to each person who enrolls in a course of study for the mandatory training of notaries public.
2. A course of study provided pursuant to this section must comply with the regulations adopted pursuant to subsection 1 of NRS 240.017.
3. The following persons are required to enroll in and successfully complete a course of study provided pursuant to this section:
 - (a) A person applying for appointment as a notary public for the first time.
 - (b) A person renewing his or her appointment as a notary public.
 - (c) A person who has committed a violation of this chapter or whose appointment as a notary public has been suspended, and who has been required by the Secretary of State to enroll in a course of study provided pursuant to this section.

4. The Secretary of State shall deposit the fees collected pursuant to paragraph (b) of subsection 1 in the Notary Public Training Account which is hereby created in the State General Fund. The Account must be administered by the Secretary of State. Any interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account. Any money remaining in the Account at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward. All claims against the Account must be paid as other claims against the State are paid. The money in the Account may be expended:

(a) To pay for expenses related to providing courses of study for the mandatory training of notaries public, including, without limitation, the rental of rooms and other facilities, advertising, travel and the printing and preparation of course materials; or

(b) For any other purpose authorized by the Legislature.

5. At the end of each fiscal year, the Secretary of State shall reconcile the amount of the fees collected pursuant to paragraph (b) of subsection 1 and the expenses related to administering the training of notaries public pursuant to this chapter and deposit any excess fees received with the State Treasurer for credit to the State General Fund.

(Added to NRS by 2001, 651; A 2007, 1098; 2010, 26th Special Session, 6, 87; 2011, 443; 2013, 3475; 2015, 929)

NRS 240.020 Powers limited to areas within this State; term of office. A person appointed as a notary public pursuant to this chapter may perform notarial acts in any part of this state for a term of 4 years, unless sooner removed. Such an appointment does not authorize the person to perform notarial acts in another state.

[Part 2:22:1907; RL § 2763; NCL § 4733]—(NRS A 1975, 1519; 1997, 931)

NRS 240.030 Application for appointment; oath and bond; fingerprints; additional requirements for resident of adjoining state; commencement of term; fee for original, duplicate or amended certificate of appointment.

1. Each person applying for appointment as a notary public must:

(a) At the time the applicant submits his or her application, pay to the Secretary of State \$35.

(b) Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if the applicant were a public officer.

(c) Submit to the Secretary of State proof satisfactory to the Secretary of State that the applicant has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.

(d) Enter into a bond to the State of Nevada in the sum of \$10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant must submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.

(e) Submit to the Secretary of State a declaration under penalty of perjury stating that the applicant has not had an appointment as a notary public revoked or suspended in this State or any other state or territory of the United States.

(f) If required by the Secretary of State, submit:

(1) A complete set of the fingerprints of the applicant and written permission authorizing the Secretary of State to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(2) A fee established by regulation of the Secretary of State which must not exceed the sum of the amounts charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for processing the fingerprints.

2. In addition to the requirements set forth in subsection 1, an applicant for appointment as a notary public who resides in an adjoining state must submit to the Secretary of State with the application:

(a) An affidavit setting forth the adjoining state in which the applicant resides, the applicant's mailing address and the address of the applicant's place of business or employment that is located within the State of Nevada;

(b) A copy of the applicant's state business registration issued pursuant to chapter 76 of NRS and any business license required by the local government where the business is located, if the applicant is self-employed; and

(c) Unless the applicant is self-employed, a copy of the state business registration of the applicant's employer, a copy of any business license of the applicant's employer that is required by the local government where the business is located and an affidavit from the applicant's employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.

3. In completing an application, bond, oath or other document necessary to apply for appointment as a notary public, an applicant must not be required to disclose his or her residential address or telephone number on any such document which will become available to the public.

4. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when the applicant applies for the appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as a notary public to the applicant.

5. The term of a notary public commences on the effective date of the bond required pursuant to paragraph (d) of subsection 1. A notary public shall not perform a notarial act after the effective date of the bond unless the notary public has been issued a certificate of appointment.

6. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which is issued to a notary. If the notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

[2:39:1864; A 1865, 407; 1883, 82; 1949, 69; 1943 NCL § 4715] + [3:39:1864; A 1911, 361; RL § 2746; NCL § 4716]—(NRS A 1973, 386; 1979, 77; 1981, 325; 1983, 706; 1985, 1205; 1987, 1113; 1989, 148; 1995, 191, 1595; 1997, 931; 1999, 74; 2001, 652; 2007, 44, 1099; 2009, 3028; 2011, 1608; 2015, 2616)

NRS 240.031 Annual submission of copy of business registration by resident of adjoining state. A notary public who is a resident of an adjoining state shall submit to the Secretary of State annually, within 30 days before the anniversary date of his or her appointment as a notary public, a copy of the state business registration of the place of employment of the notary public in the State of Nevada issued pursuant to chapter 76 of NRS, a copy of any license required by the local government where the business is located and the information required pursuant to subsection 2 of NRS 240.030.

(Added to NRS by 1997, 929; A 2009, 3029)

NRS 240.033 Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment.

1. The bond required to be filed pursuant to NRS 240.030 must be executed by the person applying to become a notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the notary public which violates a provision of NRS 240.001 to 240.169, inclusive. The surety company shall pay a final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice of final judgment. The bond may be continuous but, regardless of the duration of the bond, the aggregate liability of the surety does not exceed the penal sum of the bond.

2. If the penal sum of the bond is exhausted, the surety company shall notify the Secretary of State in writing within 30 days after its exhaustion.

3. The surety bond must cover the period of the appointment of the notary public, except when a surety is released.

4. A surety on a bond filed pursuant to NRS 240.030 may be released after the surety gives 30 days' written notice to the Secretary of State and notary public, but the release does not discharge or otherwise affect a claim filed by a person for damage resulting from an act of the notary public which is alleged to have occurred while the bond was in effect.

5. The appointment of a notary public is suspended by operation of law when the notary public is no longer covered by a surety bond as required by this section and NRS 240.030 or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 4 that the bond will be released or pursuant to subsection 2 that the penal sum of the bond is exhausted, the Secretary of State shall immediately notify the notary public in writing that his or her appointment will be suspended by operation of law until another surety bond is filed in the same manner and amount as the bond being terminated.

6. The Secretary of State may reinstate the appointment of a notary public whose appointment has been suspended pursuant to subsection 5, if the notary public, before his or her current term of appointment expires:

(a) Submits to the Secretary of State:

(1) An application for an amended certificate of appointment as a notary public; and

(2) A certificate issued by the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, the county in this State in which the applicant maintains a place of business or is employed, which indicates that the applicant filed a new surety bond with the clerk.

(b) Pays to the Secretary of State a fee of \$10.

(Added to NRS by 1995, 189; A 1997, 933; 2005, 2275)

NRS 240.036 Amended certificate of appointment: Required for certain changes in information; suspension for failure to obtain; fee; issuance.

1. If, at any time during his or her appointment, a notary public changes his or her mailing address, county of residence or signature or, if the notary public is a resident of an adjoining state, changes his or her place of business or employment, the notary public shall submit to the Secretary of State a request for an amended certificate of appointment on a form provided by the Secretary of State. The request must:

(a) Include the new information;

(b) Be submitted within 30 days after making that change; and

(c) Be accompanied by a fee of \$10.

2. The Secretary of State may suspend the appointment of a notary public who fails to provide to the Secretary of State notice of a change in any of the information specified in subsection 1.

3. If a notary public changes his or her name during his or her appointment and the notary public intends to use his or her new name in the performance of notarial duties, the notary public shall submit to the Secretary of State a request for an amended certificate of appointment on a form provided by the Secretary of State. The request must:

(a) Include the new name and signature and the address of the notary public;

(b) Be submitted within 30 days after making the change; and

(c) Be accompanied by a fee of \$10.

4. Upon receipt of a request for an amended certificate of appointment and the appropriate fee, the Secretary of State shall issue an amended certificate of appointment.

5. When the notary public receives the amended certificate of appointment, the notary public shall:

(a) Destroy his or her notary's stamp and obtain a new notary's stamp which includes the information on the amended certificate.

(b) Notify the surety company which issued his or her bond of the changes.

(Added to NRS by 1995, 188; A 1997, 933)

NRS 240.040 Use of stamp; embossed notarial seal not required; requirements of stamp; storage of stamp.

1. The statement required by paragraph (d) of subsection 1 of NRS 240.1655 must:

(a) Be imprinted in indelible, photographically reproducible ink with a rubber or other mechanical stamp; and

(b) Set forth:

(1) The name of the notary public;

(2) The phrase "Notary Public, State of Nevada";

(3) The date on which the appointment of the notary public expires;

(4) The number of the certificate of appointment of the notary public;

(5) If the notary public so desires, the Great Seal of the State of Nevada; and

(6) If the notary public is a resident of an adjoining state, the word "nonresident."

2. After July 1, 1965, an embossed notarial seal is not required on notarized documents.

3. The stamp required pursuant to subsection 1 must:

(a) Be a rectangle, not larger than 1 inch by 2 1/2 inches, and may contain a border design; and

(b) Produce a legible imprint.

4. A notary public shall not affix his or her stamp over printed material.

5. A notary public shall keep his or her stamp in a secure location during any period in which the notary public is not using the stamp to perform a notarial act.

6. As used in this section, "mechanical stamp" includes an imprint made by a computer or other similar technology.

[10:39:1864; B § 339; BH § 2244; C § 2411; RL § 2753; NCL § 4723]—(NRS A 1965, 647; 1985, 1205; 1995, 191, 1596; 1997, 934; 2003, 606; 2011, 1610)

NRS 240.045 Replacement of lost or inoperable stamp; prerequisite to production of stamp.

1. If the stamp of a notary public is lost, the notary public shall, within 10 days after the stamp is lost, submit to the Secretary of State a request for an amended certificate of appointment, on a form provided by the Secretary of State, and obtain a new stamp in accordance with NRS 240.036. The request must be accompanied by a fee of \$10.

2. If the stamp is destroyed, broken, damaged or otherwise rendered inoperable, the notary public shall immediately notify the Secretary of State of that fact and obtain a new stamp.

3. A person or governmental entity shall not make, manufacture or otherwise produce a notary's stamp unless the notary public presents his or her original or amended certificate of appointment or a certified copy of his or her original or amended certificate of appointment to that person or governmental entity.

(Added to NRS by 1995, 188; A 1997, 935)

NRS 240.051 Actions required upon resignation or death of notary public.

1. If a notary public resigns or dies during his or her appointment, the notary public, or the executor of the estate of the notary public, as appropriate, shall:

(a) Notify the Secretary of State of the resignation or death; and

(b) Destroy the notary's stamp.

2. Upon the receipt of the notice required by subsection 1, the Secretary of State shall cancel the appointment of the notary public, effective on the date on which the notice was received.

(Added to NRS by 1995, 189)

NRS 240.060 Powers of notary public. A notary public may, during normal business hours, perform notarial acts in lawful transactions for a person who requests the act and tenders the appropriate fee.

[Part 1911 CPA § 541; RL § 5483; NCL § 9030] + [4:39:1864; B § 333; BH § 2238; C § 2405; RL § 2747; NCL § 4717] + [5:39:1864; B § 334; BH § 2239; C § 2406; RL § 2748; NCL § 4718] + [6:39:1864; B § 335; BH § 2240; C § 2407; RL § 2749; NCL § 4719] + [7:39:1864; B § 336; BH § 2241; C § 2408; RL § 2750; NCL § 4720]—(NRS A 1985, 1206; 1987, 1303; 1995, 192, 1596; 2007, 45)

NRS 240.061 Performance of authorized notarial acts; restricted notarial acts.

1. A notarial officer may perform a notarial act authorized by NRS 240.001 to 240.169, inclusive, or by law of this State other than NRS 240.001 to 240.169, inclusive.

2. A notarial officer other than a notary public may not perform a notarial act with respect to a document to which the officer or the officer's spouse or domestic partner is a party, or in which either of them has a direct beneficial interest. A notary public may not perform a notarial act if the notarial act is prohibited by NRS 240.001 to 240.169, inclusive. ~~A notarial act performed in violation of this subsection is voidable.~~

(Added to NRS by 2013, 1375)

NRS 240.062 Personal knowledge of identity. For the purposes of NRS 240.001 to 240.169, inclusive, a notarial officer has personal knowledge of the identity of a person appearing before the officer if the person is personally known to the officer through dealings sufficient to provide reasonable certainty that the person has the identity claimed.

(Added to NRS by 2013, 1375)

NRS 240.063 Evidentiary effect of signature; limitations on evidentiary effect of certification of documents.

1. The signature of a notary public on a document shall be deemed to be evidence only that the notary public knows the contents of the document that constitute the signature, execution, acknowledgment, oath, affirmation or affidavit.

2. When a notary public certifies that a document is a certified or true copy of an original document, the certification shall not be deemed to be evidence that the notary public knows the contents of the document.

(Added to NRS by 1997, 929; A 2003, 607)

NRS 240.065 Restrictions on powers of notary public; exception.

1. A notary public may not perform a notarial act if:

(a) The notary public executed or is named in the instrument acknowledged, sworn to or witnessed or attested;

(b) Except as otherwise provided in subsection 2, the notary public has or will receive directly from a transaction relating to the instrument or pleading a commission, fee, advantage, right, title, interest, property or other consideration in excess of the fee authorized pursuant to NRS 240.100 for the notarial act;

(c) The notary public and the person whose signature is to be acknowledged, sworn to or witnessed or attested are domestic partners; or

(d) The person whose signature is to be acknowledged, sworn to or witnessed or attested is a relative of the domestic partner of the notary public or a relative of the notary public by marriage or consanguinity.

2. A notary public who is an attorney licensed to practice law in this State may perform a notarial act on an instrument or pleading if the notary public has or will receive directly from a transaction relating to the instrument or pleading a fee for providing legal services in excess of the fee authorized pursuant to NRS 240.100 for the notarial act.

3. As used in this section, "relative" includes, without limitation:

(a) A spouse or domestic partner, parent, grandparent or stepparent;

(b) A natural born child, stepchild or adopted child;

(c) A grandchild, brother, sister, half brother, half sister, stepbrother or stepsister;

(d) A grandparent, parent, brother, sister, half brother, half sister, stepbrother or stepsister of the spouse or domestic partner of the notary public; and

(e) A natural born child, stepchild or adopted child of a sibling or half sibling of the notary public or of a sibling or half sibling of the spouse or domestic partner of the notary public.

(Added to NRS by 1985, 1205; A 1995, 192; 1997, 935; 2005, 67; 2013, 1376)

NRS 240.075 Prohibited acts. A notary public shall not:

1. Influence a person to enter or not enter into a lawful transaction involving a notarial act performed by the notary public.

2. Certify an instrument containing a statement known by the notary public to be false.

3. Perform any act as a notary public with intent to deceive or defraud, including, without limitation, altering the journal that the notary public is required to keep pursuant to NRS 240.120.

4. Endorse or promote any product, service or offering if his or her appointment as a notary public is used in the endorsement or promotional statement.

5. Certify photocopies of a certificate of birth, death or marriage or a divorce decree.

6. Allow any other person to use his or her notary's stamp.

7. Allow any other person to sign the notary's name in a notarial capacity.

8. Perform a notarial act on a document that contains only a signature.

9. Perform a notarial act on a document, including a form that requires the signer to provide information within blank spaces, unless the document has been filled out completely and has been signed.

10. Make or note a protest of a negotiable instrument unless the notary public is employed by a depository institution and the protest is made or noted within the scope of that employment. As used in this subsection, "depository institution" has the meaning ascribed to it in NRS 657.037.

11. Affix his or her stamp to any document which does not contain a notarial certificate.

(Added to NRS by 1985, 1205; A 1987, 1114; 1995, 193; 2001, 653; 2011, 1610; 2015, 930)

NRS 240.085 Advertisements in language other than English to contain notice if notary public is not an attorney; use of certain non-English terms in advertisements prohibited; penalties.

1. Every notary public who is not an attorney licensed to practice law in this State and who advertises his or her services as a notary public in a language other than English by any form of communication, except a single plaque on his or her desk, shall post or otherwise include with the advertisement a notice in the language in which the advertisement appears. The notice must be of a conspicuous size, if in writing, and must appear in substantially the following form:

I AM NOT AN ATTORNEY IN THE STATE OF NEVADA. I AM NOT LICENSED TO GIVE LEGAL ADVICE. I MAY NOT ACCEPT FEES FOR GIVING LEGAL ADVICE.

2. A notary public who is not an attorney licensed to practice law in this State shall not use the term "notario," "notario publico," "licenciado" or any other equivalent non-English term in any form of communication that advertises his or her services as a notary public, including, without limitation, a business card, stationery, notice and sign.

3. If the Secretary of State finds a notary public guilty of violating the provisions of subsection 1 or 2, the Secretary of State shall:

- (a) Suspend the appointment of the notary public for not less than 1 year.
- (b) Revoke the appointment of the notary public for a third or subsequent offense.
- (c) Assess a civil penalty of not more than \$2,000 for each violation.

4. A notary public who is found guilty in a criminal prosecution of violating subsection 1 or 2 shall be punished by a fine of not more than \$2,000.

5. An employer of a notary public shall not:

- (a) Prohibit the notary public from meeting the requirements set forth in subsection 1; or
- (b) Advertise using the term "notario," "notario publico," "licenciado" or any other equivalent non-English term in any form of communication that advertises notary public services, including, without limitation, a business card, stationery, notice and sign, unless the notary public under his or her employment is an attorney licensed to practice law in this State.

6. If the Secretary of State finds the employer of a notary public guilty of violating a provision of subsection 5, the Secretary of State shall:

- (a) Notify the employer in writing of the violation and order the immediate removal of such language.
- (b) Assess a civil penalty of not more than \$2,000 for each violation.

7. The employer of a notary public who is found guilty in a criminal prosecution of violating a provision of subsection 5 shall be punished by a fine of not more than \$2,000.

(Added to NRS by 1983, 307; A 1985, 1206; 2005, 68; 2015, 931, 2618)

NRS 240.100 Fees for services; additional fees for travel expenses; notarial acts performed within and outside scope of employment.

1. Except as otherwise provided in subsection 3, a notary public may charge the following fees and no more:

| | |
|---|--------|
| For taking an acknowledgment, for the first signature of each signer..... | \$5.00 |
| For each additional signature of each signer..... | 2.50 |
| For administering an oath or affirmation without a signature..... | 2.50 |
| For a certified copy..... | 2.50 |
| For a jurat, for each signature on the affidavit..... | 5.00 |
| For performing a marriage ceremony..... | 75.00 |

2. All fees prescribed in this section are payable in advance, if demanded.

3. A notary public may charge an additional fee for traveling to perform a notarial act if:
 - (a) The person requesting the notarial act asks the notary public to travel;
 - (b) The notary public explains to the person requesting the notarial act that the fee is in addition to the fee authorized in subsection 1 and is not required by law;
 - (c) The person requesting the notarial act agrees in advance upon the hourly rate that the notary public will charge for the additional fee; and
 - (d) The additional fee does not exceed:
 - (1) If the person requesting the notarial act asks the notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.
 - (2) If the person requesting the notarial act asks the notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.
- ↪ The notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.

4. A notary public is entitled to charge the amount of the additional fee agreed to in advance by the person requesting the notarial act pursuant to subsection 3 if:

- (a) The person requesting the notarial act cancels the request after the notary public begins his or her travel to perform the requested notarial act.
- (b) The notary public is unable to perform the requested notarial act as a result of the actions of the person who requested the notarial act or any other person who is necessary for the performance of the notarial act.

5. For each additional fee that a notary public charges for traveling to perform a notarial act pursuant to subsection 3, the notary public shall enter in the journal that he or she keeps pursuant to NRS 240.120:

- (a) The amount of the fee; and
- (b) The date and time that the notary public began and ended such travel.

6. A person who employs a notary public may prohibit the notary public from charging a fee for a notarial act that the notary public performs within the scope of the employment. Such a person shall not require the notary public whom the person employs to surrender to the person all or part of a fee charged by the notary public for a notarial act performed outside the scope of the employment of the notary public.

[17:39:1864; B § 346; BH § 2251; C § 2418; RL § 2760; NCL § 4730] + [1:94:1865; B § 2735; BH § 2318; C § 2457; RL § 1994; NCL § 2925] + [1:49:1883; BH § 2342; C § 2468; RL § 2005; NCL § 2936] + [15:94:1865; B § 2749; BH § 2329; C § 2467; RL § 2004; NCL § 2935] + [16:49:1883; A 1889, 39; C § 2481; RL § 2018; NCL § 2949] + [Part 25:49:1883; BH § 2366; C § 2490; RL § 2027; NCL § 2958]—(NRS A 1981, 325; 1985, 1207; 1993, 261; 1995, 193; 1997, 935; 1999, 76; 2003, 607; 2013, 1199)

NRS 240.110 Posting of table of fees. If a notary public charges fees for performing notarial acts, the notary public shall publish and set up in some conspicuous place in his or her office a table of those fees, according to this chapter, for the inspection of all persons who have business in his or her office. The schedule must not be printed in smaller than 1/2-inch type. A notary public shall not charge fees unless the notary public has published and set up a table of fees in accordance with this subsection.

[Part 23:49:1883; BH § 2364; C § 2488; RL § 2025; NCL § 2956]—(NRS A 1985, 1207; 1995, 193; 1997, 936)

NRS 240.120 Journal of notarial acts: Duty to maintain; contents; verification based upon credible witness; copy of entry; storage; period of retention; report of loss or theft; exceptions.

1. Except as otherwise provided in subsection 2, each notary public shall keep a journal in his or her office in which the notary public shall enter for each notarial act performed, at the time the act is performed:

- (a) The fees charged, if any;
- (b) The title of the document;
- (c) The date on which the notary public performed the act;
- (d) Except as otherwise provided in subsection 3, the name and signature of the person whose signature is being notarized;
- (e) Subject to the provisions of subsection 4, a description of the evidence used by the notary public to verify the identification of the person whose signature is being notarized;
- (f) An indication of whether the notary public administered an oath; and
- (g) The type of certificate used to evidence the notarial act, as required pursuant to NRS 240.1655.

2. A notary public may make one entry in the journal which documents more than one notarial act if the notarial acts documented are performed:

- (a) For the same person and at the same time; and

(b) On one document or on similar documents.
3. When performing a notarial act for a person, a notary public need not require the person to sign the journal if:

- (a) The notary public has performed a notarial act for the person within the previous 6 months;
- (b) The notary public has personal knowledge of the identity of the person; and
- (c) The person is an employer or coworker of the notary public and the notarial act relates to a transaction performed in the ordinary course of the person's business.

4. If, pursuant to subsection 3, a notary public does not require a person to sign the journal, the notary public shall enter "known personally" as the description required to be entered into the journal pursuant to paragraph (e) of subsection 1.

5. If the notary verifies the identification of the person whose signature is being notarized on the basis of a credible witness, the notary public shall:

- (a) Require the witness to sign the journal in the space provided for the description of the evidence used; and
- (b) Make a notation in the journal that the witness is a credible witness.

6. The journal must:

- (a) Be open to public inspection.
- (b) Be in a bound volume with preprinted page numbers.

7. A notary public shall, upon request and payment of the fee set forth in NRS 240.100, provide a certified copy of an entry in his or her journal.

8. A notary public shall keep his or her journal in a secure location during any period in which the notary public is not making an entry or notation in the journal pursuant to this section.

9. A notary public shall retain each journal that the notary public has kept pursuant to this section until 7 years after the date on which he or she ceases to be a notary public.

10. A notary public shall file a report with the Secretary of State and the appropriate law enforcement agency if the journal of the notary public is lost or stolen.

11. The provisions of this section do not apply to a person who is authorized to perform a notarial act pursuant to paragraph (b), (c), (d) or (e) of subsection 1 of NRS 240.1635.

[Part 18:49:1883; BH § 2359; C § 2483; RL § 2020; NCL § 2951] + [Part 21:49:1883; BH § 2362; C § 2486; RL § 2023; NCL § 2954]—(NRS A 1967, 533; 1993, 262; 1995, 193, 1596; 1997, 936; 2001, 654; 2007, 46; 2011, 1611; 2013, 1376)

NRS 240.130 Only authorized fees to be charged. A notary public shall not charge a fee to perform a service unless the notary public is authorized to charge a fee for such a service pursuant to this chapter.

[17:49:1883; BH § 2358; C § 2482; RL § 2019; NCL § 2950] + [Part 21:49:1883; BH § 2362; C § 2486; RL § 2023; NCL § 2954]—(NRS A 1967, 533; 1997, 937)

NRS 240.143 Unlawful possession of certain personal property of notary public.

1. The following items are the personal property of a notary public:

- (a) His or her official stamp;
- (b) His or her journal; and
- (c) His or her certificate of appointment.

2. It is unlawful for a person who comes into possession of the official stamp, journal or certificate of appointment of a notary public to withhold such an item from the notary public, whether or not the person provided the notary public with the money to acquire the item.

(Added to NRS by 1997, 930)

NRS 240.145 Unlawful reproduction or use of completed notarial certificate; penalty.

1. It is unlawful for any person to:

- (a) Photocopy or otherwise reproduce a completed notarial certificate with a notary's statement and signature if that certificate is reproduced for use in a mailing to endorse, promote or sell any product, service or offering; or
- (b) Include a photocopy or other reproduction of a completed notarial certificate with a notary's statement and signature in a mailing to endorse, promote or sell any product, service or offering.

2. Any person who violates any of the provisions of subsection 1 is guilty of a gross misdemeanor.

(Added to NRS by 1995, 189)

NRS 240.147 Unlawful destruction, defacement or concealment of notarial record. It is unlawful for a person to knowingly destroy, deface or conceal a notarial record.

(Added to NRS by 1997, 930; A 2009, 3029)

NRS 240.150 Liability for misconduct or neglect; liability of employer; penalties for willful violation or neglect of duty; procedure upon revocation or suspension.

1. For misconduct or neglect in a case in which a notary public appointed pursuant to the authority of this State may act, either by the law of this State or of another state, territory or country, or by the law of nations, or by commercial usage, the notary public is liable on his or her official bond to the parties injured thereby, for all the damages sustained.

2. The employer of a notary public may be assessed a civil penalty by the Secretary of State of not more than \$2,000 for each violation specified in subsection 4 committed by the notary public, and the employer is liable for any damages proximately caused by the misconduct of the notary public, if:

(a) The notary public was acting within the scope of his or her employment at the time the notary public engaged in the misconduct; and

(b) The employer of the notary public consented to the misconduct of the notary public.

3. The Secretary of State may refuse to appoint or may suspend or revoke the appointment of a notary public who fails to provide to the Secretary of State, within a reasonable time, information that the Secretary of State requests from the notary public in connection with a complaint which alleges a violation of this chapter.

4. Except as otherwise provided in this chapter, for any willful violation or neglect of duty or other violation of this chapter, or upon proof that a notary public has been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a crime described in paragraph (c) of subsection 2 of NRS 240.010:

(a) The appointment of the notary public may be suspended for a period determined by the Secretary of State, but not exceeding the time remaining on the appointment;

(b) The appointment of the notary public may be revoked after a hearing; or

(c) The notary public may be assessed a civil penalty of not more than \$2,000 for each violation.

5. If the Secretary of State revokes or suspends the appointment of a notary public pursuant to this section, the Secretary of State shall:

(a) Notify the notary public in writing of the revocation or suspension;

(b) Cause notice of the revocation or suspension to be published on the website of the Secretary of State; and

(c) If a county clerk has issued a certificate of permission to perform marriages to the notary public pursuant to NRS 122.064, notify the county clerk of the revocation or suspension.

6. Except as otherwise provided by law, the Secretary of State may assess the civil penalty that is authorized pursuant to this section upon a notary public whose appointment has expired if the notary public committed the violation that justifies the civil penalty before his or her appointment expired.

7. The appointment of a notary public may be suspended or revoked by the Secretary of State pending a hearing if the Secretary of State believes it is in the public interest or is necessary to protect the public.

[13:39:1864; B § 342; BH § 2247; C § 2414; RL § 2756; NCL § 4726]—(NRS A 1985, 1208; 1995, 194; 1997, 937; 2011, 1612; 2013, 1200; 2015, 932)

NRS 240.155 Notarization of signature of person not in presence of notary public unlawful; penalty.

1. A notary public who is appointed pursuant to this chapter shall not willfully notarize the signature of a person unless the person is in the presence of the notary public and:

(a) Is known to the notary public; or

(b) If unknown to the notary public, provides a credible witness or documentary evidence of identification to the notary public.

2. A person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets a notary public to commit a violation of subsection 1,

is guilty of a gross misdemeanor.

(Added to NRS by 2005, 2274; A 2007, 1100)

Uniform Law on Notarial Acts

NRS 240.161 Short title; uniformity of application and construction.

1. NRS 240.161 to 240.169, inclusive, may be cited as the Uniform Law on Notarial Acts.

2. These sections must be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of these sections among states enacting them.
(Added to NRS by 1993, 200; A 1995, 194; 2005, 2276)

NRS 240.1635 Notarial acts in this State.

1. A notarial act may be performed within this State by the following persons:
 - (a) A notary public of this State;
 - (b) A judge, clerk or deputy clerk of any court of this State;
 - (c) A justice of the peace;
 - (d) Any other person authorized to perform the specific act by the law of this State; or
 - (e) A person authorized to perform the specific act by the law of a federally recognized Indian tribe or nation.
2. Notarial acts performed within this State under federal authority as provided in NRS 240.1645 have the same effect as if performed by a notarial officer of this State.
3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
(Added to NRS by 1993, 200; A 2013, 1377)

NRS 240.164 Notarial acts in other jurisdictions of United States.

1. A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:
 - (a) A notary public of that jurisdiction;
 - (b) A judge, clerk or deputy clerk of a court of that jurisdiction; or
 - (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.
2. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in NRS 240.1645 have the same effect as if performed by a notarial officer of this State.
3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
4. The signature and indicated title of an officer listed in paragraph (a) or (b) of subsection 1 conclusively establish the authority of a holder of that title to perform a notarial act.
(Added to NRS by 1993, 201)

NRS 240.1645 Notarial acts under federal authority.

1. A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed anywhere by any of the following persons under authority granted by the law of the United States:
 - (a) A judge, clerk or deputy clerk of a court;
 - (b) A commissioned officer on active duty in the military service of the United States;
 - (c) An officer of the foreign service or consular officer of the United States; or
 - (d) Any other person authorized by federal law to perform notarial acts.
2. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
3. The signature and indicated title of an officer listed in paragraph (a), (b) or (c) of subsection 1 conclusively establish the authority of a holder of that title to perform a notarial act.
(Added to NRS by 1993, 201)

NRS 240.165 Foreign notarial acts.

1. A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by the following persons:
 - (a) A notary public;
 - (b) A judge, clerk or deputy clerk of a court of record;
 - (c) A person authorized by the law of that jurisdiction to perform notarial acts;
 - (d) A person authorized by federal law to perform notarial acts; or
 - (e) A person authorized by the law of a federally recognized Indian tribe or nation to perform notarial acts.

2. A certificate by an officer of the foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by an officer of the foreign service or consular officer of that nation stationed in the United States, conclusively establishes a matter relating to the authenticity or validity of the notarial act set forth in the certificate.

3. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

4. An official stamp or seal of an officer listed in paragraph (a) or (b) of subsection 1 is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

5. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(Added to NRS by 1993, 201; A 1997, 939; 2001, 654; 2005, 2276; 2013, 1378)

NRS 240.1655 Notarial acts.

1. A notarial act must be evidenced by a certificate that:

(a) Identifies the county, including, without limitation, Carson City, in this State in which the notarial act was performed in substantially the following form:

State of Nevada

County of

(b) Except as otherwise provided in this paragraph, includes the name of the person whose signature is being notarized. If the certificate is for certifying a copy of a document, the certificate must include the name of the person presenting the document. If the certificate is for the jurat of a subscribing witness, the certificate must include the name of the subscribing witness.

(c) Is signed and dated in ink by the notarial officer performing the notarial act. If the notarial officer is a notary public, the certificate must be signed in the same manner as the signature of the notarial officer that is on file with the Secretary of State.

(d) If the notarial officer performing the notarial act is a notary public, includes the statement imprinted with the stamp of the notary public, as described in NRS 240.040.

(e) If the notarial officer performing the notarial act is not a notary public, includes the title of the office of the notarial officer and may include the official stamp or seal of that office. If the officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

2. Except as otherwise provided in subsection 8, a notarial officer shall:

(a) In taking an acknowledgment, determine, from personal knowledge or satisfactory evidence, that the person making the acknowledgment is the person whose signature is on the document. The person who signed the document shall present the document to the notarial officer in person.

(b) In administering an oath or affirmation, determine, from personal knowledge or satisfactory evidence, the identity of the person taking the oath or affirmation.

(c) In certifying a copy of a document, photocopy the entire document and certify that the photocopy is a true and correct copy of the document that was presented to the notarial officer.

(d) In making or noting a protest of a negotiable instrument, verify compliance with the provisions of subsection 2 of NRS 104.3505.

(e) In executing a jurat, administer an oath or affirmation to the affiant and determine, from personal knowledge or satisfactory evidence, that the affiant is the person named in the document. The affiant shall sign the document in the presence of the notarial officer. The notarial officer shall administer the oath or affirmation required pursuant to this paragraph in substantially the following form:

Do you (solemnly swear, or affirm) that the statements in this document are true, (so help you God)?

3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1 and 2 and it:

(a) Is in the short form set forth in NRS 240.166 to 240.169, inclusive;

(b) Is in a form otherwise prescribed by the law of this State;

(c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

4. For the purposes of paragraphs (a), (b) and (e) of subsection 2, a notarial officer has satisfactory evidence that a person is the person whose signature is on a document if the person:

(a) Is personally known to the notarial officer;

(b) Is identified upon the oath or affirmation of a credible witness who personally appears before the notarial officer;

(c) Is identified on the basis of an identifying document which contains a signature and a photograph;

(d) Is identified on the basis of a consular identification card;

(e) Is identified upon an oath or affirmation of a subscribing witness who is personally known to the notarial officer; or

(f) In the case of a person who is 65 years of age or older and cannot satisfy the requirements of paragraphs (a) to (e), inclusive, is identified upon the basis of an identification card issued by a governmental agency or a senior citizen center.

5. An oath or affirmation administered pursuant to paragraph (b) of subsection 4 must be in substantially the following form:

Do you (solemnly swear, or affirm) that you personally know(name of person who signed the document)....., (so help you God)?

6. A notarial officer shall not affix his or her signature over printed material.

7. By executing a certificate of a notarial act, the notarial officer certifies that the notarial officer has complied with all the requirements of this section.

8. If a person is physically unable to sign a document that is presented to a notarial officer pursuant to this section, the person may direct a person other than the notarial officer to sign the person's name on the document. The notarial officer shall insert "Signature affixed by (insert name of other person) at the direction of (insert name of person)" or words of similar import.

9. As used in this section, unless the context otherwise requires, "consular identification card" means an identification card issued by a consulate of a foreign government, which consulate is located within the State of Nevada.

(Added to NRS by 1993, 202; A 1995, 195; 1997, 940; 2001, 655; 2003, 608, 1932; 2013, 1378; 2015, 3244)

NRS 240.1657 Authentication of signature of notarial officer by Secretary of State; limitation on actions brought against Secretary of State; prohibited acts; penalties; regulations.

1. Except as otherwise provided in subsection 2, the Secretary of State shall, upon request and payment of a fee of \$20, issue an authentication to verify that the signature of the notarial officer on a document is genuine and that the notarial officer holds the office indicated on the document. If the document:

(a) Is intended for use in a foreign country that is a participant in the Hague Convention of October 5, 1961, the Secretary of State must issue an apostille in the form prescribed by the Hague Convention of October 5, 1961.

(b) Is intended for use in the United States or in a foreign country that is not a participant in the Hague Convention of October 5, 1961, the Secretary of State must issue a certification.

2. The Secretary of State shall not issue an authentication pursuant to subsection 1 if:

(a) The document has not been notarized in accordance with the provisions of this chapter;

(b) The Secretary of State has reasonable cause to believe that the document may be used to accomplish any fraudulent, criminal or other unlawful purpose; or

(c) The request to issue an authentication does not include a statement, in the form prescribed by the Secretary of State and signed under penalty of perjury, that the document for which the authentication is requested will not be used to:

(1) Harass a person; or

(2) Accomplish any fraudulent, criminal or other unlawful purpose.

3. No civil action may be brought against the Secretary of State on the basis that:

(a) The Secretary of State has issued an authentication pursuant to subsection 1; and

(b) The document has been used to:

(1) Harass a person; or

(2) Accomplish any fraudulent, criminal or other unlawful purpose.

4. A person who uses a document for which an authentication has been issued pursuant to subsection 1 to:

- (a) Harass a person; or
 - (b) Accomplish any fraudulent, criminal or other unlawful purpose,
- ↪ is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years, and may be further punished by a fine of not more than \$5,000.

5. The Secretary of State may adopt regulations to carry out the provisions of this section.
 (Added to NRS by 2005, 2274; A 2015, 933)

NRS 240.166 Short form for acknowledgment in individual capacity. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for an acknowledgment in an individual capacity:

State of Nevada
 County of.....

This instrument was acknowledged before me on(date)..... by(name(s) of person(s)).....

.....
 (Signature of notarial officer)

(Seal, if any)

.....
 (Title and rank (optional))

(Added to NRS by 1993, 202; A 1995, 196; 2001, 655; 2003, 610)

NRS 240.1663 Short form for administering oath or affirmation of office. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for administering an oath or affirmation of office:

State of Nevada
 County of.....

I,(name of person taking oath or affirmation of office)....., do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and the Constitution and Government of the State of Nevada against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of(title of office)....., on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

.....
 (Signature of person taking oath
 or affirmation of office)

Signed and sworn to (or affirmed) before me on(date)..... by(name of person taking oath or affirmation of office).....

.....
 (Signature of notarial officer)

(Seal, if any)

.....
 (Title and rank (optional))

(Added to NRS by 2001, 651; A 2003, 610)

NRS 240.1665 Short form for acknowledgment in representative capacity. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for an acknowledgment in a representative capacity:

State of Nevada
County of.....

This instrument was acknowledged before me on(date)..... by(name(s) of person(s))..... as(type of authority, e.g., officer, trustee, etc.)..... of(name of party on behalf of whom instrument was executed).....

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1993, 203; A 1995, 196; 2001, 656; 2003, 611)

NRS 240.1667 Short form for acknowledgment containing power of attorney. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for an acknowledgment that contains a power of attorney:

State of Nevada
County of

This instrument was acknowledged before me on(date)..... by(name of person holding power of attorney)..... as attorney-in-fact for(name of principal/person whose name is in the document).....

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1997, 929; A 2001, 656; 2003, 611)

NRS 240.167 Short form for execution of jurat. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for executing a jurat:

State of Nevada
County of.....

Signed and sworn to (or affirmed) before me on(date)..... by(name(s) of person(s) making statement).....

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1993, 203; A 1995, 196; 2001, 657; 2003, 611)

NRS 240.168 Short form for certifying copy of document. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for certifying a copy of a document:

State of Nevada
County of.....

I certify that this is a true and correct copy of a document in the possession of(name of person who presents the document).....
Dated.....

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1993, 203; A 1995, 197; 1997, 940; 2001, 657; 2003, 612)

NRS 240.1685 Short form for jurat of subscribing witness. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for a jurat of a subscribing witness:

State of Nevada
County of.....

On(date).....,(subscribing witness)..... personally appeared before me, whom I know to be the person who signed this jurat of a subscribing witness while under oath, and swears that he or she was present and witnessed(signer of the document)..... sign his or her name to the above document.

.....
(Signature of subscribing witness)

Signed and sworn before me on(date)..... by(subscribing witness).....

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1995, 190; A 2003, 612)

NRS 240.169 Short form for acknowledgment of credible witness. Upon compliance with the requirements of NRS 240.1655, the following certificate is sufficient for an acknowledgment of a credible witness:

State of Nevada
County of.....

This instrument was acknowledged before me on(date)..... by(name of person)..... who personally appeared before me and whose identity I verified upon the oath of(name of credible witness)....., a credible witness personally known to me and to the person who acknowledged this instrument before me.

.....
(Signature of notarial officer)

(Seal, if any)

.....
(Title and rank (optional))

(Added to NRS by 1995, 190; A 1997, 940; 2003, 613)

Electronic Notary Public Authorization Act

NRS 240.181 Short title. NRS 240.181 to 240.206, inclusive, may be cited as the Electronic Notary Public Authorization Act.

(Added to NRS by 2009, 3018)

NRS 240.182 Definitions. As used in NRS 240.181 to 240.206, inclusive, unless the context otherwise requires, the words and terms defined in NRS 240.183 to 240.188, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2009, 3018)

NRS 240.183 “Electronic” defined. “Electronic” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(Added to NRS by 2009, 3018)

NRS 240.184 “Electronic document” defined. “Electronic document” means a document that is created, generated, sent, communicated, received or stored by electronic means.

(Added to NRS by 2009, 3018)

NRS 240.185 “Electronic notarial act” defined. “Electronic notarial act” means an act that an electronic notary public of this State is authorized to perform. The term includes:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Executing a jurat; and
4. Performing such other duties as may be prescribed by a specific statute.

(Added to NRS by 2009, 3018)

NRS 240.186 “Electronic notary public” defined. “Electronic notary public” means a person appointed by the Secretary of State pursuant to NRS 240.181 to 240.206, inclusive, to perform electronic notarial acts.

(Added to NRS by 2009, 3018)

NRS 240.187 “Electronic seal” defined. “Electronic seal” means information within a notarized electronic document that includes the name, jurisdiction and expiration date of the appointment of an electronic notary public and generally includes the information required to be set forth in a mechanical stamp pursuant to NRS 240.040.

(Added to NRS by 2009, 3018)

NRS 240.188 “Electronic signature” defined. “Electronic signature” means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(Added to NRS by 2009, 3018)

NRS 240.189 Applicability. An electronic notary public shall comply with those provisions of NRS 240.001 to 240.169, inclusive, which are not inconsistent with NRS 240.181 to 240.206, inclusive. To the extent that the provisions of NRS 240.001 to 240.169, inclusive, conflict with the provisions of NRS 240.181 to 240.206, inclusive, the provisions of NRS 240.181 to 240.206, inclusive, control.

(Added to NRS by 2009, 3026)

NRS 240.191 Appointment by Secretary of State; cancellation of appointment; unlawful acts; injunctive relief.

1. The Secretary of State may appoint electronic notaries public in this State.
2. The Secretary of State shall not appoint as an electronic notary public a person who submits an application containing a substantial and material misstatement or omission of fact.
3. An electronic notary public may cancel his or her appointment by submitting a written notice to the Secretary of State.
4. It is unlawful for a person to:

(a) Represent himself or herself as an electronic notary public appointed pursuant to this section if the person has not received a certificate of appointment from the Secretary of State pursuant to NRS 240.192.

(b) Submit an application for appointment as an electronic notary public that contains a substantial and material misstatement or omission of fact.

5. The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection 4.

(Added to NRS by 2009, 3018)

NRS 240.192 Application for appointment; oath and bond; additional requirements for resident of adjoining state; commencement of term; fee for original, duplicate or amended certificate of appointment.

1. Each person applying for appointment as an electronic notary public must:

(a) At the time of application, be a notarial officer in this State and have been a notarial officer in this State for not less than 4 years;

(b) Submit to the Secretary of State an electronic application pursuant to subsection 2;

(c) Pay to the Secretary of State an application fee of \$50;

(d) Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if the applicant were a public officer;

(e) Submit to the Secretary of State proof satisfactory to the Secretary of State that the applicant has successfully completed a course of study provided pursuant to NRS 240.195; and

(f) Enter into a bond to the State of Nevada in the sum of \$10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant must submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.

2. The application for an appointment as an electronic notary public must be submitted as an electronic document and must contain, without limitation, the following information:

(a) The applicant's full legal name, and the name to be used for appointment, if different.

(b) The county in which the applicant resides.

(c) The electronic mail address of the applicant.

(d) A description of the technology or device, approved by the Secretary of State, that the applicant intends to use to create his or her electronic signature in performing electronic notarial acts.

(e) The electronic signature of the applicant.

(f) Any other information requested by the Secretary of State.

3. An applicant for appointment as an electronic notary public who resides in an adjoining state, in addition to the requirements set forth in subsections 1 and 2, must submit to the Secretary of State with the application:

(a) An affidavit setting forth the adjoining state in which the applicant resides, the applicant's mailing address and the address of the applicant's place of business or employment that is located within the State of Nevada;

(b) A copy of the applicant's state business registration issued pursuant to chapter 76 of NRS and any business license required by the local government where the applicant's business is located, if the applicant is self-employed; and

(c) Unless the applicant is self-employed, a copy of the state business registration of the applicant's employer issued pursuant to chapter 76 of NRS, a copy of any business license of the applicant's employer that is required by the local government where the business is located and an affidavit from the applicant's employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.

4. In completing an application, bond, oath or other document necessary to apply for appointment as an electronic notary public, an applicant must not be required to disclose his or her residential address or telephone number on any such document which will become available to the public.

5. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when the applicant applies for appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as an electronic notary public to the applicant.

6. The term of an electronic notary public commences on the effective date of the bond required pursuant to paragraph (f) of subsection 1. An electronic notary public shall not perform an electronic notarial act after the effective date of the bond unless the electronic notary public has been issued a certificate of appointment pursuant to subsection 5.

7. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which is issued to an electronic notary public. If the electronic notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the electronic notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

(Added to NRS by 2009, 3019)

NRS 240.193 Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment.

1. The bond required to be filed pursuant to NRS 240.192 must be executed by the person applying to become an electronic notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the electronic notary public which violates a provision of NRS 240.001 to 240.206, inclusive. The surety company shall pay a final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice of final judgment. The bond may be continuous, but regardless of the duration of the bond, the aggregate liability of the surety does not exceed the penal sum of the bond.

2. If the penal sum of the bond is exhausted, the surety company shall notify the Secretary of State in writing within 30 days after its exhaustion.

3. The surety bond must cover the period of the appointment of the electronic notary public, except when a surety is released.

4. A surety on a bond filed pursuant to NRS 240.192 may be released after the surety gives 30 days' written notice to the Secretary of State and the electronic notary public, but the release does not discharge or otherwise affect a claim filed by a person for damage resulting from an act of the electronic notary public which is alleged to have occurred while the bond was in effect.

5. The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer covered by a surety bond as required by this section and NRS 240.192 or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 4 that the bond will be released or pursuant to subsection 2 that the penal sum of the bond is exhausted, the Secretary of State shall immediately notify the electronic notary public in writing that his or her appointment will be suspended by operation of law until another surety bond is filed in the same manner and amount as the bond being terminated.

6. The Secretary of State may reinstate the appointment of an electronic notary public whose appointment has been suspended pursuant to subsection 5 if the electronic notary public, before his or her current term of appointment expires:

(a) Submits to the Secretary of State:

(1) An application for an amended certificate of appointment as an electronic notary public; and

(2) A certificate issued by the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, the county in this State in which the applicant maintains a place of business or is employed, which indicates that the applicant filed a new surety bond with the clerk; and

(b) Pays to the Secretary of State a fee of \$10.

(Added to NRS by 2009, 3020)

NRS 240.194 Term of office; suspension of appointment by operation of law; changes of information.

1. The initial term of appointment as an electronic notary public is 2 years. Each term of appointment as an electronic notary public subsequent to the initial term is 4 years.

2. The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer appointed as a notary public in this State. If the appointment of an electronic notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the electronic notary public in writing that his or her appointment as an electronic notary public will be suspended by operation of law until he or she is appointed as a notary public in this State.

3. If, at any time during his or her appointment, an electronic notary public changes his or her electronic mail address, county of residence, name, electronic signature or the technology or device used to create his or her

electronic signature, the electronic notary public shall, within 10 days after making the change, submit to the Secretary of State:

(a) An electronic document, signed with the electronic signature submitted by the electronic notary public pursuant to subsection 2 of NRS 240.192, that includes the change of information; and

(b) A fee of \$10.

(Added to NRS by 2009, 3021)

NRS 240.195 Courses of study required; persons required to successfully complete course of study; fees.

1. Except as otherwise provided in subsection 2, an applicant for appointment as an electronic notary public must successfully:

(a) Complete a course of study that is in accordance with the requirements of subsection 5; and

(b) Pass an examination at the completion of the course.

2. The following persons are required to enroll in and successfully complete a course of study as required pursuant to subsection 1:

(a) A person applying for his or her first appointment as an electronic notary public;

(b) A person renewing his or her appointment as an electronic notary public; and

(c) A person who has committed a violation of this chapter or whose appointment or an electronic notary public has been suspended, and who has been required by the Secretary of State to enroll in a course of study provided pursuant to this section.

3. A course of study required to be completed pursuant to subsection 1 must:

(a) Include at least 3 hours of instruction;

(b) Provide instruction in electronic notarization, including, without limitation, notarial law and ethics, technology and procedures;

(c) Include an examination of the course content;

(d) Comply with the regulations adopted pursuant to NRS 240.206; and

(e) Be approved by the Secretary of State.

4. The Secretary of State may, with respect to a course of study required to be completed pursuant to subsection 1:

(a) Provide such a course of study; and

(b) Charge a reasonable fee to each person who enrolls in such a course of study.

5. A course of study provided pursuant to this section:

(a) Must satisfy the criteria set forth in subsection 3 and comply with the requirements set forth in the regulations adopted pursuant to NRS 240.206.

(b) May be provided in person or online by the Secretary of State or a vendor approved by the Secretary of State.

6. The Secretary of State shall deposit the fees collected pursuant to paragraph (b) of subsection 4 in the Notary Public Training Account created pursuant to NRS 240.018.

(Added to NRS by 2009, 3022; A 2015, 934)

NRS 240.196 Powers of electronic notary public. A person appointed as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, may, during normal business hours, perform the following electronic notarial acts for a person who requests the electronic notarial act and tenders the appropriate fee:

1. Taking an acknowledgment;

2. Executing a jurat; and

3. Administering an oath or affirmation.

(Added to NRS by 2009, 3022)

NRS 240.197 Fees for services; additional fees for travel expenses; notarial acts performed within and outside scope of employment.

1. An electronic notary public may charge the following fees and no more:

(a) For taking an acknowledgment, for each signature..... \$10

(b) For executing a jurat, for each signature..... \$10

(c) For administering an oath or affirmation without a signature..... \$10

2. An electronic notary public shall not charge a fee to perform a service unless he or she is authorized to charge a fee for such a service pursuant to this section.

3. All fees prescribed in this section are payable in advance, if demanded.

4. An electronic notary public may charge an additional fee for traveling to perform an electronic notarial act if:

- (a) The person requesting the electronic notarial act asks the electronic notary public to travel;
- (b) The electronic notary public explains to the person requesting the electronic notarial act that the fee for travel is in addition to the fee authorized in subsection 1 and is not required by law;
- (c) The person requesting the electronic notarial act agrees in advance upon the hourly rate that the electronic notary public will charge for the additional fee for travel; and
- (d) The additional fee for travel does not exceed:

(1) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.

(2) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.

↪ The electronic notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.

5. An electronic notary public is entitled to charge the amount of the additional fee for travel agreed to in advance by the person requesting the electronic notarial act pursuant to subsection 4 if:

(a) The person requesting the electronic notarial act cancels the request after the electronic notary public begins traveling to perform the requested electronic notarial act.

(b) The electronic notary public is unable to perform the requested electronic notarial act as a result of the actions of the person who requested the electronic notarial act or any other person who is necessary for the performance of the electronic notarial act.

6. For each additional fee for travel that an electronic notary public charges pursuant to subsection 4, the electronic notary public shall enter in the journal that he or she keeps pursuant to NRS 240.201:

(a) The amount of the fee; and

(b) The date and time that the electronic notary public began and ended such travel.

7. A person who employs an electronic notary public may prohibit the electronic notary public from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of the employment. Such a person shall not require the electronic notary public whom the person employs to surrender to the person all or part of a fee charged by the electronic notary public for an electronic notarial act performed outside the scope of the employment of the electronic notary public.

(Added to NRS by 2009, 3022)

NRS 240.198 Notarization of signature of person not in presence of notary public unlawful; penalty; notarization of certain electronic documents prohibited; powers limited to areas within this State.

1. An electronic notary public shall not willfully electronically notarize the signature or electronic signature of a person unless the person is in the presence of the electronic notary public at the time of notarization and:

(a) Is known to the electronic notary public; or

(b) If unknown to the electronic notary public, provides a credible witness or documentary evidence of identification to the electronic notary public.

2. A person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets an electronic notary public to commit a violation of subsection 1,

↪ is guilty of a gross misdemeanor.

3. An electronic notary public shall not electronically notarize any electronic document related to the following:

(a) A will, codicil or testamentary trust; and

(b) Any transaction governed by the Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive.

4. An appointment as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, does not authorize the electronic notary public to perform notarial acts in another state.

(Added to NRS by 2009, 3023)

NRS 240.199 Evidence of electronic notarial act. An electronic notarial act must be evidenced by the following, which must be attached to or logically associated with the electronic document that is the subject of the electronic notarial act and which must be immediately perceptible and reproducible:

1. The electronic signature of the electronic notary public;

2. The electronic seal of the electronic notary public; and
3. The wording of a notarial certificate pursuant to NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169.
(Added to NRS by 2009, 3024)

NRS 240.201 Duty to keep journal of electronic notarial acts; suspension of appointment for failure to produce journal entry; delivery of notarial records to Secretary of State upon resignation, revocation or expiration of appointment.

1. An electronic notary public shall keep a journal of each electronic notarial act which includes, without limitation, the requirements of subsections 1 and 5 of NRS 240.120.
2. The Secretary of State may suspend the appointment of an electronic notary public who fails to produce any journal entry within 10 days after receipt of a request from the Secretary of State.
3. Upon resignation, revocation or expiration of an appointment as an electronic notary public, all notarial records required pursuant to NRS 240.001 to 240.206, inclusive, must be delivered to the Secretary of State.
(Added to NRS by 2009, 3024; A 2011, 1613)

NRS 240.202 Use of electronic signature and electronic seal; safeguarding of electronic signature, electronic seal and notarial records; maintenance of technology or device used to create electronic signature.

1. The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.
2. An electronic notary public shall safeguard his or her electronic signature, the electronic seal and all notarial records maintained by the electronic notary public as follows:
 - (a) When not in use, the electronic notary public shall keep the electronic signature, electronic seal and all notarial records secure, under the exclusive control of the electronic notary public and protected by a password where applicable.
 - (b) An electronic notary public shall not permit his or her electronic signature or electronic seal to be used by any other person.
 - (c) An electronic notary public shall not surrender or destroy his or her notarial records except as otherwise required by the order of a court or as allowed pursuant to NRS 240.001 to 240.206, inclusive, or any regulations adopted pursuant thereto.
 - (d) Except as otherwise provided in subsection 3, an electronic notary public, within 10 days after discovering that his or her electronic signature or electronic seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image, shall:
 - (1) Inform the appropriate law enforcement agency in the case of theft or vandalism; and
 - (2) Notify the Secretary of State in writing, including, without limitation, a signature using the name on the certificate of appointment issued pursuant to subsection 5 of NRS 240.192.
3. An electronic notary public shall take reasonable steps to maintain the technology or device used to create his or her electronic signature, and to ensure that the technology or device has not been recalled, revoked, terminated or otherwise rendered ineffective or unsecure by the entity that created the technology or device. Upon learning that the technology or device used to create his or her electronic signature has been rendered ineffective or unsecure, an electronic notary public shall cease performing electronic notarial acts until:
 - (a) A new technology or device is acquired; and
 - (b) The electronic notary public sends an electronic notice to the Secretary of State that includes, without limitation, the information required pursuant to paragraphs (d) and (e) of subsection 2 of NRS 240.192 relating to the new technology or device.
(Added to NRS by 2009, 3024)

NRS 240.203 Notice to Secretary of State of resignation or death of notary public or revocation or expiration of appointment; duty to erase, delete, destroy or otherwise render ineffective the notary's electronic signature technology or device.

1. Except as otherwise provided in subsection 3, if an electronic notary public dies or resigns during his or her appointment, or if the appointment of the electronic notary public is revoked or expires, the electronic notary public, the executor of his or her estate or an authorized representative of the electronic notary public, as appropriate, shall:
 - (a) Notify the Secretary of State of the resignation or death; and
 - (b) Erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature.

2. Upon receipt of the notice required by subsection 1, the Secretary of State shall cancel the appointment of the electronic notary public, effective on the date on which the notice was received.

3. A former electronic notary public whose previous appointment as an electronic notary public was not revoked and whose previous application for appointment as an electronic notary public was not denied is not required to erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature if the former electronic notary public renews his or her appointment, using the same electronic signature, within 3 months after the expiration of his or her previous appointment as an electronic notary public.

(Added to NRS by 2009, 3025)

NRS 240.204 Unlawful acts.

1. A person who knowingly creates, manufactures or distributes software or hardware for the purpose of allowing a person to act as an electronic notary public without being appointed in accordance with NRS 240.181 to 240.206, inclusive, is guilty of a gross misdemeanor.

2. A person who wrongfully obtains, conceals, damages or destroys the technology or device used to create the electronic signature of an electronic notary public is guilty of a gross misdemeanor.

(Added to NRS by 2009, 3025)

NRS 240.205 Authentication of signature of electronic notary public by Secretary of State.

1. Except as otherwise provided in subsection 2, the Secretary of State shall, upon request, issue an authentication to verify that the electronic signature of the electronic notary public on an electronic document is genuine and that the electronic notary public holds the office indicated on the electronic document. The authentication must be:

(a) Signed by the Secretary of State; and

(b) In conformance with any relevant international treaties, agreements and conventions subscribed to by the Government of the United States, including, without limitation, the Hague Convention of October 5, 1961.

2. The Secretary of State shall not issue an authentication pursuant to subsection 1 if:

(a) The electronic document has not been electronically notarized in accordance with the provisions of NRS 240.001 to 240.206, inclusive; or

(b) The Secretary of State has reasonable cause to believe that the electronic document may be used to accomplish any fraudulent, criminal or unlawful purpose.

(Added to NRS by 2009, 3025)

NRS 240.206 Regulations. The Secretary of State may adopt regulations to carry out the provisions of NRS 240.181 to 240.206, inclusive.

(Added to NRS by 2009, 3026)

COMMISSIONED ABSTRACTERS

NRS 240.240 Creation of office. The office of commissioned abstractor, in and for the several counties of this State, is hereby created.

[1:180:1927; NCL § 1450]

NRS 240.250 Appointment and commission. The Secretary of State is empowered to appoint and commission commissioned abstracters in and for the several counties of this State, in any number in which applications may be made to the Secretary of State, as in his or her judgment may be deemed advisable.

[2:180:1927; NCL § 1451]—(NRS A 1997, 941)

NRS 240.260 Term of office. The term of office of a commissioned abstractor shall be for 4 years.

[Part 3:180:1927; NCL § 1452]

NRS 240.270 Fee for commission; oath and bond.

1. Each commissioned abstractor, before entering upon the acts authorized in NRS 240.240 to 240.330, inclusive, and at the time the commissioned abstractor receives his or her commission, shall:

(a) Pay to the Secretary of State the sum of \$10.

(b) Take the official oath as prescribed by law, which oath shall be endorsed on his or her commission.

(c) Enter into a bond to the State of Nevada in the sum of \$2,000, to be approved by the district judge of the county for which the commissioned abstractor may be appointed.

2. Each commissioned abstractor shall have his or her commission, together with the bond, recorded in the office of the clerk of the county for which the commissioned abstractor has been appointed.

[5:180:1927; A 1951, 8]—(NRS A 1979, 78)

NRS 240.280 Seal.

1. Each commissioned abstractor shall provide an official seal with which the commissioned abstractor shall authenticate all his or her official acts. There shall be engraved on the official seal:

- (a) The name of the county for which the commissioned abstractor has been commissioned.
- (b) The name of the State.
- (c) The name of the commissioned abstractor.
- (d) The words "Commissioned Abstractor."

2. An impression of the official seal shall be made on the official bond of each commissioned abstractor before recording the bond.

[6:180:1927; NCL § 1455]

NRS 240.290 Acts may be performed anywhere in State. All acts of any commissioned abstractor performed anywhere within this State shall be of the same force and validity as if performed within the county for which the commissioned abstractor was appointed and in which he or she resides.

[4:180:1927; NCL § 1453]

NRS 240.300 Powers. A commissioned abstractor shall have authority:

1. To make search and examination of all public records and compile abstracts of title to real property or other property therefrom.

2. To make abstracts or copies of any and all instruments of record in any public office within this state, and certify the same in the official name and title of the commissioned abstractor, and under his or her official seal.

[7:180:1927; NCL § 1456]

NRS 240.310 Fees. Each commissioned abstractor shall be entitled to charge and receive, from a person or persons by whom the commissioned abstractor is employed, for services rendered, such fees as would be considered just and reasonable.

[8:180:1927; NCL § 1457]

NRS 240.320 Revocation of commission. The Secretary of State may at any time, for cause, revoke the commission of a commissioned abstractor.

[Part 3:180:1927; NCL § 1452]—(NRS A 1997, 941)

NRS 240.330 Penalties.

1. For any misconduct or neglect in any of the matters in which any commissioned abstractor appointed under the authority of NRS 240.240 to 240.330, inclusive, is authorized to act, the commissioned abstractor shall be liable on his or her official bond to the person or persons injured thereby for all damages sustained.

2. For any willful violation or neglect any commissioned abstractor shall be subject to criminal prosecution, and may be punished by fine not exceeding \$2,000 and removal from office.

[9:180:1927; NCL § 1458]

NRS CHAPTER 240 – VIOLATIONS

NRS 240.004 “Notarial act” defined. “Notarial act” means an act that a notarial officer of this state is authorized to perform. The term includes:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Certifying a copy;
4. Executing a jurat;
5. Noting a protest of a negotiable instrument; and
6. Performing such other duties as may be prescribed by a specific statute.

(Added to NRS by 1995, 188; A 1995, 1597; 1997, 930; 2003, 606)

*“Taking a Deposition” used to be listed as a notarial act pre-1995 but was removed after the 1995 Legislative Session.

NRS 240.005 “Notarial officer” defined. “Notarial officer” means a notary public or an officer authorized to perform notarial acts. (Added to NRS by 1995, 188)

*They are representing themselves as “officers before whom depositions may be taken” rather than “notarial officers.” Nowhere in NRS Chapter 240 does it state notaries are “deposition officers” or “officers of the court.”

NRS 240.020 Powers limited to areas within this State; term of office. A person appointed as a notary public pursuant to this chapter may perform notarial acts in any part of this state for a term of 4 years, unless sooner removed. Such an appointment does not authorize the person to perform notarial acts in another state.

[Part 2:22:1907; RL § 2763; NCL § 4733]—(NRS A 1975, 1519; 1997, 931)

*One notary violated this statute when he swore in a witness in California.
Dr. Low; see Reno rough draft trial transcript

NRS 240.061 Performance of authorized notarial acts; restricted notarial acts.

1. A notarial officer may perform a notarial act authorized by NRS 240.001 to 240.169, inclusive, or by law of this State other than NRS 240.001 to 240.169, inclusive.

2. A notarial officer other than a notary public may not perform a notarial act with respect to a document to which the officer or the officer’s spouse or domestic partner is a party, or in which either of them has a direct beneficial interest. A notary public may not perform a notarial act if the notarial act is prohibited by NRS 240.001 to 240.169, inclusive. A notarial act performed in violation of this subsection is voidable.

(Added to NRS by 2013, 1375)

*May only perform notarial acts as defined.

NRS 240.063 Evidentiary effect of signature; limitations on evidentiary effect of certification of documents.

1. The signature of a notary public on a document shall be deemed to be evidence only that the notary public knows the contents of the document that constitute the signature, execution, acknowledgment, oath, affirmation or affidavit.

2. When a notary public certifies that a document is a certified or true copy of an original document, the certification shall not be deemed to be evidence that the notary public knows the contents of the document.

(Added to NRS by 1997, 929; A 2003, 607)

*Cannot certify an original document. Can only certify that the copy is an exact duplicate of the original

NRS 240.065 Restrictions on powers of notary public; exception.

1. A notary public may not perform a notarial act if:

(a) The notary public executed or is named in the instrument acknowledged, sworn to or witnessed or attested;

(b) Except as otherwise provided in subsection 2, the notary public has or will receive directly from a transaction relating to the instrument or pleading a commission, fee, advantage, right, title, interest, property or other consideration in excess of the fee authorized pursuant to NRS 240.100 for the notarial act;

*Cannot execute a document the notary prepared; cannot certify a document that they are getting paid to prepare the original. Cannot be paid more than notary statutes dictate.

NRS 240.075 Prohibited acts. A notary public shall not:

1. Influence a person to enter or not enter into a lawful transaction involving a notarial act performed by the notary public.

2. Certify an instrument containing a statement known by the notary public to be false.

3. Perform any act as a notary public with intent to deceive or defraud, including, without limitation, altering the journal that the notary public is required to keep pursuant to NRS 240.120.

4. Endorse or promote any product, service or offering if his or her appointment as a notary public is used in the endorsement or promotional statement.

5. Certify photocopies of a certificate of birth, death or marriage or a divorce decree.

6. Allow any other person to use his or her notary's stamp.

7. Allow any other person to sign the notary's name in a notarial capacity.

8. Perform a notarial act on a document that contains only a signature.

9. Perform a notarial act on a document, including a form that requires the signer to provide information within blank spaces, unless the document has been filled out completely and has been signed.

10. Make or note a protest of a negotiable instrument unless the notary public is employed by a depository institution and the protest is made or noted within the scope of that employment. As used in this subsection, "depository institution" has the meaning ascribed to it in NRS 657.037.

11. Affix his or her stamp to any document which does not contain a notarial certificate.

(Added to NRS by 1985, 1205; A 1987, 1114; 1995, 193; 2001, 653; 2011, 1610; 2015, 930)

*Assembly Bill No. 148 – Assemblyman Flores, passed in 2017 Legislative Session states: Section 1, Chapter 240 of NRS is hereby amended by adding thereto a new section to read as follows: A person who willfully violates a provision of NRS 240.001 to 240.169, inclusive, or a regulation or order adopted or issued pursuant thereto is guilty of a category D felony and shall be punished as provided in NRS 193.130 if the offense results in irreparable harm to a person.

NRS 240.100 Fees for services; additional fees for travel expenses; notarial acts performed within and outside scope of employment.

1. Except as otherwise provided in subsection 3, a notary public may charge the following fees and no more:

| | |
|---|--------|
| For taking an acknowledgment, for the first signature of each signer..... | \$5.00 |
| For each additional signature of each signer..... | 2.50 |
| For administering an oath or affirmation without a signature..... | 2.50 |
| For a certified copy..... | 2.50 |
| For a jurat, for each signature on the affidavit..... | 5.00 |
| For performing a marriage ceremony..... | 75.00 |

*Only fees allowed to be charged by a notary. Certified copy is \$2.50. No per page rate allowed for preparing a document. Allowed to charge \$2.50 for administering an oath. No P/D charge allowed.

*Notaries also are violating this section by giving copy to one side for free and charging every other party in the case \$5.00 per page and above. So while one side is saving money on the deposition, all the other parties are paying more than a court reporter charges for a copy of the transcript.

NRS 240.110 Posting of table of fees. If a notary public charges fees for performing notarial acts, the notary public shall publish and set up in some conspicuous place in his or her office a table of those fees, according to this chapter, for the inspection of all persons who have business in his or her office. The schedule must not be printed in smaller than 1/2-inch type. A notary public shall not charge fees unless the notary public has published and set up a table of fees in accordance with this subsection.

NRS 240.166 through 169 has listed very specific certificates a notary can use. Nowhere in NRS 240 does it list a court reporting certificate or being able to certify a deposition transcript. In fact, the Secretary of State has stated that a notary cannot take a deposition; so it would follow that a notary cannot certify a deposition transcript.

Potential Violations – Discovery Needed:

NRS 240.0055 “Notarial record” defined. “Notarial record” means:

1. The journal that a notary public is required to keep pursuant to NRS 240.120;
2. The journal that an electronic notary public is required to keep pursuant to NRS 240.201; and
3. A document or other evidence retained by a notary public or an electronic notary public to record the performance of a notarial act or an electronic notarial act.
(Added to NRS by 2009, 3018)

NRS 240.110 Posting of table of fees. If a notary public charges fees for performing notarial acts, the notary public shall publish and set up in some conspicuous place in his or her office a table of those fees, according to this chapter, for the inspection of all persons who have business in his or her office. The schedule must not be printed in smaller than 1/2-inch type. A notary public shall not charge fees unless the notary public has published and set up a table of fees in accordance with this subsection.

[Part 23:49:1883; BH § 2364; C § 2488; RL § 2025; NCL § 2956]—(NRS A 1985, 1207; 1995, 193; 1997, 936)

NRS 240.120 Journal of notarial acts: Duty to maintain; contents; verification based upon credible witness; copy of entry; storage; period of retention; report of loss or theft; exceptions.

1. Except as otherwise provided in subsection 2, each notary public shall keep a journal in his or her office in which the notary public shall enter for each notarial act performed, at the time the act is performed:

- (a) The fees charged, if any;
- (b) The title of the document;

- (c) The date on which the notary public performed the act;
- (d) Except as otherwise provided in subsection 3, the name and signature of the person whose signature is being notarized;
- (e) Subject to the provisions of subsection 4, a description of the evidence used by the notary public to verify the identification of the person whose signature is being notarized;
- (f) An indication of whether the notary public administered an oath; and
- (g) The type of certificate used to evidence the notarial act, as required pursuant to NRS 240.1655.

2. A notary public may make one entry in the journal which documents more than one notarial act if the notarial acts documented are performed:

- (a) For the same person and at the same time; and
- (b) On one document or on similar documents.

3. When performing a notarial act for a person, a notary public need not require the person to sign the journal if:

- (a) The notary public has performed a notarial act for the person within the previous 6 months;
- (b) The notary public has personal knowledge of the identity of the person; and
- (c) The person is an employer or coworker of the notary public and the notarial act relates to a transaction performed in the ordinary course of the person's business.

4. If, pursuant to subsection 3, a notary public does not require a person to sign the journal, the notary public shall enter "known personally" as the description required to be entered into the journal pursuant to paragraph (e) of subsection 1.

5. If the notary verifies the identification of the person whose signature is being notarized on the basis of a credible witness, the notary public shall:

- (a) Require the witness to sign the journal in the space provided for the description of the evidence used; and
- (b) Make a notation in the journal that the witness is a credible witness.

6. The journal must:

- (a) Be open to public inspection.
- (b) Be in a bound volume with preprinted page numbers.

7. A notary public shall, upon request and payment of the fee set forth in NRS 240.100, provide a certified copy of an entry in his or her journal.

8. A notary public shall keep his or her journal in a secure location during any period in which the notary public is not making an entry or notation in the journal pursuant to this section.

9. A notary public shall retain each journal that the notary public has kept pursuant to this section until 7 years after the date on which he or she ceases to be a notary public.

10. A notary public shall file a report with the Secretary of State and the appropriate law enforcement agency if the journal of the notary public is lost or stolen.

11. The provisions of this section do not apply to a person who is authorized to perform a notarial act pursuant to paragraph (b), (c), (d) or (e) of subsection 1 of NRS 240.1635.

CHAPTER.....

AN ACT relating to public affairs; increasing the penalties for willful violations of certain provisions relating to notaries public and document preparation services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes various civil and criminal penalties for violations of certain provisions relating to notaries public. (NRS 240.010-240.169) **Section 1** of this bill provides that a person who willfully violates such provisions is guilty of a category D felony if the offense results in irreparable harm to a person.

Existing law provides that a person who willfully violates the provisions governing document preparation services is guilty of a misdemeanor for a first offense and a gross misdemeanor for a second or subsequent offense. (NRS 240A.290) **Section 3** of this bill makes a willful violation of any provision governing document preparation services a category D felony if the offense results in irreparable harm to a client.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 240 of NRS is hereby amended by adding thereto a new section to read as follows:

A person who willfully violates a provision of NRS 240.001 to 240.169, inclusive, or a regulation or order adopted or issued pursuant thereto is guilty of a category D felony and shall be punished as provided in NRS 193.130 if the offense results in irreparable harm to a person.

Sec. 1.2. NRS 240.001 is hereby amended to read as follows:

240.001 As used in NRS 240.001 to 240.206, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 240.002 to 240.0067, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.3. NRS 240.085 is hereby amended to read as follows:

240.085 1. Every notary public who is not an attorney licensed to practice law in this State and who advertises his or her services as a notary public in a language other than English by any form of communication, except a single plaque on his or her desk, shall post or otherwise include with the advertisement a notice in the language in which the advertisement appears. The notice must be of a conspicuous size, if in writing, and must appear in substantially the following form:



I AM NOT AN ATTORNEY IN THE STATE OF NEVADA. I AM NOT LICENSED TO GIVE LEGAL ADVICE. I MAY NOT ACCEPT FEES FOR GIVING LEGAL ADVICE.

2. A notary public who is not an attorney licensed to practice law in this State shall not use the term "notario," "notario publico," "licenciado" or any other equivalent non-English term in any form of communication that advertises his or her services as a notary public, including, without limitation, a business card, stationery, notice and sign.

3. If the Secretary of State finds a notary public guilty of violating the provisions of subsection 1 or 2, the Secretary of State shall:

(a) Suspend the appointment of the notary public for not less than 1 year.

(b) Revoke the appointment of the notary public for a third or subsequent offense.

(c) Assess a civil penalty of not more than \$2,000 for each violation.

4. ~~{A}~~ *Unless a greater penalty is provided pursuant to section 1 of this act,* a notary public who is found guilty in a criminal prosecution of violating subsection 1 or 2 shall be punished by a fine of not more than \$2,000.

5. An employer of a notary public shall not:

(a) Prohibit the notary public from meeting the requirements set forth in subsection 1; or

(b) Advertise using the term "notario," "notario publico," "licenciado" or any other equivalent non-English term in any form of communication that advertises notary public services, including, without limitation, a business card, stationery, notice and sign, unless the notary public under his or her employment is an attorney licensed to practice law in this State.

6. If the Secretary of State finds the employer of a notary public guilty of violating a provision of subsection 5, the Secretary of State shall:

(a) Notify the employer in writing of the violation and order the immediate removal of such language.

(b) Assess a civil penalty of not more than \$2,000 for each violation.

* 7. ~~{The}~~ *Unless a greater penalty is provided pursuant to section 1 of this act,* the employer of a notary public who is found



guilty in a criminal prosecution of violating a provision of subsection 5 shall be punished by a fine of not more than \$2,000.

Sec. 1.6. NRS 240.145 is hereby amended to read as follows:

240.145 1. It is unlawful for any person to:

(a) Photocopy or otherwise reproduce a completed notarial certificate with a notary's statement and signature if that certificate is reproduced for use in a mailing to endorse, promote or sell any product, service or offering; or

(b) Include a photocopy or other reproduction of a completed notarial certificate with a notary's statement and signature in a mailing to endorse, promote or sell any product, service or offering.

2. ~~{Any}~~ *Unless a greater penalty is provided pursuant to section 1 of this act*, any person who violates any of the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 1.9. NRS 240.155 is hereby amended to read as follows:

240.155 1. A notary public who is appointed pursuant to this chapter shall not willfully notarize the signature of a person unless the person is in the presence of the notary public and:

(a) Is known to the notary public; or

(b) If unknown to the notary public, provides a credible witness or documentary evidence of identification to the notary public.

2. ~~{A}~~ *Unless a greater penalty is provided pursuant to section 1 of this act*, a person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets a notary public to commit a violation of subsection 1,

↪ is guilty of a gross misdemeanor.

Sec. 2. NRS 240A.100 is hereby amended to read as follows:

240A.100 1. A person who wishes to engage in the business of a document preparation service must be registered by the Secretary of State pursuant to this chapter. An applicant for registration must be a citizen or legal resident of the United States or hold a valid Employment Authorization Document issued by the United States Citizenship and Immigration Services of the Department of Homeland Security, and be at least 18 years of age.

2. The Secretary of State shall not register as a document preparation service any person:

(a) Who is suspended or has previously been disbarred from the practice of law in any jurisdiction;

(b) Whose registration as a document preparation service in this State or another state has previously been revoked for cause;

(c) Who has previously been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a gross



misdemeanor *or a category D felony* pursuant to ~~paragraph (b) of subsection 1 of~~ NRS 240A.290; or

(d) Who has, within the 10 years immediately preceding the date of the application for registration as a document preparation service, been:

(1) Convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a crime involving theft, fraud or dishonesty;

(2) Convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, the unauthorized practice of law pursuant to NRS 7.285 or the corresponding statute of any other jurisdiction; or

(3) Adjudged by the final judgment of any court to have committed an act involving theft, fraud or dishonesty.

3. An application for registration as a document preparation service must be made under penalty of perjury on a form prescribed by regulation of the Secretary of State and must be accompanied by a cash bond or surety bond meeting the requirements of NRS 240A.120.

4. An applicant for registration must submit to the Secretary of State a declaration under penalty of perjury stating that the applicant has not had a certificate or license as a document preparation service revoked or suspended in this State or any other state or territory of the United States.

5. After the investigation of the history of the applicant is completed, the Secretary of State shall issue a certificate of registration if the applicant is qualified for registration and has complied with the requirements of this section. Each certificate of registration must bear the name of the registrant and a registration number unique to that registrant. The Secretary of State shall maintain a record of the name and registration number of each registrant.

6. An application for registration as a document preparation service that is not completed within 6 months after the date on which the application was submitted must be denied.

Sec. 3. NRS 240A.290 is hereby amended to read as follows:

240A.290 1. ~~{A}~~ *Except as otherwise provided in subsection 2, a* person who willfully violates a provision of this chapter or a regulation or order adopted or issued pursuant thereto:

(a) For the first offense within the immediately preceding 5 years, is guilty of a misdemeanor.

(b) For a second or subsequent offense within the immediately preceding 5 years, is guilty of a gross misdemeanor and shall be



punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. *A person who willfully violates a provision of this chapter or a regulation or order adopted or issued pursuant thereto is guilty of a category D felony and shall be punished as provided in NRS 193.130 if the offense results in irreparable harm to the client.*

3. In addition to the penalties prescribed by subsection ~~{1,}~~ 1 or 2, the court may order a person described in ~~{that}~~ subsection 1 or 2 to pay restitution to any person who has suffered a pecuniary loss as a result of the violation.

~~{3,}~~ 4. For the purposes of subsections 1 , ~~{and}~~ 2 ~~{,}~~ and 3, evidence that a person has been served with an order by the Secretary of State pursuant to NRS 240A.260 before the date of the alleged violation is evidence that the alleged violation is intentional if it involves a repetition or a continuation of conduct of the kind described in the order.





Steven D. Grierson

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15 Attorney for Defendant/Cross-Claimant
16 COAST HOTELS AND CASINOS, INC.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 MILDRED LOCKHART, an individual,)
15 Plaintiff,)
16 vs.)
17 COAST HOTELS AND CASINOS, INC.,)
18 d/b/a THE ORLEANS HOTEL & CASINO,)
19 a Nevada domestic corporation;)
20 GASSER CHAIR, CO., INC., an Ohio)
21 foreign corporation; HUNT COUNTRY)
22 COMPONENTS, LTD, Does I through)
23 XXX, inclusive and Roe Business)
24 Entities I through XXX, inclusive,)
25 Defendants.)

CASE NO. A-15-724776-C
DEPT. NO. 18

**BEFORE THE HONORABLE
DISCOVERY COMMISSIONER**

Date of Hearing: 2/16/18
Time of Hearing: 9 am

23 COAST HOTELS AND CASINOS, INC.,)
24 d/b/a THE ORLEANS HOTEL & CASINO,)
25 Cross-Claimant,)
26 vs.)
27 GASSER CHAIR CO., INC. and HUNT)
28 COUNTRY COMPONENTS, LTD.)
Cross-Defendants.)

1 GASSER CHAIR CO., INC.)
2 Cross-Claimant,)
3 vs.)
4 COAST HOTELS AND CASINOS, INC.,)
d/b/a THE ORLEANS HOTEL & CASINO,)
5 Cross-Defendant,)
6

7 DEFENDANT COAST HOTELS AND CASINOS, INC.'S OPPOSITION TO
8 PLAINTIFF'S MOTION TO COMPEL COAST TO PRODUCE A
9 30(B)(6) WITNESS AND FOR AN AWARD OF FEES AND COSTS

9 Comes now, Defendant COAST HOTELS AND CASINOS, INC.
10 ("COAST"), to hereby oppose Plaintiff's Motion to Compel a
11 deposition utilizing a notary to swear in the witness, as opposed
12 to utilizing a certified court reporter.

13 This Opposition is made and based on all of the pleadings
14 and papers on file herein, the attached exhibits and argument of
15 counsel at the time of the hearing of this matter.

16 POINTS AND AUTHORITIES

17 I. INTRODUCTION

18 Initially it should be noted that this defendant produced
19 two people who were ready, willing and able to provide Rule
20 30(b)(6) testimony when the deposition was originally set on
21 December 4, 2017. [See Affidavit of Kevin Diamond]. What
22 plaintiff's counsel failed to mention prior to the deposition was
23 that he was not going to have a certified court reporter present.
24 *Id.* Defense counsel, who has been practicing law since 1993, has
25 never encountered a situation where a deposition was taken absent
26 a certified court reporter. *Id.* Also, the other defense counsel
27 present disagreed with counsel for the plaintiff as to whether
28 having a notary simply record and videotape the deposition, to be

1 later transcribed, was proper. *Id.* An informal phone call was
2 made to the Discovery Commissioner to discuss the issue. *Id.* The
3 Discovery Commissioner had no definitive ruling to provide, and
4 indicated that she wanted to be briefed on the matter. *Id.*

5 The attorneys decided, including plaintiff's counsel, that
6 the deposition would cease for the time being, and plaintiff's
7 counsel indicated that he would reset the deposition with a
8 certified court reporter present. *Id.* However, although the
9 deposition was reset for January 10, 2018, two days before the
10 deposition counsel for the plaintiff changed his mind about
11 utilizing a certified court reporter, and informed the parties
12 that a notary would be utilized, just like he attempted to do at
13 the initial deposition. See Exhibit 1 to Plaintiff's Motion. As
14 such, counsel for COAST informed counsel for the plaintiff that
15 his witnesses were not going to attend without a certified court
16 reporter, or until the matter was resolved via the Discovery
17 Commissioner. See Exhibit 2 to Plaintiff's Motion.

18 It is simply important to note that proper witnesses were
19 produced. That is not the issue. The issue is how the deposition
20 is to proceed per Nevada law.

21 II. PLAINTIFF'S COUNSEL'S AFFIDAVIT

22 In his Affidavit plaintiff's counsel indicates that before
23 the second set deposition he confirmed the propriety of using a
24 notary public to swear in a witness at a deposition. Counsel did
25 send an email two days before the deposition, but the issue of
26 whether a notary can swear the witness in is far from
27 "confirmed". In fact, as can be seen by the email from counsel
28 for the plaintiff, the primary basis for believing that the issue

1 was confirmed was because some unidentified person from the
2 Secretary of State's office indicated that a statute allows for a
3 notary to administer a deposition oath. See Exhibit 1 to
4 Plaintiff's Motion. Counsel indicated he was working on getting
5 something in writing, but never produced anything in writing to
6 substantiate this. As will be discussed below, the website for
7 the Secretary of State indicates that swearing in a deponent is
8 not a proper act for a notary.

9 III. LEGAL ANALYSIS

10 The parties disagree as to whether a notary can swear in a
11 witness to take deposition testimony. Nevada Revised Statute
12 240.004 does indicate that a notary can administer an oath or
13 affirmation, but it is this defendant's position that the oath or
14 affirmation being referred to involves the traditional functions
15 of a notary. To be clearer, when a notary notarizes a document,
16 the person signing the document must swear under oath or affirm
17 that they are indeed the person indicated in the document. That
18 is the reason a notary is given powers to administer an oath or
19 affirmation. This has nothing to do with deposition testimony.

20 The defense also does not agree that the Nevada Legislature
21 placed a higher value on notary public oaths than those by a
22 certified court reporter, as is alleged by counsel. In fact, a
23 certified court reporter need not be a notary to administer the
24 deposition. It is interesting that counsel states that in Nevada
25 even before 2007 notaries public were recognized as being able to
26 administer oaths for depositions. As stated above, counsel for
27 COAST has been practicing law for about 25 years, and has taken
28 and defended thousands of depositions, and this is his first

1 where a certified court reporter was not present.

2 Nevada Rule of Civil Procedure (NRCP) 28 reads:

3 Within the United States or within a territory
4 or insular possession subject to the
5 jurisdiction of the United States, **depositions**
6 **shall be taken before an officer authorized to**
7 **administer oaths by the laws of the United**
8 **States or of the place where the examination**
9 **is held, or before a person appointed by the**
10 **court in which the action is pending. A person**
11 **so appointed has power to administer oaths and**
12 **take testimony. Upon proof that the notice to**
13 **take a deposition outside the State of Nevada**
14 **has been given as provided in these rules, the**
15 **clerk shall issue a commission or a letter of**
16 **request (whether or not captioned a letter**
17 **rogatory) in the form prescribed by the**
18 **jurisdiction in which the deposition is to be**
19 **taken, such form to be presented by the party**
20 **seeking the deposition. Any error in the form**
21 **or in the commission or letters is waived**
22 **unless objection thereto be filed and served**
23 **on or before the time fixed in the notice. The**
24 **term "officer" as used in Rule 30, 31 and 32**
25 **includes a person appointed by the court or**
26 **designated by the parties under Rule 29.**

16 NRCP 28 (emphasis added).

17 At first glance at NRCP 28, it appears any person
18 "authorized to administer oaths" can take deposition testimony.
19 However, the legislative history surrounding the notary statutes
20 in Nevada suggests the opposite. A notarial officer may perform
21 notarial acts. NRS 240.061. At present, NRS 240.004, which
22 defines "notarial acts," reads:

23 "Notarial act" means an act that a notarial
24 officer of this state is authorized to
25 perform. The term includes:

- 25 1. Taking an acknowledgment;
- 26 2. Administering an oath or affirmation;
- 27 3. Certifying a copy;
- 28 4. Executing a jurat;
5. Noting a protest of a negotiable
instrument; and
6. Performing such other duties as may be
prescribed by a specific statute.

1 NRS 240.004 provides that administering an oath or
2 affirmation is a notarial act. However, NRS 240.004 did not
3 always read as it does today. Prior to 1995, this statute listed
4 "taking a deposition" as a notarial act. On June 26, 1995, at a
5 hearing regarding A.B. 722 before the Senate Committee on
6 Judiciary, Morgan Baumgartner, a representative from the Nevada
7 Court Reporters Association, explained "the majority of certified
8 court reporters only use their notary powers to swear in people
9 when they are taking depositions, and they do not attest to
10 anything beyond that." [See attached Exhibit A]. The purpose of
11 that statement was to request certified court reports be exempted
12 from the requirement to post a bond as well as from keeping a
13 journal, because their notary power use was limited. At that
14 same hearing, Ms. Baumgartner directed the committee to the last
15 section of the bill which contained an amendment removing "taking
16 a deposition" as a notarial act. [See attached Exhibit B]. The
17 purpose of this amendment was to prevent notaries who are not
18 certified court reporters from taking legal depositions. Ms.
19 Baumgartner reminded the committee that certified court reporters
20 go through extensive training and continuing education. [See
21 Exhibit B]. The bill passed, and "taking a deposition" was
22 removed from the definition of a notarial act.

23 In addition to the removal of "taking a deposition" from the
24 definition of a notarial act, the Nevada Secretary of State's
25 website has a Notary Division section with a "FAQ" link. One of
26 the questions is, "Can I take a deposition?" to which the answer
27 is "The authority to take a deposition was removed from the list
28 of notarial acts in the law by the 1995 Legislature. Certified

1 court reporters who have been appointed notaries public with
2 limited powers take depositions." [See Exhibit C]. Though
3 Plaintiff's counsel spoke with an unidentified individual at the
4 Secretary of State's office, the website specifically states the
5 1995 Legislature removed the power to take depositions from
6 notaries public.

7 NRS Chapter 656 deals with Certified Court Reporters. The
8 "practice of court reporting" in Nevada means "reporting, in this
9 State, by the use of voice writing or any system of manual or
10 mechanical shorthand writing: ...Pretrial examinations,
11 depositions, motions and related proceedings of like character..."
12 NRS 656.030. NRS 656.315 provides, "A court reporter may
13 administer oaths and affirmations without being appointed as a
14 notary public pursuant to chapter 240 of NRS."

15 The Legislature's intent to remove notaries from the
16 deposition process is evidenced by both the removal of "taking a
17 deposition" from NRS 240.004, and NRS 656.351, which allows court
18 reporters to administer oaths and affirmations without being a
19 notary.

20 The Nevada Supreme Court has handled cases where a court
21 procedural rule conflicts with a statute. In *State v. Second*
22 *Judicial District Court*, 116 Nev. 953, 11 P.3d 1209 (2000), the
23 Nevada Supreme Court ruled that the rule and statute in question
24 in that case did not conflict, and thus, one did not have to be
25 invalidated. *Id.* at 959. But, the Court also explained that even
26 if the rule and the statute did conflict the rule would prevail.
27 "[T]he legislature may not enact a procedural statute that
28 conflicts with a pre-existing procedural rule, without violating

1 the doctrine of separation of powers, and that such a statute is
2 of no effect." Further, where "a rule of procedure is promulgated
3 in conflict with a pre-existing procedural statute, the rule
4 supersedes the statute and controls." *Id.*

5 It is a canon of statutory interpretation that to the
6 extent possible, statutes and rules should be harmonized and not
7 read as creating a conflict. See *Cromer v. Wilson*, 126 Nev. 106,
8 110, 225 P.3d 788, 790 (2010). Here, NRS 240.004 and NRCP 28 can
9 be read in harmony. The court could rule NRCP 28 does not apply
10 to notaries, because while administering an oath is a notarial
11 act, a notary cannot administer oaths in the context of a
12 deposition, and thus, a notary is not an "officer" for purposes
13 of NRCP 28.

14 IV. THE SUGGESTION THAT THE DEFENSE BRING ITS OWN REPORTER

15 Counsel suggests that the defense should simply bring its
16 own court reporter. This would be contrary to the rules of civil
17 procedure. A party taking a deposition is the one responsible to
18 have it recorded. NRCP 30(b)(1)-(2). NRCP 30(b)(3) contemplates
19 a situation where one party arranges for one means of recording,
20 such as stenography, while if another party would like the
21 deposition also video recorded, that party is to pay the extra
22 expense. The rule was not designed to allow the party noticing
23 the deposition to have someone record the deposition, even if it
24 is improper under the rules, and force the other party to bear
25 the cost of a certified court reporter to protect their client.
26 It is entirely unfair and inequitable for a second attorney to
27 have to bring their own court reporter to a deposition. Such an
28 interpretation of NRCP 30 would involve needless costs, which is

1 contrary to numerous discovery rules. Plus, which transcript
2 would be the official record?

3 Further, counsel argues that when the defense received
4 notice that the recording would be by video, the defense should
5 have planned to provide their own certified court reporter. The
6 defense did not know a certified court reporter would not be
7 present before the first deposition began, and did not know until
8 two days before the second deposition. [See *Affidavit of Kevin*
9 *Diamond*].

10 V. PRACTICAL IMPLICATIONS

11 Having a notary take a deposition rather than a certified
12 court reporter has practical implications that can affect
13 admissibility and the accuracy of the deposition transcript. A
14 notary is not taking down what is said, and therefore, cannot
15 read a question or answer back if there is an issue during the
16 deposition. The notary would have to rewind the audio and find
17 the last question. A certified court reporter can type in a
18 search term and go directly to the question. Imagine the amount
19 of time it would take if an attorney needed a question read back
20 from five minutes prior.

21 There also is the issue of the accuracy of the
22 transcription. The person who will be transcribing the audio is
23 not present at the deposition. As the Discovery Commissioner well
24 knows, since she took and defended depositions prior to becoming
25 the Discovery Commissioner, there are times when people talk over
26 each other, or a deponent does not speak loudly enough, or
27 someone speaks too quickly, or some other issue occurs such that
28 it is difficult for the court reporter to hear and/or understand

1 what was said. When that occurs a court reporter will typically
2 ask for something to be repeated, for someone to slow down, for
3 someone to speak up, etc. However, using a notary and then a
4 separate person to type the transcription, this cannot occur, and
5 thus there can be inaccuracies.

6 These issues and others were discussed at the time of trial
7 in a case in Reno. [See Exhibit D]. In that case, a notary was
8 used to record video of two depositions, but neither of the
9 depositions had a certified court reporter. *Id.* As counsel
10 noted, the certified court reporter, who engages in numerous
11 hours of training related to business law, medical vocabulary,
12 legal research, legal terminologies, and procedures, ensures the
13 accuracy and protects the sanctity of the deposition process.
14 *Id.* at 2. A notary need not engage in the training necessary to
15 ensure the accuracy of a deposition transcript. This case
16 addressed another important issue: who transcribed the deposition
17 testimony? Nobody was able to state the identity of the
18 individual who transcribed the depositions. See generally *Id.*
19 Assurances that the deposition transcript is true to the
20 testimony actually given cannot exist where the identity of the
21 person who transcribed the deposition cannot be ascertained.

22 Additionally, there may be admissibility problems if the
23 witness is not actually under oath, because the oath was
24 administered improperly. Meaning, if the notary cannot actually
25 swear in the witness, the transcript cannot be utilized at trial.

26 NRS 240.063 discusses the evidentiary effect of a signature
27 and limitations on the evidentiary effect of certification of
28 documents by a notary. NRS 240.063(1) provides, "The signature

1 of a notary public on a document shall be deemed to be evidence
2 only that the notary public knows the contents of the document
3 that constitute the signature, execution, acknowledgment, oath,
4 affirmation or affidavit." NRS 240.063(2) reads, "When a notary
5 public certifies that a document is a certified or true copy of
6 an original document, the certification shall not be deemed to be
7 evidence that the notary public knows the contents of the
8 document." NRS 240.061(1)(a) reads, "A notary public may not
9 perform a notarial act if: (a) the notary public executed or is
10 named in the instrument acknowledged, sworn to or witnessed or
11 attested." Thus, it appears a notary cannot certify the
12 original, only that the copy is an exact duplicate of the
13 original. This also raises an issue as to who is preparing the
14 transcript if it is not the notary themselves. And, without a
15 certified copy some courts may not allow the transcript to be
16 utilized at trial.

17 VI. REQUEST FOR FEES AND COSTS

18 With all due respect to counsel for the plaintiff, it is
19 insulting that he is seeking fees and costs for having to file
20 the motion. Defense counsel did not want to proceed with the
21 deposition primarily because counsel did not want the COAST
22 30(b)(6) designees to have to be deposed twice. Namely, if it was
23 found that the oath given to these designees was improper, and
24 the deposition needed to occur again, there would be a distinct
25 disadvantage to COAST in that the parties asking questions of the
26 designees would have two bites at the apple.

27

28

1 COAST is not attempting to preclude the deposition of its
2 designees, or trying to be underhanded about completing
3 discovery. We have an issue which does not have a clear answer.
4 The most surprising thing about plaintiff's counsel seeking fees
5 and costs is the fact that during the conference call with the
6 Discovery Commissioner at the initial deposition, she indicated
7 that she wanted briefing before making a final decision on the
8 issue. As such, the issue is not resolved and there is thus a
9 reason, a valid reason, for COAST to want this issue resolved
10 before the deposition proceeds. In this regard it should again be
11 noted that it wasn't until two days before the second set
12 deposition that counsel for the plaintiff indicated that he was
13 not going to utilize a certified court reporter. This is after at
14 the initial deposition he indicated that he would be using a
15 certified court reporter at the next setting. [See Exhibit 2 to
16 Plaintiff's Motion].

17 Additionally, Plaintiff's motion is devoid of any citation
18 to case law. This is an issue the Nevada Supreme Court has not
19 addressed. As demonstrated in this opposition, the issue of does
20 not lend itself to an easy answer. This opposition asserts valid
21 legal arguments, and Plaintiff's counsel should not receive fees
22 and costs for filing a motion related to an undeveloped area of
23 law.

24 As a side note, although defense counsel believes that
25 plaintiff's request for fees and costs is completely unjust, it
26 is also hard to believe that plaintiff's counsel's hourly rate is
27 \$400 per hour. That is awfully high. Counsel also includes
28 . . .

1 anticipated time in his fees calculation, which is wholly
2 improper.

3 Finally, the section pertaining to fees and costs appears to
4 be cut and pasted from other motions since on page 10 of the
5 motion there is a discussion about the Americans With
6 Disabilities Act, and on the same page there is a reference to
7 objections to written discovery. Neither of these have anything
8 to do with the instant motion.

9 **CONCLUSION**

10 This is a completely undeveloped area of law in Nevada. The
11 Legislature intended to prevent notaries from taking depositions.
12 As such, the Motion should be denied, and Plaintiff should have
13 to utilize a certified court reporter for the 30(b)(6)
14 deposition.

15 DATED this RA day of January, 2018.

16 THORNDAL, ARMSTRONG, DELK,
17 BALKENBUSH & EISINGER

18 
19 By: _____

20 KEVIN R. DIAMOND, ESQ.
21 Nevada Bar No. 4967
22 1100 E. Bridger Avenue
23 P.O. Drawer 2070
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant,
26 COAST HOTELS AND CASINOS
27
28

1 Affidavit of Kevin R. Diamond, Esq. in support of Defendant Coast
2 Hotels and Casinos, Inc.'s Opposition to Plaintiff's Motion to
3 Compel Coast to Produce a 30(b)(6) Witness and for an
4 Award of Fees and Costs

4 State of Nevada)
5) ss
6 County of Clark)

6 I Kevin R. Diamond, being first duly sworn, state as
7 follows:

8 1. I am an attorney licensed to practice law in the State of
9 Nevada, and represent Coast Hotels and Casinos in this matter.

10 2. On December 4, 2017, the deposition of the Orleans
11 30(b)(6) designees was scheduled to occur.

12 3. I produced two witnesses who were ready, willing, and
13 able to testify as Rule 30(b)(6) designees on December 4, 2017.

14 4. Plaintiff's Counsel failed to mention prior to the
15 deposition on December 4, 2017 that he was not going to have a
16 certified court reporter present.

17 5. I have been practicing law in Nevada since 1993, and I
18 have never encountered a situation where a deposition was taken
19 without the presence of a certified court reporter.

20 6. The other defense counsel present at the December 4, 2017
21 deposition disagreed with Plaintiff's counsel's position that it
22 is proper to have a notary record and videotape the deposition
23 and have it transcribed later.

24 7. An informal phone call was made to the Discovery
25 Commissioner to discuss the issue at the time the deposition was
26 scheduled to be held.

27 . . .

28 . . .

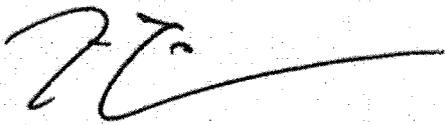
1 8. The Discovery Commissioner indicated she wanted to be
2 briefed on the issue of whether a deposition is proper without a
3 certified court reporter present.

4 9. All attorneys present at the deposition on December 4,
5 2017 agreed to cease the deposition for the time being, and
6 Plaintiff's counsel indicated he would reset the deposition with
7 a certified court reporter.

8 10. I did not know a certified court reporter would not be
9 present before the first deposition began, and I did not know
10 until two days before the second deposition.

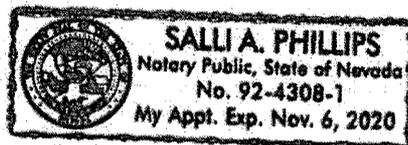
11 I declare under penalty of perjury that the foregoing is
12 true and correct.

13 Subscribed and sworn to before me
14 this 22nd day of January 2018.



Kevin R. Diamond, Esq.

15
16
17
18 Salli A. Phillips
19 Notary Public in and
20 for said county and state





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EXHIBIT A

Senate Committee on Judiciary
June 26, 1995
Page 14

Ms. Baumgartner confirmed that was the compromise reached at the suggestion of the members of the Assembly Committee on Judiciary. She recalled the committee had concern that indigent litigants would have to bear the cost, who usually only buy the original copy. She said the counties traditionally buy two copies.

Ms. Bell told the chairman court reporters normally charge \$3 per page for an original and one copy for depositions, although reporters in Clark County charge from \$.75 to \$1 more per page.

When asked by Senator James, Ms. Baumgartner said the county agreed to a fee of \$140 per diem as well as to the other terms in the first reprint of A.B. 722. She related Robert Hadfield, director of the Nevada Association of Counties, gave her permission to express the counties' agreement with the changed version of A.B. 722.

Senator James requested an explanation of the part of the bill referring to notary oaths. Ms. Baumgartner explained that the majority of certified court reporters only use their notary powers to swear in people when they are taking depositions, and they do not attest to anything beyond that. However, she said, under the notary statutes they are required to post a bond. She stated they are requesting that they be exempt from the bond requirement as well as from keeping a journal since their use of the notary power is so limited. She explained they will still be required to pay the same license fees.

In response to a query about sound recording, Ms. Baumgartner called attention to an amendment (Exhibit F) designed to allay concerns by the Clark County Courts and the Supreme Court regarding their interpretation of section 2 in the bill. She explained they feared allowing two official transcripts could lead to potential litigation problems. She said the Nevada Court Reporters' Association has accepted the amendment submitted by Ben Graham.

According to Ms. Baumgartner, the section was included in the bill to accommodate attorneys who occasionally wish the presence of a court reporter in the room because they may need a transcription on an expedited basis. It will enable an attorney to receive daily transcripts without putting the burden on the official court reporter, but it is not supposed to provide a second "official" transcript, she said.



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EXHIBIT B

Ms. Baumgartner stated the last section of the bill contains an amendment to the definition of "notarial acts." She said it removes "taking a deposition" as a notarial act, which will prevent notaries who are not certified court reporters from taking legal depositions. She reiterated certified court reporters go through extensive training and continuing education, which notaries do not, and are subject to licensing.

There being no further testimony, Senator James closed the hearing on A.B. 722.

SENATOR ADLER MOVED TO AMEND AND DO PASS A.B. 722.

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR PORTER WAS ABSENT FOR THE VOTE.)



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EXHIBIT C

Must I be concerned with whether the form is properly filled out, as long as the notarial certificate is correct?

It's not the notary's responsibility to check that the form is properly filled out, but it is the notary's responsibility to make sure the notarial wording is correct and complete.

What should I do if I determine a document is forged or fraudulent?

Don't notarize it. As a responsible citizen, you should also report the crime to law enforcement although nothing in the notarial law requires this.

Can I take a deposition?

The authority to take a deposition was removed from the list of notarial acts in the law by the 1995 Legislature. Certified court reporters who have been appointed notaries public with limited powers take depositions.

How do I notarize a signature on a document that has carbons? Do I have to notarize each copy of the original document?

If the document signer wants original signatures on each of the carbons, then you notarize each page just as if each page was an original. If the document signer does not want original signatures on each of the carbons, but only wants to show that the original was notarized, then stamp each carbon with your stamp and write next to your stamp the words "conformed copy."

IDENTIFYING THE CLIENT**How many pieces of ID should I require?**

As many as necessary to give you satisfactory evidence that the person whose signature is on the document is that person. One may be sufficient. If you rely on an identifying document, that document must contain a signature and a photograph.

Should I note which ID was used in my journal?

The law requires that the notary enter into the journal a description of the evidence used to verify the identification of the signer.

If a credible witness is used, that person must also sign your journal. If you personally know the document signer, write "personally known" in the proper column.

Does a credible witness need to be present or can he or she verify identity by phone or letter?

The credible witness needs to be present.

Is a photo ID required?

The law requires a identification card with a photo and signature.

Are there any exceptions?

In 1997 the law was changed regarding identification of a person who is 65 years of age or older. If such a person does not have a picture ID, the person can be identified with a card issued by a governmental agency or senior citizen center. Use this method of identification only if there is absolutely no other way to identify the document signer.

Can I use an expired photo ID if the signature and photo match the person before me?

The statute doesn't address expired IDs. You, the notary, have to make the determination of whether the ID presented is satisfactory or not. You must be satisfied that the person making the acknowledgment/verification is the person whose signature is on the document.

How do I notarize the signature of someone who is from another country if that person's ID has been stolen?

The standard for determining identity is the same. If no written ID is available, a credible witness can be used. Remember, the credible witness must be present and known to you.



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EXHIBIT D

1 THE COURT: That being said, do you want to meet
2 outside other than that?

3 MR. GATES: Yes, sir. Judge, I had previously
4 addressed Mr. Ivey's presentation in this case as far
5 as him being essentially behind the plaintiff's table
6 throughout the trial and playing the video on behalf of
7 the plaintiffs.

8 We have learned that Mr. Ivey is not a certified
9 court reporter in the state of Nevada, and he is the
10 one who actually completed the depositions of Dr. Low
11 and Dr. Kindig in this case. Specifically for Dr. Low,
12 he did a video of Dr. Low but did no typing. At
13 Dr. Kindig's deposition, it appears an associate of his
14 by the name of Jason Sanderson essentially did the same
15 thing. They did a video, but there was no stenography.

16 We have learned from the president of the Nevada
17 Board of Court Reporters that neither of these
18 individuals is a qualified, certified or any-fied court
19 reporter in the state of Nevada. Mr. Ivey, more
20 importantly, is only a notary in the state of Nevada
21 but not California. He's not permitted to provide
22 notary services in California and, therefore, the oath
23 he took of Dr. Low in California is not valid.

24 We believe -- as I mentioned to the judge

1 previously, there's just something about it -- I've
2 been told I've now been doing this 27 years, not 26,
3 but there was something about Mr. Ivey being at

4 Dr. Low's deposition. And I asked him "where is the
5 court reporter?" And he said, "I am doing the video
6 and then we're going to transform this into a printed
7 transcript." And that bothered me.

8 The same issue regarding Mr. Ivey is that I know he
9 drove with Mr. Osborne to and from the deposition.

10 But the reason there are certified court reporters
11 in the state of Nevada is it ensures the accuracy and
12 protects the sanctity of the deposition process.

13 Mr. Ivey and Mr. Sanderson apparently don't have the
14 training to be a court reporter. It takes two to four
15 years. They complete classes in business law, medical
16 vocabulary, legal research, legal terminologies and
17 procedures, as well as mechanics and grammar.

18 I have no idea if Mr. Ivey or his associate went
19 through that process. I can only tell you they are not
20 certified in the state of Nevada. So it gives somewhat
21 an appearance of suspicion and impropriety that now
22 Mr. Ivey is assisting Mr. Osborne here.

23 More importantly, I objected during or just after
24 the opening argument by Mr. Osborne when Dr. Kindig's

1 video was played. It appears to us that it was
2 modified and that objections that were in between some
3 of her answers were taken out and edited. And I don't
4 think that's proper. And that automatically, I think,
5 makes Mr. Ivey an impartial officer of the court.

6 So we are very concerned about the accuracy and the
7 genuineness of the transcripts. Interestingly, I

8 didn't think about this until this morning on the drive
9 over. If I would have had a question read back during
10 her deposition or during Dr. Low's deposition, that
11 couldn't happen. There was no one typing.

12 And the bottom line is, Judge, there are procedural
13 safeguards in the state of Nevada to ensure the
14 accuracy of deposition transcripts just like there are
15 the accuracy of trial transcripts. And I think they're
16 sealed for a reason. I think it's to preserve the
17 sanctity of the testimony.

18 I think we have no idea who typed the transcript
19 for Dr. Kindig and Dr. Low. We have no idea if it's
20 accurate. It hasn't been certified by anyone that I
21 know of that is qualified in the state of Nevada.

22 And I do know one thing, Judge. This process is
23 supposed to be fair, this process is supposed to be
24 impartial, and you don't cut corners. And it appears

3

♀

1 to us that having Mr. Ivey do what he's doing now, it
2 appears to us to have what Mr. Ivey did at the
3 deposition of Dr. Low and his associate with Dr. Kindig
4 is improper, and we move to strike the depositions of
5 both Dr. Kindig and Dr. Low.

6 THE COURT: Thank you. You're entitled -- I have a
7 hand-delivered copy that's not file stamped of a motion
8 entitled Defendant's Ex Parte Motion to Exclude the
9 Deposition Transcripts and Video Depositions.
10 Obviously by way of your presentation, it's not
11 ex parte, number one. Is that correct?

12 MR. GATES: Yes.

13 THE COURT: All right. And, number two, did you
14 file this in or was it -- I don't have a file-stamped
15 copy.

16 MR. GATES: It's filed. That's a courtesy copy,
17 Judge.

18 THE COURT: I want to give Mr. Osborne an
19 opportunity to respond. Go ahead. And I was thinking
20 he could respond in writing too. But let me hear from
21 you now.

22 MR. OSBORNE: I'll do both, if you'd like, Your
23 Honor. Let me just make it clear for the record,
24 number one, Mr. Ivey is not a court reporter. Neither

4

1 is Mr. Sanderson.

2 THE COURT: All right.

3 MR. OSBORNE: They never represented themselves to
4 be a court reporters. They have never represented
5 themselves to be anything other than what they are.

6 Let me read to you Nevada Rule of Civil Procedure
7 B2. "The party taking the deposition shall state in
8 the notice the method by which the testimony shall be
9 recorded. Unless the court orders otherwise, it may be
10 reported by sound, sound and visual or stenography
11 means. And the party taking the deposition shall bear
12 the cost of recording. Any party may arrange for the
13 transcription to be made from the reporting of a
14 deposition taken by non-stenography means.

15 And then B3, 30(b)(3), it says within five days

16 notice to the deponent and other parties, any party may
17 designate another method to record the deponent's
18 testimony in addition to the method specified by the
19 person taking the deposition.

20 It was clearly noticed that this was a videotaped
21 deposition. Dr. Kindig was done last June, almost a
22 year ago from now. She certified that it was proper.
23 We have it under seal here with no objection.

24 THE COURT: Say that part again. I'm not following

5

1 that part.

2 MR. OSBORNE: Sure. All these are the certified
3 transcripts that we have, including Dr. Low and
4 Dr. Kindig. They're under seal. We haven't had to
5 open or publish anything yet, but they're under seal.

6 THE COURT: I guess the question is how were they
7 transcribed? If I'm understanding the argument, both
8 those depositions were done by a videography team, if
9 you will. I'm candidly not as concerned whether you
10 hired him or he's here in court helping you. That's
11 not my thing. I want to make sure that all the
12 official Ts are crossed and Is are dotted. So that
13 being said, how did you get sealed -- how did you get
14 the videography transcribed into the sealed
15 documentation?

16 MR. OSBORNE: So that's the last part of 30(b)(2).
17 It says may arrange for the transcription to be made.
18 So from the video and the audio, there's a transcript.

19 THE COURT: And who did that transcript?

20 MR. OSBORNE: I would have to look.

21 THE COURT: Was it a certified court reporter in
22 the state of Nevada?

23 MR. OSBORNE: I couldn't answer that for you right
24 now.

6

1 THE COURT: Got it. All right.

2 MR. OSBORNE: Because I don't have it in front of
3 me. I just got the motion just right before --

4 THE COURT: No, I got it. So this -- I want to
5 give you time. I mean, obviously whenever anything is
6 listed as an ex parte motion, that means to me you just
7 got it and that means I got it. So I want to give you
8 the time to be able to properly respond, because it's
9 an important issue if there's been discovery taken
10 that's not consistent with the Nevada Rules of Civil
11 Procedure.

12 I've heard you argue just now that it is, but
13 there's some questions that Mr. Gates's motion has
14 raised that you potentially could answer if you had
15 more time; and that is, if you got a videography and
16 it's transcribed, and let's assume you're planning to
17 use the transcription of the videography in court, then
18 I want to know who the court reporter was that did the
19 transcription, certified in the state of Nevada, as a
20 start. You just don't have it handy before yourself
21 now, but I'm assuming that's the case. No?

22 MR. OSBORNE: Let me back you up just a minute. It
23 is not required --

24 THE COURT: Okay. I'm just asking.

7

1 MR. OSBORNE: -- by our own Nevada Rules of Civil
2 Procedure.

3 THE COURT: whether it's required or not, I think
4 it's an answer that Mr. Gates doesn't have. And
5 neither do I.

6 MR. OSBORNE: Okay. well, he's got the
7 transcripts. He obviously filed the motion. And I
8 think he attached some exhibits.

9 THE COURT: There's no exhibits. There's portions
10 of the exhibits, but not the actual transcripts.

11 MR. OSBORNE: Okay.

12 THE COURT: Because there's -- his argument is a
13 videographer is not a certified court reporter.

14 MR. OSBORNE: And we have no dispute about that.
15 It's just a matter of whether it's improper as he
16 alleged.

17 THE COURT: Understood.

18 MR. OSBORNE: We complied with the civil procedure
19 rules. The other thing is in (b(4), depositions shall
20 be conducted before an officer appointed or designated
21 under Rule 28 and shall begin with a statement. I
22 think he attached those statements that were properly
23 done. They're consistent with our Rules of Civil
24 Procedure. And, you know, obviously he's a notary that

8

1 can give the oath and is authorized to give the oath
2 under NRCP Rule 28.

3 But the thing is what he said was that Kindig and
4 Low, I guess -- as I said, Dr. Kindig's deposition was
5 taken nearly a year ago. No objections were made.
6 Same process. We did Dr. Low because Mr. Gates was in
7 an auto accident just before this trial. So that was
8 done, I think, about two weeks ago.

9 THE COURT: Who was in an auto accident?

10 MR. OSBORNE: Mr. Gates. So we had --

11 THE COURT: You recovered very nicely, Mr. Gates.

12 MR. OSBORNE: He just ruined your case.

13 MR. GATES: I know.

14 MR. OSBORNE: With regard to the objections in the
15 opening, I listed the transcript part that I was going
16 to use in opening. Your order, pretrial order, says
17 that any transcript or anything, all the objections
18 must be taken out prior to coming in here to court. So
19 I did that.

20 THE COURT: I got that.

21 MR. OSBORNE: Nobody else did that. And I did it
22 consistent with your order.

23 THE COURT: All right.

24 MR. OSBORNE: With regard to read-back, I've used

♀

1 this court reporting firm several times. I shouldn't
2 say court reporting. This audio visual firm several
3 times. It's easy to get a read-back if you want it.

4 You can actually get the actual audio recording back
5 and you can actually know exactly what it is. So all
6 the safeguards are in place.

7 I also want to tell the Court, I just did a trial
8 two months ago in Department 6. Same thing.
9 Depositions were taken by Mr. Ivey and they're under
10 seal and there's nothing else. He's in court here
11 today just to put up the exhibits. He doesn't have
12 any -- he doesn't alter or change the actual
13 transcripts or do anything. There's been no foul play.
14 There's nothing that's mysterious about what's
15 happening here. And they shouldn't be stricken. I do
16 want to say that I planned on using these today, and
17 that makes it difficult.

18 THE COURT: Okay. Let me ask a couple questions
19 along those lines. Were you planning to call
20 Dr. Kindig today and then maybe impeach her with the
21 deposition or --

22 MR. OSBORNE: I don't know if I was going to call
23 Dr. Kindig. We have Dr. MacGregor this afternoon.

24 THE COURT: I got it. But for purposes of this

10

1 issue, it sounds like this has to be decided rather
2 quickly as opposed to giving you the time to do your
3 written response with additional detail. When did you
4 get his motion?

5 MR. OSBORNE: This morning about 9:45.

6 THE COURT: I get it. So that's what I assumed.
7 So I wanted to give you an opportunity to respond, not

8 from the seat of your pants, as they use that
9 expression, but to give you time to evaluate and go
10 through it. That's fair. From a scheduling
11 standpoint, when do you think you were going to call
12 either -- is Dr. Low going to be here or do you want to
13 use the deposition?

14 MR. OSBORNE: I don't know what Mr. Gates has
15 planned for Dr. Low.

16 THE COURT: Okay.

17 MR. GATES: Dr. Low will be here.

18 THE COURT: Okay. So if I'm clear, then for the
19 purposes of -- you have a general motion to strike.
20 That's one piece. But for the purposes of the trial
21 procedure, we have live witnesses and the deposition
22 information potentially that's at issue would
23 potentially be used for impeachment, cross-examination
24 or something of that nature, because the live witnesses

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1 will be here to supplement or confirm their answers in
2 their deposition. Is that fair, Mr. Gates?

3 MR. GATES: Well, I think you can use the
4 deposition of a party in the state of Nevada for any
5 reason. The deposition has got to be done by a court
6 reporter. We don't even know who typed these
7 transcripts, nor can that be answered this morning.

8 The rules -- it's signed by Mr. Ivey that "nor a
9 person financially interested in the action."
10 Obviously he's not sitting here for his health. He's
11 making money. So, Judge, I do have a problem with any

12 of these -- these two transcripts being used in any
13 way. I think they're improper.

14 THE COURT: Hold on. I'm going to give you
15 a chance -- get that as your formal reply yet, but I'm
16 just asking about the use of the depositions because
17 Mr. Osborne is not done with his opposition yet, and
18 then I'm going to give you a chance to reply.

19 MR. GATES: Well, I don't -- I don't know what he's
20 doing with this case or how --

21 THE COURT: I understand.

22 MR. GATES: -- he plans to use the deposition of
23 Dr. Kindig and Dr. MacGregor. I don't know. That's
24 Mr. Osborne's --

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1 THE COURT: I get that. I'm just trying -- I was
2 trying to get -- ask that question in my mind, how they
3 might be used. So, for example, it's a different type
4 of motion and urgency if Dr. Low is not going to be
5 present and somebody wanted to use his deposition and
6 you're challenging how the deposition was taken.

7 MR. GATES: Yeah.

8 THE COURT: That's one issue.

9 MR. GATES: I think it's impeachment only that it
10 can be used. So it's less onerous but same argument
11 applies.

12 THE COURT: No, I get -- let me just restate it so
13 we're on the same page. I'm going to use regular
14 language. You're looking for the home run in having
15 them stricken, but for purposes of expediency in what

16 we're doing to do, because Mr. Osborne has represented
17 those witnesses will be here today, I'm trying to
18 figure out how they might be used from a critical
19 perspective. And so it gives me more of a priority
20 related to my decision making under the circumstances.
21 Does that make sense?

22 MR. GATES: I think for purposes of today it would
23 only apply to Dr. Kindig, because I don't think
24 Dr. Low's deposition can be used today. It can only be

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♀

1 used for impeachment purposes. He's not a party to the
2 case.

3 THE COURT: Understood. No, I'm clear.

4 Go ahead, Mr. Osborne, anything else you want to
5 add?

6 MR. OSBORNE: I don't agree with that statement,
7 because certainly Dr. MacGregor is entitled to look at
8 it and comment on it and do everything in regard to the
9 deposition of their designated expert.

10 With regard to one of his comments about financial
11 interest, there is no financial interest in the case.
12 Okay. He's hired to just do computer assistance.
13 That's it. I mean, all he's doing is putting up the
14 actual exhibits that we're presenting to you. You're
15 the one making the call on what exhibits come in or out
16 of evidence, but all he's doing is putting them up,
17 making them larger, making them easier to read, and
18 that's it, at my direction obviously.

19 So it does comply with the Nevada Rules of Civil

20 Procedure. It's been used several times, not only by
21 me but by other lawyers around the state. This has
22 been done for a very long time. It is specifically
23 designated. There is no requirement in our civil
24 procedure rules that an actual certified court reporter

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1 provide the transcript.

2 Mr. Gates could have had his own court reporter
3 transcribe that by whatever means he wanted. It was
4 properly noticed. And he could have done it by other
5 means that weren't within the notice.

6 THE COURT: I understand. I still want a written
7 response, because he did a written motion and he's made
8 it part of the record. So your response needs to be
9 part of the record as well no matter what I decide. So
10 I don't want to preclude you in short notice. I know
11 how busy you are preparing for trial, but I need to
12 have it briefed. And I want to give you that
13 opportunity so you're not prejudiced by, as I say,
14 arguing it like this when he's taken the time to do his
15 research and prepared in such a way. I want you to
16 respond to it. That would be helpful to me as well.
17 It's an important issue. It's not something that I'm
18 going to decide out of hand based upon the briefing.
19 So if you could do that, that would be fine.

20 Does that affect our morning at all? I don't want
21 the jury to wait any longer than they have to.

22 MR. OSBORNE: I also have a motion as well, Your
23 Honor.

24 THE COURT: All right.

15

1 THE COURT: Anything else you want to tell me?

2 MR. OSBORNE: About --

3 THE COURT: About this issue.

4 MR. OSBORNE: No.

5 THE COURT: Okay. And I'll hear a short reply,
6 because then I'll see the briefs and make my decision.

7 MR. GATES: Briefly, Judge. I think the rule is --
8 there's a reason why we have certified court reporters
9 at a deposition. Not only are they taking an oath, but
10 they are insuring that the testimony taken is as
11 actually what it is. We have no idea in this case who
12 transcribed from that video or those videos onto paper
13 here. And it's not noted in any of the deposition
14 documents that are filed to the transcript. We have no
15 idea. And that's the problem.

16 THE COURT: And I asked that question.

17 MR. GATES: Yes.

18 THE COURT: I do have one other thing before you
19 sit down on this issue from a timing standpoint. Why
20 is it being brought to my attention in the middle of
21 trial? What would be the reasons why you didn't file
22 anything previously if you've been on notice of the
23 fact of your concerns related to this?

24 MR. GATES: Well, Judge, the first time it bothered

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1 me was when I saw that Mr. Ivey was sitting in this
2 courtroom behind counsel table for the plaintiffs. The
3 second time it really bothered me was when I saw the
4 video of Dr. Kindig during opening argument and it
5 appeared to me, having sat through her deposition, that
6 it had been edited and modified between some of her
7 responses, what the question is and the fact that the
8 entire, it appears to me -- and I don't remember it
9 specifically. The entire answer wasn't on there, nor
10 were my objections. And obviously, once it's up there,
11 the bell is run. I can't -- I had no idea that was
12 coming down. I knew that they were going to do a
13 PowerPoint. He showed me the medical documents. He
14 never told me he was actually going to play her in a
15 video. Therein was a problem. I brought it to the
16 court's attention immediately, and you said come back
17 when you have something.

18 well, Judge, we've been calling, we have letters
19 from the board for court reporters in Nevada that says
20 he's not certified, nor is he licensed, nor is his
21 associate. So as soon as we get it all down this
22 weekend, I filed it with the court, as you requested,
23 Judge.

24 THE COURT: You answered my question. Okay. I'll

1 reserve -- I'll look forward to getting your papers
2 when you can. I know where you are.

3 All right. You had a motion, Mr. Osborne.

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5 * * * * *

6 THE COURT: All right. The jury is outside --
7 we're outside of the presence of the jury. Still on
8 the record. We're at the point where you wanted to
9 supplement your opposition with live testimony related
10 to this morning's motion.

11 MR. OSBORNE: Yes.

12 THE COURT: All right. You can all be seated.
13 Thank you.

14 MR. OSBORNE: Your Honor, we would call Mark Ivey.

15 THE COURT: All right. Please step forward and be
16 sworn.

17 THE CLERK: Raise your right hand.

18 (The oath was administered to the witness.)

19 THE WITNESS: I do.

20 THE COURT: Please take the witness stand. Tell us
21 your first and last name, spelling your last name for
22 the record.

23 THE WITNESS: Mark Ivey. Last name is spelled
24 I-v-e-y.

1 THE COURT: Thank you.

2 Mr. Osborne.

3 MR. OSBORNE: Thank you, Your Honor.

4 MARK IVEY,

5 having been called as a witness herein,
6 being first duly sworn, was examined
and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. OSBORNE:

9 Q Mr. Ivey, you helped me out with some of the
10 depositions in this case?

11 A Yes, I did.

12 Q And your employer is?

13 A EDepositions, LLC.

14 Q And tell us about the nature of eDepositions,
15 LLC.

16 A EDepositions, LLC, is a litigation services
17 company. We provide support through an alternative
18 method of recording depositions by audio-video
19 technology and trial technology as you see here.

20 Q Okay. And then I want to talk specifically
21 about the depositions. Tell us how those are recorded
22 and how those comply with the Nevada Rules of Civil
23 Procedure.

24 A Right. So when we started recording

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1 depositions this way, we did a lot of review of the
2 rules of civil procedure, spoke with the Attorney
3 General's Office, the notary board, discovery
4 commissioners and judges to make sure that how we were
5 recording depositions fell in line with the Rules of
6 Civil Procedure.

7 The way that we record depositions -- we are
8 deposition officers, meaning we're able to administer
9 an oath. We record our depositions with audio-video
10 technology with many forms of redundancy. The
11 audio-video is the official record.

12 Under Rule 30(b)(4), it talks about if it's a

13 non-stenographic deposition, there is a script that we
14 have to read onto the record identifying who we are,
15 who we work for, location of the deposition, time,
16 date, the deponent, the swearing in. And we also place
17 on the record before testimony begins that it is an
18 audiovisual deposition and that will be the official
19 record. We do create a certified transcript from that
20 official record that's certified by the deposition
21 officer.

22 So the specific rules that we follow are Rule 30
23 and 32 as far as form and presentation for the court.

24 Q Okay. And specifically 30(b)(2) talks about

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1 how it can be recorded by sound, sound visual or
2 stenographic means?

3 A Correct.

4 Q Okay. And it says "Any party may arrange for
5 the transcription to be made from the recording of a
6 deposition taken by non-stenographic means."

7 A Right. The rules are pretty specific as far as
8 how non-stenographic depositions are taken. Any party
9 has the right to get it transcribed. The rules don't
10 dictate who can transcribe that. So it doesn't say,
11 you know, it has to be a certified transcriptionist or
12 a certified court reporter. It just allows for that
13 transcript to be completed.

14 we provide the transcript because most of the
15 testimony we have has the potential of ending up in
16 court. And that specifically goes to the presentation

17 rule in court, that if a non-stenographic deposition is
18 to be presented into court, it needs to be accompanied
19 with a transcript of the portions. So that's one of
20 the main reasons that we create the transcript.

21 Q Okay. And one of your partners is Jason
22 Sanderson?

23 A That's correct.

24 Q And Jason Sanderson did Dr. Kindig's deposition

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1 in this case?

2 A Correct.

3 Q And when he did the deposition -- it was
4 approximately about a year ago -- did you receive any
5 objections from Mr. Gates?

6 A No.

7 Q Did you receive any objection from Mr. Gates's
8 firm?

9 A No.

10 Q Did you receive any objections by Dr. Kindig?

11 A No.

12 Q You transcribed the deposition?

13 A Correct.

14 Q And after the deposition is transcribed, the
15 original is back in the file over here under seal?

16 A Correct. So what we do as far as the original,
17 if you don't mind -- as far as presentation to the
18 court, it describes that the testimony has to be --
19 unless you stipulate otherwise has to be under seal if
20 it's going to be presented to the court.

21 well, the original is the audio video, so we
22 include that with a transcript, but we also follow the
23 rules on the certification of the transcript. There's
24 actually a certification. It's 30(f) goes over the

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1 certification portion, that the deposition officer has
2 to accompany the official record with a certification
3 that they were -- that they took the oath, that they
4 are, you know, subscribing that this is the true and
5 accurate testimony of the witness. So that's why we
6 create a certification page for the court record.

7 Q All right. And then in addition to it, Rule
8 30(b)(3) provides safeguards that any -- the other
9 party could designate any other means by transcription
10 if they so choose?

11 A Correct.

12 Q And that's happened in some of your
13 depositions, has it not?

14 A Yes, we've had opposing counsel bring a court
15 reporter into the depositions where we're the official
16 record.

17 Q Did you see that with Dr. Low or Dr. Kindig?

18 A I did not.

19 Q And then you've transcribed the depositions of
20 both Dr. Low and Dr. Kindig?

21 A Yes. EDepositions is responsible for the
22 transcription and the quality assurance to make sure
23 that the transcript matches the official record which
24 is the audiovisual.

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1 Q And in addition to having not only the video
2 and then the audio that goes along with it, you have
3 the transcript that corresponds with both the audio and
4 the visual?

5 A Correct. And that's a requirement under the
6 Rules of Civil Procedure, that if you are going to use
7 a non-stenographic deposition in court, it has to be
8 accompanied with a transcript of those portions that
9 you're using.

10 Q Okay. There's been some mention made that
11 because you did the deposition or your firm did the
12 deposition of Dr. Kindig and you were involved in
13 Dr. Low's deposition that you shouldn't be doing the
14 computer work in this courtroom. Let me ask you this.
15 Did I provide you all the documents to be provided up
16 here on the screen to the jury?

17 A Yes, you did.

18 Q Okay. And not until the judge admits any of
19 the evidence are we to put it up on the screen?

20 A That's correct. I'll get in trouble if I do
21 that.

22 Q So in addition to the actual exhibits -- I
23 mean, who made up the PowerPoint in this case?

24 A You did.

♀

1 Q And I just provided that to you?

2 A Yes, I just took your PowerPoint and plugged it
3 into my computer.

4 Q Okay.

5 MR. OSBORNE: If the Court wants any further
6 examination --

7 THE COURT: Let's see what the cross-examination is
8 first.

9 MR. OSBORNE: Sure.

10 THE COURT: Thank you. Were you done with your
11 questioning?

12 MR. OSBORNE: Yes.

13 THE COURT: Thank you. Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. GATES:

16 Q I still didn't hear the answer to who actually
17 typed out off the video. For instance Dr. Kindig, who
18 typed it?

19 A We have transcriptionists that we work with.

20 Q What is their name?

21 A We use a company called NT Stat as our
22 transcription company.

23 Q So maybe I'm not being clear. Who was the
24 person that typed the actual transcript --

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1 A I don't --

2 Q -- that's been used in this court that was
3 placed allegedly as a certified deposition in a sealed
4 envelope? who typed it?

5 A I don't have a name of a person who typed that.

6 Q So you don't know, sir, if the person typed it
7 if they were a court reporter.

8 A No, they are not a court reporter.

9 Q And you don't know that they're a notary of the
10 court in the state of Nevada?

11 A No, they are not.

12 Q And you don't even know their name?

13 A I can't give you a name right now.

14 Q And you had since this morning -- you've been
15 sitting in court, haven't you?

16 A Yes.

17 Q And by the way, the depositions of Dr. Kindig
18 and Dr. Low, I showed up at 5:30 on a Monday night in
19 Sacramento at Dr. Low's office. That's the first time
20 that I saw you at his deposition; correct?

21 A Yes, I believe so.

22 Q Did you send out notice to me that you were
23 going to be there and a court reporter was not?

24 A No.

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1 Q No. And did I ask you -- I said, "who are you
2 and where's the court reporter?"

3 A I don't recall you asking me where the court
4 reporter was.

5 Q And did I also ask you -- because it seemed
6 that you were particularly close to Mr. Osborne, and I
7 mean in a professional manner. Didn't you drive
8 Mr. Osborne over from Reno and back?

9 A We rode in the same vehicle.
10 Q You as an independent officer of the court as
11 you claim to be?
12 A Yes.
13 Q Sir, you're getting paid to sit back here and
14 use this computer, aren't you?
15 A Yes, I am.
16 Q So you do have a financial interest in this
17 case, don't you?
18 A I'm being paid a flat hourly --
19 THE COURT: Just a second. There's an objection.
20 MR. OSBORNE: Let me just say objection. I mean,
21 this is argumentative and --
22 THE COURT: I am going to sustain it on
23 argumentative just for that purpose.
24 Go ahead.

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1 MR. GATES: I apologize, Judge. I'm a little
2 upset.
3 THE COURT: I get that. That's why I sustained it
4 for that purpose. Continue your questioning, but --
5 MR. GATES: I'll tone it down.
6 THE COURT: That's my point.
7 BY MR. GATES:
8 Q And I apologize, Mr. Ivey.
9 Let me back up. You're a notary in the state of
10 Nevada?
11 A Correct.
12 Q Not in California?

13 A That's correct.

14 Q And you don't have any official officer of the
15 court capacity in the state of California, do you?

16 A I do not.

17 Q And so you were the only one there for
18 Dr. Low's deposition and you actually had him raise his
19 right hand and you swore him in?

20 A Yes, I did.

21 Q And you had no authority to do that, did you?

22 A My understanding is under the -- it's a Nevada
23 case and it was being followed under the Nevada Rules
24 of Civil Procedure.

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1 Q Sir, you were in the state of California.
2 California doesn't recognize notaries from the state of
3 Nevada. Did you know that?

4 A I did not.

5 Q All right. So not only were you not authorized
6 to take an oath and say what's going on the record as
7 an officer of the court in the state of California,
8 you're not an official court reporter in the state of
9 California; correct?

10 A No.

11 Q And, number three, you have no idea who
12 actually typed this out?

13 A No.

14 Q Let's go to Dr. Kindig. You weren't there,
15 sir, were you?

16 A No, I was not.

17 Q And you had -- I'm sorry. Do you own the
18 company?

19 A I do.

20 Q And your associate that came to Dr. Kindig's
21 deposition, is he an employee?

22 A Yes, he is.

23 Q And I'm guessing you have no idea who actually
24 typed out the transcript that has allegedly been

29

1 certified in this case that is in a sealed container
2 that's going to be handed to --

3 A I cannot give you a name of who typed the rough
4 draft, no.

5 Q And your associate, he's not an official court
6 reporter, is he?

7 A No.

8 MR. GATES: Judge, I have no more questions.

9 MR. OSBORNE: Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q Who notices the depositions, Mr. Ivey?

13 A Attorneys do.

14 Q And did you see any objection or have any
15 objection on the record regarding either you or
16 Mr. Sanderson doing the deposition?

17 A No.

18 Q And so let me just read you the certificate of
19 the reporter to Ms. Kindig's deposition. It gives the
20 name of the case, gives the jurat, and it says, "I,

21 Jason Sanderson, a duty-commissioned notary public,
22 Washoe County, State of Nevada, do here by certify that
23 I recorded the deposition of the witness Brandi Kindig
24 commencing June 22nd, 2015. Prior to being examined,

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1 the witness was duty sworn to testify to the truth,
2 that I thereafter transcribed or supervised the
3 transcription of the recorded audiovisual and said
4 deposition is a complete true and accurate
5 transcription. I further certify I'm not a relative,
6 employee of an attorney or counsel for the party, nor a
7 relative or employee of an attorney or counsel involved
8 in said action, nor a person financially interested in
9 the action."

10 And then there's a notary that's signed by Jason
11 Sanderson. Is that what's also affixed to Dr. Low's
12 deposition?

13 A Yes, it is.

14 Q And so all's you're doing is certifying that
15 the deposition is complete, true and accurate?

16 A Correct. It's -- we can't -- even if we had a
17 court reporter type up the transcript, due to the rules
18 of civil procedure, we can't affix a certification page
19 from anybody else that might have assisted in helping
20 us type that out. As a deposition officer, we're the
21 only ones that can put that certificate that says that
22 we gave the oath, that we were there at the time of the
23 deposition.

24 It's in our process that we get a rough draft of

1 the transcript, and then the deposition officer,
2 myself, Mr. Sanderson, we review from the first line of
3 the page of the deposition to the last line to make
4 sure that the transcript matches the official record
5 which is the audio and video.

6 THE COURT: Stop for a minute. How do you swear
7 that you supervise the transcription?

8 THE WITNESS: So the part of where we supervise the
9 transcription is it's the deposition officer's role to
10 certify that transcript.

11 THE COURT: I'm clear.

12 THE WITNESS: So when we go through the transcript,
13 there's a lot of places that we listen to the -- or
14 listen and watch the audiovisual and we make sure that
15 the transcript is accurate. There are many times where
16 a transcriptionist might hear something a certain way,
17 it might be transcribed incorrectly, or they might not
18 understand what's said, so we make sure that those
19 parts are accurate. So we do some transcription within
20 the transcript.

21 THE COURT: Stop there for a moment. You answered
22 my question related to it. In this particular case,
23 did you review the transcripts of the depositions that
24 were videoed by your company for accuracy in this case?

1 THE WITNESS: Every single deposition.

2 THE COURT: That's in this case?

3 THE WITNESS: Yes, sir.

4 THE COURT: And just because you don't know who did
5 the transcription didn't prevent you and/or your
6 partner from reviewing that transcript?

7 THE WITNESS: Absolutely.

8 THE COURT: So you're representing that you
9 reviewed the transcript and compared them to the video?

10 THE WITNESS: Every single word.

11 THE COURT: My second question is what authority is
12 there for you to be a notary in Nevada and swear
13 somebody in in California?

14 THE WITNESS: My understanding in speaking to the
15 notary board was to follow the rules of civil procedure
16 in the state of Nevada. And I was advised that
17 that's -- if it's a state of Nevada case that we're
18 following those rules of civil procedure, so that was
19 my understanding.

20 THE COURT: All right. Any questions based on my
21 questions?

22 BY MR. OSBORNE:

23 Q When you do your quality assurance and you
24 ensure that the record is accurate, you have the

1 audiovisual in addition to the stenographer; right?

2 A To the transcript?

3 Q To the written transcript.

4 A Correct.

5 Q Did you see any changes made by either

6 Dr. Kindig or Dr. Low to any of your transcripts in
7 this case?

8 A No.

9 MR. OSBORNE: That's all I have.

10 THE COURT: Do you have any questions based on my
11 questions?

12 MR. GATES: Briefly.

13 RECCROSS EXAMINATION

14 BY MR. GATES:

15 Q Sir, how do you know that the transcriptionist
16 or the word processor whose name we don't know verified
17 that the actual video had not been altered or edited
18 before he or she started word processing this document?

19 A Because we maintain control of what is
20 presented to the transcriptionist and we do not alter
21 any of our audio or video ever.

22 Q How does that word processor know that that
23 video had not been altered or modified, because they
24 weren't at the deposition?

1 A No, they're not, and that's why they don't
2 certify the transcript.

3 Q And, again, you don't know the name of these
4 people; correct?

5 A I can give you the company name. I can't give
6 you the specific transcriptionist that worked on these,
7 no.

8 Q And notaries -- the board in California has no
9 reciprocity with the state of Nevada. Did you know

10 that?

11 A I did not know that.

12 Q Yet you came over to the state of California
13 and took someone under oath?

14 A Yes.

15 MR. GATES: Thank you, Judge?

16 THE COURT: Thank you. Submitted?

17 MR. OSBORNE: Yes, Your Honor.

18 THE COURT: I'm going to still need your points and
19 authorities tonight, Mr. Osborne, but my ruling is as
20 follows: Number one, I'm going to allow those
21 transcriptions, I'm going to allow that those
22 depositions be used for the following reasons. Number
23 one, I am familiar with the fact that in a court
24 reporter context, a Nevada court reporter can follow

1 someone out of state. I understand from the witness's
2 answer that he believes there's case law out there and
3 there may be future case law depending on the outcome
4 of this case, but the reality of it is this. It would
5 not be my first choice to have used a California -- a
6 Nevada notary swearing someone in in California.
7 However, I find that it's admissible and allowable and
8 that I've had experience myself where I've brought a
9 court reporter to another country from Nevada on a
10 Nevada case and that did not meet any objections.

11 A side issue is potential waiver in this case from
12 the timing related to the objection. Now that we're in
13 trial and it wasn't made available to the court prior

14 to this time, I'm also finding that the transcripts can
15 be used as well as the testimony of the witnesses can
16 be used.

17 But I further would state for the record that,
18 again, I understand how you reviewed the transcript.
19 To my view it would have been a cleaner call if you had
20 retained the services of a certified transcriptionist
21 and knew the name and identity of the person who had
22 done it. So I share that with you of the Court's two
23 concerns. But notwithstanding those concerns, I'm
24 allowing it, and that's my order.

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1 And I'll need your points and authorities tonight,
2 Mr. Osborne. Thank you very much. You may step down.
3 You're excused.

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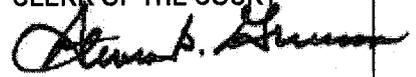
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 MILDRED LOCKHART, an individual,

8 Plaintiff,

9 vs.

10 COAST HOTELS AND CASINOS, INC.,
d/b/a THE ORLEANS HOTEL & CASINO,
a Nevada domestic corporation;
11 GASSER CHAIR, CO., INC., an Ohio
foreign corporation; HUNT COUNTRY
12 COMPONENTS, LTD, Does I through
XXX, inclusive and Roe Business
13 Entities I through XXX, inclusive,

14 Defendants.

15 COAST HOTELS AND CASINOS, INC.,
d/b/a THE ORLEANS HOTEL & CASINO

16 Cross-Claimant,

17 vs.

18 GASSER CHAIR CO., INC. and HUNT
19 COUNTRY COMPONENTS, LTD.

20 Cross-Defendants.

21 GASSER CHAIR CO., INC.

22 Cross-Claimant,

23 vs.

24 COAST HOTELS AND CASINOS, INC., d/b/a
THE ORLEANS HOTEL & CASINO,

25 Cross-Defendant.
26
27
28

CASE NO. A-15-724776-C

DEPT. NO. 18

BEFORE THE HONORABLE DISCOVERY
COMMISSIONER

Date of Hearing: 2/16/18

Time of Hearing: 9 am

**MOTION BY THE LAS VEGAS DEFENSE
LAWYERS FOR LEAVE
TO FILE BRIEF AS AMICUS CURIAE IN
OPPOSITION OF THE
MOTION TO COMPEL COAST TO
PRODUCE A 30(b)(6) WITNESS AND FOR AN
AWARD OF FEES AND COSTS**

1 The Las Vegas Defense Lawyers ("LVDL") hereby moves the Discovery Commissioner, in a
2 manner consistent with the Amicus Curiae process in the Nevada Rules of Appellate Procedure, to enter
3 an order granting leave to the LVDL to file an amicus curiae brief in opposition of the position of the
4 Movants.

5 The LVDL is an organization of attorneys in the State of Nevada engaged in the defense of civil
6 litigants and whose resources are available to provide assistance to courts in considering issues which
7 have a material impact upon the rights of such persons and/or entities beyond the interests of the
8 particular litigants in specific cases.

9 The Discovery Commissioner requested counsel provide briefs on the issues if a deposition
10 without a certified court reporter in attendance at the deposition. LVDL provides the instant Amicus
11 Curiae brief consistent with the Commissioner's request for further briefing. Given the potentially
12 broad effect of the decision herein, the LVDL believes that the interests of justice will be served by the
13 Court receiving input from the LVDL on behalf of its members who may be materially affected by the
14 decision, yet whose interests and perspectives transcend the immediate concerns of the parties to this
15 case.

16 The LVDL's brief is attached as Exhibit A in accordance with Amicus Curiae process in the
17 NRAP.

18 Dated this 31st day of January, 2018.

19
20 Las Vegas Defense Lawyers

21 

22
23

AILEEN E. COHEN, ESQ.
24 Nevada Bar No. 5263
25 Attorney for Amicus Curiae
26
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28

CERTIFICATE OF SERVICE

1
2 I hereby certify that on the 31st day of January, 2018, I served a true and correct copy of this
3 MOTION BY THE LAS VEGAS DEFENSE LAWYERS FOR LEAVE TO FILE BRIEF AS AMICUS
4 CURIAE IN OPPOSITION OF THE MOTION TO COMPEL COAST TO PRODUCE A 30(b)(6)
5 WITNESS AND FOR AN AWARD OF FEES AND COSTS upon all counsel of records by
6 electronically filing the document using the Eighth Judicial District Court's electronic filing system.
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11 _____
12 Aileen E. Cohen, Esq.
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1 AILEEN E. COHEN, ESQ.
2 Nevada Bar No. 5263
3 LAS VEGAS DEFENSE LAWYERS
3960 Howard Hughes Pkwy, Suite 200
4 Las Vegas, NV 89169
PH: (702) 257-1997
Attorney for Amicus Curiae

5 **DISTRICT COURT**

6 **CLARK COUNTY, NEVADA**

7 MILDRED LOCKHART, an individual,

8 Plaintiff,

9 vs.

10 COAST HOTELS AND CASINOS, INC.,
11 d/b/a THE ORLEANS HOTEL & CASINO,
a Nevada domestic corporation;
12 GASSER CHAIR, CO., INC., an Ohio
13 foreign corporation; HUNT COUNTRY
COMPONENTS, LTD, Does I through
14 XXX, inclusive and Roe Business
Entities I through XXX, inclusive,

15 Defendants.

16 COAST HOTELS AND CASINOS, INC.,
17 d/b/a THE ORLEANS HOTEL & CASINO

18 Cross-Claimant,

19 vs.

20 GASSER CHAIR CO., INC. and HUNT
COUNTRY COMPONENTS, LTD.

21 Cross-Defendants.

22 GASSER CHAIR CO., INC.

23 Cross-Claimant,

24 vs.

25 COAST HOTELS AND CASINOS, INC., d/b/a
26 THE ORLEANS HOTEL & CASINO,

27 Cross-Defendant.

CASE NO. A-15-724776-C
DEPT. NO. 18

**BEFORE THE HONORABLE DISCOVERY
COMMISSIONER**

Date of Hearing: 2/16/18

Time of Hearing: 9 am

**MOTION BY THE LAS VEGAS DEFENSE
LAWYERS FOR LEAVE
TO FILE BRIEF AS AMICUS CURIAE IN
OPPOSITION OF THE
MOTION TO COMPEL COAST TO
PRODUCE A 30(b)(6) WITNESS AND FOR AN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. **STATEMENT OF INTEREST**

The Commissioner's findings and recommendation in this case will likely affect a substantial number of defendants and cases because of the fundamental discovery and litigation procedure involved. The LVDL respectfully submits that the basis of the Motion to Compel is inconsistent with Nevada's, among several other jurisdictions, long-held standards for recordation and preservation of deposition testimony.

II. **SUMMARY OF POSITION**

The protection and dignity of the court process is the issue. Like a license to practice law, a certified court reporter must be licensed in order to work in the State of Nevada. NRS 656.145 Similar to attorneys, certified court reporters are officers of the court and are required to obtain continuing education credits. NRS 656.205 NRS 656.020(2) recognizes the legislative policy that "the practice of court reporting in the State of Nevada is declared to affect the public health, safety and welfare and is subject to regulation and control in the public interest."

III. **THE NEVADA REVISED STATUTES REQUIRE LICENSED CERTIFIED COURT REPORTERS WHO ARE GOVERNED BY THE NEVADA STATE BOARD OF CERTIFIED COURT REPORTERS**

In promotion of the standardized protection of the public health, safety and welfare, the Nevada State Board of Certified Court Reporters governs the examinations, certification, and continuing education credits required for a certified court reporter to operate in the State. Certified court reporters must demonstrate both knowledge of the law and the practical ability to perform their jobs with a state regulated competence and effectiveness on their first day as a certified court reporter. NRS 656.145 to 656.230 and NAC 656.100 to 656.140. The State Board exists, in part, to monitor and take actions against certificate or license of an individual multiple reasons including unworthiness or incompetency. NRS 656.240-25.

1 Multiple courts recognize that in this time of advanced technology, "videotapes are subject to a
2 higher degree of potential abuse than transcripts" because "they can be cut and spliced and used as
3 sound bites." Burgess v. Town of Wallingford, 2012 U.S. Dist. LEXIS 135781 *; 2012 WL 4344194
4 (citing Stern v. Cosby, 529 F. Supp. 2d 417 (2007) and also discussed in Felling v. Knight, 2001 U.S.
5 Dist. LEXIS 22827). Although these cases involved release of videotape testimony to the public, the
6 Courts clearly expressed concerns about the easy manipulation of a video deposition than a reported
7 transcript in their respective analyses. Moreover, the increasingly quick and ongoing changes in video
8 file formats means that videographers who use a specific file format during a deposition may not be
9 able to preserve that format or have an application or player that can play the original format while a
10 matter is litigated from the beginning of discovery through the appellate process. With a Certified
11 Court Report, this situation is not an issue as the printed transcript remains accessible and readable for
12 years. A paper transcript does not suffer from degradation like magnetic based recording media (VHS)
13 or become an obsolete or dead media format.

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16 **V. VIDEOGRAPHERS DO NOT PROTECT THE PUBLIC OR THE JUDICIARY FROM**
VIDEOGRAPHER MALPRACTICE

17 In absence of statutory and administrative oversight, no disciplinary processes exist for malpractice
18 by a videographer. Thus, no regulatory system holds the videographer accountable for malpractice, let
19 alone subjects the videographer to a disciplinary process. The lack of a process contradicts the intended
20 Legislative policy for a standardized system including the recognized "public health, safety and
21 welfare... subject to regulation and control in the public interest." NRS 656.020(2). Court reporters must
22 maintain standards of professional conduct to continue in the profession. NAC 656.300 to NAC 656.390.
23 If they violate the same, they are subject to statutory and regulatory discipline. NRS 656.240 to 300 and
24 NAC 656.420 to 460.
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1 VI. ELECTRONIC EQUIPMENT MALFUNCTION SUBJECTS THE PARTIES AND
2 THE DEPONENT TO LOST OR UNINTELLIGABLE TESTIMONY.

3 Videography equipment is not immune from malfunction. Any failure with the deposition video
4 recording process in absence of a certified court reporter impairs the accurate transcription of the
5 testimony to the outright loss of the deposition testimony itself. A recording with extraneous noise, a
6 heavy accent or episodes of parties speaking at the same time hamstrings, if not precludes, the Certified
7 Court Reporter's ability to transcribe a videographic deposition. Such a failure in the recording vitiates
8 the analysis of the testimony and the witness by the trier of fact. Even in the District Courts using sound
9 recording, NRS 3.380(5) states the certified court reporter's record shall be deemed the official record for
10 all purposes in the event that the sound recording fails.

12 Moreover, a breakdown of the recording equipment discovered only after the deposition concludes
13 leaves the parties without a deposition, let alone a transcript, after having to expend significant resources,
14 including but not limited to scheduling of all counsel, scheduling of the deponent, preparation by all
15 counsel and examination conducted during the deposition. Without a transcript, the parties will have to
16 bear the loss of time and financial resources to repeat the process again. Especially when the deponents
17 or counsel are travelling from outside of the jurisdiction, this process unduly adds to the litigation costs
18 and results in the duplication of discovery to the detriment of judicial economy. In the worst case
19 scenario, the deponent cannot return to the jurisdiction or be available for deposition for a subsequent
20 deposition.
21

22 VII. PUBLIC PROTECTION AND FAITH IN THE JUDICIAL SYSTEM, NOT CUTTING
23 CORNERS IN LITIGATION, IS THE FOUNDATION OF CERTIFIED COURT
24 REPORTING.

25 The California Legislature's Joint Committee on Boards, Commissions, & Consumer Protection
26 stated the importance of court reporters when it wrote:

1 An accurate written record of who said what in court is essential if the outcome of a
2 judicial proceeding is to be accepted by the litigants and the public as non- arbitrary, fair,
3 and credible.....In civil cases, millions of dollars, life-long careers, and the fate of whole
4 business[] enterprises can hinge on what was said or what was not said in a deposition or
5 at trial...

6 If videography without certified court reporters are allowed to be used, parties in ongoing and
7 future litigation will be prejudiced where so much is at stake involving deposition testimony.

8 **CONCLUSION**

9 For the reasons discussed above, it is important that the Plaintiff's Motion to Compel be denied.

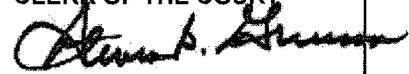
10 Dated this 31st day of January, 2018.

11 Las Vegas Defense Lawyers

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AILEEN E. COHEN, ESQ.
16 Nevada Bar No. 5263
17 Attorney for Amicus Curiae
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**EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA**

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6 MILDRED LOCKHART,)

CASE NO. A-15-724776

7 Plaintiff,)

DEPT. NO. XIV

8 vs.)

9 BOYD GAMING CORPORATION, et al,)

10 Defendants,)

11 and all related parties and actions.)

12 BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

13 FRIDAY, APRIL 20, 2018

14 **TRANSCRIPT RE:**
15 PLAINTIFF'S MOTION TO COMPEL DEFENDANT COAST HOTELS
16 AND CASINOS, INC. dba THE ORLEANS HOTEL & CASINO
TO PRODUCE A 30(b)(6) WITNESS AND FOR AN AWARD OF
FEES AND COSTS

17 APPEARANCES:

18 For the Plaintiff:

MATTHEW G. PFAU, ESQ.

19 For Coast Hotels and Casinos, Inc.:

KEVIN R. DIAMOND, ESQ.

20 For Hunt Country Components, Ltd.:

LIANE S. BINOWITZ, ESQ.

21 For Gasser Chair Co., Inc.:

ROBERT L. THOMPSON, ESQ.

22 For Las Vegas Defense Lawyers:

AILEEN E. COHEN, ESQ.

23 For Non-party Evolve Court Reporting:

JENNIFER L. FOLEY, ESQ.

24

RECORDED BY: Francesca Haak, Court Recorder

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 20, 2018, 10:30 A.M.

2 * * * * *

3 DISCOVERY COMMISSIONER: I'm calling two cases back to back. The
4 first one is Lockhart and then I need counsel for Wall also to be available because
5 I'll call that case after Lockhart. I need everyone to state your appearances for the
6 record, please, and who you represent on the Lockhart matter.

7 MR. PFAU: Your Honor, Matthew Pfau for the plaintiff, Ms. Lockhart.

8 DISCOVERY COMMISSIONER: Good morning.

9 MR. DIAMOND: Kevin Diamond for defendant Coast Hotels and Casinos,
10 Your Honor.

11 MS. BINOWITZ: Good morning, Your Honor. Liane Binowitz for Hunt
12 Country Components, Limited.

13 MR. GOLDMAN: Good morning, Your Honor. With respect to the Wall
14 case --

15 DISCOVERY COMMISSIONER: I'll call the Wall next, so this is just -- I just
16 need counsel on Lockhart here.

17 MS. FOLEY: Your Honor, Jenny Foley on behalf of Evolve Court Reporting.

18 MS. COHEN: Aileen Cohen on behalf of Las Vegas Defense Lawyers.
19 I filed the amicus brief.

20 DISCOVERY COMMISSIONER: Okay. Now, Evolve Court Reporting is
21 the court reporting firm that the plaintiff uses?

22 MR. PFAU: That's correct, Your Honor.

23 DISCOVERY COMMISSIONER: Okay, thank you.

24 All right. So these are very -- this is a very interesting issue. It has

1 public policy implications, it has significant litigation implications. I know that
2 everyone in the audience is probably wanting to know, so let me just explain it
3 as I understand it. The plaintiff would like to take certain depositions by audio-
4 visual means only and the defendants have objected because there will be no
5 court certified -- court reporter certified transcription. And as I understand it, what
6 typically happens is that the plaintiff's counsel will transcribe the video, the audio-
7 visual, if need be, after -- sometime afterwards and then provide the transcript.

8 MR. PFAU: It's transcribed as a matter of process. It's always done after
9 the video is completed.

10 DISCOVERY COMMISSIONER: Okay. And does anyone know -- gosh,
11 I wish I had like an award to give out -- does anyone know why we have to transcribe
12 it? Because if you want to use any of the testimony for impeachment it has to be
13 transcribed. Now, the federal court dealt with this issue in a very interesting way.
14 We don't have a similar rule. So when you look at the federal court cases, it's not
15 going to be terribly helpful because in federal court there's a local rule that says
16 all depositions have to be transcribed by a certified transcriptionist, I believe. It's
17 a local rule. We don't have that rule.

18 But we have another problem and I guess I really need to ask the
19 plaintiff this question because I can basically understand what you're saying and
20 in fact have some belief by reading Rule 30 that you have some good points to
21 make there. There's just two problems that I see in this process and hopefully
22 you can explain them to me. What if during the deposition we need a read-back?

23 MR. PFAU: Well, that is done through the video and audio means. We
24 can actually rewind the audio, which is done in many -- we've been doing this for

1 over a year now and sometimes we've had to have not a read-back but a listen-
2 back. And so it is time stamped, the audio is time stamped and they just rewind it
3 just enough time so we can re-listen to what was said.

4 DISCOVERY COMMISSIONER: And how do we know we're accurately
5 capturing that moment? How do we know what's happening in the room or if
6 somebody says something while they're playing back that portion of the video to
7 re-listen to it and somebody makes a comment? How is that recorded? How is
8 that captured?

9 MR. PFAU: Well, all audio is recorded, so everything that is stated in the
10 room is recorded all simultaneously at the same time. The video is recorded only
11 on the person being deposed. So when we need to hear any comments, it's the
12 audio portion that we listen back to.

13 DISCOVERY COMMISSIONER: Okay. So even if you -- so the deponent
14 says I need to hear the question again, can you please read it back, how do you
15 do that?

16 MR. PFAU: It is -- the audio recording is rewound and we listen to the
17 question as it was stated by the person who said it.

18 DISCOVERY COMMISSIONER: And is it then being recorded at the same
19 time so if the deponent makes a comment during the read-back it captures that?

20 MS. FOLEY: It is, Your Honor. That is absolutely correct. There's
21 redundant systems running at all times. And that is exactly one of the reasons that
22 we set the system up in that manner, for exactly that situation.

23 DISCOVERY COMMISSIONER: So when it's transcribed you're using both
24 systems --

1 MS. FOLEY: Correct.

2 DISCOVERY COMMISSIONER: -- to make sure you capture what
3 happened during the read-back?

4 MS. FOLEY: Correct, Your Honor.

5 DISCOVERY COMMISSIONER: Okay. So let's say we get through that
6 portion, and I think you've answered that to my satisfaction, how do we give the
7 oath?

8 MS. FOLEY: That's done through the notary, Your Honor. Notaries are
9 authorized.

10 DISCOVERY COMMISSIONER: They're not anymore; not since 1995.

11 MS. FOLEY: That is -- if you look at --

12 MR. PFAU: Your Honor --

13 MS. FOLEY: Go ahead.

14 MR. PFAU: Yeah. Your Honor, in our pleadings we have specifically cited
15 the law, NRS 240.010, where notaries are authorized to administer oaths. I think
16 the real issue here is there's no specific rule saying that they can authorize oaths
17 in a deposition.

18 DISCOVERY COMMISSIONER: Right. They had that rule in place and
19 then they took it out.

20 MR. PFAU: No, Your Honor, that is actually not accurate. They actually --

21 DISCOVERY COMMISSIONER: Okay, so I'm not reading it correctly on
22 the website?

23 MR. PFAU: What happened was -- well, are you referring to the question
24 that was asked on the website?

1 DISCOVERY COMMISSIONER: I'm looking at -- right. I'm looking at --
2 I'm trying to figure this out.

3 MR. PFAU: Sure. The rule that was changed was that transcriptionists no
4 longer have to be notaries, okay, which is saying that -- it's making it easier on court
5 transcriptionists, saying you don't have to go get a notary license anymore, we'll just
6 let you administer oaths, because it is a notary's job to administer oaths. It always
7 has been. That rule has never, ever changed. The change was that transcriptionists
8 don't have to be notaries anymore, which does not mean ever and there's nothing
9 in the comments for when they changed the rule, there's nothing in the rule that says
10 that notaries don't administer oaths anymore, it's just that transcriptionists don't.

11 DISCOVERY COMMISSIONER: There is if you go onto the notary website.
12 It says you have to be a court reporter, that they're a special form of notary to be
13 able to give an oath during deposition.

14 MR. PFAU: However, what has happened is that comment that is on the
15 website -- first of all, as Your Honor knows, this is not any standard -- legal standard
16 that we can refer to, first of all. But secondly, it is an old, antiquated comment that
17 was posted before these new rules, the 30(b)(2) rules that say that you don't even
18 need a transcriptionist present. So we have a conflict of rules.

19 DISCOVERY COMMISSIONER: Yes, we do.

20 MS. FOLEY: We have -- Your Honor --

21 DISCOVERY COMMISSIONER: I agree with you. And the Commissioner
22 is probably not the one to resolve the conflict. We do. If we read the rule that the
23 notary provision that allowed the notaries to give an oath during deposition is deleted
24 -- and by the way, just for fun you can Google it or do a Westlaw search and you

1 come up with all the cases in the 1800's where they just used notaries because they
2 didn't have anything else. The notaries did the depositions, so -- or they swore the
3 witnesses for testimony. My favorite case I think was from 1818. I think we were
4 still a territory.

5 But if that is true that notaries can no longer swear witnesses for
6 purposes of deposition, then we have a conflict between that rule and Rule 30
7 because Rule 30 makes it very clear that you can choose between audio, audio-
8 visual and stenographic means. And if you do have a decision, if you make the
9 decision to go forward stenographically, you have to follow all those rules. There's
10 no question about it. But then it would eviscerate the part of the rule that says you
11 can conduct the depositions by audio or audio-visual, and if requested you can
12 provide a transcript. In fact, at trial if you have audio-visual that is preferred, except
13 for impeachment purposes, to use at trial. Why? Because it's more like testifying.
14 It seems like a live witness testifying. This is all in the rule. Commissioner Bulla
15 is not making this stuff up. It's all in the rule. Look at Rule 32, use of depositions
16 at trial. I mean, it's all in the rule.

17 But the problem that I have is I'm not confident on anyone's
18 interpretation of what a notary can do and what a notary cannot do. I think the
19 fact that they removed the language from the notary list of duties is problematic,
20 plaintiff's counsel.

21 MR. PFAU: Your Honor, if I can address that. There is no -- first of all,
22 no specific rule, and all of the defense counsel, none of them have cited a specific
23 rule that says notaries cannot administer oaths, first of all. Second of all, in NRS --

24 DISCOVERY COMMISSIONER: But they took it out. See, that's what

1 you're not understanding, with all due --

2 MR. PFAU: Well, but, Your Honor --

3 DISCOVERY COMMISSIONER: No. They took it out. They had it in their
4 list of duties and they removed it from the statute. Why did they do that? I don't
5 think anybody has given me a very good answer for that.

6 MR. PFAU: But, Your Honor, there is another statute that does state that
7 they can administer oaths.

8 DISCOVERY COMMISSIONER: For documents, for signature of
9 documents, but I'm talking administering oaths for depositions. That was specifically
10 in their duties and then they deleted it. The legislative session, it was deleted in the
11 legislative session. Why? And on their website, like it or not, there's the comment
12 that only special notaries, court reporters get to administer oaths at deposition.
13 Why did they say that --

14 MS. FOLEY: Your Honor --

15 DISCOVERY COMMISSIONER: -- if it's not the law? So the government
16 is misrepresenting the state of the law on its website?

17 MS. FOLEY: We -- actually one of the questions -- when the business
18 started that was one of the questions that -- when we started looking into what we
19 could and couldn't do. One of the questions that we came across was we looked
20 at the Secretary of State website and we said, hey, this doesn't seem to comport
21 with what's out there, let's give them a call, let's ask. And I have a transcript of the
22 voicemail that was left to us that says --

23 DISCOVERY COMMISSIONER: And that's admissible and relevant and
24 we get to look at that because -- Okay, I'm listening. Go ahead.

1 MS. FOLEY: It says that: "The statute allows a notary to administer an
2 oath without a signature and therefore administering an oath during the deposition
3 or proceedings is considered an oath without a signature and therefore a notary may
4 do that." We have that and we're happy to give it to any defense counsel. We, as
5 Evolve, were not given any real notice of this. I would have liked to have submitted
6 an amicus brief as well, but I got notice of this literally last night, so here I am.
7 We're happy to provide that. So --

8 DISCOVERY COMMISSIONER: And technically you probably shouldn't
9 be arguing.

10 MR. DIAMOND: Your Honor, may we jump in?

11 DISCOVERY COMMISSIONER: Because the defense bar actually did it
12 properly and joined in. Maybe I can let you have the time to do that.

13 Yes, sir?

14 MR. DIAMOND: Your Honor, obviously this is -- well, I'd like to first address
15 notice by counsel for Evolve is that we received an affidavit awhile back, about a
16 month or two ago in February from the owner of Evolve, so I'm surprised to know
17 that the attorney is going to go through the affidavit with the owner. But regardless
18 of that, this is an extremely important issue to the defense bar and to the plaintiff
19 bar.

20 DISCOVERY COMMISSIONER: I understand that. I take it very seriously.

21 MR. DIAMOND: So if I may, although I didn't hit the 1800's cases, I'd like to
22 make just a short record if that's okay. Okay. So I want to start with the practicality
23 issues and you talked about read-backs, okay. I have three issues with read-backs.
24 My first is reading back the question that was just asked. That just doesn't seem

1 like that big of a deal. And I would agree with counsel, if it was the very last
2 question it's probably not a big deal. But what happens if counsel says, you know,
3 about ten questions ago there was a question about stoplights. If you have a
4 certified court reporter there, they type in stoplight, it comes right up. If you have
5 a recording person there, everyone has to wait while they rewind and try to find it.

6 My better example, and I don't know if any other attorneys are as
7 anal as I am and do this, but during breaks I pull the court recorder aside often and
8 I'll say, you know, an hour ago I asked a question and it was probably the most
9 important question of my deposition and I'm embarrassed to say I didn't write down
10 the answer because I was too concerned with the next question. It was about
11 stoplights. Can you help me find it so I can tailor the rest of my questions? If I try
12 to do that with someone who's there just recording, I'll never get that. I'll never be
13 able to do that again.

14 The other issue in regards to practicality is accuracy. Your Honor
15 has taken and defended a number of depositions. It is not uncommon for attorneys
16 to talk over each other, for foreign people to perhaps mumble things -- or not even
17 foreign, it could be American people mumble things or talk too quietly. If you get
18 that on the tape for the person transcribing it, they're not going to catch it. A good
19 court reporter will say, hey, everybody stop, I can't type 15 people at once, and force
20 you to re-ask those questions.

21 The next part about accuracy. Who's transcribing it? You know, I find
22 it interesting in plaintiff's opposition on page 5, line 10 he says: "The notary also
23 turns the recorded material over to a certified court reporter for transcription." Well,
24 if they're turning their material over to a certified court reporter, why aren't we just

1 having the certified court reporter at the deposition in the first place?

2 The next issue as regards to accuracy is will judges allow these in?
3 We don't know. And I certainly -- we get along well and Matt will tell you the main
4 reason that I objected to all this is because I didn't want to show up at trial, have
5 a judge say I'm not going to let this in, I've never seen this before without a court
6 reporter there; just take the depositions again. And remember, when it comes to
7 that, notaries can only attest to the contents. So NRS 240.063, subsection 1 says:
8 "The signature of a notary public on a document shall be deemed to be evidence
9 only that the notary public knows the contents of the document that constitute the
10 signature, execution, acknowledgment, oath, affirmation or affidavit." The next
11 subsection 2 says: "When a notary public certifies that a document is a certified
12 or true copy of an original document, the certification shall not be deemed to be
13 evidence that the notary knows the contents of the document."

14 If you compare that to your run of the mill transcript -- I happen to have
15 a transcript from another one of my cases that I brought. In the reporter's certificate
16 it says that "I thereafter transcribed my said shorthand notes into typewriting and
17 that the typewritten transcript of said deposition is a complete, true and accurate
18 transcription of my said shorthand notes taken down at said time."

19 So now we do not have a certification of accuracy. All we have from
20 a notary is a certification that it was recorded, but not the contents.

21 DISCOVERY COMMISSIONER: So why do you think the court adopted in
22 Rule 30 the taking of deposition by audio or audio-visual as an alternative?

23 MR. DIAMOND: Because the typical way that it is done, and perhaps this
24 was an oversight in that rule, but the typical way that it's been done, and I don't

1 mean to sound like a dinosaur, but in my 25 years of practice every time you have
2 a video you always have a certified court reporter there. I've never once had it
3 happen where there was just audio and no certified court reporter there.

4 Now, let me -- let me just make my record. I know you'll probably
5 address this stuff.

6 MR. PFAU: Okay, go ahead.

7 MR. DIAMOND: Let me jump to statutes and rules. If you look at NRCP 28
8 alone that talks about an officer who can administer oaths, if that was the only thing
9 out there I probably would be forced to agree with counsel. However, NRS 240.004
10 lists notarial acts. There's nothing in there about depositions. And you've already
11 said, Your Honor, about the Secretary of State website that says the authority to
12 take a deposition was removed from the list of notarial acts in the law by the 1995
13 Legislature. Certified court reporters who have been appointed notaries public with
14 limited powers take depositions.

15 Now, counsel -- both counsel now have actually said they spoke with
16 someone and they have an audio recording, and in his email to us he said: And
17 I'm going to get something to you in writing. Well, number one, we don't know who
18 was on the voicemail. We don't know if it was a receptionist. Who knows? And
19 we don't have anything in writing.

20 Taking a deposition, as you have already said, was part of the notarial
21 acts before 1995. You said why did they change it? Well, if you take a look at the
22 legislative history and the discussions during that time, there were discussions about
23 the extensive training and continuing education of court reporters and the fact that
24 there's oversight. There's a court reporter board. A court reporter is subject to

1 discipline. Court reporters take continuing education.

2 Let's -- just as a practical matter, Your Honor, talking about notaries,
3 I used to represent notaries all the time and we know what notaries do. Notaries are
4 there because you're buying a house and you need to sign the papers or, you know,
5 you need to sign your will. They're not there for depositions. This morning I got on
6 the Internet and did some Googling myself of mobile notaries in Las Vegas. I have
7 two ads and I'll just read from one of them about services including mortgage loan
8 documents, powers of attorney, contracts, bail bonds, witness signings, affidavit of
9 citizenship, minor travel authorizations, etcetera, etcetera. I can tell you that if
10 mobile notaries or any notaries knew that this was valid, every notary in town would
11 be saying, yeah, and I can do depositions. I mean, why wouldn't they get in on it?
12 It wouldn't be that expensive to do it; get someone to transcribe it.

13 One of the things you said when we had a conference call with you,
14 which I'm sure -- I shouldn't say I'm sure -- I suspect you don't remember, but --

15 DISCOVERY COMMISSIONER: No, I do actually recall --

16 MR. DIAMOND: Okay.

17 DISCOVERY COMMISSIONER: -- and I said bring a motion, so no fees
18 or costs.

19 MR. DIAMOND: No, no, no, that's not what I was going to say.

20 DISCOVERY COMMISSIONER: And quite candidly, anyone who asked for
21 any it kind of bothered the Commissioner because I gave you specific instructions
22 to bring the motion to my attention.

23 MR. DIAMOND: No, actually I wasn't --

24 DISCOVERY COMMISSIONER: So there won't be any awarded today.

1 MR. DIAMOND: I wasn't going to go there, but I appreciate that, Your
2 Honor. One of the things you said on our conference call was that technology
3 is advancing and dinosaurs like me have to start, you know, being okay with it.
4 However --

5 DISCOVERY COMMISSIONER: I'm sure I didn't say it exactly like that.

6 MR. DIAMOND: Well, you didn't call me a dinosaur, but I'm calling me.
7 I just turned 50 yesterday. I'm in that mode, so I'm sorry.

8 DISCOVERY COMMISSIONER: I'm older.

9 MR. DIAMOND: I know. Okay.

10 MS. BINOWITZ: I won't say anything.

11 MR. DIAMOND: Yeah.

12 DISCOVERY COMMISSIONER: Yeah. I think discretion is the better part
13 of valor here.

14 MR. DIAMOND: I would say that I know technology is advancing, but this
15 technology isn't ready and it's not allowed by the rules.

16 DISCOVERY COMMISSIONER: I think the technology is ready. I think
17 it's workable. I don't think that it prohibits the defense from within five days of the
18 notice setting the deposition by alternative means; i.e., you can always bring a
19 court reporter. But let's talk about the practicality of what that does. It cost shifts.

20 MR. DIAMOND: Right.

21 DISCOVERY COMMISSIONER: And then it means that someone who's
22 taking depositions may never have to pay for the transcript because they can set it
23 the way the plaintiff wants to set it. This -- or the defendant.

24 MR. DIAMOND: Or the defense attorney can --

1 DISCOVERY COMMISSIONER: It could be the other side.

2 MR. DIAMOND: Defense attorneys can start being obnoxious, which of
3 course I wouldn't, but the first day --

4 DISCOVERY COMMISSIONER: Oh, let's perish the thought of that.

5 MR. DIAMOND: The first day when discovery begins the defense attorney
6 can set the depositions of every person the plaintiff is going to want to call --

7 DISCOVERY COMMISSIONER: It could work then.

8 MR. DIAMOND: -- for just audio and visual and he'd have to bring a notary.

9 DISCOVERY COMMISSIONER: It could work both ways.

10 MR. DIAMOND: Right.

11 DISCOVERY COMMISSIONER: Here's the problem. The rules don't work
12 without a court reporter based on the notary and the oath. That's to me where this
13 falls. We have two competing rules. I can't fix the problem. I have legislation that
14 removed the ability of the notary to give the oath. I have a rule 30 which allows the
15 deposition to be done just the way the plaintiffs want to do it. What do I do?

16 MS. BINOWITZ: Your Honor, can I --

17 DISCOVERY COMMISSIONER: I can say this. You'll have to have the
18 oath given properly, not by a notary, but by a proper person who can administer
19 the oath.

20 MS. BINOWITZ: Can I say something, Your Honor?

21 DISCOVERY COMMISSIONER: Yes.

22 MS. BINOWITZ: I think what's also helpful is NRS 650, which regulates
23 and deals with court reporters. And what it states is that court reporting, the practice
24 of court reporting can only be performed by a certified court reporter.

1 DISCOVERY COMMISSIONER: I agree with you. And if you have made
2 the decision to take the deposition stenographically it has to be by a court reporter.
3 But our rules do not contemplate this. And the reason -- the only reason that I can't
4 agree with using a notary to give the oath is the change in the law that doesn't
5 allow a notary to do that. And the fact of the matter is it is inapposite to or opposite
6 of what Rule 30 contemplates. We have a problem. We have a problem and
7 technology is even going to get better. And frankly, we use JAVS. We transcribe
8 our hearings. So please don't tell me it can't be done because I disagree with that.
9 I think you can do the read-backs.

10 If you're really concerned about how you take the deposition, within
11 five days the rule allows you to notice it in another way. So I can actually 99.9
12 percent get to where the plaintiffs are, but the most critical factor that I cannot get
13 around is the administration of the oath. I believe that you're going to have to have
14 a court reporter administer it and I don't think any court reporter is going to verify the
15 transcript unless they sit through the whole thing and do it stenographic -- and do it
16 by means of stenography.

17 MR. DIAMOND: And, Your Honor, can I comment on the JAVS things just
18 once?

19 DISCOVERY COMMISSIONER: Well, I'm just throwing that out there. It
20 is not related, but I just don't think we can say that we don't have the technology.

21 MR. DIAMOND: Okay.

22 MR. PFAU: Your Honor, if I understand your -- how you understand the
23 rule as well, there are two individuals who can administer an oath, then; correct?

24 It is --

1 DISCOVERY COMMISSIONER: There's one.

2 MR. PFAU: Well, there were two. There were special notaries --

3 DISCOVERY COMMISSIONER: In the deposition setting there is one,
4 a court reporter.

5 MR. PFAU: Okay. So if there is a court reporter who is willing to administer
6 the oath but not even be present for the deposition, that would resolve this issue?

7 DISCOVERY COMMISSIONER: And I think the transcription at the end
8 of the day is not done by the notary, it's done by a certified court reporter, so they
9 are attesting to it.

10 MR. PFAU: Yes, Your Honor, and that is the process that we follow. But
11 the question is -- the reason why this is done and why I really don't understand
12 why the -- I mean, I understand their arguments, but the reason why this is done
13 is because it is just to reduce the cost of litigation.

14 DISCOVERY COMMISSIONER: It's an access to justice issue. I
15 understand.

16 MR. PFAU: Yeah. Mr. Diamond brings up the fact that it's sent to a
17 certified court reporter and why don't they just sit there in the first place. Well, the
18 answer is is because this certified court reporter works remotely. We send them
19 the materials and they do it on their own time, so it reduces the cost significantly
20 of having a court reporter present.

21 DISCOVERY COMMISSIONER: I understand.

22 MR. PFAU: Yeah. And so the reason why this is all done, we would like
23 to find a work-around to not have the court reporter there so we can still have the
24 benefit of a less --

1 DISCOVERY COMMISSIONER: You need to call your legislators.

2 MR. PFAU: But in Your Honor's decision, what I'd like to clarify, that a
3 court reporter does not need to be present and transcribing at the actual deposition.
4 Is that correct?

5 DISCOVERY COMMISSIONER: I don't know if I can go that far because
6 you have to insure that the oath is given in accordance with the law of the State of
7 Nevada and I don't know if a court reporter will be willing just to walk in and give an
8 oath and walk out. I don't know the answer to that question.

9 MR. PFAU: Okay. If they were, or even if they were willing to do it remotely
10 and that was the same transcriptionist who is going to transcribe it later --

11 DISCOVERY COMMISSIONER: I think the officer has to be present unless
12 there's a stipulated agreement, and I'm confident you're not going to get one in this
13 case.

14 MR. PFAU: Certainly in this case.

15 DISCOVERY COMMISSIONER: This is a very difficult issue. There are
16 a number of cases that are extremely complicated where I would have no problem
17 exercising my discretion and saying we need a court reporter to record the
18 deposition and prepare it stenographically. But in the smaller cases, which I think
19 this is one of them if I recall correctly, it is an access to justice issue. And I hope
20 my defense lawyers can see that because it's very costly.

21 MR. DIAMOND: We do, Your Honor, although this is a case where it's our
22 understanding that counsel will attempt to bring punitive damages at some point in
23 the litigation, which is one of the reasons why we were so concerned on a 30(b)(6)
24 deposition that there was no court reporter there if something is said wrong or typed

1 wrong or people talking over each other, and all of a sudden there could be punitive
2 damages allowed against my client.

3 DISCOVERY COMMISSIONER: Okay. And this Lockhart case is the
4 30(b)(6) deposition?

5 MR. DIAMOND: Yes. Well, it would be of my clients and then eventually
6 of Liane's client.

7 MS. COHEN: Your Honor, may I be heard briefly?

8 DISCOVERY COMMISSIONER: Briefly.

9 MS. COHEN: With regard to the access of justice issue, this actually also
10 involves a faith in the system issue as well and that one of the things that is noted
11 at the beginning of Chapter 656, which is devoted to the training, accreditation and
12 oversight of court reporters, is the Legislature's statement that the role of court
13 reporting impacts the welfare, safety and other factors of the public who are involved
14 in litigation and need that protection. That is something that is also noted when --

15 DISCOVERY COMMISSIONER: I understand.

16 MS. COHEN: -- Mr. Diamond recited the evidentiary note.

17 DISCOVERY COMMISSIONER: I understand the argument.

18 MS. COHEN: And so that's the other thing, also, is being able to make sure
19 that all information that is created at that deposition, all of it, that there is a chain of
20 custody from the deposition to whoever is transcribing it. When you have a court
21 reporter there present, that's not an issue. When you have somebody --

22 DISCOVERY COMMISSIONER: When you have a videographer present
23 it's not an issue because they also do the same thing.

24 MS. BINOWITZ: Except, Your Honor, there's no state or governmental

1 to have a certified court reporter give the oath.

2 Now, everything else is not necessarily in front of me today. I
3 anticipate we'll have to revisit the issue. I think under the facts and circumstances
4 I think what the other problem is is that within five days any party can do whatever
5 they want in terms of setting the deposition by other means. But unfortunately it is
6 -- that is cost shifting. There's no way around it; that's what it does. Just like when
7 you don't set a video -- when you don't set a deposition by video and everybody
8 knows you want a video and you make the other side notice it. Or you don't make
9 a jury demand and want the other side to do it because it costs money. I mean,
10 there's all different ways of cost shifting and I'm not sure that I want to go there
11 today.

12 So what I'm going to say is this. With regard to the Lockhart matter,
13 the motion for a protective order is granted. The deposition must be conducted
14 or prepared by someone who can properly give the oath under Nevada law, which
15 is a court reporter who is a specialized notary for that purpose. Because this is a
16 Rule 30(b)(6) deposition, I'm going to require it be transcribed by a notary -- or not
17 by a notary, I'm sorry -- caught myself thinking ahead -- by a court reporter. This
18 does not exclude the plaintiff from videotaping the deposition or using any part of
19 the audio-visual deposition at trial, except for impeachment, the transcript will need
20 to be used in accordance with the rules.

21 MS. BINOWITZ: Does that apply to -- if he notices, wants to take a 30(b)(6)
22 of my client, does this ruling apply to my client as well?

23 DISCOVERY COMMISSIONER: Any 30(b)(6) deposition.

24 MS. BINOWITZ: Thank you, Your Honor.

1 MR. PFAU: Your Honor, one more clarifying question?

2 DISCOVERY COMMISSIONER: Just a minute. Now, I will put a caveat
3 in there. Other than 30(b)(6) depositions, if mechanically there is a way to comply
4 with Nevada law and insure that a proper oath is given by a court reporter who has
5 the ability to give the oath for a deposition and there can be a -- I'm trying to think
6 of the word I want -- a blending of technology to allow the audio-visual recording of
7 the deposition, the oath by the court reporter and then a proper transcription that
8 can be properly certified, without running afoul of Nevada law, then the parties
9 can proceed accordingly. If one of the other parties desires to still have the court
10 reporter present, they can properly notice the deposition to be taken in an alternative
11 means also by court reporter and stenographically record it. But for every 30(b)(6)
12 deposition they'll have to have a court reporter and it will have to be stenographically
13 recorded. So that will actually solve the problem in Lockhart.

14 MR. DIAMOND: Can I clarify a couple things? Matt was probably going
15 to do the same. You said the motion for protective order is granted, but it was --
16 there was a motion to compel is what we're here for, plaintiff's motion to compel.
17 So that's denied, right?

18 DISCOVERY COMMISSIONER: One is a motion to compel and then one
19 is a motion for protective order.

20 MR. DIAMOND: Yeah, that was the other case.

21 DISCOVERY COMMISSIONER: And I apologize if I mixed them up.

22 MR. DIAMOND: That's okay. So in Lockhart, plaintiff's motion --

23 DISCOVERY COMMISSIONER: It's a motion to compel.

24 MR. DIAMOND: And that's denied?

1 DISCOVERY COMMISSIONER: That's denied.

2 MR. DIAMOND: Okay. And then the other issue is you said that in our
3 30(b)(6) deposition in Lockhart the oath is to be given by a court reporter.

4 DISCOVERY COMMISSIONER: And it needs to be transcribed by a court
5 reporter.

6 MR. DIAMOND: Transcribed by a court reporter.

7 DISCOVERY COMMISSIONER: You'll have to use a court reporter as
8 the primary source of taking the deposition for the 30(b)(6) witnesses only. Then I
9 said if in other depositions you can without running afoul of Nevada law -- plaintiff's
10 counsel, make sure the oath can be properly administered by a court reporter, you
11 can take your deposition by audio-visual means and transcribe it appropriately
12 as you've been doing, fine. And if you all prefer to have a court reporter there
13 transcribing, you can within five days notice the deposition that way. And obviously
14 for any depositions you all notice, you can have it by court reporter.

15 MR. DIAMOND: And the 30(b)(6) depositions -- when you said also has to
16 be transcribed by a court reporter, I'm assuming you're saying that the court reporter
17 has to be there throughout.

18 DISCOVERY COMMISSIONER: I'm saying use the court reporter as the
19 primary --

20 MR. DIAMOND: During the deposition.

21 DISCOVERY COMMISSIONER: -- manner in which the deposition will be
22 taken.

23 MR. DIAMOND: Okay. Thank you, Your Honor.

24 DISCOVERY COMMISSIONER: I'm sorry, I didn't mean to confuse that

1 issue. Anything further? No fees or costs.

2 MS. COHEN: Just a quick clarification.

3 DISCOVERY COMMISSIONER: Yes?

4 MS. COHEN: Is this ruling limited to the Lockhart decision itself and to
5 Mr. Goldman's case, or is this the practice that you will be entertaining?

6 DISCOVERY COMMISSIONER: I've got to call the Wall case. I have not
7 called it yet. I've got to make a ruling in that case. I can only make a ruling on a
8 case-by-case basis because my recommendations are not orders until they are
9 signed by the district court judge. I do not have the ability to make one ruling and
10 have it apply across the board. That's not within my purview, so I have to do it on
11 a case-by-case basis. So the answer to your question is yes, the ruling that I just
12 made will apply in Lockhart. I'm assuming I'm going to do a similar ruling in Wall,
13 but I have to call that case and hear it.

14 MS. COHEN: Thank you, Your Honor.

15 MR. PFAU: Who should prepare the order, Your Honor?

16 DISCOVERY COMMISSIONER: Yes. I'll have Mr. Diamond -- Mr.
17 Diamond.

18 MR. DIAMOND: I'm sorry, I was just getting names because I figured I'd
19 be preparing it.

20 DISCOVERY COMMISSIONER: Yes. You will prepare the Report and
21 Recommendation. I will need it in 20 days. Make sure all counsel approve as to
22 form and content and you all are welcome to object.

23 MR. DIAMOND: And who's here for Gasser?

24 MR. THOMPSON: Robert Thompson for Gasser.

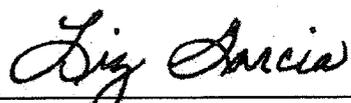
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MR. DIAMOND: Oh, hey, Robert. I didn't see you behind me. I'm sorry.

DISCOVERY COMMISSIONER: Okay. But I am going to need to call the
Wall case separately, so I'm going to call that case.

(PROCEEDINGS CONCLUDED 11:08 A.M.)

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service

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MEMORANDUM OF POINTS AND AUTHORITES

I.

INTRODUCTION

A. **Reginald Low, MD's Videotaped Deposition & Deposition Transcript**

Reginald Low, MD's deposition was taken on May 2, 2016 in Sacramento, California. No Certified Court Reporter was present for the stenography of the deposition. Instead, Plaintiff's counsel, Stephen Osborne, retained a self-professed "videographer" and "officer of the court," Mark Ivey, to film the deposition with a personal video camera and then subsequently transcribe the deposition from the videotape. When the under-signed questioned Mr. Ivey regarding the whereabouts of the Certified Court Reporter just after he arrived, Ivey indicated that he was the court reporter and would be preparing a transcript from the videotaped deposition. Mr. Ivey was vague regarding his qualifications. At that time, Defense counsel commented that it was the first time in his 26 years of practice that someone was not typing the deposition in real time. The undersigned allowed the deposition to proceed, but intended to review the deposition transcript along with the credentials of the "videographer" and would determine whether remedial measures would be required in the future.

When Dr. Low's transcript was later received, the first line of the transcript read, "My name is Mark Ivey. I'm the **videographer** and **officer of the court**. I work for e-depositions, LLC, located at 730 Sandhill Road, Suite 105, Reno, Nevada 89521." (See Deposition of Dr. Low at 4:1-5 attached as **Exhibit "1."**) Dr. Low's deposition transcript also contained a certification page on the back. (See "Certificate of Recorder" attached hereto as **Exhibit "2."**) This page contained the following:

"I, MARK IVEY, a duly commissioned **Notary Public**, authorized to administer **oaths** or **affirmations** in the State of Nevada, do hereby certify: That I recorded the foregoing deposition of the witness, REGINALD LOW, M.D., on May 2, 2016...That I thereafter transcribed **or supervised transcription** from the recorded audio and visual record and said deposition." *Id.* (Emphasis added.)

1 Notably, Plaintiff's counsel and Mr. Ivey retained complete control of the videotape following
the deposition. Additionally, this video was not synced to an official written transcript taken by a
3 Certified Court Reporter.

4
5 **B. Brandi Kindig, MD's Videotaped Deposition & Deposition Transcript**

6 Brandi Kindig, MD's deposition was taken on June 22, 2015 in Reno, Nevada. No Certified
7 Court Reporter was present for the stenography of her deposition either. Plaintiff's counsel
8 retained Jason Sanderson, another "videographer" and "officer of the court," from E-Depositions,
9 LLC, to film the deposition with a personal video camera and transcribe the deposition from the
10 videotape.

11 When Dr. Kindig's deposition transcript arrived, the first line of the transcript read:

12 "Job number NV912 Volume 2...My name is Jason Sanderson. I'm the
13 **videographer** and **officer of the court**. I work for E-Depositions, LLC,
14 located at 730 Sandhill Road, Suite 105, Reno, Nevada 89521." (See
Deposition of Dr. Kindig at 4:1-6 attached as **Exhibit "3."**)

15 Dr. Kindig's deposition transcript also contained a certification page on the back. (See
16 "Certificate of Recorder" attached hereto as **Exhibit "4."**) This page contained the following:

17 "I, Jason Sanderson, a duly commissioned **Notary Public**, Washoe
18 County, State of Nevada, do hereby certify: That I recorded the taking of
19 the deposition of the witness, Brandi Kindig, M.D...that I thereafter
20 transcribed **or supervised transcription** from the Recorded Audio and
21 Visual Record and said deposition...." *Id.* (Emphasis added.)

22 Notably, Plaintiff's counsel and Mr. Sanderson also retained control of the Dr. Kindig's
23 videotape following Dr. Kindig's deposition. This video was not synced to an official written
24 transcript and was not taken by a Certified Court Reporter.

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II.

ARGUMENT

A. **The Deposition Transcripts and Depositions Videotapes of Both Dr. Kindig and Dr. Low are Inadmissible Under NRS §656.320 As They Were Taken by Nevada Notaries Rather Than Certified Court Reporters.**

NRCP 656.320 provides, in pertinent part:

“Court reporters must hold current certificate. No person may be appointed to the position of **official reporter** of any court in this state except a court reporter who holds a current and valid certificate under the provisions of this chapter.” (Emphasis added.)

The primary duty of the court reporters is to take real time verbatim transcription of the speech that is occurring in court or in a deposition. Nothing is better than having the court reporter there at the time of the deposition to ask for clarifications and get the actual words from the speaker at the time they are spoken. Court reporters also administer oaths to the witnesses. The educational requirements for court reporters include certification, licensure and formal schooling. Court reporters go through strenuous academic programs for 2 to 4 years with classes include business law, medical vocabulary, legal research, legal terminologies and procedures and the English language mechanics and grammar.

On the other hand, notaries are required to complete a 4 hour notary public education class conducted by the Nevada Secretary of State’s Notary Division pursuant to NRS 240.018. Clearly, there is no comparison between the skill level of a Certified Court Reporter and a Notary Public. Because neither Ivey nor Sanderson hold court reporting certificates or licenses, they apparently transcribed these depositions as legal transcriptionists. (There is no formal degree or certification that is required for a person to work as a legal transcriptionist.) Ivey and Sanderson could only be acting

1 in an unofficial and unauthorized capacity which render the depositions of Dr. Kindig and Low
2 inadmissible.

3 Both Ivey and Sanderson are merely State of Nevada notaries who are self-professed
4 videographers presenting themselves as "deposition officers." As notaries, they presented themselves
5 as "officers of the court" with the ability to swear in the witness, officially take the deposition video
6 as a "deposition officer," and transcribe the video into a "certified" transcript. Mr. Ivey certainly
7 presented himself as a certified court reporter when he stated:
8

9 "The electronic audio and visual recording of this deposition will be the
10 **official record**. A transcript **certified** by the **deposition officer** will be
11 created from the audio and visual recording of this deposition by e-
12 depositions, LLC." (See Exhibit "1" at 4:17-21) (Emphasis added.)

13 Notaries do have the power to take the oath or affirmation of a deponent in the state where
14 they are notaries. However, a Nevada notary may ONLY notarize a document within the borders of
the State of Nevada. Notary commissions are not transferable between states.

16 Here, Mr. Ivey, a State of Nevada notary, took the oath of Dr. Low in Sacramento, California.
17 A search of the State of California Secretary of State shows that he is not a notary in the State of
18 California. Therefore, not only was his transcription of the Dr. Low's deposition improper, but his
19 administration of oath to Dr. Low was invalid as he did not have the authority as a Nevada notary to
20 do same. This makes Dr. Low's entire deposition testimony hearsay and inadmissible at trial.

21 **B. The Deposition Transcripts and Depositions Videotapes of Both Dr. Kindig**
22 **and Dr. Low are Inadmissible Under NRS §656.340 as They Were Taken by**
23 **Unlicensed Court Reporters**

24 NRCP 656.340 Unlawful to practice without license or approval of Board provides, in
25 pertinent part:

26 "1. Except as otherwise provided in subsection 2, **it is unlawful for any**
27 **person to practice court reporting** or advertise or put out any sign or
28 card or other device which might indicate to the public that the person is
entitled to practice as a court reporter **without a certificate of**
Motion to Exclude Deposition Transcripts and Videotaped Depositions of Dr. Kindig & Dr. Low

1 registration as a certified court reporter issued by the Board.”
2 (Emphasis added.)

3 Finally, neither Defense counsel nor the Court can determine from the slippery language in
4 the certification pages who actually transcribed the videotapes. Both Ivey and Sanderson’s
5 certification pages indicated the following:

6 “I thereafter transcribed *or supervised transcription* from the recorded
7 audio and visual record.” (See Exhibit “2” at 81:13-15 & Exhibit “4”
8 77:12-14) (Emphasis added.)

9 This language is clearly improper. Because Defense counsel has no way of authenticating or
10 knowing *who* actually transcribed the deposition transcripts of Dr. Kindig or Dr. Low, both
11 transcripts and videotaped records should be inadmissible at trial.

12 **C. The Deposition Transcripts and Depositions Videotapes of Both Dr. Kindig**
13 **and Dr. Low are Inadmissible Because Ivey and Sanderson Notarized or**
14 **Verified Their Own Documents**

15 Generally, a notary public is a completely disinterested third party who notarizes documents.
16 However, if a notary public is a party to a document, or who might receive a direct benefit or indirect
17 benefit from the transaction he or she cannot perform the notarial act. Additionally, notaries who
18 receive any commission, fee, advantage, right, title, interest, cash, property, or other consideration
19 exceeding in value the fees specified in state statute may not perform the notarial act.

20 Here, Ivey and Sanderson signed their certification pages as “notary” or “notary public.”
21 However, they were likely paid for their time to attend the deposition, travel to and from the
22 deposition and to transcribe or “supervise” the transcription of the video footage. These fees likely
23 exceeded the commission to notarize a document.

24 **D. There Is a Further Appearance of Impropriety Since Mr. Ivey is Assisting With**
25 **Plaintiff’s Counsel’s Technical Support At Trial.**

26 Finally, Mark Ivey has attended trial every day since May 10, 2016. He works closely with
27 Plaintiff’s counsel Steve Osborne as his technical support by playing his power point presentations
28 and assisting in electronic record presentation. He even played a portion of Dr. Kindig’s videotaped

Motion to Exclude Deposition Transcripts and Videotaped Depositions of Dr. Kindig & Dr. Low

1 deposition during Mr. Osborne's opening statement that appeared to be edited in some way. As such,
2 Ivey is certainly not a "disinterested third party" and his connection with Plaintiff's counsel as well as
3 his improper conduct in transcribing court documents clearly has than the appearance of impropriety.

4 The prejudice to Defendants is clear and severe. Defendants were and are without the ability
5 to meaningfully challenge the veracity of the depositions of Drs. Kindig and Low as they were taken
6 by notaries who present themselves as "deposition officers" without the ability to "certify" the
7 depositions.

8 **III.**

9 **CONCLUSION**

10 Based on the foregoing, Defendants request that this Court enter an Order excluding any
11 deposition testimony of Dr. Kindig or Dr. Low, whether it is in written transcript form or in the form
12 of videotape at the trial in this matter.

LIST OF EXHIBITS

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| <u>Exhibit</u> | <u>Description</u> | <u>Pages</u> |
|----------------|---|--------------|
| 1 | Excerpt from the deposition of Reginald Low, M.D. | 1 |
| 2 | Certification page from the deposition of Reginald Low, M.D. | 1 |
| 3 | Excerpt from the deposition of Brandi Kindig, M.D. | 1 |
| 4 | Certification page from the deposition of Brandi Kindig, M.D. | 1 |

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2
CERTIFICATE OF SERVICE

3 Pursuant to NRCP 5(b), I served the foregoing DEFENDANTS' MOTION TO EXCLUDE
4 DEPOSITION TRANSCRIPTS AND VIDEOTAPED DEPOSITIONS OF BRANDI KINDIG,
5 MD AND REGINALD LOW, MD by e-filing and hand serving, on the 16th day of May, 2016
6 addressed as follows:

7
8 STEPHEN H. OSBORNE, ESQ.
9 75 Court Street
10 Reno, NV 89501
11 Fax: (775) 322-5484

12
13 /s/Betty Henkle

14 An employee of Lauria Tokunaga
Gates & Linn, LLP

EXHIBIT 1

EXHIBIT 1

1 MR. IVEY: Okay. We are now on the record in the
2 matter of Cox versus Hometown Health Management Company. My
3 name is Mark Ivey. I'm the videographer and officer of the
4 court. I work for e-depositions, LLC, located at 730 Sandhill
5 Road, Suite 105, Reno, Nevada 89521.

6 Today's date is May 2nd, 2016, and the time is
7 5:47 p.m. This deposition is being held at 4860 Y Street, Suite
8 2820, Sacramento, California. This is the recorded deposition
9 of Reginald Low, M.D. Mr. Low, can you please raise your right
10 hand? Do you solemnly swear that the testimony you are about to
11 give will be the truth, the whole truth and nothing but the
12 truth, so help you God?

13 MR. LOW: I do.

14 MR. IVEY: Thank you. Can you please state your
15 name, full -- state your full name with spelling?

16 MR. LOW: Reginald, R-E-G-I-N-A-L-D, Low, L-O-W.

17 MR. IVEY: Thank you. The electronic audio and
18 visual recording of this deposition will be the official record.
19 A transcript certified by the deposition officer will be created
20 from the audio and visual recording of this deposition by e-
21 depositions, LLC. Would all attorneys present please identify
22 themselves, their firm, anybody with them and the party they
23 represent beginning with the party noticing this proceeding?

24 STEPHEN OSBORNE: Yes. Stephen Osborne on behalf
25 of Charles and Shirley Cox.

EXHIBIT 2

EXHIBIT 2

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3)

4 COUNTY OF WASHOE)

5 NAME OF CASE: CHARLES COX, SHIRLEY COX, PLAINTIFFS, VS.

6 HOMETOWN HEALTH MANAGEMENT COMPANY, ET. AL.,

7 DEFENDANTS

8 I, MARK IVEY, a duly commissioned Notary Public, authorized
9 to administer oaths or affirmations in the State of Nevada, do
10 hereby certify: That I recorded the foregoing deposition of the
11 witness, REGINALD LOW, M.D., on May 2, 2016.

12 That prior to being examined, the witness was duly sworn to
13 testify to the truth. That I thereafter transcribed or
14 supervised transcription from the recorded audio and visual
15 record and said deposition is a complete, true, and accurate
16 transcription of the deposition testimony. Before completion of
17 the deposition, a review of the transcript [] was [X] was not
18 requested by the deponent and [X] was [] was not requested by a
19 party of the action. If a review was requested, any changes
20 communicated to me by the deponent during the period allowed are
21 appended hereto.

22 I further certify that I am not a relative or employee of
23 an attorney or counsel of any of the parties, nor a relative or
24 employee of an attorney or counsel involved in said action, nor
25 a person financially interested in the action.

EXHIBIT 4

EXHIBIT 4

CERTIFICATE OF RECORDER

STATE OF NEVADA

COUNTY OF WASHOE

NAME OF CASE: CHARLES COX, SHIRLEY COX, vs. HOM ETOWN HEALTH

MANAGEMENT COMPANY dba RENOWN MEDICAL GROUP, RA JAN PATEL, M.D.,

BRANDI KINDIG, M.D., DOES I-X inclusive,

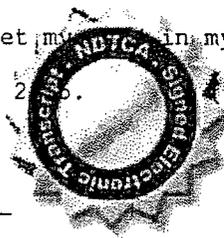
I, Jason Sanderson, a duly commissi oned Notary Public, Washoe County, State of Nevada, do hereby certi fy: That I recorded the taking of the deposition of the witness, Brandi Kindig M.D., commencing on June 22nd, 2015.

That prior to being examined the wi tness was duly sworn to testify to the truth. That I thereafter transcr ibed or supervised transcription from Recorded Audio and Visual Record and said deposition is a complete, true and accurate transcription.

I further certify that I am not a r elative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, no r a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in my office in the County of Washoe, State of Nevada, this July 9th, 2015.

Jason Sanderson
Jason Sanderson



Notary

EXHIBIT 3

EXHIBIT 3

1 MR. SANDERSON: Job number NV912 Volume 2. We
2 are now on the record in the matter of Charles Cox, Shirley Cox
3 versus Hometown Health Management Company dba Renown Medical
4 Group. My name is Jason Sanderson. I'm the videographer and
5 officer of the court. I work for E-Deposition LLC, located at
6 730 Sandhill Road, Suite 105, Reno, Nevada 89521.

7 Today's date is June 22nd. The time is 1:07 p.m.
8 This deposition is being held at 232 Court Street, Reno, Nevada
9 89501. This is the recorded deposition of Dr. Brandi Kindig.
10 Ms. Kindig, could you please raise your right hand? Do you
11 solemnly swear that the testimony you are about to give will be
12 the truth, the whole truth and nothing but the truth so help you
13 God?

14 DR. KINDIG: Yes, sir.

15 MR. SANDERSON: Thank you. Can you please state
16 your name with the spelling?

17 DR. KINDIG: Brandi Kindig, B-R-A-N-D-I K-I-N-D-
18 I-G.

19 MR. SANDERSON: Thank you. This electronic audio
20 and visual recording of this deposition will be the official
21 record. A transcript certified by the deposition officer will
22 be created from the audio and visual recording of this
23 deposition by E-Depositions, LLC. Would all attorneys present
24 please identify themselves, their firm, anybody with them and
25 the party they represent, beginning with the party noticing the

e-depositions

In the Matter Of:

CHARLES COX, SHIRLEY COX v. HOMETOWN HEALTH
MANAGEMENT COMPANY dba RENOWN MEDICAL GROUP,
RAJAN PATEL, M.D., BRANDI KINDIG, M.D., DOES I-X,
inclusive,

Brandi Kindig, M.D.

Date: June 22, 2015

e-depositions

Phone: 775.240.0186

Email: calendar@e-depositions.com

Internet: <http://e-depositions.com/>

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES COX, SHIRLEY COX,)

Plaintiffs,)

vs.) Case No.: CV14-00414

HOMETOWN HEALTH MANAGEMENT) Dept. No.: 9

COMPANY dba RENOWN MEDICAL GROUP,) Arbitration Exemption: Medical

RAJAN PATEL, M.D., BRANDI KINDIG, M.D.,) Malpractice NAR 3(A) (action

DOES I-X, inclusive,) in excess of \$50,000)

Defendants.)

RECORDED DEPOSITION OF BRANDI KINDIG, M.D.

Taken on June 22, 2015

At 1:07 p.m.

232 Court Street

Reno, NV 89501

1 APPEARANCES:

2 For the Plaintiffs: STEPHEN H. OSBORNE, ESQ.

3 232 Court Street

4 Reno, NV 89501

5

6 For the Defendants: RAYMOND R. GATES, ESQ.

7 LAURIA TOKUNAGA GATES & LINN, LLP

8 BREMER WHYTE BROWN & O'MEARA LLP

9 1755 Creekside Oaks Drive, Suite 240

10 Sacramento, CA 95833

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INDEX

Direct

Witness

Dr. Kindig

5

(BY Mr. Osborne)

EXHIBITS

Number

Description

1

Deposition Notice

13

1 MR. SANDERSON: Job number NV912 Volume 2. We
2 are now on the record in the matter of Charles Cox, Shirley Cox
3 versus Hometown Health Management Company dba Renown Medical
4 Group. My name is Jason Sanderson. I'm the videographer and
5 officer of the court. I work for E-Deposition LLC, located at
6 730 Sandhill Road, Suite 105, Reno, Nevada 89521.

7 Today's date is June 22nd. The time is 1:07 p.m.
8 This deposition is being held at 232 Court Street, Reno, Nevada
9 89501. This is the recorded deposition of Dr. Brandi Kindig.
10 Ms. Kindig, could you please raise your right hand? Do you
11 solemnly swear that the testimony you are about to give will be
12 the truth, the whole truth and nothing but the truth so help you
13 God?

14 DR. KINDIG: Yes, sir.

15 MR. SANDERSON: Thank you. Can you please state
16 your name with the spelling?

17 DR. KINDIG: Brandi Kindig, B-R-A-N-D-I K-I-N-D-
18 I-G.

19 MR. SANDERSON: Thank you. This electronic audio
20 and visual recording of this deposition will be the official
21 record. A transcript certified by the deposition officer will
22 be created from the audio and visual recording of this
23 deposition by E-Depositions, LLC. Would all attorneys present
24 please identify themselves, their firm, anybody with them and
25 the party they represent, beginning with the party noticing the

5

1 proceeding?

2 STEPHEN OSBORNE: Yes. Stephen Osborne on behalf

3 of Charles and Shirley Cox.

4 RAYMOND GATES: Ray Gates of Lauria Tokunaga

5 Gates & Linn, on behalf of the defendants.

6 DIRECT EXAMINATION

7 BY: Stephen Osborne

8 Q: Good afternoon, Dr. Kindig. Could you please

9 state your full name for the record?

10 A: Brandi Kindig.

11 Q: Do you have a middle name?

12 A: Brandi Marie Kindig.

13 Q: And what is your current address?

14 A: 5754 Tappan Drive, Reno, Nevada 89523.

15 Q: And what is your current occupation?

16 A: Hospitalist physician.

17 Q: And what does that mean to be a hospitalist

18 physician?

19 A: Well, the hospital doctor is an internal medicine

20 physician who admits patients into the hospital and cares for

21 them while they're in the hospital and discharges them back to

22 their primary physicians from the hospital.

23 Q: Is part of your duties also as hospitalist-

24 internal medicine doctor working for Renown is to make the

25 appropriate referrals of the patients?

6

1 A: Correct to the, to different specialists.

2 Q: Yes.

3 A: Yes.

4 Q: Okay. How long have you been a hospitalist at

5 Renown?

6 A: It will be five years next month.

7 Q: And who is your employer?

8 A: Hometown Health is. Renown is my employer, but

9 Hometown Health is with the hospitalist group is under.

10 Q: Okay. We have a list that it's Hometown Health

11 Management Company doing business as Renown Medical Group?

12 A: Yes.

13 Q: Is the correct affiliation?

14 A: Yes.

15 Q: And that is who you work for?

16 A: Yes.

17 Q: Okay. Have you ever had your deposition taken

18 before?

19 A: I have.

20 Q: Okay. On how many occasions?

21 A: Two occasions.

22 Q: Okay. Were those recent?

23 A: One was a year ago and one was I think three to

24 four months ago.

25 Q: Okay. And in what capacity did you give those

7

1 depositions? Were you a party? Were you a witness?

2 A: I was a party the first one about a year ago.

3 They took my deposition. I was named in a lawsuit and it was

4 dismissed -- the case.

5 Q: What was that case involving?

6 A: A man who died from a pulmonary embolism. I had

7 seen him six weeks prior.

8 Q: And who filed that case? What's the name of the

9 lawyer?

10 A: Steven Bus

11 Q: And you said that case was dismissed?

12 A: It was.

13 Q: Okay. When was it dismissed?

14 A: I think July or August of 2014.

15 Q: Was there any payment on your behalf?

16 A: No, there was none.

17 Q: Okay. The second time you gave your deposition,

18 what was that involving?

19 A: It was as a treating physician. I don't know if

20 it's called the witness. I was the treating physician from the

21 previous hospital. There was a lawsuit involved, so I was, I

22 was a witness.

23 Q: Okay. And what had happened to that patient?

24 A: A lot. Ultimately, he had a splenic fracture and

25 he exsanguinated.

8

1 Q: Okay. Let me just go the admonitions with you so

2 they're very firm in your mind. You've been placed under oath

3 by the reporter here today. That's the same oath or affirmation

4 you would receive as if you're in a court of law. Do you

5 understand that?

6 A: I do.

7 Q: It carries with it the same solemnity, so it's the

8 same penalties of perjury. Do you understand that?

9 A: Yes.

10 Q: Okay. Everything is being taken down as we're

11 talking. So, it's very important to ensure a clear record that

12 only one of us would be talking at once. So, if you please do

13 me the courtesy and wait until I finish my question, I'll do the

14 same courtesy and wait until you finish your answer.

15 A: Okay.

16 Q: Okay. If I asked you a question, I'm not a

17 doctor, I don't have a medical degree. If I asked you a

18 question that is not understandable, please tell me so, and I'll

19 be happy to rephrase.

20 A: Okay.

21 Q: Okay. This is my one opportunity probably to talk

22 to you and get down all your testimony. I wanted to warn you

23 that if your testimony changes from now until the time of trial

24 that that could affect your credibility. Do you understand

25 that?

9

1 A: I understand.
 2 Q: Okay. Is there any medical or physical reason why
 3 we cannot receive your best testimony here today?
 4 A: No.
 5 Q: Okay. For instance, you haven't been up for three
 6 days straight?
 7 A: No.
 8 Q: Or something along those lines?
 9 A: No.
 10 Q: Okay. You'd not had a cold or not on some
 11 medication that makes you very tired and you can't remember.
 12 A: I am not.
 13 Q: Okay. All right. Where are you licensed?
 14 A: In the State of Nevada.
 15 Q: Have you ever been licensed in any other state to
 16 practice medicine?
 17 A: No.
 18 Q: Where did you go to medical school?
 19 A: At the University of Nevada School of Medicine.
 20 Q: And did you specialize in -- what was your degree
 21 in?
 22 A: It was -- the degree was an M.D., and then, I did
 23 residency after that.
 24 Q: Okay.
 25 A: I was internal medicine.

10

1 Q: And you did your internship?
 2 A: Here in Reno, yes.
 3 Q: Where at?
 4 A: At the VA Hospital and at Renown.
 5 Q: And where did you do your residency?
 6 A: Here, the same places.
 7 Q: Okay. And you said -- are you board-certified in
 8 internal medicine?
 9 A: I am.
 10 Q: When did you become board-certified?
 11 A: 2009.
 12 Q: Did you pass your board certification test on the
 13 first opportunity?
 14 A: I did.
 15 Q: Have you had done any kind of fellowship or post-
 16 graduate work following your degree from UNR?
 17 A: No.
 18 Q: Have you ever published any kind of articles or
 19 publications?
 20 A: No.
 21 Q: Have you ever participated in any articles or
 22 publications?
 23 A: No, no.
 24 Q: Okay. Do you have a principal text reference in
 25 your practice?

11

1 A: A principal text reference?
 2 Q: Yes.
 3 A: We have our automated, our computer system links
 4 into UpToDate. It's an online.
 5 Q: And at the time that that you rendered treatment
 6 to Charles Cox in February of 2013, were you using UpToDate?
 7 A: Not that specific.
 8 Q: Did you have access to UpToDate?
 9 A: I did.
 10 Q: You did. Did you have any other kind of -- did
 11 you have a text that was your principal reference besides the
 12 UpToDate program?
 13 A: No, not that I recall.
 14 Q: What articles or treatises did you subscribe to?
 15 MR. GATES: When?
 16 Q: At the time of February of 2013?
 17 A: None that I remember.
 18 Q: Do you have any journals that you subscribed to as
 19 being internal medicine doctor?
 20 A: No.
 21 Q: Did you consult any kind of written materials,
 22 articles, treatises, or publication during your treatment of
 23 Charles Cox?
 24 A: No.
 25 Q: Have you consulted any articles, text, treatises,

12

1 or publications since your treatment of Charles Cox?
 2 A: I've read UpToDate since I treated him.
 3 Q: On aortic dissection?
 4 A: Yes.
 5 Q: Okay. And what specifically did you look at?
 6 A: The overall -- overall symptoms diagnosis.
 7 Q: And why did you look at UpToDate for the symptoms
 8 and diagnosis for aortic dissection?
 9 MR. GATES: Other than any conversation you had
 10 with your counsel.
 11 A: I'm sorry. I don't understand.
 12 MR. GATES: Other than any conversation where I
 13 asked you to do something or something we talked about.
 14 A: Oh. That was the only reason I--
 15 Q: What was the --?
 16 A: Speaking -- speaking with my counsel.
 17 Q: Okay.
 18 A: And comparing or -- as the physician.
 19 Q: So you -- you utilized UpToDate to help you
 20 prepare for this deposition?
 21 A: Well, specifically. I've used UpToDate many times
 22 since then.
 23 Q: Okay. Do you have a copy of what you referenced
 24 in UpToDate?
 25 A: I don't have a copy.

13

1 Q: Okay. Why not? Why didn't you bring that with
2 you?

3 A: I could bring it up on my phone, if you'd like. I
4 don't have it on paper.

5 Q: No, I want a text copy. Let's mark this as
6 Exhibit 1, please. I'm showing you what's been marked, is your
7 Deposition Notice. Have you ever seen that before?

8 A: I have.

9 Q: Okay. Turn to Page 2, please, of that? Look at,
10 say, Number 4, please, and you were supposed to be bringing this
11 with you at the time of this deposition. And so, for the
12 record, it says, "All policies, procedures, texts, treatises,
13 journals, or publications, you reviewed regarding the care and
14 treatment of Charles Cox, both before and after his treatment."
15 Did you bring those?

16 MR. GATES: She's already asked and answered
17 that. It's attorney-client privilege as to why she looked at
18 it. So, she didn't have to bring it, but she's telling you she
19 has it on her phone, if you want to look at it.

20 MR. OSBORNE: I strongly disagree with you. It's
21 not that you've waived any kind of attorney-client privilege by
22 having her do any research regarding the symptoms.

23 MR. GATES: She didn't say. That's your words.
24 She didn't say research. She said she looked at it.

25 MR. OSBORNE: She looked at UpToDate for the

14

1 symptoms and diagnosis for aortic dissection. I'm going to
2 continue this deposition until I get those documents. I want a
3 complete copy of everything you referenced.

4 MR. GATES: She tells she has a copy on her phone
5 right now.

6 MR. OSBORNE: That's not acceptable.

7 MR. GATES: Well, maybe, at the break. We can
8 email it to you.

9 THE WITNESS: I'd be happy to do that.

10 Q: Okay. And what did you look at specifically?

11 MR. GATES: Again, the same objection, attorney-
12 client privilege, nothing that I asked you to do. If you did it
13 on your own, tell him.

14 Q: Let's get something clear on the record. Anything
15 you talked with Mr. Gates about, the substance of your
16 communications with him are protected. What you looked at
17 outside of that is not protected. So, everything you looked at
18 is what I want to know right now.

19 A: Okay. I'll be happy to give you the UpToDate --

20 MR. GATES: Again the same -- again, well, hold
21 on, same objection. Go ahead and tell him what you looked at.

22 A: I looked at the aortic dissection section of
23 UpToDate.

24 Q: How many pages was that aortic dissection of
25 UpToDate that you looked at?

15

1 MR. GATES: The same objection, go ahead.

2 A: I don't know, it's online. So, I was simply
3 scrolling.

4 Q: Do you know what information was referenced in the
5 UpToDate articles?

6 MR. GATES: That's vague and ambiguous. If you
7 can answer, go ahead.

8 A: I'm not sure I understand.

9 Q: Okay. That's fair enough. Do you know what
10 articles UpToDate utilized for their information that they
11 provided you?

12 A: Not specifically, it's listed in their references
13 though.

14 Q: Okay. Why did you feel it was necessary to go
15 look up what the symptoms were on UpToDate since your treatment
16 of Charles Cox?

17 MR. GATES: Again, outside of what you and I
18 talked about, go ahead ma'am.

19 A: Repeat once more, I'm sorry.

20 Q: Why did you feel it was necessary to look at the
21 symptoms on UpToDate with regard to aortic dissection?

22 MR. GATES: Same objection, go ahead.

23 A: Only to ensure I gave him the proper treatment and
24 the right diagnosis with the information I had at the time.

25 Q: Did you learn anything when you look at UpToDate

16

1 with regard to the symptoms for aortic dissection?

2 A: Not that I didn't already know.

3 Q: You already knew what, what the symptoms were of
4 aortic dissection at the time you treated Charles Cox?

5 A: I did.

6 Q: Did it refresh your recollection as to what the
7 symptoms of aortic dissection were when you looked at UpToDate?

8 A: Did it refresh my -- I already knew the symptoms.
9 It solidified that I already knew them.

10 Q: Okay. With regard to the diagnosis and treatment
11 options, did you learn anything new with regard to aortic
12 dissection from UpToDate since you've reviewed that information?

13 A: No.

14 Q: How many times did you look at UpToDate with
15 regard to aortic dissection since your treatment of Charles Cox?

16 A: Once.

17 Q: How long did you look at UpToDate with regard to
18 the symptoms and diagnosis of aortic dissection?

19 A: As long as it took to read that section, I would
20 say 10 minutes.

21 Q: Did you discuss what you found on UpToDate with
22 anybody else?

23 MR. GATES: Except me.

24 A: Except you? No.

25 Q: Did you discuss the symptoms and diagnosis on

17

1 aortic dissection with your attorney?
 2 MR. GATES: She's not going to answer that.
 3 MR. OSBORNE: She will, too.
 4 MR. GATES: No, she won't.
 5 MR. OSBORNE: She can say whether she talked to
 6 you about it.
 7 MR. GATES: What does it -- how relevant it --
 8 MR. OSBORNE: I didn't ask for the substance, I
 9 just asked if she talked to you about it.
 10 MR. GATES: I don't think that's a proper
 11 question.
 12 MR. OSBORNE: Are you instructing her not to
 13 answer?
 14 MR. GATES: I am.
 15 Q: Okay. And are you following that advice?
 16 MR. GATES: Yes, she is.
 17 A: Yes.
 18 Q: Did you exchange any information on the internet
 19 with regard to aortic dissection with anybody else?
 20 A: No.
 21 Q: Were you provided any other information with
 22 regard to the symptoms and diagnosis for the treatment on aortic
 23 dissection since the treatment of Charles Cox?
 24 A: No.
 25 Q: How are you compensated by Renown Medical Group?

18

1 MR. GATES: Well, she's not going to discuss her
 2 salary, so when you say--
 3 MR. OSBORNE: She can tell me how she is
 4 compensated. Is it salary, is it hourly based, is it based on
 5 test?
 6 A: Salary.
 7 MR. GATES: Go ahead.
 8 A: It's a salary.
 9 Q: And beyond your salary, are there bonuses or
 10 incentives for doing certain things?
 11 A: There are incentives that the group gets as a
 12 whole, and then, there's RVU which I can't tell you what that
 13 stands for, but it's RVU-based above and beyond -- I don't know
 14 how to explain it. There's a certain level of RVUs that we make
 15 every month, and then, anything past that we get as a quarterly
 16 bonus.
 17 Q: And you, you don't know what RVU stands for?
 18 A: Something value units.
 19 Q: Okay.
 20 A: Sorry, I can't remember the R.
 21 Q: And what is RVU-based on, to your understanding?
 22 A: Patient numbers and billing.
 23 Q: You don't have to tell me the exact amount that
 24 you make, but give me a rough percentage of what the highest
 25 level of RVU bonus that you'd receive on a percentage basis?

19

1 MR. GATES: Are you asking her the amount, dollar
 2 amount?
 3 MR. OSBORNE: I didn't say dollar amount. I just
 4 said -- I said a percentage amount.
 5 MR. GATES: That's what I'm asking. I want to
 6 make she's clear.
 7 MR. OSBORNE: So, for instance, is it 5% of your
 8 salary? Is it 10%?
 9 A: It varies.
 10 Q: What's the highest you've ever seen RVU bonus?
 11 A: Maybe, probably 10 or 15%.
 12 Q: And that's you said paid on a quarterly basis?
 13 A: Yes.
 14 Q: And so, you said that the patient numbers on your
 15 billing, can you explain that a little further as to what those
 16 RVUs are based on?
 17 A: Each case is a different number of RVUs
 18 admissions. ICU visits, subsequent visits, observation, admits
 19 and discharges, level of care, all of those are different.
 20 Codes and then they all go in together and -- an RVU is, a
 21 specific RVU is allocated for a specific level of billing.
 22 Q: Okay. Like for instance with Charles Cox. How
 23 would his RVU be allocated?
 24 A: Minimal. He was, for me, observation and
 25 discharge.

20

1 Q: So, if he's admitted and has a longer course of
 2 treatment, then the RVU number would go up?
 3 A: Each day, there would be a billing for a
 4 subsequent visit.
 5 Q: How does it work with Renown Medical Group? How
 6 are they affiliated with Renown Regional Medical Center?
 7 MR. GATES: If you know.
 8 A: I don't know if I can answer that correctly.
 9 Q: Okay. Are you aware of any contracts between
 10 Renown Medical Group and Renown Regional Medical Center?
 11 A: No.
 12 Q: How do you get your patients, Dr. Kindig?
 13 A: We -- from a couple of different areas but mostly
 14 from the ER. So, when a patient needs to be admitted from the
 15 ER, the ER physician pages us and met with that patient. We had
 16 met four primary care physicians in the community unless we'd
 17 get direct admits from outlying facilities that don't go through
 18 the ER. They go straight to the hospital for and we'll admit
 19 those as well.
 20 Q: Other than the one malpractice case with the
 21 pulmonary embolism, have you ever been involved in any other
 22 malpractice cases?
 23 A: No.
 24 Q: Are you named in any other malpractice cases
 25 besides this one?

21

1 A: I am.

2 **Q: And what case is that?**

3 MR. GATES: Let me object. It's irrelevant. It

4 is not calculated to lead to the discovery of admissible

5 evidence, but go ahead and answer his question.

6 A: It's an upcoming case that I've learned about four

7 or five months ago. There, I think, 14 doctors named in that

8 case. It's a case that I, I saw the patient for about 15

9 minutes in the ICU post-op and that was all.

10 **Q: And what is that case involving?**

11 A: Decubitus ulcer.

12 **Q: And do you know the name of the patient that had**

13 **the decubitus ulcer?**

14 A: I don't know if I'm allowed to say that with HIPAA

15 compliance.

16 **Q: It's a public record now that it's been filed?**

17 MR. GATES: Do you know if it's been filed? Have

18 you seen a copy of the complaint?

19 THE WITNESS: Yes.

20 MR. GATES: Okay. If you know the name, go

21 ahead.

22 A: Richard Brushing

23 **Q: Have you ever had your deposition taken before?**

24 MR. GATES: Asked and answered but go ahead.

25 A: Yes.

22

1 **Q: On how many cases did you have it taken? Just**

2 **those two?**

3 A: Yes. As I have stated.

4 **Q: Okay. Okay. Have you ever testified at any kind**

5 **of trial before?**

6 A: No.

7 **Q: Has Mr. Gates ever represented you before?**

8 A: He has.

9 **Q: On how many occasions?**

10 A: One occasion.

11 **Q: Okay. What did you review for your deposition**

12 **here today?**

13 A: This paper.

14 MR. GATES: She has a copy, Steve, as I indicated

15 we'd sent, we'd emailed you, so you probably have it in your

16 office; wrote responses to request to produce and she'd seen the

17 Renown medical records.

18 **Q: Okay. Anything else?**

19 A: No.

20 **Q: Okay. Had you ever looked at anything from Carson**

21 **Tahoe Regional Medical Center?**

22 A: Sorry. I saw just the admit note, I believe.

23 **Q: Anything else?**

24 A: The medical record on the computer.

25 MR. GATES: Let me help her there, complaint

23

1 affidavit, to the complaint.

2 **Q: Is that true?**

3 A: Yes.

4 **Q: Okay.**

5 A: Sorry.

6 **Q: All right. That's okay. Anything else you**

7 **reviewed?**

8 A: No.

9 **Q: Okay. Do you have copies of the things you**

10 **reviewed?**

11 A: Yes.

12 **Q: And where are those?**

13 MR. GATES: Well, you can look at my copies but -

14 - read the complaint affidavit?

15 MR. OSBORNE: No, I'm just asking about where the

16 copies that she reviewed.

17 MR. GATES: Here.

18 **Q: Okay. Did you make any notes or any kind of**

19 **highlights or anything on those?**

20 A: I didn't, no.

21 **Q: Okay. Did you review any policies or procedures**

22 **at Renown Medical Group?**

23 A: No.

24 **Q: Do you have any policies or procedures at Renown**

25 **Medical Group?**

24

1 MR. GATES: Regarding --

2 MR. OSBORNE: I'm just asking broadly if there's-

3 A: I'm sure there are. I don't know what you're

4 speaking to specifically.

5 **Q: Okay. So, you have policies and procedures at**

6 **your medical group?**

7 A: I don't know what you mean specifically.

8 **Q: Okay. So, when --?**

9 A: As a hospitalist group, we have hospitalist

10 standards that we have our hospitalists sign. I'm not sure.

11 **Q: Okay. And what type of things do you have to sign**

12 **as hospitalist standards?**

13 A: Being on call until your shift if over, being

14 within 20 or 30 minutes in the hospital, code of conduct, dress

15 code, things like that.

16 **Q: Okay. Do you have anything in your policies and**

17 **procedures at Renown Medical Group with regard to the diagnosis**

18 **or the treatment or the symptoms of any kind of diseases or**

19 **ailments?**

20 A: Not that I know of.

21 **Q: The policies and procedures, would it be fair to**

22 **say that they're more involved in the employment aspects of what**

23 **they expect you to do with regard to, you know, dates, times,**

24 **places, and showing up on this time and being prepared to**

25 **practice and that type of thing?**

25

1 A: Yes.

2 Q: Okay. Anything outside of those employment-type

3 issues that that you have a policy and procedure at Renown

4 Medical Group?

5 A: Not that I know of specifically.

6 Q: Okay. Do you have any policies and procedures

7 with regard to when it is appropriate for you to refer a patient

8 to a specialist?

9 A: Not that I know of.

10 Q: Okay. And did you review the policies and

11 procedures to see if you had any kind of policies and procedures

12 that pertain to this case?

13 A: No.

14 Q: Do any of your policies and procedures pertain to

15 your treatment of Charles Cox?

16 A: Not that I'm aware of.

17 Q: Okay. Can you say with any kind of definitiveness

18 that that your policies and procedures do not pertain to Charles

19 Cox and his treatment?

20 A: I can't say.

21 Q: But you didn't take the time to review any kind of

22 policies and procedures to ensure that?

23 MR. GATES: Argumentative, go ahead and answer

24 it.

25 A: No.

26

1 Q: You didn't. So, for instance, you didn't

2 investigate to see, I'll read to you Number 5 that, on that

3 Exhibit 1 there, it says, "All policies and procedures and

4 protocols at Renown Medical Group applicable to your treatment

5 of Charles Cox." What did you do to investigate policies and

6 procedures and protocols at Renown Medical Group applicable to

7 the treatment of Charles Cox?

8 MR. GATES: Same objection, go ahead and answer

9 if you can, and it's vague and ambiguous.

10 A: I don't know how to answer that question. I don't

11 -- I would -- I didn't think of any policy or procedure that

12 really would pertain if there were. I don't know of any

13 policies or procedures applicable to my treatment.

14 Q: Okay. But you didn't review the policies and

15 procedures or investigate to ensure that --?

16 A: I really don't know what I would review.

17 Q: Okay. When was the last time you looked at the

18 policies and procedures at Renown Medical Group?

19 MR. GATES: Again, vague and ambiguous.

20 A: I don't know what policies and procedures we're

21 speaking of.

22 Q: Okay. Well, when you first got hired, did you

23 review a policies and procedures manual?

24 A: I'm sure I did five years ago.

25 Q: Okay. Since your hiring five years ago, did you

27

1 review any kind of policies and procedures or protocol manual at

2 Renown Medical Group?

3 A: No.

4 Q: And ma'am, what I'm trying to get at here is -- or

5 what I wanted you to bring with you today is any kind of

6 policies and procedures that pertain to the treatment of my

7 client, Charles Cox. I'm going to continue the deposition for

8 that purpose as well with regard to the policies and procedures

9 and protocols at Renown Medical Group.

10 MR. GATES: Well, I think she's answered your

11 questions, Steve. She's not aware of any that pertain to this

12 particular patient.

13 MR. OSBORNE: She's also said that she wasn't

14 aware one way or the other and she didn't investigate it. So,

15 I'm going to ask her and investigate it and find out a little

16 bit more about that.

17 MR. GATES: Well, our objection noted.

18 Q: Okay. Do you remember Charles Cox?

19 A: I do.

20 Q: Okay. What does he look like?

21 A: I can't tell you. I wouldn't be able to pick him

22 out of a line, though.

23 Q: Okay.

24 A: But I remember his face.

25 Q: Okay. Do you remember from what you reviewed in

28

1 the records?

2 A: No, I remember from when I got the complaint and

3 looked at my discharge summary.

4 Q: Okay. When you go the complaint, what did you do?

5 A: Got upset likely.

6 Q: And why did you get upset?

7 A: Because I didn't agree with it.

8 Q: Did you not agree with the affidavit that was

9 attached to the complaint?

10 A: The affidavit from the --

11 Q: From Dr. McGregor that's attached to the

12 complaint?

13 A: Yes.

14 Q: Is that what upset you?

15 A: Well, yes.

16 Q: Okay. What didn't you agree with the affidavit

17 attached to the complaint?

18 MR. GATES: Do you need to look at it?

19 A: Yes. One that a lot of the symptoms were not

20 present when I examined the patient and spoke to the patient, a

21 lot of the history and physical symptoms. Also, two, that he

22 had ongoing, it says, "Despite his ongoing chest pain," he did

23 not have chest pain when I saw him.

24 Q: When did he stop having chest pain?

25 A: I saw him at 3 p.m. on the 26th. I go through all

29

1 the nursing notes from when they come into the ER until I see
 2 them, and from I could gather, probably around 7 or 8 p.m.
 3 **Q: 7 or 8 p.m. on the --?**
 4 A: On the 25th, I'm sorry.
 5 **Q: 25th--?**
 6 A: Yes.
 7 **Q: Charles Cox stopped having chest pain?**
 8 A: That's the last I could see documentation of his
 9 chest pain.
 10 **Q: Did you only see Charles Cox at 3 p.m. on February**
 11 **26th?**
 12 A: Yes.
 13 **Q: And how long did you spend with Charles Cox on**
 14 **February 26th at 3 p.m.?**
 15 A: Probably about 15 or 20 minutes. I don't remember
 16 exactly. Physically with him. I spent a good amount of time
 17 looking at his chart and his lab studies.
 18 **Q: How long did you spend looking at his chart and**
 19 **his lab studies?**
 20 A: Likely 20 or 30 minutes.
 21 **Q: Did you ever talk to Dr. Patel about Charles Cox**
 22 **while Charles Cox was at Renown?**
 23 A: I received an email sign-out from Dr. Patel
 24 regarding Mr. Cox's case.
 25 **Q: And what does that email sign-out mean?**

30

1 A: When a hospitalist works overnight on an admitting
 2 shift, we construct an email sign-out. So, Roe so and so, name,
 3 age, male, female, and complaint.
 4 **Q: And so, so that, that was your only communication**
 5 **with Dr. Patel regarding Charles Cox, was an email sign-out?**
 6 A: As well as reading his history and physical in the
 7 computer.
 8 **Q: But you never spoke with Dr. Patel, is that**
 9 **correct?**
 10 A: Correct.
 11 **Q: What was your shift on February 26th, 2013?**
 12 A: 7 a.m. to 7 p.m.
 13 **Q: And what was Dr. Patel's shift?**
 14 A: I believe he was on the swing-to shift the night
 15 before, so 5 p.m. to 2 a.m. on the 26th. And he did admissions
 16 from -- it's he'd take admissions and then you are on cross
 17 cover calls. So, he took admissions from 5 to 10.
 18 **Q: Okay. So, 5 p.m. to 2 a.m. was Dr. Patel's shift**
 19 **the night before?**
 20 A: Correct.
 21 **Q: And then, who's the doctor that was treating**
 22 **Charles Cox from 2 a.m. to 7 a.m.?**
 23 A: There was a Dr. Heard on-call. She was the night
 24 doctor who was 10 p.m. to 7 a.m., is the night shift.
 25 **Q: And how does your shift work? How many of these 7**

31

1 **a.m. to 7 p.m. shifts do you work in a week?**
 2 A: It's seven days on and then seven days off. So,
 3 you work seven days on the same shift.
 4 **Q: Okay. So, for seven days in a row, you're going**
 5 **to work 7 a.m. to 7 p.m.?**
 6 A: Correct.
 7 **Q: Do you know what day in that seven days on, that**
 8 **that shift was on February 26th of 2013?**
 9 A: I don't. If I knew -- is there a specific day
 10 listed? I worked Tuesday through Monday.
 11 **Q: Okay.**
 12 A: It's always the same seven days, so--
 13 **Q: I'll just tell you for the record, it was a**
 14 **Tuesday.**
 15 A: So, that was my first day of my shift.
 16 **Q: And so, you go Tuesday to Tuesday?**
 17 A: Tuesday morning through Monday evening, 7 p.m.
 18 **Q: Okay.**
 19 A: Hmm-hmm.
 20 **Q: And is that still the case--**
 21 A: Correct.
 22 **Q: --that you still work from Tuesday, seven days on,**
 23 **until Monday?**
 24 A: Yes. I'm actually still on right now.
 25 **Q: And how about Dr. Patel, do you know what his**

32

1 **shift was? Did he always work that swing shift?**
 2 A: He was on the Swing 2 shift and I believe he was
 3 on his -- that would have made it his last shift of the week.
 4 **Q: Do you ever personally talk with Dr. Patel**
 5 **regarding patients?**
 6 A: Do I?
 7 **Q: Yes.**
 8 A: I have. He's not working anymore, so I don't
 9 anymore.
 10 **Q: I understand that. When he was working at Renown**
 11 **Medical Group, you would have physical conversations with him**
 12 **regarding patients?**
 13 A: Once in a while, depending on the patient.
 14 **Q: When did Dr. Patel leave Renown Medical Group?**
 15 A: I don't know that. I want to say, it was about, I
 16 think it was within the last year. I don't know specifically.
 17 **Q: How would a patient or another doctor get in touch**
 18 **with you as a hospitalist that was caring for one of their**
 19 **patients?**
 20 A: The hospitalists speak by phone or text message or
 21 cell phones. A patient usually gets - asks the nurse to get in
 22 touch with us, if that's necessary, and the nurse can page us or
 23 call us directly, if they have our number. We also have our
 24 answering service.
 25 **Q: When you say, "If they have the number," what**

33

1 number would they call to get a hold of Dr. Kindig, once they
 2 leave Renown?
 3 A: The patient?
 4 Q: Yes.
 5 A: 982-7878. And that's our answering service.
 6 Q: And is that the number for Renown Medical Group?
 7 A: It's for the hospital. It really -- a lot of the
 8 same numbers filter into the hospital operator.
 9 Q: And so, you'd get the hospital operator if you
 10 called this 982-7878 number?
 11 A: Correct.
 12 Q: Did you ever evaluate Mr. Cox prior to discharging
 13 him on February 26th of 2013?
 14 A: I did.
 15 Q: And I'm not talking about through records. I'm
 16 talking about, did you physically --
 17 A: Physically, yes.
 18 Q: You gave Mr. Cox a physical examination?
 19 A: I did.
 20 Q: And that was at 3 p.m., on the 26th?
 21 A: Vaguely, approximately 3 p.m.
 22 Q: Did anyone instruct you to discharge Mr. Cox?
 23 A: No.
 24 Q: It was your decision to discharge Mr. Cox?
 25 A: It was.

34

1 Q: I want to go over your discharge summary with you,
 2 if we could.
 3 A: Okay.
 4 Q: It's Bates stamped REN, there are some zeroes,
 5 then a "7". Is this your discharge summary, Dr. Kindig? I
 6 believe it goes from--
 7 A: Yes.
 8 Q: --REN, it starts about middle of REN-007, about
 9 the middle of a page, all the way to the top of REN-009?
 10 A: Yes.
 11 Q: And you electronically signed that discharge
 12 summary?
 13 A: I did.
 14 Q: Okay. Did you make any actual written notations
 15 in any kind of chart or any kind of --
 16 A: Everything is on the electronic medical record
 17 now, so no, I did not.
 18 Q: Looking at this discharge summary, you discharged
 19 Mr. Cox at 3:28 p.m. or 15:28 p.m.?
 20 A: I see 15:38 is when I dictated this.
 21 Q: Okay. And when you dictated that, would you have
 22 already--
 23 A: That was after--
 24 Q: After you met with Mr. Cox?
 25 A: Correct, hmm-hmm.

35

1 Q: And what was your discharge diagnosis?
 2 A: He had had chest pain, whole body pain, likely a
 3 viral syndrome, with normal myocardial perfusion scan.
 4 Q: You told me a moment ago that Mr. Cox did not have
 5 chest pain.
 6 A: That's correct. So, my discharge diagnosis is
 7 usually what they came in for, so that's more why he was
 8 admitted.
 9 Q: So, it's your testimony that you did not find any
 10 chest pain in Mr. Cox?
 11 A: Correct.
 12 Q: You found whole body pain?
 13 A: Whole body pain, aching, muscle aching.
 14 Q: Did the pain start at any point and end at any
 15 point?
 16 A: At the time I saw him, he had generalized, just
 17 really generalized vague whole body pain is what he told me. He
 18 told me he felt like he had the flu when I saw him. Many of the
 19 symptoms that had been described were no longer present when I
 20 examined him.
 21 Q: Okay. All right. Let's be very specific about
 22 what symptoms did he no longer have.
 23 A: He had no sharp stabbing chest pain. He had no
 24 vomiting, which was another significant symptom he had had the
 25 night before, in the morning, that had resolved. He had no

36

1 specific back pain. He had a bit of a headache still. He
 2 really just said he just felt -- he just didn't feel well, but
 3 there was nothing specific at that point that he was complaining
 4 of.
 5 Q: Did you review any prior records on Mr. Cox when
 6 you saw him about 3 p.m.--
 7 A: Yes.
 8 Q: --on the 26th? And did--
 9 A: I reviewed the medical record.
 10 Q: Did you review the ambulance records?
 11 A: I reviewed the -- there is an ER notes about what
 12 had happened in the ambulance.
 13 Q: So, I just want to get a list of the things that
 14 you reviewed prior to going in and seeing Mr. Cox.
 15 A: So, I reviewed everything that had happened from
 16 the time he got to the ER to the time I was seeing him. Which
 17 means, I looked at the labs and imaging done, I looked at all
 18 the notes, including all the nursing notes, all of the ER
 19 providers' notes, Dr. Patel's History and Physical and then, all
 20 of the notes from that point as well up to the time that I saw
 21 him. I also spoke to the nurse on the unit.
 22 Q: And what's the name of that nurse you spoke with?
 23 A: I believe it was Kristina. I don't know her last
 24 name off the top of my head.
 25 Q: Do you remember what information you got from the

1 nurse, [Kristina], from speaking to her?
 2 A: He had had some vomiting early. He had mostly
 3 been sleeping after his stress test. He had some vomiting after
 4 his stress test, then he had mostly been sleeping. The studies
 5 came back negative and he was -- she did not mention any
 6 significant specific pain that he had.
 7 Q: Did Mr. Cox mention some specific pain that he had
 8 on arrival?
 9 A: He had said that, I think he was sitting in his
 10 computer, and he had had some headache and chest pain, went into
 11 his left arm. That's what I recall him telling me. From the
 12 note, it was almost like that, said that he had had a headache,
 13 moved into the middle to the left of his chest, going down his
 14 left arm.
 15 Q: And did he describe -- did you ask him what that
 16 pain was like when he first experienced it?
 17 A: I can't remember if I asked him specifically. I
 18 knew from reading the chart.
 19 Q: Hmm-hmm.
 20 A: So, I don't know if I asked him specifically. I
 21 already knew, so I don't know if I had more knowledge from his
 22 history or the chart's history.
 23 Q: So, you were aware that the chest pain was a
 24 sharp, stabbing pain, it was abrupt onset?
 25 A: Yes.

1 Q: You're aware that there was no precipitating
 2 events to that chest pain?
 3 A: Yes.
 4 Q: Did Mr. Cox have an elevation in temperature?
 5 A: No.
 6 MR. GATES: At the time she saw him?
 7 A: I'm sorry? At the time I saw him?
 8 MR. GATES: It's vague as to time.
 9 Q: Well, did he ever have elevation in temperature
 10 that you're aware of?
 11 A: He never had a fever, is that what you mean,
 12 specifically, a fever?
 13 Q: Yes, right.
 14 A: He did not have a fever.
 15 Q: Okay. Were his flu labs ever positive?
 16 A: No.
 17 Q: So--
 18 A: Well, his influenza was negative. So, there is
 19 one specific test for influenza.
 20 Q: And that was negative?
 21 A: Yes.
 22 Q: Let's go through your note here. And did you
 23 specifically discuss with Mr. Cox about the type of pain, the
 24 chest pain that he was feeling at the time that he had called
 25 the ambulance?

1 A: As far as I know, he said, "I had a" -- I think he
 2 just told me he had chest pain that started when he was sitting
 3 at the computer.
 4 Q: And did you explore any further with him about the
 5 type of chest pain and how bad the chest pain was?
 6 A: I already had that information from the chart. He
 7 didn't have any chest pain when I was speaking with him. I
 8 would have had him characterize it further had he still been
 9 having chest pain.
 10 Q: Had he been given any kind of medication for his
 11 pain?
 12 A: He had gotten a dose of -- I think he had a dose
 13 of morphine in the ambulance and that's when he started
 14 vomiting. He had a dose of, a very low dose of Dilaudid in the
 15 ER, twice, I believe. I think his last was 11 a.m., that -- so,
 16 four hours, four and a half hours before I saw him.
 17 Q: It says in your discharge, "I do not have any
 18 previous labs to go off." Are you--
 19 A: That's regarding his creatinine.
 20 Q: And are you talking specifically about labs prior
 21 to the admission?
 22 A: Yes, his creatinine--
 23 Q: Okay.
 24 A: --specifically.
 25 Q: So, you reviewed the labs that were at Renown at

1 the time of your discharge of Mr. Cox?
 2 A: Yes.
 3 Q: Did Mr. Cox receive any morphine while he was at
 4 Renown?
 5 A: Well, at Renown, I'm not sure. He got Dilaudid
 6 while he was at Renown. He got morphine in the ambulance, from
 7 looking through the notes. And as I stated, he had, I believe,
 8 two doses of .5 milligrams of Dilaudid at Renown.
 9 Q: Dilaudid is for pain?
 10 A: Dilaudid is for pain.
 11 Q: Did you approve or recommend any pain medication
 12 from the time you were on your shift at 7 a.m. until the time of
 13 Mr. Cox's discharge?
 14 A: The order was written as an as-needed order
 15 previously, so I didn't order any specific medication. It was,
 16 I want to -- I think the Dilaudid order was .5 milligrams every
 17 four hours as needed, for pain.
 18 Q: Let's talk about your physical examination of Mr.
 19 Cox. What did you do?
 20 A: I spoke with him, asked him how he was feeling at
 21 that time, listened to his heart, looked at his vital signs,
 22 listened to his lungs.
 23 Q: So, you took the vital signs of Mr. Cox?
 24 A: The vital signs had been taken and I looked at
 25 those and he also was on the monitor.

41

1 **Q: When was the last time, prior to discharge, that**
 2 **the vital signs had been taken?**
 3 A: I don't know that off the top of my head.
 4 **Q: You go ahead--**
 5 A: They're usually taken like--
 6 **Q: Go ahead and take a look at the--**
 7 A: Okay.
 8 **Q: --chart.**
 9 A: Sorry this may take a minute. I don't know if
 10 it's physically in here. I know that on the telemetry monitor.
 11 We have vital signs there. We have his oxygen saturation.
 12 blood pressure, his last heart rate. None of that was abnormal.
 13 **Q: Doctor, take a look between 55 and 65 Bates**
 14 **stamps.**
 15 A: There's some missing, there are none. So, the
 16 last I see here is 1 o'clock. I don't know if they documented
 17 right before he left.
 18 **Q: The last vital signs listed in the chart are 1**
 19 **o'clock?**
 20 A: Well, let's see, 1:52. So, 2, approximately, 2
 21 o'clock.
 22 **Q: What page are you on?**
 23 A: I'm on 56. 13:52, it looks like.
 24 **Q: And at 13:52, what did they do?**
 25 A: What did who do?

42

1 **Q: What vital signs were taken?**
 2 A: Temperature, blood pressure, heart rate and
 3 respirations.
 4 **Q: I'm sorry.**
 5 A: I'm sorry. Right here. And so, 1:52.
 6 **Q: And so, it's listed at 1 o'clock up there, but**
 7 **then, next to it is 13:52?**
 8 A: I think that's probably the headings and then it's
 9 physically put when exactly it was taken.
 10 **Q: Okay. So, 1:52 p.m. was the last vital signs that**
 11 **you're aware of on Charles Cox?**
 12 A: That are in the chart.
 13 **Q: And what does that mean?**
 14 A: I can't tell you what they said on his monitor
 15 when I saw him, but they did not -- they were not abnormal to
 16 worry me.
 17 **Q: You documented that "I think he simply has a viral**
 18 **syndrome."**
 19 A: Yes.
 20 **Q: That's correct?**
 21 A: Yes, that's correct.
 22 **Q: Did you do a differential diagnosis?**
 23 A: I think there had been a differential diagnosis,
 24 so those -- the testing had been ordered.
 25 **Q: Are you saying that Dr. Patel--**

43

1 A: So--
 2 **Q: --did a differential diagnosis?**
 3 A: I think he would have to order the testing he did.
 4 At the time I saw him, my differential was there were much less
 5 symptoms there. With his generalized body pain, that's the
 6 reason I ordered the CPK, was to rule out rhabdomyolysis causing
 7 his pain. I also had influenza, as it was influenza season. I
 8 ruled out influenza with a test. Already, myocardial infarction
 9 had been ruled out with negative blood test Troponin as well as
 10 heart failure. Although that was not in the differential at the
 11 time because he wasn't exhibiting any symptoms of heart failure,
 12 but stress, the cardiac stress test gives information on that as
 13 well.
 14 **Q: So, what was your differential diagnosis?**
 15 A: At the time I saw him, rhabdomyolysis, influenza
 16 and viral syndrome that just made him feel achy.
 17 **Q: What is rhabdomyolysis?**
 18 A: It's a syndrome where you get severe muscle
 19 breakdown. It can lead to kidney failure.
 20 **Q: And did you rule--**
 21 A: And that's usually associated with body aches.
 22 **Q: Anything else on your differential diagnosis**
 23 **besides rhabdomyolysis and influenza?**
 24 A: Gastroenteritis was also in there because he had
 25 nausea and vomiting.

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1 **Q: Anything else on your differential?**
 2 A: Intolerance to morphine because he had nausea and
 3 vomiting.
 4 **Q: Anything else on your differential diagnosis?**
 5 A: Acute versus chronic renal failure because of his
 6 creatinine elevation.
 7 **Q: Anything else on your differential diagnosis?**
 8 A: I think that's all his presentation when I saw
 9 him.
 10 **Q: Do you agree with me that a doctor should test for**
 11 **what they can rather than guess at what the diagnosis is?**
 12 MR. GATES: It's argumentative, but go ahead.
 13 And it's--
 14 A: I would agree with that.
 15 MR. GATES: Let me get my objection. Sorry,
 16 Doctor.
 17 A: Oh, sorry.
 18 MR. GATES: Incomplete hypothetical. Go ahead.
 19 **Q: I think you answered the question. You said,**
 20 **"Yes, a doctor should test rather than guess the diagnosis"?**
 21 A: Yes.
 22 **Q: Did you ever consider that Mr. Cox was having an**
 23 **aortic dissection?**
 24 A: No.
 25 **Q: Why not?**

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1 A: He didn't have the symptoms when I saw him.
 2 Q: Did he ever have the symptoms?
 3 A: He could have had symptoms. Chest pain is a
 4 symptom. Continued chest pain is a symptom of aortic
 5 dissection. He did not have chest pain when I saw him. Go
 6 ahead.
 7 Q: Do you agree that a doctor who is diagnosing a
 8 patient's symptoms has a duty to rule out the most dangerous
 9 treatable potential diseases first?
 10 MR. GATES: Same objections. Go ahead, ma'am.
 11 A: Yes.
 12 Q: When you evaluate someone for chest pain, do you
 13 look at the worst first?
 14 MR. GATES: That's incomplete hypothetical, but
 15 go ahead, if you can, ma'am.
 16 A: It depends on the presentation.
 17 Q: So, sometimes, you don't look at the worst things
 18 that could be happening first?
 19 A: You always think of the worst thing that could be
 20 happening first.
 21 Q: Do you look at the life-threatening conditions or
 22 the worst things that could be happening to the patient first?
 23 A: If possible, yes.
 24 Q: What are the worst things that could be happening
 25 with a severe chest pain?

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1 MR. GATES: Incomplete hypothetical, speculation,
 2 foundation. Go ahead, ma'am.
 3 A: It depends on the chest pain and he did not have
 4 chest pain when I saw him, so it was not relevant with his case.
 5 Q: Did you ever determine why Mr. Cox had the severe
 6 chest pain that was abrupt in onset?
 7 A: No. There are many reasons you can have chest
 8 pain, including esophageal reflux, pancreatitis, his lipase had
 9 been mildly elevated, gas, gall bladder issues, heart attack,
 10 pulmonary embolus, of course, aortic dissection, but he did not
 11 have chest pain when I saw him.
 12 Q: And you made no type of testing to determine why
 13 he had the chest pain that he had?
 14 A: Yes, there were tests done.
 15 Q: Okay. Did you do any kind of testing to see if he
 16 had a pulmonary embolism?
 17 A: He didn't have symptoms of pulmonary embolism.
 18 Q: Did you ever do any testing to see if he had
 19 pneumonitis or pneumonia?
 20 A: He had a chest x-ray, which was in here.
 21 Q: Did you ever do any kind of aortic imaging?
 22 A: Not specifically of the aorta. I did not feel it
 23 was warranted with the symptoms.
 24 Q: You mentioned in your discharge summary that he is
 25 not feeling terribly well, but does not look toxic in any way,

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1 and with his negative studies, he's able to go home. What did
 2 you mean by "not feeling terribly well."
 3 A: That's when he told me, "I just feel like I have
 4 the flu." Not influenza, just the flu, which in layman's
 5 patient terms, flu-like symptoms, body aches, just don't feel
 6 well. I did not diagnose him with the flu because he told me
 7 that, but that's how he described how he felt. "Not looking
 8 toxic in any way" means that his vital signs were stable. He
 9 was not cold and clammy. His skin was warm and dry. He was not
 10 hypotensive. He was not febrile. He did not look toxic.
 11 That's what I meant.
 12 Q: Your testimony is that Mr. Cox was not hypotensive
 13 in any way?
 14 A: Hypotensive?
 15 Q: Yes.
 16 A: Yes.
 17 Q: You--
 18 A: By "hypotensive," I mean, toxic, meaning, very low
 19 blood pressure, but very low systolic blood pressure.
 20 Q: Did you see the prior blood pressure examination
 21 at 8 a.m. that's on REN-60?
 22 A: It's -- sorry. Is this the one? Which one is
 23 that?
 24 Q: At 8 a.m., at --
 25 A: 94/58.

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1 Q: 94/58.
 2 A: Hmm-hmm.
 3 Q: Is that hypotensive?
 4 A: Not to where I would be worried.
 5 Q: Okay.
 6 A: It's above 90 systolic.
 7 Q: Okay.
 8 A: He had been running on the lower end, but nothing--
 9 Q: Did Mr. Cox have a discrepancy between his left
 10 arm and right arm in the systolic blood pressure?
 11 A: I don't believe that was taken.
 12 Q: At that same page, at 8 a.m., the right upper arm,
 13 the blood pressure and then, right next to it, at 13:52 is the
 14 left upper arm.
 15 A: That was not taken at the same time.
 16 Q: Hmm-hmm.
 17 A: So, I can't make any determination there.
 18 Q: Okay. Did you take the blood pressure of the
 19 different arms at the same time?
 20 A: No, I didn't.
 21 Q: Why didn't you request that?
 22 A: Because he wasn't giving me any symptoms that
 23 would make me test that.
 24 Q: Would it be difficult to test the blood pressure
 25 in each of his arms?

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1 A: No.

2 Q: Did you notice that the systolic blood pressure

3 was more than 20 points difference between his right arm and his

4 left arm?

5 A: It was at different times of the day.

6 Q: Okay.

7 A: And it was five hours apart.

8 Q: Okay. If the systolic blood pressure is

9 different, in the different two upper extremities by more than

10 20 points, isn't that high-risk indicator for aortic dissection?

11 A: If it's taken at the same time, that would be more

12 applicable. I can't speak to that though. It's five hours

13 apart.

14 Q: But you didn't request that blood pressure be

15 taken at the same time in the different upper extremities?

16 MR. GATES: Asked and answered, argumentative.

17 One more time.

18 A: I did not feel it was warranted.

19 Q: Okay. Mr. Cox's father died from an aortic

20 dissection?

21 A: At 88, yes.

22 Q: Yeah. And you knew that?

23 A: Hmm-hmm.

24 Q: Isn't a family history of aortic dissection a

25 high-risk indicator for aortic dissection?

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1 A: He was 88 when it happened--

2 Q: Not my question. My question was, is a family

3 history of aortic dissection a high-risk indicator for aortic

4 dissection in the patient?

5 MR. GATES: Well, I don't think she was done, but

6 go ahead and finish, Dr. Kindig.

7 A: Depending on the presentation. That's not just a

8 blanket statement.

9 Q: So, the family history of aortic dissection isn't

10 a high-risk indicator to you?

11 A: No, that's not what I said. It's just when the

12 family member is 88, when things happen much later in life, they

13 tend to be less of an indicator.

14 Q: And so, in your mind, it was less of an indicator

15 because of the patient's age?

16 A: In my mind, it didn't make a difference because

17 the patient didn't have the symptoms of an aortic dissection

18 when I saw him.

19 Q: Where did you learn that the family history of

20 aortic diseases is not a high-risk indicator because of the age

21 of the relative?

22 A: I don't know.

23 Q: You can't point me to any article, treatise or

24 publication that would indicate such information?

25 A: No.

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1 Q: Did Mr. Cox have an abrupt onset of severe chest

2 pain?

3 A: Per the history, yes.

4 Q: Hmm-hmm. And was this chest pain stabbing in

5 nature?

6 A: Transiently, yes.

7 Q: Well, he had that type of pain for 30 minutes,

8 correct?

9 A: Thirty minutes. It was not sustained.

10 Q: And he continued to have pain until he was

11 provided pain medication, correct?

12 A: He got a couple of doses of pain medication.

13 Q: Isn't this type of chest pain that's abrupt in

14 onset, severe in intensity and stabbing in quality, isn't that a

15 high-risk indicator for aortic dissection?

16 MR. GATES: Incomplete hypothetical, lacks

17 foundation, calls for speculation. Go ahead.

18 A: Yes.

19 Q: If someone is at high-risk for aortic dissection,

20 what's the proper treatment course?

21 MR. GATES: The same objection. Go ahead if you

22 can answer.

23 A: If he had presented high-risk when I saw him, if

24 he had still been having chest pain, stabbing in nature and if

25 he had back pain, stabbing in nature, if he had other things

52

1 like that ongoing, then I would have done more imaging studies.

2 Q: What type of imaging studies would you have

3 ordered if Mr. Cox was a high-risk for aortic dissection?

4 A: Likely an aortogram or CT of the aorta.

5 Q: Was the CT, was that available to Mr. Cox or to

6 you had you ordered it at Renown?

7 A: Yes.

8 Q: Another appropriate aortic imaging is also MR

9 scan?

10 A: Hmm-hmm, yes.

11 Q: And a TEE is also another appropriate imaging of

12 the aorta if the patient is high-risk for aortic dissection?

13 A: Correct.

14 Q: Are both the MR scan and the TEE available at

15 Renown as well?

16 A: Yes.

17 Q: But that would have been the CT, the MR scan or

18 the TEE, would had to have been ordered by you as his doctor,

19 correct?

20 MR. GATES: Well, it's vague as to time and

21 scope, but if you understand the question--

22 A: At the time I saw him, yes, that would have had to

23 have been ordered by me.

24 Q: Okay. And so, specifically, before, at

25 approximately 3 p.m. on February 26th, you discharged Mr. Cox

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1 instead of ordering any type of an aortic imaging?
 2 A: Correct.
 3 Q: Another appropriate thing to do if someone is at
 4 high risk for aortic dissection would be to refer the patient
 5 for immediate surgical consultation, correct?
 6 A: For a patient with an aortic dissection showing
 7 signs and symptoms.
 8 Q: And was someone available to treat Mr. Cox
 9 approximately 3 p.m. on February 26th? Have you made you that
 10 referral?
 11 A: Yes.
 12 Q: Did you ever consider with all the paperwork in
 13 front of you with your examination with all the information that
 14 you had before you, did you ever consider an aortic dissection?
 15 A: Not when I saw him.
 16 Q: The profusion scan that was done on Mr. Cox, what
 17 effect would that have on aortic dissection?
 18 A: I don't know that specifically.
 19 Q: It wouldn't help you diagnose an aortic
 20 dissection, would it?
 21 A: If the aortic dissection was causing heart failure
 22 or affecting the wall motion, then it would help but that's not
 23 why it was ordered. I was ordered to rule out acute coronary
 24 syndrome.
 25 Q: Did you have a supervisor that was working on

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1 February 26th of 2013?
 2 A: We have our medical director which I'm one of the
 3 assistant medical director so I probably was the supervisor of
 4 that day.
 5 Q: So you were the supervisor for Renown Medical
 6 Group that day on February 26th --
 7 A: I don't know. We switch back and forth. We have
 8 two assistant medical directors.
 9 Q: And who was the other assistant medical director?
 10 A: Dr. Schmidhuber.
 11 Q: Is there a medical director on top of the two
 12 assistant medical directors?
 13 A: Dr. Herbert.
 14 Q: Is there any other medical directors in your
 15 group?
 16 A: David Brock, Dr. Brock.
 17 Q: Was David Brock working on February 26th?
 18 A: No.
 19 Q: Did you consult with any doctors with regards to
 20 Charles Cox on February 26th of 2013?
 21 A: No.
 22 Q: Did you talk with any nurses other [Kristina] with
 23 regard to Charles Cox?
 24 A: No. Kristina was his nurse that day.
 25 Q: Do you remember anything else other than what

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1 you've already talked to me about what you talked to Christina
 2 about on February 26th?
 3 A: No.
 4 Q: When did you start reviewing any information with
 5 regard to Mr. Cox on February 26th? For instance, you got on
 6 shift at 7 a.m., when was the first time you reviewed anything
 7 having to do with Charles Cox?
 8 A: Probably 7 a.m. or 7:30 when I put him onto my
 9 patient list. I saw what was ordered, I saw a myocardial
 10 profusion scans are done in the early late morning.
 11 Q: Let me go to your discharge instructions and
 12 that's REN-29 in front of you. Are these your discharge
 13 instructions here?
 14 A: Yes.
 15 Q: Did you inform Mr. Cox of these discharge
 16 instructions or did the nurse?
 17 A: Both. I can't -- Actually, I wasn't in there when
 18 the nurse told him so I can't say for sure that she did. I did
 19 and I put this order in for her to tell him as well.
 20 Q: Okay. So, you told him that it was likely a
 21 virus.
 22 A: Yes.
 23 Q: Okay. And you told him to continue on his home
 24 meds and follow up with Dr. Sutherland this week or next week?
 25 A: Correct.

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1 Q: When you say, "Get labs drawn, February 28th: CBC,
 2 BMP."
 3 A: Yes. That was two days later. I wanted him to
 4 get to repeat his CBC, to check his white blood cell count
 5 because it was mildly elevated and to check the BMP to check his
 6 creatinine because that was also mildly elevated. I didn't know
 7 if he had chronic kidney disease or not, so I wanted to trend
 8 his labs to make sure nothing changed in that two days. I told
 9 him to drink plenty of water. I offered him another liter of IV
 10 fluid but he declined saying he wanted to go home.
 11 Q: He said he would drink water at home, correct?
 12 A: Hmm-hmm.
 13 Q: Was that acceptable to you for him to drink water
 14 at home?
 15 A: I said drink plenty of water. The best would be
 16 IV fluid but he did not want to stay for that.
 17 Q: Was it acceptable to you for him to drink water at
 18 home as opposed to having IV?
 19 A: It was not ideal but it was acceptable.
 20 Q: You gave him the option to do one of the other,
 21 correct?
 22 A: I gave him the option to stay and have another
 23 liter of fluid, and he said no, I'll just drink water at home.
 24 I said make sure you drink plenty of water, get your labs
 25 rechecked on the 28th.

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1 Q: Okay. The CBC and the BMP that you ordered was
2 not to help diagnose any kind of aortic dissection, was it?
3 A: No. He was not looking suspicious for aortic
4 dissection.
5 Q: And CBC and BMP would not assist in any way in
6 diagnosing an aortic dissection, would it?
7 A: If you have a decompensating aortic dissection,
8 his white count might be a little higher. If he's bleeding into
9 the aorta, his hemoglobin might be lower. If it went into the
10 renal arteries or in that system, his renal failure may have
11 been much worse, but that's not why I ordered those. I ordered
12 them for the reasons I stated.
13 Q: Were you working on February 28th of 2013?
14 A: Yes.
15 Q: If somebody called the general Renown number to
16 try to get a hold of you, would they be able to get connected to
17 you?
18 A: Yes.
19 Q: Are you familiar with LabCorp?
20 A: I don't know what LabCorp is.
21 Q: Okay. Did you ever get a call on February 28th
22 from LabCorp regarding Charles Cox?
23 A: No.
24 Q: You said, "Return to ER if symptoms worsen, fever
25 and change in urination."

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1 A: Yes.
2 Q: Okay. Did you explain to Mr. Cox what you meant
3 by these things?
4 A: I said if you feel any worse -- I can't remember
5 specific words I said but if you feel any worse, if your pain
6 gets worse, if you spike a fever, if any urinary changes, come
7 back.
8 Q: Do you remember anything else you told Mr. Cox
9 upon discharge?
10 A: Other than what I've already said, drink plenty of
11 fluids, limit caffeine because he had been very anxious, I said
12 you make sure you follow up with Dr. Sutherland either this week
13 or next week, make sure you get your labs checked.
14 Q: And is that it?
15 A: As far as I remember, yes.
16 Q: Okay. Do you know what happened to Charles Cox
17 after he left Renown?
18 A: Now, I do, yes.
19 Q: Okay. When did you first learn what happened to
20 Charles Cox after he left Renown?
21 A: When I got the complaint in the email.
22 Q: You never knew prior to the complaint that Charles
23 Cox had an aortic dissection?
24 A: I did not.
25 Q: Did you review to see how much his aorta had

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1 dissected?
2 A: I didn't have access to that. All I had was the
3 complaint I was given with the affidavit.
4 Q: Okay. Have you talked to any of the doctors with
5 what's happened in this case, any of the doctors at Carson Tahoe
6 Hospital, any of the doctors at Renown?
7 A: No. the only thing I talked to Dr. Patel about was
8 that was, I think, using you as our lawyer.
9 Q: Okay. You never talked to Dr. Patel with regard
10 to the substance of the treatment?
11 A: No.
12 Q: You didn't talk to Dr. Patel regarding what his
13 thoughts on the treatment were?
14 A: No.
15 Q: Did you ever talk to Dr. Patel about aortic
16 dissection in Charles Cox?
17 A: No.
18 Q: Do you know whether Dr. Patel ever considered
19 aortic dissection?
20 A: I don't know.
21 Q: In other words, aortic dissection do not appear in
22 Dr. Patel's record, is that true?
23 A: That's my assumption. He didn't.
24 Q: Because he did not write those words?
25 A: Right. It was not on his sign out, anything about

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1 aortic dissection.
2 Q: Had Dr. Patel put anything like aortic dissection
3 or considering aortic dissection, would that have changed your
4 treatment?
5 MR. GATES: Incomplete hypothetical, calls for
6 speculation, foundation. If you can answer, go ahead.
7 A: I think that's too hypothetical for me to answer.
8 Q: Okay. So, if a prior doctor to you suggested
9 diagnosis, would you follow up on that suggestion?
10 MR. GATES: Same objection. Go ahead.
11 A: If he had said I think he has an aortic
12 dissection, he would have checked a test, and I would have
13 followed up on that test.
14 Q: Okay. And you didn't see any test that Dr. Patel
15 was doing with regard to aortic dissection?
16 A: Correct.
17 Q: Okay. Do you know the experts that have been
18 hired by your lawyer to testify on your behalf?
19 A: I don't think so. I don't know their names so I
20 don't know.
21 Q: Hmm-hmm. You've never done any kind of review of
22 the experts or looked them up or talked to them, is that
23 correct?
24 A: Correct.
25 Q: Have you ever diagnosed an aortic dissection

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1 before?

2 A: I think I have. Why I'm stalling is I'm not sure

3 if I've specifically diagnosed one. I've taken care of them,

4 and there's a lot of handoffs and taking over the patient when

5 their in the ICU and things like that. So, I have cared for

6 them. I don't know if I have been the one to start the whole

7 process. I can't remember specifically over the years.

8 Q: You can't recall any specific patient that you've

9 diagnosed somebody with an aortic dissection?

10 A: No.

11 Q: And the people that you treated regarding aortic

12 dissection, you've done the postoperative care, is that correct?

13 A: Preoperative and postoperative.

14 Q: Okay. And so, you've seen what the patients go

15 through postoperatively from aortic dissection?

16 A: Yes. What specifically do you mean?

17 Q: I'm just asking the question.

18 MR. GATES: Vague and ambiguous.

19 A: I've cared before and after repairs.

20 Q: Okay. And did you review any of Mr. Cox's records

21 with regard to his repair of aortic dissection?

22 A: No.

23 Q: Did you know how you would diagnose and aortic

24 dissection when Mr. Cox was your patient?

25 A: Yes.

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1 Q: And you don't recall ever ordering any kind of

2 aortic imaging on any kind of patient of yours?

3 A: I have ordered aortograms on people, CT of the

4 aorta, yes.

5 Q: Okay. Was that to rule out an aortic dissection?

6 A: Yes.

7 Q: When you've ordered the aortic CT scans, what were

8 the signs and the symptoms that would cause you to order that

9 aortic imaging?

10 MR. GATES: Incomplete hypothetical. Go ahead.

11 A: Yeah, it's -- I don't remember specific patient

12 encounters but it would have been tearing, chest pain radiating

13 to the back that did not go away, a lot of times they're

14 unstable going to the ICU when I see them, hypotensive, systolic

15 blood pressure is 70s to 80s, cold and clammy. Depending on

16 where the dissection is, the pain is different. Sometimes

17 they'll have signs of myocardial infarction, myolab

18 abnormalities. A lot of times it's people who have been

19 hypertensive and then become opposite, hypotensive, wide

20 differences, sometimes kidney failure, sometimes where the

21 dissection is, sometimes heart failure, pericardial tamponade,

22 things like that.

23 Q: Are you aware of what a false lumen is?

24 A: I am.

25 Q: What is your understanding of what a false lumen

63

1 is?

2 A: That the dissection has a tear and it can bleed

3 into that, into the wall from that tear, so you create a second

4 lumen in the wall. Usually, if that happens, if it's

5 significant, it will show up as a white in the mediastinum on

6 the chest x-ray.

7 Q: So, sometimes it shows up on the chest x-ray?

8 A: Sometimes if it's white into the mediastinum or if

9 there is significant heart failure associated you'll see a white

10 fluid in the lungs, maybe a very enlarged heart or something

11 like that.

12 Q: You'd agree that you don't have to have a wide

13 mediastinum or --

14 A: Oh, I agree with that.

15 Q: --or a heart failure to have a false lumen?

16 A: Correct.

17 Q: Okay. Have you ever reviewed American Heart

18 Association's guidelines for diagnosis and management of aortic

19 dissection?

20 A: I'm sure I have in residency and probably medical

21 school.

22 Q: And what year did you get out of residency?

23 A: 2009.

24 Q: When was the last time you had a refresher course

25 on aortic dissection?

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1 MR. GATES: Vague and ambiguous. Go ahead.

2 A: I never had a refresher course.

3 Q: Have you had any kind of schooling or any kind of

4 courses that you went over the aortic dissection and the

5 diagnosis, symptoms and treatment since residency?

6 A: Since residency, when I was having digest which I

7 was into preparation for your boards in five years or four

8 years, so that just in the course of a number of years, I'll

9 listen to that in my car but no specific course that I've taken.

10 Q: Okay. While Mr. Cox was under your care, did Mr.

11 Cox have an atrial flutter?

12 A: He did not.

13 Q: Okay. Did he have hypotension?

14 A: Not significant, nothing below 90.

15 Q: Did he have pericardial effusion while he was

16 treated by you?

17 A: I can't say for sure but he showed no signs of a

18 pericardial effusion or tamponade.

19 Q: That was my next question. Did you ever see a

20 cardiac tamponade on Mr. Cox while under your care and

21 treatment?

22 A: No. His EKG didn't show any significant

23 abnormalities denoting tamponade. He was not struggling for

24 breath. His blood pressure was okay, no palpitations. There

25 was a couple aortic VPDs seen on the EKG but that was, I

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1 believe, in his history but nothing to denote cardiac
 2 compromise, and his perfusion scan, it showed no wall motion
 3 abnormality which is not in the echocardiogram but I think it
 4 would pick up on what's not moving.
 5 **Q: You think it would pick up on what's not moving?**
 6 A: Well, I think if he had severe tamponade, his
 7 ejection fraction from that perfusion scan would have shown
 8 that, and again, I wasn't looking for any. He wasn't showing
 9 any signs of tamponade.
 10 **Q: What about any kind of collapse to head vessels?**
 11 A: Collapse to head vessels?
 12 **Q: Right.**
 13 A: I'm not sure what you mean by that.
 14 MR. GATES: Incomplete hypothetical, --
 15 A: In his head?
 16 MR. GATES: --and vague and ambiguous.
 17 **Q: Yes. That's what I mean, collapse to head**
 18 **vessels.**
 19 MR. GATES: Same objection. Go ahead.
 20 A: Like, such as stroke? I don't know what you mean
 21 by collapse to head vessels.
 22 **Q: When you have a dissection, the vessels that go up**
 23 **to the head can collapse. Did you see any evidence of that?**
 24 A: He didn't show any altered mentation, no weakness
 25 on one side, no stroke-like symptoms that can have the aortic

66

1 dissection.
 2 **Q: Any respiratory distress by Mr. Cox under your**
 3 **treatment?**
 4 A: No.
 5 **Q: Did he have any kind of acute injury to his**
 6 **kidneys?**
 7 A: I can't say for sure. As I put in my discharge
 8 summary, I did not have previous labs to go by. It was my
 9 thought that he may have some acute injury to his kidneys from
 10 all of his vomiting. I don't know if he was dehydrated. Again,
 11 I don't know if he had chronic kidney disease or not.
 12 **Q: Hmm-hmm. Any pleural effusion that you're aware**
 13 **of?**
 14 A: No.
 15 **Q: Did you ever have Mr. Cox get up or walk in front**
 16 **of you at Renown?**
 17 A: I think he was standing when I saw him, but I
 18 can't say for sure. There's always - they had the patient walk
 19 before they discharge him or them, so I'm told, you know, if
 20 there's limitation, that would hinder discharge. I believe he'd
 21 also been up to the bathroom.
 22 **Q: Are you aware -**
 23 A: If there's not a bathroom, right in the room.
 24 I'm sorry.
 25 **Q: It's all right. Just let me know when you're**

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1 done.
 2 A: I'm done.
 3 **Q: Okay. Are you aware of any difficulty walking**
 4 **that Mr. Cox had at Renown?**
 5 A: He didn't mention any of that. I wasn't aware of
 6 any difficulty with walking.
 7 **Q: Okay. Any collapse with lungs that Mr. Cox had at**
 8 **Renown?**
 9 A: No.
 10 **Q: Okay. Have you kept any kind of diary or summary**
 11 **of any other type of events from your review of anything?**
 12 A: No.
 13 **Q: Do you have anything with regard to Mr. Cox that's**
 14 **outside of the medical record?**
 15 A: I'm sorry.
 16 **Q: Do you have anything with regard to Mr. Cox that's**
 17 **outside of the medical record?**
 18 A: Do I have -- no.
 19 **Q: Okay.**
 20 MR. GATES: There is one thing. Let me refresh
 21 her record. She mentioned it -- the email she mentioned with
 22 Dr. Patel.
 23 A: I emailed sign-out but I don't have record of
 24 that. We don't keep our emails.
 25 **Q: So, that's not part of -- the email sign-out is**

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1 **not part of the record.**
 2 A: It's not. It's not.
 3 **Q: So, what does the email sign-out look like?**
 4 A: It's just an Outlook, Microsoft Outlook and we can
 5 type. It's just inbox and just type listing the patients -- the
 6 previous person admitted.
 7 **Q: And you don't have record of that?**
 8 A: I don't.
 9 **Q: Does your Renown Medical Group have a record?**
 10 A: I doubt that. I don't know if they keep emails
 11 from two years back.
 12 **Q: Have you checked to see if they kept a record with**
 13 **the regard to the email sign out.**
 14 MR. GATES: I've asked, Counsel.
 15 MR. OSBORNE: You've asked?
 16 MR. GATES: Yeah. Renown. So, I'm waiting for
 17 an answer.
 18 MR. OSBORNE: Oh, you don't know yet.
 19 MR. GATES: No.
 20 MR. OSBORNE: Okay. Well, I want the opportunity
 21 to question about that as well.
 22 MR. GATES: Sure.
 23 **Q: How many patients were you treating at that time**
 24 **you were treating Mr. Cox?**
 25 A: Right at that time, no other patients. I was just

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1 with him. I don't know how many patients I had that day. Two
 2 years ago, we were running a census of maybe 20 to 25 patients.
 3 Q: So you had roughly 20 to 25 patients a day for
 4 Renown Medical Group that you were caring for?
 5 A: Roughly.
 6 Q: Okay. Did you keep your census records with
 7 regard to the patients that you had on February 26th of 2013?
 8 A: No. I keep my billing sheets for maybe three
 9 months, and then I shred them.
 10 Q: What about Renown Medical Group? Do they keep the
 11 census numbers with regard to the patients that you provided
 12 care to on those given days?
 13 A: I don't know that. It's possible.
 14 Q: And did you do anything to check to see if that
 15 they still have the census numbers?
 16 A: No. I thought of how I would find that out and I
 17 didn't even know who to ask actually.
 18 Q: Are you aware of what the mortality rate is, the
 19 change mortality rate for each hour that aortic dissection goes
 20 undetected?
 21 A: Not specifically.
 22 Q: Do you have any kind of general knowledge about
 23 what happens to the mortality rate for each hour that an aortic
 24 dissection goes undetected?
 25 A: Not specifically.

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1 Q: Do you know how greater risk it is to have an
 2 aortic dissection undetected?
 3 MR. GATES: Incomplete hypothetical, speculation,
 4 foundation. Go ahead.
 5 A: Yes. I imagine it's -- Yes, of course, if it's
 6 undetected.
 7 Q: And what's your understanding of the mortality
 8 rate of undetected aortic dissection?
 9 MR. GATES: Same objection and assumes facts not
 10 in evidence. Go ahead.
 11 A: That it increases. I don't know specifics. I
 12 don't know percentages.
 13 Q: Do you know generally the percentages of an
 14 undetected aortic dissection, percentage of mortality?
 15 A: Not off the top of my head.
 16 MR. GATES: Same objection.
 17 A: Sorry.
 18 Q: Did Mr. Cox have any risk factors that predisposed
 19 him to aortic dissection?
 20 A: I think he was a smoker. I don't think he had had
 21 any -- He had very little medical history.
 22 Q: Hypertension, risk factor for --
 23 A: Significant hypertension, yes, but he was not
 24 hypertensive. He was not on any medication for hypertension.
 25 Q: And would discuss family history as a risk factor?

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1 A: He had a father who died at 88.
 2 Q: And so it's a yes, that's a risk factor?
 3 A: I suppose so, but his father was 88 when it
 4 occurred. So if -- No. That's my answer.
 5 Q: Arterial sclerosis, atherosclerosis, is that a
 6 risk factor?
 7 A: Atherosclerosis, yes.
 8 Q: We talked about chest and back pain with abrupt
 9 onset, that's a risk factor?
 10 A: That's a symptom.
 11 Q: That's also a risk factor for aortic dissection?
 12 A: It's a symptom of aortic dissection.
 13 Q: Looking back on what happened here, can you think
 14 of anything you would have done differently?
 15 MR. GATES: Objection -
 16 Q: --with regard to Mr. Cox and the injuries?
 17 MR. GATES: Let me place an objection. It's an
 18 incomplete hypothetical. It's not calculated to be admissible,
 19 evidence of hindsight. It calls for speculation. It's vague
 20 and ambiguous and lacks foundation, and all of those objections.
 21 Ma'am, go ahead. Feel free to respond.
 22 A: No.
 23 Q: You would not have done anything differently.
 24 MR. GATES: Same objection.
 25 A: I would have not done anything differently.

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1 Q: Okay. Let's take a quick break. I just want to
 2 take a look at the discovery responses that are in front of you.
 3 MR. SANDERSON: We're going off the record at
 4 2:51 p.m. We are back on the record in the matter of Charles
 5 Cox, Shirley Cox versus Hometown Health Management Company dba
 6 Renown Medical Group. The time is 2:58 p.m.
 7 Q: Were you working any other jobs at the time of
 8 your treating Charles Cox in February of 2013?
 9 A: No.
 10 Q: Were you working for any other entities besides
 11 Hometown Health Management Company?
 12 A: No.
 13 Q: Notice in Interrogatory Number 18, it talks about
 14 everything you reviewed with regard to textbook, treatises,
 15 journals, articles, policies, procedures after caring for
 16 Charles Cox, he says, "I don't recall referring to the any of
 17 the above information after my treatment of Charles Cox."
 18 Answer Number 18.
 19 A: I think I misunderstood, I was thinking. It was
 20 just UpToDate so it was not textbook or journal or article but--
 21 Q: Okay. So, you would include UpToDate in that
 22 answer there?
 23 A: Online references, yes.
 24 Q: Okay. Any other online references other than the
 25 one article on UpToDate with regard to the diagnosis and

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1 symptoms of aortic dissection?
 2 A: No. It's not so much an article. It's -- I don't
 3 know what you call it -- a summary retrieval, so no, other than
 4 the UpToDate summary.
 5 Q: Doesn't UpToDate summarize things such as you look
 6 at what aortic dissection provides the reference materials to
 7 support the summary that they provide?
 8 A: Yes.
 9 Q: Okay. Did you do any investigation into the any
 10 of the supporting documents?
 11 A: No, I did not.
 12 Q: And other the summary that was provided by
 13 UpToDate, did you review anything else?
 14 A: No. No.
 15 Q: Are you aware of any kind of investigation into
 16 what happened with Charles Cox?
 17 A: Investigation?
 18 Q: Yes.
 19 A: Other than what's happening right here, I guess,
 20 it's not an investigation
 21 Q: No. No.
 22 A: Clarify. Sorry.
 23 Q: It's okay. What happens when sometimes these
 24 matters happen, they assign someone to go investigate what
 25 happened for say things that cause analysis.

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1 A: Okay.
 2 Q: Was any investigation with regard to Charles Cox
 3 done at Renown Medical Group?
 4 A: No, not that I'm aware of.
 5 Q: Do you recall who was in the room when you came in
 6 the room with Charles Cox on February 26th, 2013?
 7 A: I think it was him and his wife.
 8 Q: Do you remember Charles Cox's wife?
 9 A: Not by face, no.
 10 Q: Did she anything to you, Dr. Kindig?
 11 A: I don't remember.
 12 Q: Can you tell me anything that Shirley Cox did in
 13 the room when you were examining or talking with Charles Cox?
 14 A: No.
 15 Q: Was anyone else in the room besides Shirley Cox
 16 when you were there?
 17 A: Not that I recall.
 18 Q: And did you talk with any other family members
 19 with regard to Charles Cox?
 20 A: Not that I remember.
 21 Q: Did you ever talk with Shirley Cox while you were
 22 in the room with her husband, Charles Cox?
 23 A: I probably did. I probably addressed her along
 24 with Mr. Cox.
 25 Q: Other than formalities, did you talk to her about

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1 anything of substance about her husband?
 2 A: As I was speaking to him, it would have been both
 3 of them.
 4 Q: Okay. So, it's just she would be able to over
 5 hear you what you told --
 6 A: Correct.
 7 Q: --her husband.
 8 A: Correct.
 9 Q: Okay. For instance, you didn't take her aside
 10 over to the side of the room and tell her something, you didn't
 11 tell the husband?
 12 A: No.
 13 Q: So if you addressed him, you addressed them both.
 14 A: Correct.
 15 Q: And you didn't take her outside of the room and
 16 talk with her outside of the room?
 17 A: No, I don't think I did.
 18 Q: Okay. Did you ever talk with Charles Cox other
 19 than in the room for approximately 15 to 20 minutes on February
 20 26th ?
 21 A: No.
 22 Q: Well, I want to continue the deposition for the
 23 reasons previously stated, but we're done for today.
 24 A: Okay. Thank you.
 25 MR. GATES: No questions.

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1 MR. SANDERSON: Going off the record in the
 2 matter of Charles Cox, Shirley Cox versus Hometown Health
 3 Management Company dba Renown Medical Group. The time is 3:04
 4 p.m.
 5 (Deposition adjourned at 3:04 p.m.)
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1 CERTIFICATE OF RECORDER
2 STATE OF NEVADA
3 COUNTY OF WASHOE
4 NAME OF CASE: CHARLES COX, SHIRLEY COX, vs. HOMETOWN HEALTH MANAGEMENT
5 COMPANY dba RENOWN MEDICAL GROUP, RAJAN PATEL, M.D., BRANDI KINDIG, M.D.,
6 DOES I-X inclusive,

7 I, Jason Sanderson, a duly commissioned Notary Public, Washoe
8 County, State of Nevada, do hereby certify: That I recorded the taking of the
9 deposition of the witness, Brandi Kindig M.D., commencing on June 22nd, 2015.

10 That prior to being examined the witness was duly sworn to testify
11 to the truth. That I thereafter transcribed or supervised transcription from
12 Recorded Audio and Visual Record and said deposition is a complete, true and
13 accurate transcription.

14 I further certify that I am not a relative or employee of an
15 attorney or counsel of any of the parties, nor a relative or employee of an
16 attorney or counsel involved in said action, nor a person financially interested
17 in the action.

18 IN WITNESS WHEREOF, I have hereunto set my hand in my office in the
19 County of Washoe, State of Nevada, this July 7th, 2015.

20
21 
22 Jason Sanderson



23 Notary
24
25

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES COX, SHIRLEY COX) Case No.: CV14-00414
Plaintiffs,) Dept. No.: 9
vs.)
HOMETOWN HEALTH MANAGEMENT)
COMPANY dba RENOWN MEDICAL GROUP)
RAJAN PATEL, M.D., BRANDI)
KINDIG, M.D., DOES I-X, inclusive;) Arbitration Exemption;
Defendants.) Medical Malpractice; NAR 3(A)
_____) (action in excess of \$30,000)

RECORDED DEPOSITION OF REGINALD LOW, M.D.

Taken on May 2, 2016

At 5:30 p.m.

4860 Y Street, Suite 2820

Sacramento, CA 95817

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE
3
4

5 CHARLES COX, SHIRLEY COX) Case No.: CV14-00414

6 Plaintiffs,) Dept. No.: 9

7 vs.)

8 HOMETOWN HEALTH MANAGEMENT)

9 COMPANY dba RENOWN MEDICAL GROUP)

10 RAJAN PATEL, M.D., BRANDI)

11 KINDIG, M.D., DOES I-X, inclusive;) Arbitration Exemption;

12 Defendants.) Medical Malpractice; NAR 3(A)

13) (action in excess of \$30,000)
14
15
16
17
18
19

20 RECORDED DEPOSITION OF REGINALD LOW, M.D.

21 Taken on May 2, 2016

22 At 5:30 p.m.

23 4860 Y Street, Suite 2820

24 Sacramento, CA 95817

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1 MR. IVEY: Okay. We are now on the record in the

2 matter of Cox versus Hometown Health Management Company. My

3 name is Mark Ivey. I'm the videographer and officer of the

4 court. I work for e-depositions, LLC, located at 730 Sandhill

5 Road, Suite 105, Reno, Nevada 89521.

6 Today's date is May 2nd, 2016, and the time is

7 5:47 p.m. This deposition is being held at 4860 Y Street, Suite

8 2820, Sacramento, California. This is the recorded deposition

9 of Reginald Low, M.D. Mr. Low, can you please raise your right

10 hand? Do you solemnly swear that the testimony you are about to

11 give will be the truth, the whole truth and nothing but the

12 truth, so help you God?

13 MR. LOW: I do.

14 MR. IVEY: Thank you. Can you please state your

15 name, full -- state your full name with spelling?

16 MR. LOW: Reginald, R-E-G-I-N-A-L-D, Low, L-O-W.

17 MR. IVEY: Thank you. The electronic audio and

18 visual recording of this deposition will be the official record.

19 A transcript certified by the deposition officer will be created

20 from the audio and visual recording of this deposition by e-

21 depositions, LLC. Would all attorneys present please identify

22 themselves, their firm, anybody with them and the party they

23 represent beginning with the party noticing this proceeding?

24 STEPHEN OSBORNE: Yes. Stephen Osborne on behalf

25 of Charles and Shirley Cox.

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2 Witness Direct Redirect

3 Dr. Low 5

4 (BY Mr. Osborne)

5

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7 EXHIBITS

8 Number Description Page

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1 RAYMOND GATES: Ray Gates on behalf of the

2 defendants, with Lauria Tokunaga Gates & Linn.

3 DIRECT EXAMINATION

4 BY: Stephen Osborne

5 Q: Good evening, Dr. Low. We sent you a deposition

6 notice in this case. Are the documents in front of me all the

7 documents that you have may that are responsive to that

8 deposition notice?

9 A: Yes.

10 Q: Did you have any other correspondence that - than

11 what is in front of us here?

12 A: No.

13 Q: Any other photographs?

14 A: I have looked at the chest x-rays on disc.

15 Q: Any other imaging besides the chest x-rays that

16 you - you looked at?

17 A: No.

18 Q: Did you look at any CT scans?

19 A: I have looked at it when I first saw the case.

20 I don't have it with me now though.

21 Q: Did you look at any echocardiograms?

22 A: Only the echocardiogram report.

23 Q: Okay. Do you have any billing or financial

24 records with you here today?

25 A: No billing records.

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1 Q: Okay. How much time have you spent on this case?
2 A: I hadn't really thought about it. You know I've
3 reviewed the records a few times, a lot of pages. I would guess
4 20 hours.
5 Q: Have you sent Mr. Gates a bill yet?
6 A: No.
7 Q: Did you -- did he send you a retainer with regard
8 to this case?
9 A: No.
10 Q: Any - any research, any policies, procedures,
11 texts, treatises, journals or publications you're relying on?
12 A: No.
13 Q: Any statistical analysis?
14 A: No.
15 Q: Have you done any research with regard to this
16 case?
17 A: No.
18 Q: Doctor, you had attached to your CV a fee
19 schedule. You - you currently charge \$350 an hour for your
20 record review?
21 A: Correct.
22 Q: And then your meetings are \$400 an hour?
23 A: Correct.
24 Q: About how many of those 20 hours were - were
25 meetings?

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1 A: I haven't had any meetings.
2 Q: Okay. And you -- did you get a chance--
3 A: Except today.
4 Q: And how long did you meet with Mr. Gates today?
5 A: A little over an hour.
6 Q: All right. And then your deposition is \$500 per
7 hour?
8 A: Correct.
9 Q: And do you have a - a minimum for - for the
10 deposition time?
11 A: No.
12 Q: And your court testimony is \$4,000 per day?
13 A: I assume so. The fee schedule was set up by the
14 division 10 years ago and it's used by everyone, so--
15 Q: It -- is that the - the fee schedule that you
16 apply?
17 A: Sure.
18 Q: And - and where did the checks go to when - when
19 you write a check for your record review, meetings, deposition,
20 court testimony?
21 A: You mean who gets the money when they pay?
22 Q: Yes.
23 A: Usually, I do.
24 Q: So, the checks would be paid directly to Dr.
25 Reginald Low?

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1 A: Yes.
2 Q: And - and anything in particular that's done with
3 the money that you earn from medical legal work?
4 A: You know, sometimes, we use it to support our
5 fellowship training.
6 Q: Is there any obligation on your part to - to use
7 the money for any specific purpose?
8 A: No.
9 Q: Are you currently licensed in California and
10 Kentucky?
11 A: I have an active license in California.
12 Q: What about the license in Kentucky?
13 A: Well, I only taught there in the early '80s. I
14 still have the license in my pocket, but I don't think it's
15 currently active. I don't pay them.
16 Q: Okay. And when was the last time your license was
17 active in Kentucky?
18 A: Oh, when I was teaching at the University of
19 Kentucky in '81 through '83.
20 Q: All right. You've got a number of professional
21 organizations you're a part of. You're part of the American
22 College of Cardiology?
23 A: Correct.
24 Q: American Heart Association?
25 A: Yes.

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1 Q: Do - do you subscribe to the journals of American
2 College of Cardiology?
3 A: I do.
4 Q: How about the American Heart Association?
5 A: I do.
6 Q: How long have you been on the - the subscriber to
7 the American Heart Association and American College of
8 Cardiology?
9 A: As long as I've been a cardiologist, since 1978 or
10 so when I was in training.
11 Q: You have a list of publications here dating all
12 the way back to the early 1980s? Anything that that's
13 particularly germane to the subject matters of the Charles Cox
14 case?
15 A: No.
16 Q: Did you make any notes or summaries or anything
17 with regard to this case?
18 A: No.
19 Q: I briefly thumbed through all the documents that
20 you've looked at on this and - and I didn't see any kind of even
21 highlights, earmarks, or any kind of notations.
22 A: Correct.
23 Q: Is - is -- did you review all the materials that
24 you were provided in this case?
25 A: Absolutely.

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1 Q: Okay. And so you've been provided with the Carson
2 Tahoe records?
3 A: Yes.
4 Q: And the Renown records?
5 A: Yes.
6 Q: You've been provided with the declaration of Dr.
7 John MacGregor?
8 A: Yes.
9 Q: Okay. Do you know Dr. John MacGregor?
10 A: I met him before, and it's interesting that you
11 asked, but we've been on some publications together.
12 Q: And how many publications have you been with Dr.
13 MacGregor?
14 A: A few. You know, it's work done by the fellows at
15 UC Davis and one of the sites that was included was UC San
16 Francisco and they included Dr. MacGregor as their faculty
17 attending.
18 Q: Do you ever socialize with Dr. MacGregor?
19 A: No.
20 Q: When you first received this case, it looks like
21 on April 30th. When you agreed to review the case, you provided
22 the declaration of Dr. MacGregor and it looks like the Renown
23 medical records.
24 A: Yeah. It's everything is on those copies right
25 there, those copies right there.

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1 Q: Okay. Have you ever worked as a hospitalist?
2 A: Well, I've admitted patients to the hospital for
3 many years before they call them hospitalist.
4 Q: And when was the last time you - you had to admit
5 a patient to the hospital?
6 A: Well, you know, I'm - I'm currently at the
7 University of California, Davis. I'm the Chief of Cardiology
8 and I attend on the Coronary Care Unit Service, two weeks every
9 8 to 12 weeks. And so, in essence, I admit every patient that -
10 - every other day for that two-week block.
11 Q: And when you -- when you work on that two-week
12 block, in what capacity are you working?
13 A: I'm the faculty attending on the service and the
14 service includes a fellow, two residents, two interns, and a
15 night intern and a night resident.
16 Q: And where is that location that you actually --
17 was it here at UC--?
18 A: At UC Davis Medical Center here.
19 Q: In Sacramento?
20 A: Correct.
21 Q: And you said you're currently the Chief of
22 Cardiology at UC Davis?
23 A: Correct.
24 Q: And then, what are your obligations as a Chief of
25 Cardiology at UC Davis?

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1 A: Well, I oversee the division of cardiovascular
2 medicine and the faculty. And I'm responsible for all the
3 clinical and administrative duties associated with that
4 position.
5 Q: And could you briefly summarize that for us? What
6 are your - your duties with regard to that position?
7 A: You know, I am in charge of all of the clinical
8 services in the hospital. I'm director of the cardiac cath lab.
9 I'm the director of the heart center, the medical director. I'm
10 in charge of the telemetry floor and I run the interventional
11 program. And I also administrate the academic service and
12 mentor our faculty and involved in their promotions.
13 Q: If we had to do a pie chart, how much time of - of
14 that pie chart would be teaching students at this time?
15 A: Well, the students or interns, residents, and
16 fellows. Occasionally, we teach medical students, but most of
17 that is in the classroom. So, cardiology teaches a six to
18 twelve week block in the second year. And then, we're involved
19 in the clerkships of the third year students and fourth year
20 students that want to rotate through the CCU service or the
21 consult service.
22 Q: And are you involved in teaching the second year
23 students?
24 A: I have been. We have a dedicated faculty person
25 who is interested in medical school education and she's in

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1 charge of that and we take turns with lecturing and doing the
2 clinical hands-on. So, my major strength is being a clinician.
3 So, I do the clinical teaching at the bedside. We bring in
4 patients for the students in their second year.
5 Q: Have you written any articles on aortic dissection
6 before?
7 A: No.
8 Q: Do you ever contribute to any books or chapters
9 involving aortic dissection?
10 A: No.
11 Q: Have you ever heard of the - the International
12 Registry of Acute Aortic Dissection?
13 A: Yes.
14 Q: Have you read that paper?
15 A: I've read it before.
16 Q: Is that a reliable source of information?
17 A: You know, it's a document that's referred to in
18 aortic dissection.
19 Q: Is it a reliable information in the subject of
20 aortic dissection?
21 MR. GATES: Vague and ambiguous, go ahead.
22 A: Yeah. It's - it's one of the documents that is
23 referenced in the discussion of aortic dissection.
24 Q: And you're -- and are you familiar with - with the
25 International Registry of Acute Aortic Dissection document?

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1 A: I've seen the document. I've seen it before in my
2 education and training. I haven't reviewed it recently.
3 Q: How about the 2010 Guidelines for Diagnosis and
4 Management of Patients with Thoracic Aortic Disease? Have you
5 ever heard of that?
6 A: I can't say I've specifically heard of it.
7 Q: It was co-authored by the American College of
8 Cardiology and American Heart Association in 2010.
9 A: Well, you know, I've looked at all the guidelines
10 and I read the guidelines whenever they come out. So, I'm sure
11 I've seen it.
12 Q: And is - is the American College of Cardiology and
13 the American Heart Association article on the Guidelines for the
14 Diagnosis and Management of Patients with Thoracic Aortic
15 Disease, is that a reliable source of information?
16 A: Sure.
17 Q: How long have you done expert witness work?
18 A: You know, I've probably done it since I finished
19 my training in 1980, but I do it very infrequently.
20 Q: How many cases do you currently have?
21 A: One.
22 Q: This one?
23 A: Correct.
24 Q: And it looks like the first letter I saw authored
25 to you was in April of 2015. Has it -- has this been the only

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1 case that you've had an expert witness work since April of 2015?
2 A: You know, I may have reviewed some other records,
3 but I've never had a deposition in any of the other cases and
4 I've only rendered opinions.
5 Q: Is this the first time you ever had a deposition
6 taken?
7 A: No, I've done this before.
8 Q: On how many occasions have you had your deposition
9 taken?
10 A: I would say in my professional lifetime, maybe,
11 30.
12 Q: Of the 30, how many cases have you reviewed in
13 addition to testifying approximately 30 times?
14 A: Well, not all those depositions were related to
15 expert testimony. Many of them were as treating physicians.
16 I'd say the majority are as treating physicians.
17 Q: How many of the depositions were as expert
18 witness?
19 A: I'd say, maybe, half, 15.
20 Q: And how many cases do you think you've reviewed
21 since you began reviewing cases in approximately 1980?
22 A: Well, I review a lot of cases because I'm a
23 relatively senior guy and I'm chief in cardiology for whatever
24 that is worth. So, people ask me to review a lot of cases. Not
25 all of them are for money. Most of them aren't for money. I've

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1 also done reviews for some hospitals. I've done reviews for
2 Stanford Medical Center. I've done reviews for San Jose
3 Regional Medical Center. I think I've done a review for the
4 hospitals in the Walnut Creek-Concord area, but, you know, those
5 are for usually quality assurance.
6 Q: So, those are behind the scenes where you do a
7 quality assurance work for the hospitals to review the work--?
8 A: Well, they usually have a particular problem they
9 want me to address, and so, I'll review those kinds of cases. I
10 review cases frequently for other doctors, but not necessarily
11 in a medical legal capacity.
12 Q: In - in what capacity are - are you reviewing?
13 A: As a clinician for patient care.
14 Q: When you review cases in a medical legal capacity,
15 have you ever reviewed a case for the plaintiff?
16 A: I have.
17 Q: On how many occasions?
18 A: You know, I don't specifically recall but a few.
19 Q: And if you had to do a percentage on - on how
20 often you - you reviewed cases for the plaintiff versus the
21 defense, what would that number be?
22 A: You know, I rarely called my plaintiff attorneys.
23 I would say it's probably about ten percent.
24 Q: Ten percent for the plaintiff?
25 A: Yes.

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1 Q: When was the last time you reviewed a plaintiff's
2 case?
3 A: I don't recall. It's been over 20 years.
4 Q: Have you ever testified in Nevada?
5 A: I don't believe I have.
6 Q: Have you ever worked with Mr. Gates before?
7 A: I don't think I have.
8 Q: You ever worked for his firm, Lauria Tokunaga
9 Gates & Linn?
10 A: You know, I've been deposed by them. I'm not sure
11 that I've worked for them.
12 Q: Okay. How about his previous firm, Schuering
13 Zimmerman law firm? Have you ever worked for Schuering
14 Zimmerman?
15 A: You know, many years ago, I may have done some
16 expert work for them, but I cannot -- I can't recall a specific
17 case.
18 Q: Now, your - your wife is Donna Low?
19 A: Correct.
20 Q: And she's a - a medical defense attorney, right?
21 A: She is.
22 Q: And she used to work for the Schuering Zimmerman
23 firm?
24 A: Yes.
25 Q: Did you ever provide any services to the Schuering

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1 Zimmerman firm while she was employed there?
2 A: You know, I - I don't recall any specific cases.
3 I - I help them with some cardiology training.
4 Q: What does that mean?
5 A: I've basically given them some classes in
6 Cardiology 101.
7 Q: And was that when your wife was working there at
8 Schuering Zimmerman firm?
9 A: I believe it was, but it was not -- she wasn't
10 involved in the cases. I think they were trying to prepare for
11 some cases, some malpractice cases out of Redding.
12 Q: Have you ever worked with - with Butch Schuering?
13 A: I don't specifically recall ever working with
14 Butch Schuering.
15 Q: How about Zimmerman?
16 A: I don't recall working with Bob Zimmerman either.
17 Q: How about Tom Doyle?
18 A: I don't think I've worked specifically with Tom,
19 no. I - I just don't recall any specific interactions with any
20 of those three.
21 Q: You ever testified before in an aortic dissection
22 case for the defense?
23 A: No.
24 Q: Have you provided a cardiology training to Mr.
25 Gates?

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1 A: No.
2 Q: Was Mr. Gates part of the Schuering Zimmerman firm
3 when you provided the cardiology training?
4 A: You know, I don't know. I don't recall.
5 Q: Okay. Did you know Mr. Gates before he sent you
6 the letter in April 2015?
7 A: I've met Mr. Gates before but only professionally.
8 Q: Did you ever meet Mr. Gates when he worked at the
9 same firm as your wife?
10 A: I - I can't recall, honestly. I didn't -- I don't
11 really interact with the - the attorneys.
12 Q: Have you reviewed the depositions that are listed
13 in these documents in front of me?
14 A: Yes.
15 Q: Is there any materials that you've asked for that
16 you haven't reviewed?
17 A: No. Well, I don't have the final depositions of
18 some of them. I think I got rough drafts. So, I'd like to see
19 the final copies of whatever rough drafts that have been given
20 to me.
21 Q: And so, did you review the rough drafts of Dr.
22 MacGregor?
23 A: Yes, I did.
24 Q: And did you review the rough draft of - of Dr.
25 Carey?

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1 A: Yes.
2 Q: Do you know Dr. Carey?
3 A: No.
4 Q: Have you ever done any work with any of the
5 cardiologists at UC Irvine?
6 A: Well, I have in the very distant past. I used to
7 work with -- one of the doctors there.
8 Q: But you never heard of a Dr. Carey before?
9 A: Never.
10 Q: Are you going to provide any opinions regarding
11 the imaging involved in this case?
12 A: Um - only if I'm asked. I mean, I did compare the
13 x-rays and I have looked at the other images that were provided
14 in the -- on the disc.
15 Q: So, you compared the x-rays from Renown to the x-
16 ray at Carson Tahoe Hospital?
17 A: Yes.
18 Q: And did you -- did you say that you looked at the
19 CT scan at Carson Tahoe Hospital?
20 A: I believe that I've seen the CT scan as well as
21 the report.
22 Q: Okay. I don't see that in front of me, so that's
23 why I'm asking you.
24 A: I can't tell you where it is, but I somehow have
25 seen it.

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1 Q: Okay. But you have not read or reviewed the
2 actual images of the echo?
3 A: I have not reviewed the images of the echo.
4 Q: Okay. Did you review the deposition of Dr.
5 Aldrich?
6 A: If you can refresh my memory who Dr. Aldrich is,
7 I'll tell you if I have.
8 Q: Dr. Aldrich is Mr. Cox's treating or primary care
9 physician.
10 A: You know, I can't specifically recall that
11 deposition, but if it's in that pile, I've looked at it.
12 Q: Have you ever received any referrals from Renown?
13 A: I have.
14 Q: Does Renown refer down to UC Davis frequently?
15 A: Not frequently, but for special cases, yes.
16 Q: When was the last time you received a referral
17 from Renown?
18 A: You know, the referrals are to our division and,
19 depending on the type of case, you know, I may or may not be
20 specifically involved, but I try to triage it to the most
21 appropriate person. Many of the cases that we get from there
22 are trans catheter aortic valve replacements for patients too
23 sick for surgical aortic valve replacement.
24 Q: Any other referrals come to mind with regard to
25 referrals from Renown?

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1 A: You know, I think I've been around a long time and
2 I know a lot of the physicians and I've given talks in Reno and
3 I believe that some cases of complex coronary intervention have
4 been sent down to me, but I don't specifically recall the names.
5 Q: You said you - you've given talks in Reno. Have
6 you given talks to Renown?
7 A: No, they're usually on neutral turf. They're
8 frequently at a restaurant because of the politics in town. One
9 group won't go to the other hospital and so forth, and so,
10 they're usually at a neutral site, at a restaurant.
11 Q: When was the last time you gave a talk in Reno?
12 A: Earlier this year, a couple of months ago.
13 Q: And what was the subject of the talk?
14 A: It related to complex coronary intervention and
15 some tips and tricks as well as talking about the next-
16 generation coronary stents.
17 Q: And - and what was the - the type of stent that
18 you - you spoke of with the - the talk in Reno earlier this
19 year?
20 A: Well, I went through the whole history of stents
21 from the very first stent that was developed in the United
22 States until the most recent stent.
23 Q: And do you -- did you recommend a specific type of
24 stent to be utilized?
25 A: I only recommend the best stent for each

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1 particular case. I did address the new bio absorbable polymer
2 stents.
3 Q: And who is the bio absorbable polymer stent made
4 by?
5 A: Boston Scientific is one of the companies in the
6 US. There are probably a half a dozen companies worldwide.
7 Q: And what's your capacity with the Boston
8 Scientific?
9 A: I am a consultant.
10 Q: Are you also a founding member of Boston
11 Scientific?
12 A: Unfortunately, no.
13 Q: Are you on the board of Boston Scientific?
14 A: I'm on an advisory board, but I'm on the advisory
15 board of Abbott Vascular and Direct Flow as well.
16 Q: And are you compensated by Boston Scientific for
17 being on the advisory board?
18 A: Only for my time that I spend at the meetings.
19 Q: In giving talks like you did at Reno?
20 A: Usually, they compensate me.
21 Q: Did they compensate you for the talk you gave in
22 Reno earlier this year?
23 A: I believe they have.
24 Q: How about Abbott Vascular? What - what type of
25 product do they make?

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1 A: They make stents.
2 Q: And are you compensated for spending time on
3 giving talks regarding the Abbott Vascular products?
4 A: I am.
5 Q: Any other companies you're affiliated with besides
6 Boston Scientific and Abbott Vascular?
7 A: I've been involved in the development of the trans
8 catheter aortic valve with a company called Direct Flow for many
9 years.
10 Q: And who makes that product?
11 A: Direct Flow.
12 Q: Oh, Direct Flow is the name of the company?
13 A: Correct.
14 Q: And do you have the same type of arrangement that
15 you're - you're paid to be on an advisory board and give talks
16 on that product?
17 A: Well, it's a startup and they don't have much
18 money. I - I don't think I've ever taken any money from them
19 for that. I mean, I've taken money from them for proctoring,
20 but I've gone to Europe to proctor cases prior to their approval
21 of that valve and I occasionally proctor in the US for them when
22 they can't find somebody else to do it, but it's pretty
23 infrequent.
24 Q: And - and do you own stock in any of these
25 companies?

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1 A: I don't own any stock in Boston Scientific or
2 Abbott. Allegedly, I own some shares of Direct Flow, but I - I
3 think they're not worth anything.
4 Q: Is that because it's a startup company at this
5 time?
6 A: It is and they've had to go through multiple
7 rounds of financing and -- so that makes their stock pretty much
8 worthless.
9 Q: Do you have a - a principal source of information
10 you use when you do your teaching?
11 A: No principal source.
12 Q: Okay. Do you -- do you use text anymore?
13 A: I think everybody uses text or they should.
14 Q: Which text do you use?
15 A: I use all the textbooks of cardiology.
16 Q: Do you have -- do you use the Cardiac Emergencies
17 by R. S. Elliott?
18 A: Well, that's not a textbook of cardiology. That's
19 an emergency medicine.
20 Q: How about the The Heart by J. W. Hurst?
21 A: That is one of the standard textbooks of
22 cardiology.
23 Q: And is that one of the textbooks that you use in
24 teaching?
25 A: I refer to that textbook.

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1 Q: Do you -- is Harrison still used as an internal
2 medicine teaching textbook?
3 A: It is.
4 Q: Do you still use Harrison's--?
5 A: I do.
6 Q: --Internal Medicine? I'm sorry, I didn't get
7 that.
8 A: Yes, I do.
9 Q: Did you consult any kind of textbook, artis,
10 treatise, or publication regarding the issues of this case?
11 A: No.
12 Q: Is there a reason for that?
13 A: I didn't think it was necessary.
14 Q: But you read the - the - the rough draft of Dr.
15 MacGregor's deposition, correct?
16 A: Yes.
17 Q: And you saw a couple of the articles of -- that he
18 was relying on?
19 A: Sure.
20 Q: And did you go back and review any of those
21 articles that he relied on?
22 A: No.
23 Q: Were you provided those articles by Mr. Gates?
24 A: I didn't review anything. I don't think I was
25 provided them.

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1 Q: You ever had a - a case brought against you as a
2 doctor?
3 MR. GATES: Relevancy but go ahead and answer.
4 A: I think that I have.
5 Q: On how many occasions?
6 MR. GATES: Same.
7 A: I would say maybe twice.
8 Q: And how long ago were the
9 MR. GATES: Same
10 Q -- when was the first case?
11 A: I'd say 20 years for the first case. And the
12 second case is -- you know, I was named, but I'm not a treating
13 physician. I had taken care of the patient before.
14 Q: And then, so, what was your capacity with the
15 patient?
16 MR. GATES: Same.
17 A: It's a patient that was a faculty member at the -
18 the University of California, Davis who I took care of with a
19 heart valve disease and he recovered from the heart valve
20 surgery and, after like 15 years, he was hospitalized with
21 sepsis. And the medical intensive care unit service took care
22 of him and he went home. And with home antibiotics, he got sick
23 and had respiratory distress and died. And so, the wife was
24 unhappy and she listed every one of the doctors that ever took
25 care of him and they're suit, but I never took care of him when

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1 he was sick.
2 Q: Was it about the - the heart valve that - that
3 became septic?
4 A: There was no evidence of endocarditis.
5 Q: Was that the allegation though that the heart
6 valve became septic?
7 A: No.
8 Q: How many years ago was this case involving the
9 faculty member at UC, Davis?
10 A: You know, when he got sick, it was a couple of
11 years ago. I would say two or three years ago, but when I took
12 care of him for his heart valve, it was probably 15 years ago.
13 Q: Is that case still ongoing?
14 A: You know, I haven't heard anything about it. I
15 assume that it is.
16 Q: And was it filed here in Sacramento?
17 A: Yes.
18 Q: But the case 20 years ago, what was that
19 involving?
20 A: A patient had open heart surgery and died of
21 hyperkalemia in the postoperative period and I was the attending
22 cardiologist. They sued the surgeon, but because I was the
23 cardiologist, I was also named, but the case was dropped.
24 Q: Have you ever met Dr. Patel before?
25 A: No.

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1 Q: Have you ever met Dr. Kindig before?
2 A: No.
3 Q: Never talked to either Dr. Patel or Dr. Kindig at
4 anytime?
5 A: No.
6 Q: Have you talked to any of the doctors involved in
7 this case?
8 A: No.
9 Q: Have you ever met any of the doctors involved in
10 this case?
11 A: No.
12 Q: Do you believe that - that any nurse or physician
13 was negligent in the care of Charles Cox?
14 A: No.
15 Q: Are you critical of - of any of the care involving
16 Charles Cox?
17 A: No.
18 Q: Are you going to be providing opinions regarding
19 the standard of care for Dr. Patel?
20 A: I believe I can.
21 Q: And what's the basis that you feel that you can
22 provide a standard of care opinion regarding Dr. Patel?
23 A: Well, I've admitted patients from the emergency
24 room for, you know, 30 years or more before they had
25 hospitalists, and so, we function like hospitalists because,

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1 anybody with any cardiac complaint, there was no hospital
2 service to admit them to. So, they all got admitted to
3 cardiology.
4 Q: Are you aware of what board certification Dr.
5 Patel holds?
6 A: I don't specifically know what board certification
7 he holds.
8 Q: But Dr. Kindig, are you going to offer any
9 standard of care opinions regarding Dr. Kindig?
10 A: The same.
11 Q: And you feel that - that you're qualified to do it
12 based upon your function of admitting patients as well?
13 A: Exactly.
14 Q: Is - is -- do you know what board certification
15 Dr. Kindig holds?
16 A: I do not, specifically, no.
17 Q: Are you going to testify regarding any of the
18 surgical care of Dr. or Mr. Cox?
19 A: Only in reference to any questions asked of me
20 about the surgical care, but I don't have any specific opinions.
21 Q: Okay. Well, were the surgeries that Mr. Cox
22 underwent at Carson Tahoe Hospital necessary?
23 A: Absolutely.
24 Q: And - and it was reasonable to - to undergo those
25 surgeries?

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1 A: Absolutely.
2 Q: Do you have any opinions regarding the causation
3 of the alleged negligence by Dr. Patel or Dr. Kindig?
4 A: Yes.
5 Q: What is that opinion?
6 A: The opinion is that I do not believe the patient
7 had any aortic dissection when he was admitted to Renown or that
8 he had any aortic dissection during that hospitalization.
9 Q: And so you don't believe that Mr. Cox had an
10 aortic dissection either on February 25th or February 26th?
11 A: Correct.
12 Q: When did Mr. Cox have an aortic dissection?
13 MR. GATES: Speculation, incomplete hypothetical.
14 Go ahead.
15 A: I believe that his dissection occurred either just
16 before or during his hospitalization at Carson Tahoe.
17 Q: And explain that to me, please.
18 A: Can you be more specific?
19 Q: Yeah. Why - why do you feel that the dissection
20 occurred just before or during the hospitalization at Carson
21 Tahoe Hospital?
22 A: Well, the chest x-ray at Renown is completely
23 normal and the chest x-ray at Carson Tahoe shows a large cardiac
24 silhouette and fluid in both chest called pleural effusions,
25 plus the patient was hospitalized with heart failure and that

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1 may have been a consequence of the fluid around his heart, the
2 pericardial effusion. In addition, the electrocardiogram at
3 Renown shows no acute changes and the electrocardiogram at
4 Carson Tahoe shows reduced voltage, suggesting that there may be
5 some fluid around the outside of the heart.
6 Q: And would the reason for the change in the EKG be
7 the fact that there was fluid around the outside of the heart?
8 A: That's what I said.
9 Q: But that would be the - the whole reason for the
10 change in the EKG from the time at Renown to the time at Carson
11 Tahoe Hospital?
12 A: Well, there were more changes than just that, but
13 I was talking about the voltage criteria of the QRS complex
14 being different. The patient had also developed a new
15 arrhythmia, an irregular heart rhythm called atrial flutter,
16 which was the primary problem on admission at Carson -- Tahoe
17 Carson. He developed a rapid heart rate of over 140 beats per
18 minute and the atrial flutter was twice that rate.
19 Q: And what - what's your opinion as to the cause of
20 the atrial flutter?
21 A: Well, atrial flutter is caused by macro re-entry
22 of electricity in the atrium and eighty five percent of the
23 time, it's in the right atrium and fifteen percent of the time,
24 it's in the left atrium. So, he likely had typical atrial
25 flutter from the right atrium.

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1 Q: And what was causing the atrial flutter in the
2 right atrium?
3 A: Well, it's usually caused by macro re-entry. It's
4 a short circuit where an early beat provokes this re-entry
5 electrical mechanism that causes these electricity to go around
6 in circles in the right atrium.
7 Q: Do you have an opinion regarding whether it was
8 appropriate for Dr. Paige to re -- refer Mr. Cox for further
9 evaluation of his chest pain?
10 A: I think it was appropriate.
11 Q: Had Dr. Paige ruled out any life-threatening
12 causes of the chest pain that Mr. Cox was experiencing?
13 A: Well, he looked at the electrocardiogram that
14 didn't show acute changes to suggest a transmural ST elevation
15 myocardial infarction.
16 Q: Other than myocardial infarction, did - did Dr.
17 Paige rule out any of the other fatal causes of chest pain?
18 A: I'm not aware that he did.
19 Q: And Dr. Paige referred Mr. Cox to - to Dr. Patel?
20 A: Yes.
21 Q: And did Dr. Patel rule out the life-threatening
22 causes of chest pain in Mr. Cox?
23 A: Well, based on the history and the EKG and so
24 forth, he was most concerned with the most common cause of chest
25 pain related to the heart, which is acute coronary syndrome.

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1 So, he did further blood testing with the serial cardiac enzymes
2 and electrocardiograms to exclude that as a cause and he further
3 did a myocardial perfusion scan with pharmacologic stress to
4 assess whether or not he had potential areas of ischemia in the
5 heart.
6 Q: And did you review the images on the stress test?
7 A: I did not.
8 Q: Did you review the EKG that was corresponding with
9 the stress test?
10 A: You know, I don't specifically recall, but I'm
11 sure that I did if it was included in the images. I looked at
12 all the EKGs, all the rhythm strips.
13 Q: Okay. For the records that you have in front of
14 you, I've never seen the EKG strip. Can you tell me where that
15 is?
16 A: The EKG strip for which?
17 Q: For the stress test.
18 A: You know, I don't know where it is.
19 Q: Have you ever reviewed the stress test EKG?
20 A: If they're included in there, I reviewed it. If
21 they're not included, I didn't review it.
22 Q: Do you specifically recall the EKG that
23 corresponded with the stress test?
24 A: I don't specifically recall the EKG. And the
25 reason that I'm not focused on the ECG is because the ECG is not

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1 very sensitive or specific. And in fact, it may be no more
2 sensitive than fifty percent of the time in detecting high-grade
3 stenosis in - in coronary artery and that's why they did the
4 pharmacological stress, which increases its sensitivity and
5 specificity to ninety percent. So, I relied on the images from
6 the myocardial perfusion scan to make the determination of
7 whether or not he had a coronary disease, not the ECG.
8 Q: Okay. But the question is, Doctor, you have never
9 reviewed the EKG that corresponded, is that correct?
10 A: You know, I can't specifically recall. If they
11 were included, I've looked at it. If they weren't included, I
12 did not. But I definitely looked at the report for the
13 myocardial perfusion scan and I relied on that to come to the
14 conclusion that the patient was unlikely to have coronary artery
15 disease that was obstructive.
16 Q: Did you look at the images on the stress test?
17 A: I did not and you had asked that already.
18 Q: Did Dr. Patel rule out the other potential fatal
19 causes of chest pain?
20 A: What are those fatal causes of chest pain that you
21 are referring to?
22 Q: Well, do you know what the fatal causes of chest
23 pain like -- that Mr. Cox appeared with would be?
24 MR. GATES: Incomplete hypothetical, assumes
25 facts not in evidence, vague and ambiguous. Go ahead, Doctor.

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1 A: I - I -- your question is very unclear.
2 Q: Are - are there other potential fatal causes of
3 chest pain as Mr. Cox presented to Renown with?
4 MR. GATES: The same objections.
5 A: You know, his chest pain was non-specific and in
6 terms of chest pain, there are always fatal causes. The most
7 common fatal cause of chest pain is myocardial infarction,
8 followed by ventricular fibrillation or ventricular tachycardia,
9 causing sudden cardiac death.
10 Q: Are there other--
11 A: You know, twenty five percent of the patients
12 admitted from the ER are related to chest pain and of those,
13 eighty five percent are usually non-cardiac. Of the ones that
14 are cardiac, it's most often acute coronary syndrome, which can
15 either immediately or delayed cause cardiac death. There are
16 definitely other causes of cardiac death.
17 Q: And so, your - your opinion is that that the most
18 common cause of the chest pain, the acute coronary syndrome, was
19 ruled out by Dr. Patel?
20 A: Correct.
21 Q: And so, what is the explanation for the chest pain
22 of the type that Mr. Cox appeared with at - at Renown?
23 A: It's unclear.
24 Q: Other potential life-threatening causes of this
25 type of chest pain would be pulmonary embolism, wouldn't it,

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1 Doctor?
2 A: A blood clot to the lung certainly can cause chest
3 pain and it could be life-threatening although most are not.
4 Q: How do you rule out a pulmonary embolism in a
5 patient appearing with sudden onset of acute chest pain?
6 MR. GATES: Incomplete hypothetical. Go ahead.
7 A: In that hypothetical situation of somebody
8 presenting with chest pain, where you're truly concerned about
9 pulmonary embolus and this patient had none of the history that
10 would make me suspect that, he was not dyspneic. In other
11 words, he had no acute shortness of breath and he did not have a
12 pleuritic type of chest pain. But to rule it out, there are
13 several tests that you can do, one is pulmonary angiography.
14 One is CT angiography with contrast, time to look at the
15 pulmonary arteries. Another is a ventilation perfusion lung
16 scan.
17 Q: And were any of these tests to rule out pulmonary
18 embolism performed on Mr. Cox--
19 A: They weren't indicated.
20 Q: -- while he was at -- while he was at Renown?
21 A: They weren't indicated so they weren't done.
22 Q: How about--
23 A: You have to have a clinical suspicion to order an
24 appropriate test and he did not have appropriate clinical
25 suspicion that would signal that that test should be done.

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1 Q: And how about aortic dissection, how was the
2 aortic dissection ruled out by Dr. Patel while Mr. Cox was at
3 Renown?
4 A: Well, he did not have any symptoms that would
5 suggest an aortic dissection at that time. These patients have
6 unrelenting pain frequently described as either tearing or
7 ripping and he absolutely did not have those symptoms. Plus,
8 those symptoms don't go away.
9 Q: And where do you obtain that information, Doctor,
10 that - that the - the patient must have unrelenting ripping,
11 tearing pain that doesn't go away?
12 A: You know, I've taken care of probably a hundred
13 and fifty patients with aortic dissection over the years, maybe
14 two hundred, and it's my clinical experience and my education
15 and training that tell me these patients have unrelenting
16 tearing, severe chest pain and that's not what he presented
17 with. In fact, if you look at the records from the paramedics
18 or the ambulance service, they also had the impression that he
19 had acute coronary syndrome and they, in fact, wanted to give
20 him sublingual nitroglycerin, but because his complaint at that
21 time was headache, they didn't give it to him because he refused
22 because his headache was so bad. And headaches certainly would
23 not make me think of aortic dissection.
24 Q: Would the sudden onset of - of stabbing, burning
25 chest pain make you think of aortic dissection, Doctor?

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1 MR. GATES: Incomplete hypothetical. Go ahead.
2 A: In that hypothetical case, it could, but his pain
3 was not persistent, it was not tearing, it was not ripping and
4 it was not sustained. If you've ever seen a single patient with
5 an aortic dissection at the bedside, there is virtually little
6 doubt what's going on with those patients. I mean, I've been at
7 the bedside of, you know, over a hundred and fifty patients with
8 aortic dissection.
9 Q: Doctor, doesn't the literature say otherwise with
10 regard to the unrelenting tearing, ripping pain that doesn't go
11 away?
12 A: I--
13 MR. GATES: It's incomplete hypothetical--
14 A: --can't tell you what the literature says, but I
15 can tell you that the textbooks would tell you that this pain is
16 the most intense of the kinds of pain that one can suffer
17 related to the heart, equal to or worse than a -- an ST
18 elevation myocardial infarction.
19 Q: And when a patient experiences that most intense
20 pain, is that the initial intimal tear that's occurring in the
21 patient?
22 MR. GATES: Incomplete hypothetical. Go ahead.
23 A: I don't think that an intimal tear by itself would
24 give that kind of pain. It's the dissection itself that gives
25 the patient the tearing and ripping pain.

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1 Q: And - and was Mr. Cox experiencing intense pain
2 before he went to Renown?
3 A: Well, he had some pain, yes. But it was not
4 described in anything that I saw as tearing or ripping.
5 Q: How about stabbing pain, would stabbing pain
6 satisfy you?
7 A: Stabbing pain can relate to an esophageal reflux.
8 I mean, stabbing pain is non -- non-specific just as chest pain.
9 On another occasion, they described him as having dull chest
10 pain and I believe that was in the paramedic's report, which is
11 certainly not like aortic dissection. Plus, there's no evidence
12 whatsoever by ECG, chest x-ray and the aortic dissection that he
13 absolutely presented with at Carson Tahoe showed that he had
14 dissection that caused tamponade, bilateral pleural effusions.
15 And the surgeon himself felt that it was hours old and that he
16 would unlikely have survived had he had a dissection at Renown.
17 Q: And--
18 A: So, it's clear in my mind, without any question,
19 that the dissection occurred just before or during the
20 hospitalization at Carson -- Tahoe Carson.
21 Q: And - and what specifically was the surgeon at
22 Carson Tahoe referring to when he said that it was hours old?
23 A: The dissection, the aortic dissection.
24 Q: Are you sure about that, Doctor?
25 A: As sure as what I read. I think it's highly

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1 improbable that he had aortic dissection at Renown that waited
2 to present with all those findings at Tahoe Carson.
3 Q: Did Dr. Kindig ever rule out aortic dissection or
4 pulmonary embolism at Renown?
5 A: There were no clinical symptoms or signs that
6 would make them consider--
7 Q: Doctor, that's not - not my--
8 A: --that as a--
9 Q: That's not my question.
10 A: --etiology and so, they did not, as far as I can
11 tell from their records.
12 Q: So, the answer to my question is that Dr. Kindig
13 did not rule out pulmonary embolism or aortic dissection at
14 Renown?
15 MR. GATES: Incomplete hypothetical, assumes
16 facts not in evidence. Go ahead.
17 A: Well, first of all, you have to suspect it to rule
18 it out and if you don't suspect it, why would you bother to rule
19 it out?
20 Q: I'm asking--
21 A: That's - that's the appropriate clinical question.
22 We're practicing clinical medicine, we're taking care of the
23 patient in real time, we're not doing it from a
24 retrospectroscope. So, if the patient has no symptoms of
25 something, why would she try to exclude it?

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1 Q: So, is it--

2 A: I mean, you're asking a test. Well, why didn't she

3 do a stool guaiac? Because he had no symptoms of rectal

4 bleeding or GI bleed, you know. Why didn't she culture the

5 blood for sepsis? Because he had no symptoms of sepsis. So,

6 you have to have a clinical suspicion to do an appropriate test.

7 That's one of the tenets of the practice of medicine.

8 Q: My question to you, Doctor, is - is - is -- did

9 Dr. Patel or Dr. Kindig rule out pulmonary embolism or aortic

10 dissection at Renown?

11 MR. GATES: Asked and answered.

12 MR. OSBORNE: No, he hasn't.

13 A: You know, I don't know what you're specifically

14 asking, maybe they ruled out to their satisfaction clinically by

15 having no physical findings of aortic dissection. So, I mean, I

16 can't tell you. You can ask them.

17 Q: Well, how - how do you rule out an aortic

18 dissection, Doctor?

19 A: Well, first, you have to have clinical suspicion

20 and then, you do an appropriate test.

21 Q And - and what are you relying on for - for - for

22 this opinion that you first you have to have a clinical

23 suspicion?

24 A: Well, that's how medicine is practiced, by

25 clinical suspicion. We get a good history that makes us think

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1 about a particular disease entity or a set of disease entities

2 and then, we order an appropriate test.

3 Q: And - and this clinical suspicion opinion that you

4 have is - is based upon your experience?

5 A: It's my education and training and experience,

6 yes. Plus, there is no--

7 Q: What are the--

8 A: --objective evidence, as I said once before, that

9 the patient had a dissection. The dissection evidence is based

10 on the x-ray and the findings at Carson Tahoe. Furthermore, the

11 emergency room doctor at Carson -- Tahoe Carson and the

12 cardiologist who admitted the patient, none of them had a

13 suspicion for aortic dissection, none of them.

14 Q: Did you talk to those doctors?

15 A: I read the records and what the records said

16 specifically is an echocardiogram was ordered for a possible

17 ablation of the cardiac arrhythmia, atrial flutter. And they

18 were looking at cardiac dimensions, cardiac volume, cardiac size

19 and it was only incidentally, incidentally picked up that the

20 patient had a pericardial effusion. And when they looked at the

21 aorta, they saw aortic enlargement and a shadow that might be an

22 aortic flap, prompting them to do a CT angiogram looking for

23 aortic dissection. So, none of the doctors that have seen the

24 patient up to this point, five doctors, two emergency room

25 doctors, two hospitalists and a cardiologist, not a single one

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1 of those doctors had a suspicion for aortic dissection.

2 Q: Move to strike. Non-responsive.

3 A: That's very responsive.

4 Q: It is not responsive to anything I asked.

5 A: Well, you want the facts about whether or not the

6 patient had an aortic dissection at Renown? Then the answer is

7 no.

8 Q: Okay. What are the signs and symptoms of aortic

9 dissection, Doctor?

10 MR. GATES: It's incomplete hypothetical. Go

11 ahead.

12 A: In the hypothetical, the signs and symptoms of an

13 aortic dissection depends on where the dissection begins and the

14 extent of the dissection and what it involves.

15 Q: Okay. Let's - let's start with the ascending

16 portion of the - the aorta. What would be the signs and

17 symptoms of aortic dissection in the ascending portion of the

18 aorta?

19 MR. GATES: The same objection. Go ahead.

20 A: Again, it depends on what that dissection

21 involves. If it involves the ascending arch, it can present

22 with chest pain, describes as ripping and tearing. If it

23 involves the coronary ostia, it can give you myocardial ischemia

24 and symptoms of a heart attack. If it has involvement with

25 leakage into the pericardial space, it gives you cardiac

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1 tamponade, which is compression of the heart by fluid in the sac

2 around the heart that gives you a heart failure.

3 Q: How about in the descending portion, what are the

4 signs and symptoms of aortic dissection of the descending aorta?

5 A: Those patients can have chest pain.

6 Q: Do you have an opinion as to where Mr. Cox's

7 aortic dissection started?

8 A: It started near the transverse arch, as described

9 in the surgical report by Dr. Chapman.

10 Q: And where did the dissection end?

11 A: The dissection or the tearing of the layers of the

12 blood vessel extended from somewhere in the ascending aorta

13 above the takeoff of the coronary arteries down to his legs.

14 Q: It's your opinion, Doctor that the aortic

15 dissection both started and went all the way down to his legs at

16 or near the time Mr. Cox was at Carson Tahoe Hospital?

17 A: Either during the hospitalization or shortly

18 before because it's unlikely that he would have survived for

19 very long without surgery if it had occurred earlier. And the

20 dissection is unclear whether it starts from a tear or whether

21 it's hemorrhaged in the media that then causes the tear. The

22 basic disease of an aortic dissection is medial disease, either

23 cystic medial necrosis or something like that.

24 Q: Do you have an opinion that if - if this -- if Mr.

25 Cox had a hemorrhage in the media?

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1 A: There was definitely hemorrhage in the media.
2 Q: And did you -- do you have an opinion whether the
3 hemorrhage in the media happened before any aortic dissection?
4 A: Well, the hemorrhage in the media is a form of
5 dissection. It depends on how acute and how extensive it is.
6 Q: And did Mr. Cox have any hemorrhage going on at
7 the time he was at Renown?
8 A: He definitely had hemorrhage. He had blood and
9 bloated chest and he had blood around the heart, and he had
10 blood in the intimal space, in the medial space.
11 Q: I'm sorry, Doctor. That -- and that was at
12 Renown?
13 A: No, not at Renown. This is at Tahoe Carson.
14 Q: Okay.
15 A: He had nothing at - at Renown. He didn't have an
16 aortic dissection at Renown.
17 Q: Did he have a hemorrhage going on at - at Renown?
18 A: Well, it's unlikely. There was no -- nothing to
19 suggest that he had it. There was no blood in the pericardial
20 space, no blood in the pleural space, no change on his EKG.
21 Q: Is it your opinion, Doctor, that - that the - the
22 pain and the symptoms that Mr. Cox experienced on February 25th
23 and 26th had nothing to do with the aortic dissection that was
24 found at Carson Tahoe Hospital?
25 A: There is no objective evidence that his chest pain

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1 had anything to do with aortic dissection that was found at
2 Tahoe Carson. That is my opinion. That was the opinion of five
3 physicians that I just talked to you about. Not a single person
4 that saw him before the echocardiogram thought he had an aortic
5 dissection, not a single doctor.
6 Q: Should it have been in the differential diagnosis
7 of either Dr. Patel or Dr. Kindig about aortic dissection?
8 MR. GATES: Asked and answered, but go ahead.
9 A: You know, he had no symptoms or findings that
10 would suggest that they should consider that high on their list
11 of causes of his chest pain.
12 Q: How about the fact that Mr. Cox's father died of
13 aortic dissection, is that a high-risk feature?
14 A: I - I never saw any documentation of his death by
15 aortic dissection. I'd be glad to review those records if you
16 produce them for me. I think at the age of 88, we don't
17 consider that premature heart disease at 88. Anything after 55
18 is not premature. And when people say that there's a family
19 history of heart disease, it only is applicable when patients
20 are 55 and under or if they have some underlying connective
21 tissue disease like Marfan syndrome, Ehlers-Danlos, annuloaortic
22 ectasia, something like that. And he -- I don't know if he had
23 that or not, but I'd be glad to review that. And in another H
24 and P done at Tahoe Carson, it doesn't even say that the father
25 died of that. It says that he had coronary disease and he had

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1 some stents put in and I don't know if it was ascending or
2 descending. I don't know if he had hypertension, I don't know
3 if he had a history of cigarette smoking or other risk factors.
4 I don't know if he had a bicuspid aortic valve, these things
5 that would make him a high-risk candidate for aortic dissection.
6 At 88, it's highly improbable that he had any of those diseases.
7 So, I would like to see his records and his autopsy or death
8 certificate saying that he had aortic dissection. Nevertheless,
9 at 88, it's not premature.
10 Q: Would the fact that Mr. Cox's father died of
11 aortic dissection that's contained within the medical records be
12 a high-risk feature that would cause the doctors at Renown to
13 rule out an aortic dissection?
14 A: The short answer is no. The longer answer is,
15 show me that document that shows about his aortic dissection and
16 where it occurred.
17 Q: What is the basis for you saying that you don't
18 consider the familial history of Mr. Cox when considering the
19 high-risk features of aortic dissection?
20 A: People that have a familial history that are at
21 high-risk don't die at 88. They die much younger from aortic
22 dissection.
23 Q: Doctor, what is the source of information that you
24 don't consider that information on the first degree of family
25 history of Mr. Cox?

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1 A: First of all, you have to show me some objective
2 evidence that he in fact had an aortic dissection and where that
3 dissection was. I'd like to see that documentation first.
4 Q: Is that what you're tell your patients when they
5 come to see you, that - that they tell you that their father
6 died of aortic dissection? You say, "I want to see--"?
7 A: I absolutely do that. I - I say, "Let's get the
8 documentation. Let's try to get the death certificate. Let's
9 get the medical records." At 88, this is not premature disease.
10 If he's 35 years old and presents -- presents with Marfan
11 syndrome and has aortic dissection, yes, we do genetic testing
12 on every single one of those patients. But at 88, if you
13 present with aortic dissection at 88, we're not going to be
14 testing all of his kids with genetic testing.
15 Q: So, Doctor, did Dr. Patel or Dr. Kindig obtain the
16 records of Mr. Cox's father?
17 A: I'm not aware that they did.
18 Q: Do you know what facility that Mr. Cox's father
19 died in?
20 A: Renown.
21 Q: The same exact facility that - that Mr. Cox
22 appeared to.
23 A: Well, I don't think Mr. Cox, Senior released his
24 medical records to them. It would be a HIPAA violation.
25 Q: Okay. Did you ever request Mr. Gates to provide

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1 you with Mr. Cox's father's medical records?
2 A: I did not. You asked me the question. I asked
3 you to provide it to me.
4 Q: I - I understand that, but - but you understand
5 that -- what - what this - this medical-legal case is about?
6 A: Well, I understand the fact that--
7 Q: Have you ever asked for those records before here?
8 A: --I don't believe that 88 years old is premature
9 aortic dissection that warrants family screening.
10 Q: Okay. Can you -- can you point me to any
11 literature that would support that opinion, Doctor?
12 A: I can't specifically at this moment, but I'm sure
13 that I can find some.
14 Q: No. Today is the day, Doctor. You don't have
15 anything that that would support the fact you don't consider the
16 family history of Mr. Cox in ruling out aortic dissection?
17 MR. GATES: Well, I think it's argumentative. I
18 think it's asked and answered and he's given you the basis for
19 his opinion as his education, his experience.
20 A: At age 88, aortic dissection is unlikely familial.
21 I will go on record to say that and I will provide you
22 documentation with that.
23 Q: But you have nothing that you can point me to at
24 this moment?
25 A: I don't have any specific document, but I can --

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1 I'm sure that I can talk to the two of the world's experts in
2 aortic disease that would confirm that and I would welcome you
3 to call them.
4 Q: What does -- what does the American Heart
5 Association say regarding considering familial history in aortic
6 dissection?
7 A: They're not referring to age 88.
8 Q: How do you know that?
9 A: You can call the people that wrote the document.
10 I'm sure that they'll confirm it. Please call them. I - I - I
11 would beg you to call them and I would guarantee you that they
12 would not say that age 88 is an age that they would think that
13 you need familial screening.
14 Q: And the same question with American College of
15 Cardiology. What -- what's their position on a familial history
16 of - of aortic dissection?
17 A: I don't know their specific position.
18 Q: With regard to the American Heart Association's
19 position on what the signs and symptoms that are high-risk
20 features of aortic dissection, what's their position?
21 A: You know, I don't know their specific position,
22 but in general, the - the tenets are that people that are
23 hypertensive, people that have congenital disease like Marfan,
24 Ehlers-Danlos or annuloaortic -- aortic ectasia, people that
25 have a bicuspid aortic valve, people with Turner syndrome. You

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1 know, these are people with giant penetrating ulcers to the
2 aorta. These are the people at high risk for aortic dissection.
3 Q: What are the high-risk pain features that are
4 listed by the American Heart Association, American College of
5 Cardiology with regard to aortic dissection?
6 A: You know, the patient didn't come in and say, "I
7 have aortic dissection and these are my symptoms that you should
8 be looking for." The patient came in with non-specific chest
9 pain. So, you're going backwards, you know, you're already
10 taking a disease entity that none of us believed he had. None
11 of the five doctors that saw the patient thought he had it and I
12 don't believe he has it in over -- in looking at the medical
13 records.
14 Q: Doctor, that wasn't responsive to my question. My
15 - my question was -- is, what are the pain features that are
16 listed by the American Heart Association, American College of
17 Cardiology that they list as high-risk features.
18 MR. GATES: Compound. Go ahead.
19 A: The high-risk pain features are ripping and
20 tearing chest pain.
21 Q: And - and that type of chest pain that's listed by
22 the American Heart Association and American College of
23 Cardiology was experienced at one time or another by Mr. Cox on
24 February 25th, correct?
25 A: That's what you say. I don't believe it.

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1 Q: You don't believe that - that - that he had the -
2 the pain features of -- that - that are listed as high-risk
3 features of aortic dissection?
4 A: I - I told you before in previous--
5 Q: Doctor--
6 A: --testimony. I - I specifically -- please don't
7 interrupt me while I'm answering.
8 Q: No. You--
9 A: You asked me if he had--
10 Q: We got to start over.
11 A: --sharp pain.
12 Q: You - you stepped on my question. We got to start
13 over.
14 A: No.
15 Q: No, no. Stop. Stop. Okay. We have to do this
16 again because you didn't allow me to finish. We got to do that
17 for the clear record.
18 A: Okay. Fine.
19 Q: Okay.
20 MR. GATES: I think he thought you were done, but
21 go ahead.
22 Q: Okay. So, let me ask the question again so we
23 have a clear record. The pain features for the -- by the
24 American Heart Association and American College of Cardiology
25 are the ripping, tearing chest pain. My question is - is - is,

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1 were any -- was that ever present, the ripping, tearing chest
2 pain, during February 25th?

3 A: Not that I saw in the records.

4 Q: And if - if the pain was the type of -- that type
5 of pain, ripping or tearing type chest pain, then that would
6 have prompted investigation regarding an aortic dissection by
7 Dr. Patel or Dr. Kindig?

8 A: I think those are elements of the history that may
9 prompt them to look for aortic dissection.

10 Q: What did Dr. Patel think was going on with Mr. Cox
11 while he treated him at Renown?

12 A: Well, he was concerned that he had acute coronary
13 syndrome, clogged coronary arteries that might predispose him to
14 a heart attack.

15 Q: Would a CT scan assist the diagnosis of acute
16 coronary syndrome?

17 A: Can you be more specific?

18 Q: Yeah. Would a -- would a CT scan assist Dr. Patel
19 in the diagnosis of what the cause of Mr. Cox's chest pain was
20 on February 25th?

21 MR. GATES: Incomplete hypothetical. Go ahead.

22 A: You know, that question has no clear answer. I
23 don't know what your question really is. I mean, he didn't
24 order a test that wasn't indicated. I mean, the test was not
25 indicated, so why would he order the test? He'd be exposing him

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1 to a contrast for kidney failure. He had to be given
2 unnecessary radiation and I don't think the practice of
3 medicine, by any of the standard societies would support that
4 kind of approach.

5 Q: Did Mr. Cox know what the life-threatening causes
6 of chest pain were when he was at Renown?

7 MR. GATES: It assumes facts not in evidence.

8 A: Mr. Cox is not a physician, he was the patient.
9 Why would he know those -- you know potential causes that's why
10 he goes to the doctor.

11 Q: And he relied on the doctor to identify what was
12 going on with him?

13 A: Well, I think he relied on the doctor to try to
14 find out why he was having chest pain, but the testing didn't
15 reveal an obvious cause.

16 Q: Are you aware of any time that that Mr. Cox was
17 not in pain while he was at Renown?

18 A: You know, I looked through the records from the
19 nurses and sometimes he had pain on a scale of 4 out of 10,
20 sometimes there were no occasions of pain, so I can't honestly
21 tell you. I only know what the records say.

22 Q: And you saw that the pain medication that Mr. Cox
23 was provided from the time used at the ambulance until the time
24 he was discharged from Renown?

25 A: I know he received 3 mg of morphine in the

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1 ambulance, which is not a high dose.

2 Q: And did he receive any pain medication while he
3 was at Renown?

4 A: He did.

5 Q: And what - what was your understanding of whether
6 Mr. Cox was ever not in pain while he was at Renown?

7 A: You know, I can't tell you if he was in pain at
8 Renown, but I think that most healthcare professionals, doctors
9 and nurses would not let somebody sit there in pain.

10 Q: What condition did Mr. Cox have that required
11 Haldol?

12 A: I don't know.

13 Q: What condition did Mr. Cox have that required
14 Ativan?

15 A: Ativan is usually used for anxiety.

16 Q: And did Mr. Cox have some anxiety?

17 A: Presumably, if he was given the medication.

18 Q: And why did Mr. Cox have anxiety?

19 MR. GATES: Speculation. Go ahead.

20 A: I don't know specifically know why he had anxiety,
21 but most patients that have a medical symptom that get admitted
22 to a hospital, I'd say it's abnormal to not have anxiety.

23 Q: Did Mr. Cox have an anxiety over anything
24 involving his chest pain?

25 A: I don't know.

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1 Q: Is it common for people having cardiac symptoms or
2 chest pains to have anxiety?

3 A: Absolutely.

4 Q: Did Mr. Cox have a normal rate and rhythm of his
5 heart when he was at Renown?

6 A: On admission.

7 Q: Did he have a history of palpitations?

8 A: He did.

9 Q: And are palpitations a symptom of anxiety?

10 A: They can be.

11 Q: Do you have an opinion with regard to whether Mr.
12 Cox was having palpitations as a result of his anxiety?

13 A: I don't have an opinion.

14 Q: Did Mr. Cox continue to have palpitations after
15 receiving Haldol?

16 A: I don't know.

17 Q: How about after Mr. Cox received Ambien, did he
18 still have pain or palpitations?

19 A: Ambien is a sleep medicine, I don't know.

20 Q: How about Ativan, did Mr. Cox continue to have
21 palpitations after receiving Ambien? I'm sorry, Ativan.

22 A: I don't know.

23 Q: Did either Dr. Patel or Dr. Kindig ever take the
24 blood pressure on both Mr. Cox's arms?

25 A: I don't know.

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1 Q: Is that an important part of the physical
2 examination from a cardiac standpoint?
3 A: Only if you suspect peripheral vascular disease or
4 aortic dissection.
5 Q: Is that an easy test to perform of doing blood
6 pressure in both arms at the same time?
7 A: Well, it's -- it can be done to do it well, it may
8 not always be that easy.
9 Q: And anything that would preclude the doctors from
10 taking the blood pressure in both of Mr. Cox's arms?
11 A: Not if it was indicated.
12 Q: Anything on the EKG that was taken on February
13 25th that would explain Mr. Cox's chest pain?
14 A: I didn't see anything that would explain his chest
15 pain.
16 Q: Was it appropriate for Dr. Patel to order a stress
17 test before ruling out a potential life-threatening causes of
18 chest pain like aortic dissection or pulmonary embolism?
19 MR. GATES: Incomplete hypothetical, assumes
20 facts not in evidence. Go ahead, Doctor.
21 A: That question is unclear and Dr. Patel felt that
22 the most important potentially life-threatening problem was
23 acute coronary syndrome, which is the most common problem in
24 chest pain patients admitted to hospitals. He was worried about
25 heart attack either a non-ST elevation or an ST elevation

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1 myocardial infarction. And that's the line of evaluation that
2 he pursued. It was, what was the impression of the ambulance
3 and the clinical team that saw him when they brought him to the
4 hospital, acute coronary syndrome, ACS. That was their focus.
5 That's what they felt was most life-threatening because that's
6 what his symptoms were suggestive of.
7 Q: Well, I want you to assume that Mr. Cox had an
8 aortic dissection, was it appropriate for Dr. Patel to order a
9 stress test if he had an aortic dissection?
10 A: Listen, in that hypothetical of assuming that he
11 had the dissection for which there is absolutely not one iota
12 piece of evidence, okay, the chest x-ray didn't show it. And in
13 fact, the x-ray showed it at the other hospital. And not a
14 single doctor, as I told you before, suspected aortic
15 dissection. So, if you ask me to assume aortic dissection, he
16 didn't have it.
17 Q: So, your - your statement to me was this that the
18 chest x-ray showed aortic dissection at Carson Tahoe?
19 A: It showed the complications of aortic dissection,
20 which included the enlarged cardiac silhouette compared to the
21 prior one and fluid in both chest for which there was no good
22 reason. And this was not evident on the chest x-ray at Renown.
23 Q: Do - do--
24 A: It absolutely was not there.
25 Q: Do - do all aortic dissections happen at a rapid

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1 rate?
2 A: It -- you know, aortic dissections are different.
3 In his dissection, it was an extensive dissection.
4 Q: And did it happen all at once?
5 A: The kind that was life-threatening that occurred
6 when he went to the other hospital, when he went to Tahoe
7 Carson. The surgeon himself believed that it was less than a
8 day old and that it was unlikely that if he had it earlier that
9 he would survive admission at Tahoe Carson.
10 Q: You've said that a few times and I just want to
11 point out that Dr. Chapman was asked that question is - is
12 whether the condition that he saw in him had been present for a
13 period of time?
14 A: Correct.
15 Q: And so what was he specifically referring to other
16 than cardiac tamponade?
17 A: The fact that he had dissection.
18 Q: Okay. And that's your - your interpretation of
19 Dr. Chapman's testimony?
20 A: It's my interpretation of all the data that I've
21 reviewed, which includes Dr. Chapman's history and physical, op
22 report and deposition.
23 Q: How long did it take Mr. Cox to dissect from -
24 from the beginning of the ascending portion near the arch as you
25 mentioned all the way down to his legs?

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1 A: I don't know specifically how long it took, but
2 many times it can be instantaneous with the initial dissection.
3 Furthermore, when he presented to Renown Hospital, his heart
4 rate wasn't even fast. It's unlikely to have an aortic
5 dissection without at least having an increased heart rate and
6 his heart rate was one hundred percent normal.
7 Q: What's the basis for that opinion that that he
8 should have an increased heart rate with - with the aorta
9 dissection?
10 A: Well, if you're having so much pain and you're not
11 on drugs that slow your heart rate, your heart rate should go up
12 with pain and his heart rate was completely normal.
13 Q: What was his heart rate before he was provided
14 morphine?
15 A: His heart rate on the EKG was completely in the
16 normal range. His heart rate in the field was normal.
17 Q: You said that - that aortic dissection can be
18 instantaneous. Can it also take a period of days before an aor-
19 aorta to dissect?
20 A: I would assume that it could progress.
21 Q: What was Mr. Cox's -- how was he feeling on the
22 27th of February?
23 A: I don't know.
24 Q: How was Mr. Cox feeling on the 28th of February?
25 A: Not bad enough to go to the hospital.

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1 Q: How - how was he feeling?
2 A: I don't know.
3 Q: How was he feeling on the 1st before he went into
4 the hospital?
5 A: I only know from his history that he was having
6 some symptoms that included palpitations and chest pain.
7 Q: Any other symptoms that Mr. Cox had upon
8 presentation at Carson Tahoe Hospital?
9 A: I think he complained of shortness of breath as
10 well.
11 Q: And was the shortness of breath due to the cardiac
12 tamponade that was subsequently found?
13 A: It was definitely in part related of that, but not
14 only to that.
15 Q: Okay. What else was his shortness of breath
16 related to besides the cardiac tamponade?
17 A: Well, he had a tachyarrhythmia. He had atrial
18 flutter with a rapid rate, which wasn't giving his left
19 ventricle enough time to fill. In fact, that was their
20 impression on admission is that he had diastolic heart failure.
21 Q: Did - did Mr. Cox have the flu at the time he was
22 at Renown?
23 A: I don't know what you mean by the flu.
24 Q: That he -- like - like have a - a viral syndrome?
25 A: He could have.

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1 Q: What is the indication that Mr. Cox was having a
2 viral syndrome at Renown?
3 A: Well, he complained of a lot of nonspecific pain
4 that could be interpreted as myalgias and arthralgias.
5 Q: Anything else besides the nonspecific pain that
6 would have indicated viral syndrome?
7 A: Well, his pain started in his head, up in his
8 temple and went down to his feet or something or - or his legs.
9 He also had an elevated lipase that would suggest that he had
10 some inflammation of his pancreas.
11 Q: What was the time component between the pain that
12 Mr. Cox felt in his head versus the - the pain at the time he
13 felt the pain in his chest on February 25th?
14 A: His pain started in his temples, in his head.
15 Q: Well what - what was the time component with
16 regard to the pain in his temple or his head and the chest?
17 A: I don't specifically know.
18 Q: Do you recall what Dr. Chapman said about it
19 because he's the only one that asked that question?
20 A: Well, Dr. Chapman wasn't the patient, doctor
21 taking care of the patient when he presented with this pain.
22 Q: Would that be something that's important as to -
23 to when the head pain and the chest pain were occurring in Mr.
24 Cox?
25 A: Well, from what I've read his pain started in his

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1 temples and went down.
2 Q: How long did it take for the pain to start in his
3 temple and go down to his chest?
4 A: I don't know.
5 Q: Is that important from a cardiac standpoint,
6 Doctor?
7 A: Cardiac pain as far as I know doesn't start in the
8 temples in the head.
9 Q: Cardiac pain is, but it happens in the chest,
10 correct?
11 A: It does.
12 Q: And cardiac pain that starts in the chest also has
13 the ability to migrate, is that correct?
14 A: That's not exactly how it works.
15 Q: You've never seen migration of pain with aortic
16 dissection?
17 A: I don't know what you mean by migration, it's not
18 a medical term that I'm aware of. I mean it's not like moving
19 from one country to another or one part to another. Different
20 parts of your body can have pain related to the heart, but it
21 has nothing to do with migration. It's not like there's some
22 chemicals that are moving from one place to another to cause the
23 pain.
24 Q: What other flu symptoms did Mr. Cox have besides
25 this nonspecific pain that he described?

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1 A: I understand that he had a lot of cough.
2 Q: Your understanding is - is Mr. Cox had a cough?
3 A: I seem to recall that he had cough, yes.
4 Q: How long was this cough going on?
5 A: I don't know.
6 Q: What day was the cough on?
7 A: I think it was during his hospitalization at
8 Renown.
9 Q: Was it a productive cough that produced phlegm?
10 A: I don't know.
11 Q: Did he have any pleuritic chest pain?
12 A: Not at Renown.
13 Q: Did he have any warm, flushed skin or red, watery
14 eyes?
15 A: Not that I'm aware of.
16 Q: Was a flu test indicated by Dr. Kindig?
17 A: If they thought he had influenza type A, I think
18 it's not unreasonable to exclude it because it's a quick, simple
19 test for which there's therapy.
20 Q: Do you know what Dr. Kindig wrote on her
21 prescription as to why the blood test was needed for the -- Mr.
22 Cox?
23 A: I don't specifically recall, but I seem to
24 remember that she was concerned about his renal function.
25 Q: Was that all that you recall, Doctor?

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1 A: She may have been concerned about was elevated
2 white count.
3 Q: And what was the cause of the elevated white count
4 in your opinion?
5 A: There are many different causes. I don't think
6 that we know specifically.
7 Q: Can an elevated white count be caused by the
8 stress from a catastrophic event like aortic dissection?
9 A: It can be caused by any kind of stress.
10 Q: Including aortic dissection, Doctor?
11 A: Including the flu and aortic dissection and just
12 being hospitalized.
13 Q: Does the chest x-ray rule in or rule out an aortic
14 dissection?
15 A: It doesn't rule out completely, but it's certainly
16 can be suggestive if there's a widened mediastinum, which he did
17 not have. And for tamponade, it would be an enlarged cardiac
18 silhouette, which he also did not have. If there was hemorrhage
19 into the pleural space is it would include a pleural effusion,
20 which he did not have.
21 Q: How long does it take for the mediastinum to
22 become widened with an aortic dissection?
23 A: I would -- I believe that would happen if it
24 involved the enlargement of the aorta, it would occur
25 immediately.

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1 Q: When you say it's -- you qualify the answer that
2 if it involved the enlargement of the aorta. What about if it
3 just started with a tear of the intima?
4 A: Well, you know that is nonspecific. I mean, a
5 tear was that from external or internal, was it -- what caused
6 the tear?
7 Q: Hmm-hmm. How often is a widened mediastinum
8 present in patients with a type A aortic dissection?
9 A: It's not a highly sensitive test.
10 Q: In fact less than half would be -- involved a
11 widened mediastinum in patients with aortic dissection in the
12 ascending portion?
13 A: I agree.
14 Q: What - what method of imaging are recommended by
15 American College of Cardiology to determine the presence of
16 thoracic aortic disease?
17 A: If you're suspicious and that's not this
18 particular case, this is a hypothetical I assume. If you're
19 concerned about aortic dissection, some kind of testing would be
20 ordered. A transesophageal echo, a CT angiogram of the heart
21 with contrast, time for the ascending aorta and descending
22 aorta, cardiac magnetic resonance imaging study and uncommonly
23 an aortogram.
24 Q: And none of those tests were ordered by Dr. Patel
25 or Dr. Kindig, correct?

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1 A: Correct.
2 Q: Do you have an opinion as to what the likelihood
3 of death was in Charles Cox at the time Dr. Chapman saw Mr. Cox?
4 A: I would guess it is mortality, it would have been
5 fifty percent.
6 Q: And how would you get to the fifty percent
7 mortality, Doctor?
8 A: Well, as dissection was very extensive and he had
9 evidence of hemorrhage into the pericardial space with tamponade
10 and without operation he would have had a mortality of a hundred
11 percent.
12 Q: How much does the mortality figure go up with
13 aortic dissection if it's delayed diagnosis?
14 A: Most people believe that your risk of dying goes
15 up one percent with each passing hour.
16 Q: And do you have opinion on when Mr. Cox achieved
17 the fifty percent mortality rate?
18 A: That question is very ambiguous.
19 Q: You said that he had a fifty percent mortality
20 rate, how long was he at fifty percent mortality rate?
21 A: No, you ask me what I thought is risk of death
22 would be at surgery. That's different.
23 Q: Okay. The risk of death at surgery was at fifty
24 percent mortality rate?
25 A: I think that that's a figure that many surgeons

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1 would quote them. But without surgery, it would be hundred
2 percent.
3 Q: Okay. And is this fifty percent mortality rate
4 based upon the increase of one percent per hour with the aortic
5 dissection?
6 A: You're mixing apples and oranges.
7 Q: No -- it's a question, Doctor.
8 A: It's not -- it's not a real question. The
9 questions are completely unrelated. You're talking about the
10 risk of no operation and what that risk is of dying with each
11 passing hour. The other question you're asking is what's the
12 risk of surgery in a patient that Mr. Cox who was diagnosed with
13 a dissection with complications of tamponade.
14 Q: No, my - my - my question is - is simply this.
15 You said fifty percent mortality at the time he was going into
16 surgery.
17 A: No.
18 Q: Is that correct?
19 A: No.
20 Q: Okay.
21 A: The risk of surgery and his surviving surgery, I
22 believe, is about fifty percent.
23 Q: And that was at the time Dr. Chapman saw Mr. Cox
24 at Carson Tahoe Hospital?
25 A: It's unrelated to the dissection natural history.

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1 You're mixing up the natural history with operative mortality.
2 Q: So - so the operative mortality is just based upon
3 the extensive dissection and hemorrhage you referenced?
4 A: No, it's based on all the clinical factors.
5 Q: Okay. What other clinical factors besides the
6 dissection?
7 A: Well, he's becoming hypotensive. And in fact, at
8 the time of surgery, he crashed in the -- just during induction.
9 You know, by the operative report, he had tensed pericardial
10 tamponade, the sac was completely full of blood and compressing
11 the heart.
12 Q: Have you ever diagnosed an aortic dissection?
13 A: Many times.
14 Q: And how did you diagnose an aortic dissection?
15 A: We use our clinical knowledge and skill to make
16 that diagnosis. We use history, physical exam and confirmatory
17 test.
18 Q: And what are the confirmatory tests of aortic
19 dissection, Doctor?
20 A: Well, if we have the clinical suspicion and we
21 have some physical findings then we proceed with one of the four
22 tests that I mentioned, transesophageal echo, aortography, CT
23 angio, time for the ascending aorta or cardiac MR.
24 Q: Have you ever treated a patient after he had an
25 aortic dissection?

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1 A: Absolutely.
2 Q: Done it many times?
3 A: Many times.
4 Q: And is the course that Mr. Cox experienced
5 following the aortic dissection common in your experience?
6 A: It's not common, but it's not uncommon. All of
7 the problems he had are not unanticipated.
8 Q: What problems are you referring to?
9 A: His pseudo aneurysm at the suture line and the
10 fact that he had some progression of his disease in the
11 descending aorta requiring operation.
12 Q: And do you agree that that Mr. Cox needed to have
13 a grafting in the ascending portion of the aorta on an emergent
14 basis?
15 A: Absolutely.
16 Q: And do you agree that that Mr. Cox needed to have
17 the grafting done on the descending portion because of his
18 ongoing symptomatology including weakness and perfusion to his
19 kidneys.
20 A: I think that that statement is not complete. I
21 think when you talk about descending, you know, it was in the
22 abdominal aorta.
23 Q: Okay. Why did Mr. Cox need the grafting in the
24 descending portion in your opinion?
25 A: I think that he had the compromised circulation to

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1 some of his internal organs.
2 Q: And which internal organs were compromised,
3 Doctor?
4 A: I believe it's one of his kidneys and his - his
5 intestinal tract.
6 Q: Would you expect any cognitive deficits in Mr. Cox
7 following the aortic dissection grafting in the ascending
8 portion?
9 MR. GATES: Incomplete hypothetical. Go ahead.
10 A: Patients who are going cardiopulmonary bypass
11 virtually always have some neurocognitive dysfunction by
12 testing. And I believe that he not only had cardio circulatory
13 bypass, but he also had cardio circulatory arrest where there
14 was no circulation and I think that most of these patients by
15 testing would have some neurocognitive dysfunction.
16 Q: And how long was Mr. Cox without circulation to
17 his brain?
18 A: I believe it was in the order of 30 to 35 minutes.
19 But it was done with cooling him to 16 or 18 degrees centigrade.
20 Q: And given the extent of the dissection, you agree
21 with this approach by Dr. Chapman?
22 A: I'm not a surgeon, but as a cardiologist this is
23 the standard technique.
24 Q: And with that standard technique that was required
25 to have that technique because of the dissection that was in the

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1 descending portion of the aorta?
2 A: No, it was because of the involvement of the great
3 vessels.
4 Q: And so the brain was unable to be perfused because
5 of the involvement in the great vessels?
6 A: There was dissection extending into the great
7 vessels and that's the approach that he felt was most optimal
8 for successful operation.
9 Q: And to do the procedure involve -- after the
10 failure of the great vessels involved would it require the lack
11 of perfusion to the brain for approximately 30 or 35 minutes?
12 A: Well, it's done with a technique that's well
13 described in the literature. It's cooling patients down to the
14 point where it's safe just to interrupt the circulation.
15 Q: Was the surgery involving the pseudo aneurysm is
16 result of the aortic dissection extent?
17 A: Can you repeat that?
18 Q: Sure. Was the pseudo aneurysm surgery as a result
19 of the extent of the aortic dissection of Mr. Cox?
20 A: You know, it's a known complication of any kind of
21 surgery.
22 Q: And does the risk of having a pseudo aneurysm
23 increase if an aortic dissection is undiagnosed for a longer
24 period of time?
25 A: I would say that--

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1 MR. GATES: Incomplete hypothetical. Go ahead,
2 Doctor.
3 A: I would say that it's increased in patients with
4 medial disease of the aorta. The tissues are not as healthy and
5 it's harder to get a good seal when you pass the sutures through
6 the tissues.
7 Q: Is the length of time that the aortic dissection
8 is present, would that also have an effect on the likelihood of
9 a pseudo aneurysm?
10 A: I'm not aware of any studies that show that
11 correlation.
12 Q: Are you going to be talking -- offering opinion as
13 to what the cause of the surgery involving pseudo aneurysm was?
14 A: I - I--
15 MR. GATES: I think he already has.
16 A: I don't understand that question.
17 Q: Okay. My question to you is - is - is - are you
18 going to be offering opinion regarding the surgery, the
19 necessity of the pseudo aneurysm and the cause of the necessity
20 of the pseudo aneurysm in Mr. Cox?
21 MR. GATES: Asked and answered. Go ahead.
22 A: Well, pseudo aneurysm was a hole in the aorta
23 that's walled off by tissue and so it's an unstable situation,
24 so my opinion is yes, the patient needed that surgery.
25 Q: And are you going to be offering opinion as to why

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1 Mr. Cox needed that pseudo aneurysm surgery?
2 MR. GATES: Asked and answered. Go ahead.
3 A: I just explained that. It's a hole and it's an
4 unstable situation and it needs to be fixed.
5 Q: And do you have an opinion as to why the hole and
6 what the quality of the tissue is regarding or surrounding the
7 hole?
8 A: You know, these things happen with all kinds of
9 surgery and it can happen with this surgery and these things
10 happen with surgery.
11 Q: Hmm-hmm. Are you a cardiothoracic surgeon?
12 A: I'm not.
13 Q: When was the last time you performed surgery?
14 A: You know, I did two months of cardiothoracic
15 surgery in my training.
16 Q: And how long ago was that?
17 A: It was in my training.
18 Q: Give me the years of your training, Doctor?
19 A: 1975 through 1980. Well actually, I was in
20 training from '71 through '80, medical school through residency
21 through fellowship.
22 Q: And did you actually perform any pseudo aneurysm
23 procedures on any patient at any time?
24 A: We do pseudo aneurysm closure all the time on the
25 iliofemoral system after heart catheterization.

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1 Q: And have you actually performed that procedure?
2 A: Well, we don't do it surgically, we close it
3 nonsurgically. We do thrombin injections and we do endografts,
4 we do coiling, you know, but it's a different vessel. We're not
5 talking about the aorta. We're talking about, you know, leaks
6 that occur after the heart catheterization in the iliofemoral
7 system.
8 Q: Have you ever done a pseudo aneurysm aorta?
9 A: No, I'm not a surgeon. I don't represent myself
10 as a surgeon.
11 Q: But you're going to be offering an opinion as to
12 the - the cause and the necessary surgery regarding the pseudo
13 aneurysm?
14 A: No. I'm going to offer my opinion that he needed
15 the surgery to fix the pseudo aneurysm.
16 Q: Okay. Do you have any opinions with regard to the
17 billing that that Mr. Cox incurred?
18 A: No.
19 Q: Do you have any opinions as to what was reasonable
20 and necessary with regard to the bills involving Mr. Cox?
21 A: No.
22 Q: Do you have any opinions with regard to the
23 current state that Mr. Cox is in?
24 A: No.
25 Q: Do you have any opinions as to the future care

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1 needs of Mr. Cox?
2 A: I'm not going to give any opinions on that matter.
3 Q: Can we take a quick break? I think I am about
4 done.
5 MR. GATES: Okay.
6 MR. IVEY: We're going off the records. The time
7 is 7:39 p.m.
8 DR. LOW: And it's in 3D here?
9 MR. IVEY: Not quite. We are back on the record
10 in the matter of Cox versus Hometown Health, et al. The time is
11 7:43 p.m.
12 Q: Doctor, you - you had a chance to review Dr.
13 Carey's deposition?
14 A: I've seen it.
15 Q: Do you disagree with anything in Dr. Carey's
16 deposition?
17 MR. GATES: Other than what you've already
18 testified to this evening. Go ahead.
19 A: I don't withhold the specifics, you know my
20 position. I think I've made it clear.
21 Q: What Dr. Carey has testified is to the necessity
22 of - of the surgeries and he felt that they were caused by the
23 aortic dissection and the delay in the diagnosis. Other than
24 the fact that you've disagreed with him on the delay of the
25 diagnosis in the aortic dissection, do you disagree with Dr.

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1 Carey at all?

2 A: I believe that the diagnosis was in and around the
3 time of admission to Tahoe Carson.

4 Q: Hmm. Other than that difference with Dr. Carey,
5 do you dispute anything that he had to say with regard to the
6 necessity of the surgeries involving Mr. Cox?

7 A: No. I mean I don't specifically recall all of his
8 opinions, but I'd have to go through it to be absolutely sure,
9 but you know my position about the facts that you questioned me
10 on and.

11 Q: Anything other than what we've talked about here
12 today that you disagree with Dr. MacGregor about his opinions?

13 A: I don't agree with his timing of the aortic
14 dissection because I cannot find any objective evidence.

15 Q: And the objective evidence, would you need aortic
16 imaging to know what the objective evidence is as to whether an
17 aortic dissection was actually going on at Renown?

18 A: No.

19 Q: What objective evidence are you referring to?

20 A: There were no findings to suggest aortic
21 dissection.

22 Q: Have we covered all of your opinions you intend on
23 offering at the time of trial doctor?

24 A: I believe that I have offered all the opinions. I
25 mean it -- I mean you've asked me what you think is important

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1 and I've given you the answers in my opinions about what you
2 believe is important.

3 Q: It's not so much of what I believe is important,
4 but basically what you believe is important, Doctor.

5 A: I think I fully expressed what I believe is
6 important.

7 Q: You've trained any of the hospitalists at UC,
8 Davis?

9 A: Yes, we do.

10 Q: Do you personally train any hospitalists?

11 A: Yes, I do.

12 Q: When was the last time you trained a hospitalist
13 at UC, Davis?

14 A: I trained hospitalist - I trained the residents
15 that are going to be hospitalists, so I'm training them to be
16 hospitalist. We also have a private service where we have a
17 hospitalist on the cardiology service.

18 Q: Did you feel in this case that the hospitalists
19 were trained -- adequately trained and have the ability to
20 diagnose the cause of the chest pain in Mr. Cox?

21 MR. GATES: Incomplete hypothetical, assumes
22 facts not in evidence. Go ahead.

23 A: You know, I don't really understand that question.
24 And you know, I have not -- I'm not familiar with their training
25 or I haven't quizzed them. I don't know them. I don't think

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1 I'm a person that should be offering that opinion.

2 Q: Okay. Do you have a chest pain center here at UC,
3 Davis?

4 A: We do.

5 Q: Does Renown have a chest pain center?

6 A: I don't know.

7 Q: Thank you. That's all I have.

8 MR. GATES: No, questions.

9 MR. IVEY: This concludes the recorded deposition
10 of Reginald Low, MD. Before going off the record, can we please
11 stipulate it a reading and signing will take place with this
12 witness?

13 MR. GATES: What do you want to do Doc?

14 DR. LOW: What's that?

15 MR. GATES: Do you want to read and sign or
16 waive?

17 DR. LOW: Um, is it safe to waive it?

18 MR. GATES: We'll read and sign.

19 MR. IVEY: We're going off the record. The time
20 is 7:48 p.m.

21 (Deposition adjourned at 7:48 p.m.)

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1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3)

4 COUNTY OF WASHOE)

5 NAME OF CASE: CHARLES COX, SHIRLEY COX, PLAINTIFFS, VS.
6 HOMETOWN HEALTH MANAGEMENT COMPANY, ET. AL.,
7 DEFENDANTS

8 I, MARK IVEY, a duly commissioned Notary Public, authorized
9 to administer oaths or affirmations in the State of Nevada, do
10 hereby certify: That I recorded the foregoing deposition of the
11 witness, REGINALD LOW, M.D., on May 2, 2016.

12 That prior to being examined, the witness was duly sworn to
13 testify to the truth. That I thereafter transcribed or
14 supervised transcription from the recorded audio and visual
15 record and said deposition is a complete, true, and accurate
16 transcription of the deposition testimony. Before completion of
17 the deposition, a review of the transcript [] was [X] was not
18 requested by the deponent and [X] was [] was not requested by a
19 party of the action. If a review was requested, any changes
20 communicated to me by the deponent during the period allowed are
21 appended hereto.

22 I further certify that I am not a relative or employee of
23 an attorney or counsel of any of the parties, nor a relative or
24 employee of an attorney or counsel involved in said action, nor
25 a person financially interested in the action.

1 IN WITNESS WHEREOF, I have hereunto set my hand in the City
2 of Reno, County of Washoe, State of Nevada, on May 4, 2016.

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6 MARK IVEY

7 Notary Public

8 Appointment No. 13-10818-2

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1 Code No. 4190

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5 THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

6 -oOo-

| | | | |
|----|-----------------------------|---|---------------------|
| 7 | CHARLES COX, SHIRLEY COX, |) | |
| | |) | Case No. CV14-00414 |
| 8 | Plaintiff, |) | |
| | |) | Dept. No. 9 |
| 9 | vs. |) | |
| | |) | |
| 10 | RENOWN REGIONAL MEDICAL |) | |
| | CENTER dba RENOWN HEALTH |) | |
| 11 | MEDICAL GROUP, RAJAN PATEL, |) | |
| | M.D. BRANDI KINDIG, M.D., |) | |
| 12 | DOES I-X, inclusive, |) | |
| | |) | |
| 13 | Defendants. |) | |

14
15 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

16 Jury Trial

17 Wednesday, May 11, 2016

18 Reno, Nevada

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22
23
24 Reported By: SUSAN KIGER, CCR No. 343, RPR

A P P E A R A N C E S

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1 RENO, NEVADA, WEDNESDAY, MAY 11, 2016, 10:43 A.M.

2 -oOo-

3 (The following is a requested partial transcript of
4 proceedings.)

5 THE COURT: We are on the record in CV14-00414. Cox
6 versus Renown, et al. We are outside the presence. Are there
7 any issues that need to be brought to my attention prior to
8 bringing the jury in?

9 MR. GATES: Yes, I have one, Judge.

10 THE COURT: All right.

11 MR. GATES: Judge, during the discovery of this
12 case, depositions were taken and specifically, Mr. Ivey who I
13 think is a court reporter came to Sacramento and videotaped
14 Dr. Low's deposition. It appears to us, that rather than to
15 be an unbiased court reporter, he is now helping plaintiffs
16 with their presentation of their case, and what's -- we have
17 asked for the video of Dr. Kindig, but we believe that some of
18 the video that was shown during opening may have been edited.
19 So I've never had a situation like this, but I think it's
20 highly improper that we have a court reporter now essentially
21 being part of the plaintiff's team, and I think it's improper
22 and I think it's very prejudicial if in fact he is now editing
23 videos that he took or ^ editing that were taken in this
24 case.

1 THE COURT: I hear your argument that you find it
2 objectionable, but I'm not quite following what the objection
3 is other than you saying it's improper. I mean, I'm not
4 following you.

5 MR. GATES: Well, Judge, I thought that court
6 reporters were supposed to be unbiased. And it doesn't appear
7 to me that that's going on right now, especially as he sits
8 behind the plaintiff's table. He was there for Dr. Low's
9 deposition and videoed Dr. Low's depo. So at minimum I would
10 ask that deposition not be permitted in this courtroom.

11 THE COURT: Do you have some evidence that he
12 improperly participated in that deposition or done something
13 nefarious?

14 MR. GATES: I don't. But I do believe that
15 yesterday the video that was shown during opening argument may
16 have been edited, and we've asked for the video of Dr. Kindig,
17 and we'll find out.

18 THE COURT: All right.

19 MR. GATES: But I do believe and I understand
20 everybody wants to work, that's fine. But you can't be a
21 court reporter and then work on the plaintiff's team. So I
22 think it's prejudicial, and I think the remedy would be to
23 strike any depositions that he took in this case.

24 THE COURT: Thank you.

1 Mr. Osborne.

2 MR. OSBORNE: Yeah, nothing has happened here. I
3 mean, he doesn't report the video. He took the video and then
4 a transcript is made. There's no objection to the transcript.
5 I know he probably doesn't want the transcript because it
6 doesn't bode so well for him.

7 THE COURT: That doesn't help your argument. Go
8 ahead. I'm not the jury.

9 MR. OSBORNE: The thing about it is -- is there's
10 been nothing that's happened. This is just to have him in
11 here and put images up and help me with the computer. It
12 doesn't show that he's biased.

13 THE COURT: I understand the issue, thank you. This
14 is my order. I'm denying your motion without prejudice. If
15 you find some information that, as I use the term, something
16 nefarious or improper has occurred by way of his involvement
17 with the plaintiff's team, I'll allow you to renew your motion
18 with the specifics. But the general appearance of a court
19 reporter who is assisting the plaintiffs for the reason the
20 plaintiffs need them, I'm denying your motion.

21 Are you ready to bring the witness in?

22 MR. OSBORNE: Yes.

23 THE COURT: Let's bring the jury in.

24 (Whereupon the jury entered the courtroom.)

RenoTrialRough

1 THE COURT: That being said, do you want to meet
2 outside other than that?

3 MR. GATES: Yes, sir. Judge, I had previously
4 addressed Mr. Ivey's presentation in this case as far
5 as him being essentially behind the plaintiff's table
6 throughout the trial and playing the video on behalf of
7 the plaintiffs.

8 We have learned that Mr. Ivey is not a certified
9 court reporter in the state of Nevada, and he is the
10 one who actually completed the depositions of Dr. Low
11 and Dr. Kindig in this case. Specifically for Dr. Low,
12 he did a video of Dr. Low but did no typing. At
13 Dr. Kindig's deposition, it appears an associate of his
14 by the name of Jason Sanderson essentially did the same
15 thing. They did a video, but there was no stenography.

16 We have learned from the president of the Nevada
17 Board of Court Reporters that neither of these
18 individuals is a qualified, certified or any-fied court
19 reporter in the state of Nevada. Mr. Ivey, more
20 importantly, is only a notary in the state of Nevada
21 but not California. He's not permitted to provide
22 notary services in California and, therefore, the oath
23 he took of Dr. Low in California is not valid.

24 We believe -- as I mentioned to the judge

1 previously, there's just something about it -- I've
2 been told I've now been doing this 27 years, not 26,
3 but there was something about Mr. Ivey being at

RenoTrialRough

4 Dr. Low's deposition. And I asked him "where is the
5 court reporter?" And he said, "I am doing the video
6 and then we're going to transform this into a printed
7 transcript." And that bothered me.

8 The same issue regarding Mr. Ivey is that I know he
9 drove with Mr. Osborne to and from the deposition.

10 But the reason there are certified court reporters
11 in the state of Nevada is it ensures the accuracy and
12 protects the sanctity of the deposition process.

13 Mr. Ivey and Mr. Sanderson apparently don't have the
14 training to be a court reporter. It takes two to four
15 years. They complete classes in business law, medical
16 vocabulary, legal research, legal terminologies and
17 procedures, as well as mechanics and grammar.

18 I have no idea if Mr. Ivey or his associate went
19 through that process. I can only tell you they are not
20 certified in the state of Nevada. So it gives somewhat
21 an appearance of suspicion and impropriety that now
22 Mr. Ivey is assisting Mr. Osborne here.

23 More importantly, I objected during or just after
24 the opening argument by Mr. Osborne when Dr. Kindig's

♀

1 video was played. It appears to us that it was
2 modified and that objections that were in between some
3 of her answers were taken out and edited. And I don't
4 think that's proper. And that automatically, I think,
5 makes Mr. Ivey an impartial officer of the court.

6 So we are very concerned about the accuracy and the
7 genuineness of the transcripts. Interestingly, I

8 didn't think about this until this morning on the drive
9 over. If I would have had a question read back during
10 her deposition or during Dr. Low's deposition, that
11 couldn't happen. There was no one typing.

12 And the bottom line is, Judge, there are procedural
13 safeguards in the state of Nevada to ensure the
14 accuracy of deposition transcripts just like there are
15 the accuracy of trial transcripts. And I think they're
16 sealed for a reason. I think it's to preserve the
17 sanctity of the testimony.

18 I think we have no idea who typed the transcript
19 for Dr. Kindig and Dr. Low. We have no idea if it's
20 accurate. It hasn't been certified by anyone that I
21 know of that is qualified in the state of Nevada.

22 And I do know one thing, Judge. This process is
23 supposed to be fair, this process is supposed to be
24 impartial, and you don't cut corners. And it appears

♀

1 to us that having Mr. Ivey do what he's doing now, it
2 appears to us to have what Mr. Ivey did at the
3 deposition of Dr. Low and his associate with Dr. Kindig
4 is improper, and we move to strike the depositions of
5 both Dr. Kindig and Dr. Low.

6 THE COURT: Thank you. You're entitled -- I have a
7 hand-delivered copy that's not file stamped of a motion
8 entitled Defendant's Ex Parte Motion to Exclude the
9 Deposition Transcripts and Video Depositions.

10 Obviously by way of your presentation, it's not
11 ex parte, number one. Is that correct?

12 MR. GATES: Yes.

13 THE COURT: All right. And, number two, did you
14 file this in or was it -- I don't have a file-stamped
15 copy.

16 MR. GATES: It's filed. That's a courtesy copy,
17 Judge.

18 THE COURT: I want to give Mr. Osborne an
19 opportunity to respond. Go ahead. And I was thinking
20 he could respond in writing too. But let me hear from
21 you now.

22 MR. OSBORNE: I'll do both, if you'd like, Your
23 Honor. Let me just make it clear for the record,
24 number one, Mr. Ivey is not a court reporter. Neither

4

1 is Mr. Sanderson.

2 THE COURT: All right.

3 MR. OSBORNE: They never represented themselves to
4 be a court reporters. They have never represented
5 themselves to be anything other than what they are.

6 Let me read to you Nevada Rule of Civil Procedure
7 B2. "The party taking the deposition shall state in
8 the notice the method by which the testimony shall be
9 recorded. Unless the court orders otherwise, it may be
10 reported by sound, sound and visual or stenography
11 means. And the party taking the deposition shall bear
12 the cost of recording. Any party may arrange for the
13 transcription to be made from the reporting of a
14 deposition taken by non-stenography means.

15 And then B3, 30(b)(3), it says within five days

16 notice to the deponent and other parties, any party may
17 designate another method to record the deponent's
18 testimony in addition to the method specified by the
19 person taking the deposition.

20 It was clearly noticed that this was a videotaped
21 deposition. Dr. Kindig was done last June, almost a
22 year ago from now. She certified that it was proper.
23 We have it under seal here with no objection.

24 THE COURT: Say that part again. I'm not following

5

♀

1 that part.

2 MR. OSBORNE: Sure. All these are the certified
3 transcripts that we have, including Dr. Low and
4 Dr. Kindig. They're under seal. We haven't had to
5 open or publish anything yet, but they're under seal.

6 THE COURT: I guess the question is how were they
7 transcribed? If I'm understanding the argument, both
8 those depositions were done by a videography team, if
9 you will. I'm candidly not as concerned whether you
10 hired him or he's here in court helping you. That's
11 not my thing. I want to make sure that all the
12 official Ts are crossed and Is are dotted. So that
13 being said, how did you get sealed -- how did you get
14 the videography transcribed into the sealed
15 documentation?

16 MR. OSBORNE: So that's the last part of 30(b)(2).
17 It says may arrange for the transcription to be made.
18 So from the video and the audio, there's a transcript.

19 THE COURT: And who did that transcript?

20 MR. OSBORNE: I would have to look.

21 THE COURT: Was it a certified court reporter in
22 the state of Nevada?

23 MR. OSBORNE: I couldn't answer that for you right
24 now.

6

♀

1 THE COURT: Got it. All right.

2 MR. OSBORNE: Because I don't have it in front of
3 me. I just got the motion just right before --

4 THE COURT: No, I got it. So this -- I want to
5 give you time. I mean, obviously whenever anything is
6 listed as an ex parte motion, that means to me you just
7 got it and that means I got it. So I want to give you
8 the time to be able to properly respond, because it's
9 an important issue if there's been discovery taken
10 that's not consistent with the Nevada Rules of Civil
11 Procedure.

12 I've heard you argue just now that it is, but
13 there's some questions that Mr. Gates's motion has
14 raised that you potentially could answer if you had
15 more time; and that is, if you got a videography and
16 it's transcribed, and let's assume you're planning to
17 use the transcription of the videography in court, then
18 I want to know who the court reporter was that did the
19 transcription, certified in the state of Nevada, as a
20 start. You just don't have it handy before yourself
21 now, but I'm assuming that's the case. No?

22 MR. OSBORNE: Let me back you up just a minute. It
23 is not required --

24 THE COURT: Okay. I'm just asking.

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1 MR. OSBORNE: -- by our own Nevada Rules of Civil
2 Procedure.

3 THE COURT: Whether it's required or not, I think
4 it's an answer that Mr. Gates doesn't have. And
5 neither do I.

6 MR. OSBORNE: Okay. Well, he's got the
7 transcripts. He obviously filed the motion. And I
8 think he attached some exhibits.

9 THE COURT: There's no exhibits. There's portions
10 of the exhibits, but not the actual transcripts.

11 MR. OSBORNE: Okay.

12 THE COURT: Because there's -- his argument is a
13 videographer is not a certified court reporter.

14 MR. OSBORNE: And we have no dispute about that.
15 It's just a matter of whether it's improper as he
16 alleged.

17 THE COURT: Understood.

18 MR. OSBORNE: We complied with the civil procedure
19 rules. The other thing is in (b(4), depositions shall
20 be conducted before an officer appointed or designated
21 under Rule 28 and shall begin with a statement. I
22 think he attached those statements that were properly
23 done. They're consistent with our Rules of Civil
24 Procedure. And, you know, obviously he's a notary that

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1 can give the oath and is authorized to give the oath
2 under NRCPC Rule 28.

3 But the thing is what he said was that Kindig and
4 Low, I guess -- as I said, Dr. Kindig's deposition was
5 taken nearly a year ago. No objections were made.
6 Same process. We did Dr. Low because Mr. Gates was in
7 an auto accident just before this trial. So that was
8 done, I think, about two weeks ago.

9 THE COURT: Who was in an auto accident?

10 MR. OSBORNE: Mr. Gates. So we had --

11 THE COURT: You recovered very nicely, Mr. Gates.

12 MR. OSBORNE: He just ruined your case.

13 MR. GATES: I know.

14 MR. OSBORNE: With regard to the objections in the
15 opening, I listed the transcript part that I was going
16 to use in opening. Your order, pretrial order, says
17 that any transcript or anything, all the objections
18 must be taken out prior to coming in here to court. So
19 I did that.

20 THE COURT: I got that.

21 MR. OSBORNE: Nobody else did that. And I did it
22 consistent with your order.

23 THE COURT: All right.

24 MR. OSBORNE: With regard to read-back, I've used

1 this court reporting firm several times. I shouldn't
2 say court reporting. This audio visual firm several
3 times. It's easy to get a read-back if you want it.

4 You can actually get the actual audio recording back
5 and you can actually know exactly what it is. So all
6 the safeguards are in place.

7 I also want to tell the Court, I just did a trial
8 two months ago in Department 6. Same thing.
9 Depositions were taken by Mr. Ivey and they're under
10 seal and there's nothing else. He's in court here
11 today just to put up the exhibits. He doesn't have
12 any -- he doesn't alter or change the actual
13 transcripts or do anything. There's been no foul play.
14 There's nothing that's mysterious about what's
15 happening here. And they shouldn't be stricken. I do
16 want to say that I planned on using these today, and
17 that makes it difficult.

18 THE COURT: Okay. Let me ask a couple questions
19 along those lines. Were you planning to call
20 Dr. Kindig today and then maybe impeach her with the
21 deposition or --

22 MR. OSBORNE: I don't know if I was going to call
23 Dr. Kindig. We have Dr. MacGregor this afternoon.

24 THE COURT: I got it. But for purposes of this

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1 issue, it sounds like this has to be decided rather
2 quickly as opposed to giving you the time to do your
3 written response with additional detail. When did you
4 get his motion?

5 MR. OSBORNE: This morning about 9:45.

6 THE COURT: I get it. So that's what I assumed.

7 So I wanted to give you an opportunity to respond, not

8 from the seat of your pants, as they use that
9 expression, but to give you time to evaluate and go
10 through it. That's fair. From a scheduling
11 standpoint, when do you think you were going to call
12 either -- is Dr. Low going to be here or do you want to
13 use the deposition?

14 MR. OSBORNE: I don't know what Mr. Gates has
15 planned for Dr. Low.

16 THE COURT: Okay.

17 MR. GATES: Dr. Low will be here.

18 THE COURT: Okay. So if I'm clear, then for the
19 purposes of -- you have a general motion to strike.
20 That's one piece. But for the purposes of the trial
21 procedure, we have live witnesses and the deposition
22 information potentially that's at issue would
23 potentially be used for impeachment, cross-examination
24 or something of that nature, because the live witnesses

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1 will be here to supplement or confirm their answers in
2 their deposition. Is that fair, Mr. Gates?

3 MR. GATES: Well, I think you can use the
4 deposition of a party in the state of Nevada for any
5 reason. The deposition has got to be done by a court
6 reporter. We don't even know who typed these
7 transcripts, nor can that be answered this morning.

8 The rules -- it's signed by Mr. Ivey that "nor a
9 person financially interested in the action."
10 Obviously he's not sitting here for his health. He's
11 making money. So, Judge, I do have a problem with any

12 of these -- these two transcripts being used in any
13 way. I think they're improper.

14 THE COURT: Hold on. I'm going to give you
15 a chance -- get that as your formal reply yet, but I'm
16 just asking about the use of the depositions because
17 Mr. Osborne is not done with his opposition yet, and
18 then I'm going to give you a chance to reply.

19 MR. GATES: Well, I don't -- I don't know what he's
20 doing with this case or how --

21 THE COURT: I understand.

22 MR. GATES: -- he plans to use the deposition of
23 Dr. Kindig and Dr. MacGregor. I don't know. That's
24 Mr. Osborne's --

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1 THE COURT: I get that. I'm just trying -- I was
2 trying to get -- ask that question in my mind, how they
3 might be used. So, for example, it's a different type
4 of motion and urgency if Dr. Low is not going to be
5 present and somebody wanted to use his deposition and
6 you're challenging how the deposition was taken.

7 MR. GATES: Yeah.

8 THE COURT: That's one issue.

9 MR. GATES: I think it's impeachment only that it
10 can be used. So it's less onerous but same argument
11 applies.

12 THE COURT: No, I get -- let me just restate it so
13 we're on the same page. I'm going to use regular
14 language. You're looking for the home run in having
15 them stricken, but for purposes of expediency in what

16 we're doing to do, because Mr. Osborne has represented
17 those witnesses will be here today, I'm trying to
18 figure out how they might be used from a critical
19 perspective. And so it gives me more of a priority
20 related to my decision making under the circumstances.
21 Does that make sense?

22 MR. GATES: I think for purposes of today it would
23 only apply to Dr. Kindig, because I don't think
24 Dr. Low's deposition can be used today. It can only be

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1 used for impeachment purposes. He's not a party to the
2 case.

3 THE COURT: Understood. No, I'm clear.

4 Go ahead, Mr. Osborne, anything else you want to
5 add?

6 MR. OSBORNE: I don't agree with that statement,
7 because certainly Dr. MacGregor is entitled to look at
8 it and comment on it and do everything in regard to the
9 deposition of their designated expert.

10 With regard to one of his comments about financial
11 interest, there is no financial interest in the case.
12 Okay. He's hired to just do computer assistance.
13 That's it. I mean, all he's doing is putting up the
14 actual exhibits that we're presenting to you. You're
15 the one making the call on what exhibits come in or out
16 of evidence, but all he's doing is putting them up,
17 making them larger, making them easier to read, and
18 that's it, at my direction obviously.

19 So it does comply with the Nevada Rules of Civil

20 Procedure. It's been used several times, not only by
21 me but by other lawyers around the state. This has
22 been done for a very long time. It is specifically
23 designated. There is no requirement in our civil
24 procedure rules that an actual certified court reporter

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1 provide the transcript.

2 Mr. Gates could have had his own court reporter
3 transcribe that by whatever means he wanted. It was
4 properly noticed. And he could have done it by other
5 means that weren't within the notice.

6 THE COURT: I understand. I still want a written
7 response, because he did a written motion and he's made
8 it part of the record. So your response needs to be
9 part of the record as well no matter what I decide. So
10 I don't want to preclude you in short notice. I know
11 how busy you are preparing for trial, but I need to
12 have it briefed. And I want to give you that
13 opportunity so you're not prejudiced by, as I say,
14 arguing it like this when he's taken the time to do his
15 research and prepared in such a way. I want you to
16 respond to it. That would be helpful to me as well.
17 It's an important issue. It's not something that I'm
18 going to decide out of hand based upon the briefing.
19 So if you could do that, that would be fine.

20 Does that affect our morning at all? I don't want
21 the jury to wait any longer than they have to.

22 MR. OSBORNE: I also have a motion as well, Your
23 Honor.

24 THE COURT: All right.

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1 THE COURT: Anything else you want to tell me?

2 MR. OSBORNE: About --

3 THE COURT: About this issue.

4 MR. OSBORNE: No.

5 THE COURT: Okay. And I'll hear a short reply,
6 because then I'll see the briefs and make my decision.

7 MR. GATES: Briefly, Judge. I think the rule is --
8 there's a reason why we have certified court reporters
9 at a deposition. Not only are they taking an oath, but
10 they are insuring that the testimony taken is as
11 actually what it is. We have no idea in this case who
12 transcribed from that video or those videos onto paper
13 here. And it's not noted in any of the deposition
14 documents that are filed to the transcript. We have no
15 idea. And that's the problem.

16 THE COURT: And I asked that question.

17 MR. GATES: Yes.

18 THE COURT: I do have one other thing before you
19 sit down on this issue from a timing standpoint. Why
20 is it being brought to my attention in the middle of
21 trial? What would be the reasons why you didn't file
22 anything previously if you've been on notice of the
23 fact of your concerns related to this?

24 MR. GATES: Well, Judge, the first time it bothered

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1 me was when I saw that Mr. Ivey was sitting in this
2 courtroom behind counsel table for the plaintiffs. The
3 second time it really bothered me was when I saw the
4 video of Dr. Kindig during opening argument and it
5 appeared to me, having sat through her deposition, that
6 it had been edited and modified between some of her
7 responses, what the question is and the fact that the
8 entire, it appears to me -- and I don't remember it
9 specifically. The entire answer wasn't on there, nor
10 were my objections. And obviously, once it's up there,
11 the bell is run. I can't -- I had no idea that was
12 coming down. I knew that they were going to do a
13 PowerPoint. He showed me the medical documents. He
14 never told me he was actually going to play her in a
15 video. Therein was a problem. I brought it to the
16 court's attention immediately, and you said come back
17 when you have something.

18 well, Judge, we've been calling, we have letters
19 from the board for court reporters in Nevada that says
20 he's not certified, nor is he licensed, nor is his
21 associate. So as soon as we get it all down this
22 weekend, I filed it with the court, as you requested,
23 Judge.

24 THE COURT: You answered my question. Okay. I'll

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1 reserve -- I'll look forward to getting your papers
2 when you can. I know where you are.

3 All right. You had a motion, Mr. Osborne.

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5 * * * * *

6 THE COURT: All right. The jury is outside --
7 we're outside of the presence of the jury. Still on
8 the record. We're at the point where you wanted to
9 supplement your opposition with live testimony related
10 to this morning's motion.

11 MR. OSBORNE: Yes.

12 THE COURT: All right. You can all be seated.
13 Thank you.

14 MR. OSBORNE: Your Honor, we would call Mark Ivey.

15 THE COURT: All right. Please step forward and be
16 sworn.

17 THE CLERK: Raise your right hand.

18 (The oath was administered to the witness.)

19 THE WITNESS: I do.

20 THE COURT: Please take the witness stand. Tell us
21 your first and last name, spelling your last name for
22 the record.

23 THE WITNESS: Mark Ivey. Last name is spelled
24 I-v-e-y.

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1 THE COURT: Thank you.

2 Mr. Osborne.

3 MR. OSBORNE: Thank you, Your Honor.

4 MARK IVEY,

5 having been called as a witness herein,
6 being first duly sworn, was examined
and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. OSBORNE:

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9 Q Mr. Ivey, you helped me out with some of the
10 depositions in this case?

11 A Yes, I did.

12 Q And your employer is?

13 A EDepositions, LLC.

14 Q And tell us about the nature of eDepositions,
15 LLC.

16 A EDepositions, LLC, is a litigation services
17 company. We provide support through an alternative
18 method of recording depositions by audio-video
19 technology and trial technology as you see here.

20 Q Okay. And then I want to talk specifically
21 about the depositions. Tell us how those are recorded
22 and how those comply with the Nevada Rules of Civil
23 Procedure.

24 A Right. So when we started recording

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1 depositions this way, we did a lot of review of the
2 rules of civil procedure, spoke with the Attorney
3 General's Office, the notary board, discovery
4 commissioners and judges to make sure that how we were
5 recording depositions fell in line with the Rules of
6 Civil Procedure.

7 The way that we record depositions -- we are
8 deposition officers, meaning we're able to administer
9 an oath. We record our depositions with audio-video
10 technology with many forms of redundancy. The
11 audio-video is the official record.

12 Under Rule 30(b)(4), it talks about if it's a
Page 17

13 non-stenographic deposition, there is a script that we
14 have to read onto the record identifying who we are,
15 who we work for, location of the deposition, time,
16 date, the deponent, the swearing in. And we also place
17 on the record before testimony begins that it is an
18 audiovisual deposition and that will be the official
19 record. We do create a certified transcript from that
20 official record that's certified by the deposition
21 officer.

22 So the specific rules that we follow are Rule 30
23 and 32 as far as form and presentation for the court.

24 Q Okay. And specifically 30(b)(2) talks about

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1 how it can be recorded by sound, sound visual or
2 stenographic means?

3 A Correct.

4 Q Okay. And it says "Any party may arrange for
5 the transcription to be made from the recording of a
6 deposition taken by non-stenographic means."

7 A Right. The rules are pretty specific as far as
8 how non-stenographic depositions are taken. Any party
9 has the right to get it transcribed. The rules don't
10 dictate who can transcribe that. So it doesn't say,
11 you know, it has to be a certified transcriptionist or
12 a certified court reporter. It just allows for that
13 transcript to be completed.

14 We provide the transcript because most of the
15 testimony we have has the potential of ending up in
16 court. And that specifically goes to the presentation

17 rule in court, that if a non-stenographic deposition is
18 to be presented into court, it needs to be accompanied
19 with a transcript of the portions. So that's one of
20 the main reasons that we create the transcript.

21 Q Okay. And one of your partners is Jason
22 Sanderson?

23 A That's correct.

24 Q And Jason Sanderson did Dr. Kindig's deposition

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1 in this case?

2 A Correct.

3 Q And when he did the deposition -- it was
4 approximately about a year ago -- did you receive any
5 objections from Mr. Gates?

6 A No.

7 Q Did you receive any objection from Mr. Gates's
8 firm?

9 A No.

10 Q Did you receive any objections by Dr. Kindig?

11 A No.

12 Q You transcribed the deposition?

13 A Correct.

14 Q And after the deposition is transcribed, the
15 original is back in the file over here under seal?

16 A Correct. So what we do as far as the original,
17 if you don't mind -- as far as presentation to the
18 court, it describes that the testimony has to be --
19 unless you stipulate otherwise has to be under seal if
20 it's going to be presented to the court.

21 well, the original is the audio video, so we
22 include that with a transcript, but we also follow the
23 rules on the certification of the transcript. There's
24 actually a certification. It's 30(f) goes over the

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1 certification portion, that the deposition officer has
2 to accompany the official record with a certification
3 that they were -- that they took the oath, that they
4 are, you know, subscribing that this is the true and
5 accurate testimony of the witness. So that's why we
6 create a certification page for the court record.

7 Q All right. And then in addition to it, Rule
8 30(b)(3) provides safeguards that any -- the other
9 party could designate any other means by transcription
10 if they so choose?

11 A Correct.

12 Q And that's happened in some of your
13 depositions, has it not?

14 A Yes, we've had opposing counsel bring a court
15 reporter into the depositions where we're the official
16 record.

17 Q Did you see that with Dr. Low or Dr. Kindig?

18 A I did not.

19 Q And then you've transcribed the depositions of
20 both Dr. Low and Dr. Kindig?

21 A Yes. EDepositions is responsible for the
22 transcription and the quality assurance to make sure
23 that the transcript matches the official record which
24 is the audiovisual.

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1 Q And in addition to having not only the video
2 and then the audio that goes along with it, you have
3 the transcript that corresponds with both the audio and
4 the visual?

5 A Correct. And that's a requirement under the
6 Rules of Civil Procedure, that if you are going to use
7 a non-stenographic deposition in court, it has to be
8 accompanied with a transcript of those portions that
9 you're using.

10 Q Okay. There's been some mention made that
11 because you did the deposition or your firm did the
12 deposition of Dr. Kindig and you were involved in
13 Dr. Low's deposition that you shouldn't be doing the
14 computer work in this courtroom. Let me ask you this.
15 Did I provide you all the documents to be provided up
16 here on the screen to the jury?

17 A Yes, you did.

18 Q Okay. And not until the judge admits any of
19 the evidence are we to put it up on the screen?

20 A That's correct. I'll get in trouble if I do
21 that.

22 Q So in addition to the actual exhibits -- I
23 mean, who made up the PowerPoint in this case?

24 A You did.

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1 Q And I just provided that to you?

2 A Yes, I just took your PowerPoint and plugged it
3 into my computer.

4 Q Okay.

5 MR. OSBORNE: If the Court wants any further
6 examination --

7 THE COURT: Let's see what the cross-examination is
8 first.

9 MR. OSBORNE: Sure.

10 THE COURT: Thank you. Were you done with your
11 questioning?

12 MR. OSBORNE: Yes.

13 THE COURT: Thank you. Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. GATES:

16 Q I still didn't hear the answer to who actually
17 typed out off the video. For instance Dr. Kindig, who
18 typed it?

19 A We have transcriptionists that we work with.

20 Q What is their name?

21 A We use a company called NT Stat as our
22 transcription company.

23 Q So maybe I'm not being clear. Who was the
24 person that typed the actual transcript --

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1 A I don't --

2 Q -- that's been used in this court that was
3 placed allegedly as a certified deposition in a sealed
4 envelope? Who typed it?

5 A I don't have a name of a person who typed that.

6 Q So you don't know, sir, if the person typed it
7 if they were a court reporter.

8 A No, they are not a court reporter.

9 Q And you don't know that they're a notary of the
10 court in the state of Nevada?

11 A No, they are not.

12 Q And you don't even know their name?

13 A I can't give you a name right now.

14 Q And you had since this morning -- you've been
15 sitting in court, haven't you?

16 A Yes.

17 Q And by the way, the depositions of Dr. Kindig
18 and Dr. Low, I showed up at 5:30 on a Monday night in
19 Sacramento at Dr. Low's office. That's the first time
20 that I saw you at his deposition; correct?

21 A Yes, I believe so.

22 Q Did you send out notice to me that you were
23 going to be there and a court reporter was not?

24 A No.

1 Q No. And did I ask you -- I said, "who are you
2 and where's the court reporter?"

3 A I don't recall you asking me where the court
4 reporter was.

5 Q And did I also ask you -- because it seemed
6 that you were particularly close to Mr. Osborne, and I
7 mean in a professional manner. Didn't you drive
8 Mr. Osborne over from Reno and back?

9 A We rode in the same vehicle.
10 Q You as an independent officer of the court as
11 you claim to be?
12 A Yes.
13 Q Sir, you're getting paid to sit back here and
14 use this computer, aren't you?
15 A Yes, I am.
16 Q So you do have a financial interest in this
17 case, don't you?
18 A I'm being paid a flat hourly --
19 THE COURT: Just a second. There's an objection.
20 MR. OSBORNE: Let me just say objection. I mean,
21 this is argumentative and --
22 THE COURT: I am going to sustain it on
23 argumentative just for that purpose.
24 Go ahead.

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1 MR. GATES: I apologize, Judge. I'm a little
2 upset.
3 THE COURT: I get that. That's why I sustained it
4 for that purpose. Continue your questioning, but --
5 MR. GATES: I'll tone it down.
6 THE COURT: That's my point.
7 BY MR. GATES:
8 Q And I apologize, Mr. Ivey.
9 Let me back up. You're a notary in the state of
10 Nevada?
11 A Correct.
12 Q Not in California?

13 A That's correct.

14 Q And you don't have any official officer of the
15 court capacity in the state of California, do you?

16 A I do not.

17 Q And so you were the only one there for
18 Dr. Low's deposition and you actually had him raise his
19 right hand and you swore him in?

20 A Yes, I did.

21 Q And you had no authority to do that, did you?

22 A My understanding is under the -- it's a Nevada
23 case and it was being followed under the Nevada Rules
24 of Civil Procedure.

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1 Q Sir, you were in the state of California.
2 California doesn't recognize notaries from the state of
3 Nevada. Did you know that?

4 A I did not.

5 Q All right. So not only were you not authorized
6 to take an oath and say what's going on the record as
7 an officer of the court in the state of California,
8 you're not an official court reporter in the state of
9 California; correct?

10 A No.

11 Q And, number three, you have no idea who
12 actually typed this out?

13 A No.

14 Q Let's go to Dr. Kindig. You weren't there,
15 sir, were you?

16 A No, I was not.

17 Q And you had -- I'm sorry. Do you own the
18 company?

19 A I do.

20 Q And your associate that came to Dr. Kindig's
21 deposition, is he an employee?

22 A Yes, he is.

23 Q And I'm guessing you have no idea who actually
24 typed out the transcript that has allegedly been

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1 certified in this case that is in a sealed container
2 that's going to be handed to --

3 A I cannot give you a name of who typed the rough
4 draft, no.

5 Q And your associate, he's not an official court
6 reporter, is he?

7 A No.

8 MR. GATES: Judge, I have no more questions.

9 MR. OSBORNE: Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q Who notices the depositions, Mr. Ivey?

13 A Attorneys do.

14 Q And did you see any objection or have any
15 objection on the record regarding either you or
16 Mr. Sanderson doing the deposition?

17 A No.

18 Q And so let me just read you the certificate of
19 the reporter to Ms. Kindig's deposition. It gives the
20 name of the case, gives the jurat, and it says, "I,

21 Jason Sanderson, a duty-commissioned notary public,
22 Washoe County, State of Nevada, do here by certify that
23 I recorded the deposition of the witness Brandi Kindig
24 commencing June 22nd, 2015. Prior to being examined,

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1 the witness was duty sworn to testify to the truth,
2 that I thereafter transcribed or supervised the
3 transcription of the recorded audiovisual and said
4 deposition is a complete true and accurate
5 transcription. I further certify I'm not a relative,
6 employee of an attorney or counsel for the party, nor a
7 relative or employee of an attorney or counsel involved
8 in said action, nor a person financially interested in
9 the action."

10 And then there's a notary that's signed by Jason
11 Sanderson. Is that what's also affixed to Dr. Low's
12 deposition?

13 A Yes, it is.

14 Q And so all's you're doing is certifying that
15 the deposition is complete, true and accurate?

16 A Correct. It's -- we can't -- even if we had a
17 court reporter type up the transcript, due to the rules
18 of civil procedure, we can't affix a certification page
19 from anybody else that might have assisted in helping
20 us type that out. As a deposition officer, we're the
21 only ones that can put that certificate that says that
22 we gave the oath, that we were there at the time of the
23 deposition.

24 It's in our process that we get a rough draft of

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1 the transcript, and then the deposition officer,
2 myself, Mr. Sanderson, we review from the first line of
3 the page of the deposition to the last line to make
4 sure that the transcript matches the official record
5 which is the audio and video.

6 THE COURT: Stop for a minute. How do you swear
7 that you supervise the transcription?

8 THE WITNESS: So the part of where we supervise the
9 transcription is it's the deposition officer's role to
10 certify that transcript.

11 THE COURT: I'm clear.

12 THE WITNESS: So when we go through the transcript,
13 there's a lot of places that we listen to the -- or
14 listen and watch the audiovisual and we make sure that
15 the transcript is accurate. There are many times where
16 a transcriptionist might hear something a certain way,
17 it might be transcribed incorrectly, or they might not
18 understand what's said, so we make sure that those
19 parts are accurate. So we do some transcription within
20 the transcript.

21 THE COURT: Stop there for a moment. You answered
22 my question related to it. In this particular case,
23 did you review the transcripts of the depositions that
24 were videoed by your company for accuracy in this case?

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1 THE WITNESS: Every single deposition.

2 THE COURT: That's in this case?

3 THE WITNESS: Yes, sir.

4 THE COURT: And just because you don't know who did
5 the transcription didn't prevent you and/or your
6 partner from reviewing that transcript?

7 THE WITNESS: Absolutely.

8 THE COURT: So you're representing that you
9 reviewed the transcript and compared them to the video?

10 THE WITNESS: Every single word.

11 THE COURT: My second question is what authority is
12 there for you to be a notary in Nevada and swear
13 somebody in in California?

14 THE WITNESS: My understanding in speaking to the
15 notary board was to follow the rules of civil procedure
16 in the state of Nevada. And I was advised that
17 that's -- if it's a state of Nevada case that we're
18 following those rules of civil procedure, so that was
19 my understanding.

20 THE COURT: All right. Any questions based on my
21 questions?

22 BY MR. OSBORNE:

23 Q When you do your quality assurance and you
24 ensure that the record is accurate, you have the

1 audiovisual in addition to the stenographer; right?

2 A To the transcript?

3 Q To the written transcript.

4 A Correct.

5 Q Did you see any changes made by either
Page 29

RenoTrialRough

6 Dr. Kindig or Dr. Low to any of your transcripts in
7 this case?

8 A No.

9 MR. OSBORNE: That's all I have.

10 THE COURT: Do you have any questions based on my
11 questions?

12 MR. GATES: Briefly.

13 RECROSS EXAMINATION

14 BY MR. GATES:

15 Q Sir, how do you know that the transcriptionist
16 or the word processor whose name we don't know verified
17 that the actual video had not been altered or edited
18 before he or she started word processing this document?

19 A Because we maintain control of what is
20 presented to the transcriptionist and we do not alter
21 any of our audio or video ever.

22 Q How does that word processor know that that
23 video had not been altered or modified, because they
24 weren't at the deposition?

34

♀

1 A No, they're not, and that's why they don't
2 certify the transcript.

3 Q And, again, you don't know the name of these
4 people; correct?

5 A I can give you the company name. I can't give
6 you the specific transcriptionist that worked on these,
7 no.

8 Q And notaries -- the board in California has no
9 reciprocity with the state of Nevada. Did you know

10 that?

11 A I did not know that.

12 Q Yet you came over to the state of California
13 and took someone under oath?

14 A Yes.

15 MR. GATES: Thank you, Judge?

16 THE COURT: Thank you. Submitted?

17 MR. OSBORNE: Yes, Your Honor.

18 THE COURT: I'm going to still need your points and
19 authorities tonight, Mr. Osborne, but my ruling is as
20 follows: Number one, I'm going to allow those
21 transcriptions, I'm going to allow that those
22 depositions be used for the following reasons. Number
23 one, I am familiar with the fact that in a court
24 reporter context, a Nevada court reporter can follow

‡

1 someone out of state. I understand from the witness's
2 answer that he believes there's case law out there and
3 there may be future case law depending on the outcome
4 of this case, but the reality of it is this. It would
5 not be my first choice to have used a California -- a
6 Nevada notary swearing someone in in California.
7 However, I find that it's admissible and allowable and
8 that I've had experience myself where I've brought a
9 court reporter to another country from Nevada on a
10 Nevada case and that did not meet any objections.

11 A side issue is potential waiver in this case from
12 the timing related to the objection. Now that we're in
13 trial and it wasn't made available to the court prior

14 to this time, I'm also finding that the transcripts can
15 be used as well as the testimony of the witnesses can
16 be used.

17 But I further would state for the record that,
18 again, I understand how you reviewed the transcript.
19 To my view it would have been a cleaner call if you had
20 retained the services of a certified transcriptionist
21 and knew the name and identity of the person who had
22 done it. So I share that with you of the Court's two
23 concerns. But notwithstanding those concerns, I'm
24 allowing it, and that's my order.

♀

1 And I'll need your points and authorities tonight,
2 Mr. Osborne. Thank you very much. You may step down.
3 You're excused.

4

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Can a Notary Take a Deposition?

January 2, 2018 Michael Lowry

Can you reduce deposition costs by eliminating the court reporter and just using a notary to video record the deposition? A long time reader emailed that question to me. He appeared for another party's video recorded deposition. There was a videographer, but no court reporter. The videographer explained he is a notary so he can swear in the witness. I am aware of at least one company in town that provides this service, but will that process lead to admissible testimony? The reader sent me the answer he later found.

The Deposition is Worthless

The problem is not necessarily with the videographer, for all the reasons described at length in [prior posts](#) about video recording. The problem is with the notary. FRCP 28(a)(1) establishes before whom a deposition may be taken in a federal case, NRCP 28(a)(1) is substantively identical.

Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

- (A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or
- (B) a person appointed by the court where the action is pending to administer oaths and take testimony.

In Nevada, a notary is not authorized to take a deposition. The Nevada Secretary of State's notary division has expressly answered that question in a [FAQs page](#).

Can I take a deposition?

The authority to take a deposition was removed from the list of notarial acts in the law by the 1995 Legislature. Certified court reporters who have been appointed notaries public with limited powers take depositions.

What does this mean? If you appear for a deposition and encounter a situation like this reader did, object and do not proceed until a certified court reporter attends. The problem is the notary cannot put a witness under oath and that fact may lead to admissibility problems later on. Some may think the better strategy is to wait and object to using the testimony later because it is a strategic advantage. I suspect that strategy will not work because, by failing to object at the time, any objection to the procedure is likely waived.

As a final caveat, this post is jurisdiction specific, as notary licensing is a matter of state law. I encourage readers to check their jurisdiction's laws on this topic.

LAURIA TOKUNAGA GATES & LINN, LLP

Attorneys at Law

Anthony D. Lauria*+
Mark D. Tokunaga*+
Raymond R. Gates*+
Scott A. Linn*
Robert B. Smith*+
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601 South Seventh Street
Las Vegas, NV 89101
Tel: (702) 387-8633
Fax: (702) 387-8635

* Licensed in California
+ Licensed in Nevada

March 28, 2017

To the Honorable Members of the Committee on Commerce, Labor and Energy:

I write in support of SB 406. Specifically, I am in support of the proposed amendment to section 32 modifying the language in NRS 656.320 and sections 1 and 2 of NRS 656.320 limiting the duties of an officer before whom depositions are taken to be completed by a certified court reporter. As a trial attorney for the past 28 years, I believe these amendments are necessary to preserve the necessary foundational requirements, credibility, and trustworthiness of court evidence. In my experience, I believe only a certified court reporter has the qualifications, background, capacity, and neutrality as a court officer to certify testimony as true and correct for utilization in court or other formal proceedings.

I have recent personal experience in trial in the District Court of Washoe County where my opponent utilized a notary public/videographer to complete and preserve deposition testimony rather than utilize a neutral certified court reporter. At trial, this individual then worked as part of the opposition litigation team providing clips of video testimony that had been purposely altered including the omission of objections and complete responses to questions. Given the alteration of the video from which this individual produced a deposition transcript, there was no way to determine whether testimony from the video was altered nor could the original be produced. In a court hearing, this individual, under oath, admitted he did not know who preserved the videotape nor could he testify as to who typed the transcript from the video. Obviously, the credibility and foundation of the transcript and video were suspect at best. It was also prejudicial to my client when the individual worked as part of the opponent's team producing videotape segments on cue and providing a deposition transcript that could not be certified. The obvious prejudicial effect of a notary public/videographer becoming a part of the opponent litigation team was apparent and certainly violated the ethical obligation of an officer sworn to provide credible, reliable, trustworthy recorded testimony. I submit that this official duty be left to the fine men and women certified court reporters in Nevada.

Accordingly, I fully support the proposed modifications to NRS 656.320 limiting the duties of recording and preserving deposition and court testimony to certified court reporters.

Sincerely,

Raymond R. Gates, Esq.
Founding Partner,
Lauria Tokunaga Gates & Linn, LLP

 ERICKSON, THORPE &
SWAINSTON, LTD.

ATTORNEYS AT LAW

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RENO, NEVADA 89509

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P.O. BOX 3559, RENO, NEVADA 89505

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ROGER L. ERICKSON
1933 - 2013

GEORGE W. SWAINSTON
1936 - 2007

TELEPHONE: 775.786.3930
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BRENT L. RYMAN
ANDREA K. PRESSLER
PAUL M. BERTONE
ANN M. ALEXANDER
BRETT A. DIEFFENBACH
BRITTANY N. COOPER

March 28, 2017

To the Honorable Members of the Committee on Commerce, Labor and Energy

Re: SB 406

Dear Members:

I write to you in support of SB 406. I am the managing partner of the law firm of Erickson, Thorpe & Swainston, Ltd., a firm which has been in existence for more than 40 years in northern Nevada. I have been a member of this firm for more than thirty-one years practicing in all courts in the states of Nevada and California, including the Ninth Circuit Court of Appeals and the United States Supreme Court. My practice has primarily focused on civil litigation.

As I trust you are well aware, all civil litigation involves a search for the truth. The process begins with discovery and, if necessary, culminates in a trial before a judge or jury. In virtually all cases, key evidence has been developed during the discovery process. Without question, the most valuable source of evidence comes through the deposition process whereby witness are sworn and provide testimony under the penalties of perjury before an officer of the court known as a court reporter. The testimony given during the discovery process is thereafter used in various other proceedings, including motions which seek a pretrial resolution of the case. Such motions usually take the form of motions for summary judgment, but may include many other proceedings such as motions for preliminary injunctions or motions for awards of attorney's fees or sanctions. In addition, if the deponent dies or is otherwise unavailable to appear at a subsequent trial or other proceeding, that person's deposition testimony can be read into the record and taken by the court or jury as if the person had testified live. Thus, the evidence developed can be very critical to a case. Most frequently, however, the deposition is used as a means by which to impeach a witness. In this way, the judge or jury is shown previous sworn testimony which is inconsistent with the testimony the witness offered in the subsequent proceeding. This method of impeachment absolutely key to the search for the truth, but depends entirely upon an accurate deposition transcript.

Recently, companies have been formed to circumvent the process of a certified court reporter whereby the deposition is recorded not by way of a live court reporter, but instead, by way of a video camera. This camera, however, shows only the witness and does not show any of the other participants in the process, especially the attorneys who are present and participating in the deposition. This video of this proceeding is then sent to another person

From Martina Kratka-Shindelus, Esq.

3/28/17

Peggy I saw your post and I have question. Right now there are attorneys who take depo by videographer and then they say those are transcribed but that is valid. I always had a weird feeling as I don't know who or how is transcribing It as they are not there. The people who took it like this (not me by the way) I did not care as much cause i knew it was on non trial cases but now I have few that will likely go to trial and I'm questioning that those may not be valid transcripts (not that I care as i took real depos) so I wanted your input. Interesting issue

Against As a member of the Nevada bar I am firmly Mar-
against this bill. Having a qualified court 28-
reporter in each hearing is invaluable. They 2017
allow for the smooth recall of important
events in a way a Maxine or video never
can. I am firmly against this bill

I want to point out this "against" is obviously "for" since comments support the bill.....

You can also leave comments here and ask they vote in favor of SB 406: <https://www.leg.state.nv.us/App/Opinions/79th2017/A/>

Thanks!

Bill

Here is a copy of what I sent to my legislators:

Good afternoon. I am writing to urge you to pass SB 406.

I have been a licensed court reporting firm owner in Nevada for eight years and a licensed Certified Court Reporter in Nevada since 1999. SB 406 is needed to protect the public from unlicensed video operators acting as officers of the court and conducting depositions without a Certified Court Reporter present. These video operators are not tested for transcription skills or knowledge of NRCPC deposition rules. They are not certified. They are not credentialed. They have no regulatory or governing body to answer to. They have no licensure and no continuing education requirements. They have a video camera and transcriptionists, perhaps from overseas and unfamiliar with our statutes and regulations, who labor to transcribe from a video record with attorneys and witnesses talking over each other, frequently using medical and other expert-laden terminology.

I have personally seen transcripts from these services. I saw them when my clients were on the copy side of these vendors and they asked me what remedies were available when they received transcripts they considered unusable. Unfortunately, their remedies are limited because, as I said, there is no regulatory body governing video operators acting as court reporters.

It deeply concerns me that any person off the street with a notary and video camera can walk into a deposition with absolutely no training and call themselves a court reporter and then under their purview have a transcriptionist somewhere create a transcript to be used as an official certified deposition in court proceedings.

There will continue to be a need for videography at certain depositions, but it should always be in conjunction with a Certified Court Reporter and not in lieu of one. I employ videographers at my court reporting firm, but they are always present with a Certified Court Reporter, and the official record is always the certified transcript from the Certified Court Reporter, not the video record.

As a Certified Court Reporter who has attended and passed court reporting schooling as a prerequisite for State licensure, then sat for State testing to ensure my competency, annually paid my dues for State licensure, attended numerous conferences to meet State continuing education requirements, diligently followed NRS and NAC rules governing Certified Court Reporters and worked tirelessly to build my business, I am hopeful that you will vote in favor of protecting the public by ensuring that Certified Court Reporters are the only officers of the court before whom a deposition can be conducted.

Sincerely,

William C. LaBorde

Dana Matthews

From: Mark Ivey [Mark@evolvedepo.com]
Date: Thursday, September 04, 2014 3:53 PM
To: brent.harsh@farmersinsurance.com; dmatthews@etsreno.com
Subject: Signature pages.
Attachments: Signature pages Francovic v Menmuir.pdf

All,

Attached are the signature pages for the transcripts that you have received. I have one more transcript to send over and will include the signature page as well.

Please let me know if you need anything else.

Regards,

Mark Ivey
Evolve
775-240-0186

Where is the notary stamp? on these certificate pages?

CERTIFICATE OF RECORDER

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STATE OF NEVADA)

COUNTY OF WASHOE)

NAME OF CASE: MARISA FRANCOVICH vs. BRETT MENMUIR

I, Mark Ivey, a duly commissioned
Notary Public, Washoe, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Kathleen Bishop,
commencing on 07/15/2014.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Washoe, State of
Nevada, this 07/15/2014.



Mark Ivey Notary

CERTIFICATE OF RECORDER

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STATE OF NEVADA)

COUNTY OF WASHOE)

NAME OF CASE: MARISA FRANCOVICH vs. BRETT MENMUIR

I, Mark Ivey, a duly commissioned
Notary Public, Washoe, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Patricia Menmuir,
commencing on 07/16/2014.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Washoe, State of
Nevada, this 07/16/2014.



Mark Ivey Notary

CERTIFICATE OF RECORDER

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STATE OF NEVADA)
COUNTY OF CLARK)

NAME OF CASE: MARISA FRANCOVICH vs. BRETT MENMUIR

I, Mark Ivey, a duly commissioned
Notary Public, Washoe, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Natalie Okeson,
commencing on 08/01/2014.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this 08/01/2014.



Mark Ivey Notary

CERTIFICATE OF RECORDER

STATE OF NEVADA)

COUNTY OF WASHOE)

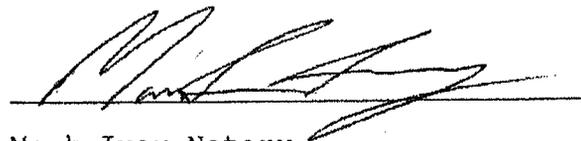
NAME OF CASE: MARISA FRANCOVICH vs. BRETT MENMUIR

I, Mark Ivey, a duly commissioned
Notary Public, Washoe, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Lorraine Onesian,
commencing on 08/05/2014.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Washoe, State of
Nevada, this 08/05/2014.


Mark Ivey Notary

DISTRICT COURT
CLARK COUNTY, NEVADA

KENNETH STIMPSON AND KRISSEY
STIMPSON,)
Plaintiff,)

Case No.
A-11-655052-C

vs.)

MARCELO PALACIOS, and Individual;)
IRRISCAPE CONSTRUCTION NEVADA,)
INC., a Nevada Corporation; DOES I)
through X; and ROE CORPORATIONS I)
through X, inclusive,)
Defendants.)

VIDEOTAPED DEPOSITION OF KENNETH STIMPSON
Taken on January 4, 2013

At 10:13 o'clock a.m.

At 7670 West Lake Mead Boulevard, Suite 225
Las Vegas, Nevada

Transcribed By: Julie C. Filiberti, CCR 718

Evolve Recording LLC.

Las Vegas, NV
2620 Regatta Drive, Suite 102
Las Vegas, NV 89128
702-490-DEPO (3376)

Reno, NV
401 Court Street
Reno, NV 89501
775-410-DEPO (3376)

It's time to...

evolv
Audio and Visual Dep.
ARIZONA · CALIFORNIA · COLORADO · FLORIDA · NEVADA

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

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5 KENNETH STIMPSON AND KRISSY)
STIMPSON,)

6 Plaintiff,)

7 vs.)

Case No.
A-11-655052-C

8)
9 MARCELO PALACIOS, and Individual;)
IRRISCAPE CONSTRUCTION NEVADA,)
10 INC., a Nevada Corporation; DOES I)
through X; and ROE CORPORATIONS I)
11 through X, inclusive,)

12 Defendants.)

13
14 VIDEOTAPED DEPOSITION OF KENNETH STIMPSON

15 Taken on January 4, 2013

16 At 10:13 o'clock a.m.

17 At 7670 West Lake Mead Boulevard, Suite 225

18 Las Vegas, Nevada

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25 Transcribed By: Julie C. Filiberti, CCR 718

1 APPEARANCES:

2 For the Plaintiffs: TAMARA V. LILE, ESQ.
3 Vannah & Vannah
4 400 South Fourth Street
5 Sixth Floor
6 Las Vegas, Nevada 89101

7 For Marcelo Palacios and Irriscape
8 Construction Nevada, Inc.: TROY A. CLARK, ESQ.
9 Bremer, Whyte, Brown &
10 O'Meara, LLP
11 7670 West Lake Mead Boulevard
12 Suite 225
13 Las Vegas, Nevada 89128

14 For Guy Corley: JOHN L. BERTOLDO, ESQ.
15 Benson, Bertoldo, Baker &
16 Carter, CHTD.
17 7408 West Sahara Avenue
18 Las Vegas, Nevada 89117

19 For S&C Claims Services and Heritage Pool
20 Plastering: MARLA R. FREDERICK, ESQ.
21 Lewis, Brisbois, Bisgaard &
22 Smith, LLP
23 400 South Fourth Street
24 Suite 500
25 Las Vegas, Nevada 89101

26 The Videographer: Lars Bangen

27 INDEX

28 Witness Direct

29 Kenneth Stimpson
30 (By Mr. Clark) 4

31 EXHIBITS

32 Number Description Page
33 Def's A Plaintiff's Response to 139
34 Defendants' 1st Set of
35 Interrogatories

(Original exhibits attached to original transcript.)

1 MR. BANGEN: We are now on the record in the
2 matter of Stimpson versus Palacios. My name is Lars Bangen.
3 I'm the videographer and officer. I work for Evolve Recording
4 located at 2620 Regatta Drive, Las Vegas, Nevada 89128.
5 Today's date is January 4th, 2013. The time is 10:13 a.m.
6 This deposition is being held at the offices of Bremer, Whyte,
7 Brown and O'Meara located at 7670 West Lake Mead Boulevard,
8 Las Vegas, Nevada 89128. This is a recorded deposition of
9 Kenneth Stimpson.

10 Would you please raise your right hand,
11 sir? Do you solemnly swear that the testimony you're
12 about to give will be the truth, the whole truth and
13 nothing but the truth so help you God?

14 THE WITNESS: Yes.

15 MR. BANGEN: Can you please state and spell
16 your name for the record?

17 THE WITNESS: Kenneth Orivelle Stimpson,
18 K-E-N-N-E-T-H. You need me to spell my middle, too, or just
19 last? S-T-I-M-P-S-O-N.

20 MR. BANGEN: This deposition is an audio/visual
21 recorded deposition. This will be the official record and any
22 transcript created will be created by Evolve from this
23 recording. Would all the attorneys present please identify
24 themselves and anybody with them beginning with the party
25 noticing the proceeding.

1 sign. I just want him to --

2 MR. CLARK: We will read and sign. I am
3 getting a copy of the transcript.

4 MS. LILE: Okay. Thank you. At your office.
5 That sounds good.

6 MR. BANGEN: Yes.

7 Going off the record in the matter of
8 Stimpson. The time is 1:39.

9 (Defendants' Exhibit A marked for
10 identification.)

11 (Deposition concluded at 1:39 p.m.)
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CERTIFICATE OF RECORDER

STATE OF NEVADA)

COUNTY OF CLARK)

NAME OF CASE: KENNETH STIMPSON AND KRISSY STIMPSON vs. MARCELO PALACIOS

I, Peter Hellman, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Kenneth Stimpson,
commencing on 01/04/2013.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this ____ day of _____, 2012.

Peter J. Hellman Notary (12-9031-1)

*he wasn't
even at the
deposition
Lars Bangen
was videographer*

DISTRICT COURT
CLARK COUNTY, NEVADA

JUAN TARROZA,
Plaintiff,

vs.

CASEY CAHILL, THERESA CAHILL)
CHARLES HENRY, DOE OWNER, I-V,)
DOE DRIVER, I-V, ROE EMPLOYER,)
and ROE COMPANIES,)
Defendants.)

ALL RELATED CLAIMS)

) Case No.: A-13-692078-C
) Dept. No.: II

RECORDED DEPOSITION OF CASEY CAHILL

Taken on January 23, 2015

At 9:18 a.m.

At Evolve Deposition

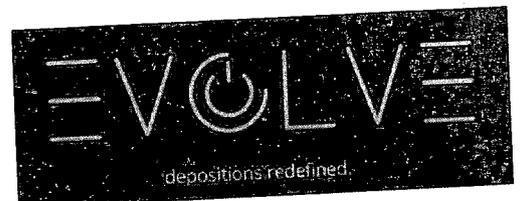
400 South 7th Street, Suite 400

Las Vegas, Nevada 89101

Evolve Deposition and Trial Services

400 South 7th Street, Suite 400
Las Vegas, Nevada 89101
702-421-3376

401 Court Street
Reno, Nevada 89501
775-410-3376



1 MR. HELLMAN: Job 71245. We are now on
2 the JUAN TARROZA vs. CASEY CAHILL
Casey Cahill, on 01/23/2015 matter of case number A-13-692078-

3 C, Juan Tarroza versus Casey Cahill. My name is
4 Peter Hellman. I'm the videographer and officer. I
5 work for Evolve Deposition Services, located at 400
6 South 7th Street, Suite 400, Las Vegas, Nevada 89101.

7 Today's date is January 23rd, 2015.
8 The time is 9:18 a.m. This deposition is being held
9 at the offices of Evolve Deposition, once again,
10 located at 400 South 7th Street, Las Vegas, Nevada
11 89101. This is the recorded deposition of Casey
12 Cahill. Mr. Cahill, can you please raise your right
13 hand? Do you solemnly swear or affirm that the
14 testimony you are about to give will be the truth,
15 the whole truth and nothing but the truth to the best
16 of your knowledge?

17 MR. CAHILL: Yes, sir.

18 MR. HELLMAN: Can you please state your
19 name with spelling?

20 MR. CAHILL: Casey Cahill, C-A-S-E-Y C-
21 A-H-I-L-L, Cahill.

22 MR. HELLMAN: This deposition is an
23 audio and visual-recorded deposition. This will be
24 the official record and any transcripts created will
25 be created by Evolve from this recording. Would all

CERTIFICATE OF RECORDER

STATE OF NEVADA)

COUNTY OF CLARK)

NAME OF CASE: JUAN TARROZA vs. CASEY CAHILL

I, Peter Hellman, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I recorded the taking of the
deposition of the witness, Vol ve Cahill,
commencing on 01/23/2015.

That prior to being examined the witness was
duly sworn to testify to the truth. That I thereafter
transcribed or supervised transcription from Recorded
Audio-and-Visual Record and said deposition is a complete,
true and accurate transcription.

I further certify that I am not a relative or
employee of an attorney or counsel of any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this 01/23/2015.

Peter J. Hellman Notary (12-9031-1)

e-depositions

VICKI MUNNS

Deposition Officer

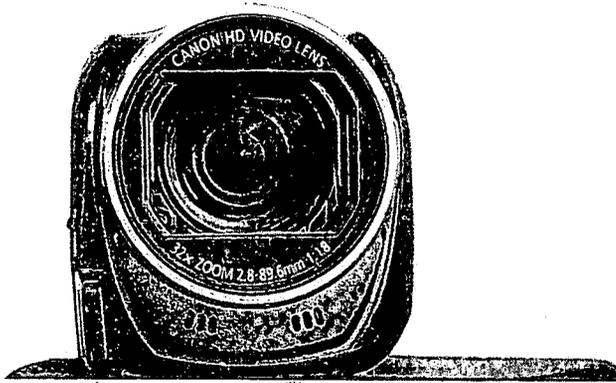
Direct: 775-690-1210

Office: 775-393-9531

vicki@e-depositions.com

750 Sandhill Road, Ste 105, Reno, NV 89521 www.e-depositions.com

IF A PICTURE PAINTS A THOUSAND WORDS, IMAGINE WHAT A VIDEO CAN DO



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- Depositions are conducted by our Deposition Officers who are Notary Publics, authorized to administer oaths.
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- The E-Depositions audiovisual recording system has multiple redundancies on both audio and video to ensure that every deposition is recorded completely and accurately.
- Typical delivery of a certified transcript takes place within 7-10 business days of the deposition (and often earlier) followed by a synced video of the deposition.

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"E-Depositions recently completed over 30 depositions for a complex Federal case in a period of 6 weeks. The timeline required a very rapid turnaround and they greatly exceeded our expectations. We wholeheartedly recommend E-Depositions." Senior Partner of a major law firm in Reno, Nevada. (full reference available on request)

From: Mike Pintar [mailto:mpintar@gplawreno.net]
Sent: Wednesday, February 22, 2017 11:36 AM
To: Linda Shaw <linda@litigationservices.com>
Subject: FW: Upcoming deposition

FYI. I received this for an upcoming deposition that I have with Tom Brennan and Sean Rose and thought you would be interested. I have already directed my office to have one of your reporters attend the depo to transcribe it for me.

Hope all is good and thanks again for writing a letter of recommendation for me.

Mike

From: Kadie Huffman [mailto:kadie@e-depositions.com]
Sent: Wednesday, February 22, 2017 11:04 AM
To: Mike Pintar <mpintar@gplawreno.net>
Subject: Upcoming deposition

My name is Kadie Huffman of E-Depositions LLC, and we are providing the deposition services on case number CV14-02507 Kuhnmuench V. Wilm on 2/27/17.

We are reaching out to you to introduce E-Depositions LLC and provide you with a little information about our premier services. E-Depositions is the premier deposition services firm in the state of Nevada. We have deposition officers that are legal experts and experts in the rules of civil procedure in regards to recording a deposition. All of our depositions are audio and video recorded (at no extra cost) to ensure an accurate record.

By recording depositions via audio and video technology you will receive your transcripts, video, and video with synced transcript, in a much more efficient manner than any other deposition services company. Along with a fast turnaround we provide accurate transcripts and the video synced to the transcript at rates that will make your firm and clients happy.

We would like to offer our services to you in this case and any other case your are currently taking depositions. I have attached information about our company for your review. We look forward to seeing you at the upcoming deposition as well as the opportunity to record your depositions as well.

Best regards,

Kadie Huffman**Director of Trial Services**

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Michael LeBouef

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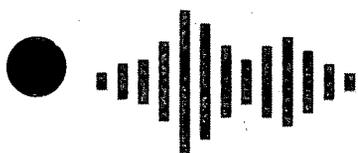
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 E-DEPOSITIONS brochure.pdf
1576K

Peggy Elias <peggysue4761@gmail.com>
Draft To: Linda Shaw <linda@litigationservices.com>

Wed, Feb 22, 2017 at 5:52 PM

[Quoted text hidden]



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Vicki A. Madsen
Founder/CEO

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Price List for Services - Nevada

Depositions, Mediations or Arbitrations Fees (with transcription)

Half-Day Appearance Fees \$90.00
(up to 3 hours)

Weekend Half-Day Appearance \$120
(up to 3 hours)

Full-Day Appearance Fees \$150.00
(over 3 hours, up to 6)

Weekend Full-Day Appearance \$180
(over 3 hours, up to 6)

Transcription Fee (electronic) \$5.00/pp
Exhibits (electronic) \$.30/pp

Transcript Fee (hard copy) \$5.50/pp
Exhibits (hard copy) \$.30/pp
Out of Area Shipping (of hard copy) \$25.00

Raw Video (w/transcript order) No Cost

Video Synced to Transcript No Cost

Depositions, Mediations, or Arbitrations (without transcription)

Depositions \$150.00/per hour
(Synced DVD incl. from third party transcript)

Mediations \$150.00/per hour

Arbitrations \$150.00/per hour

calendar@elevatereportingllc.com

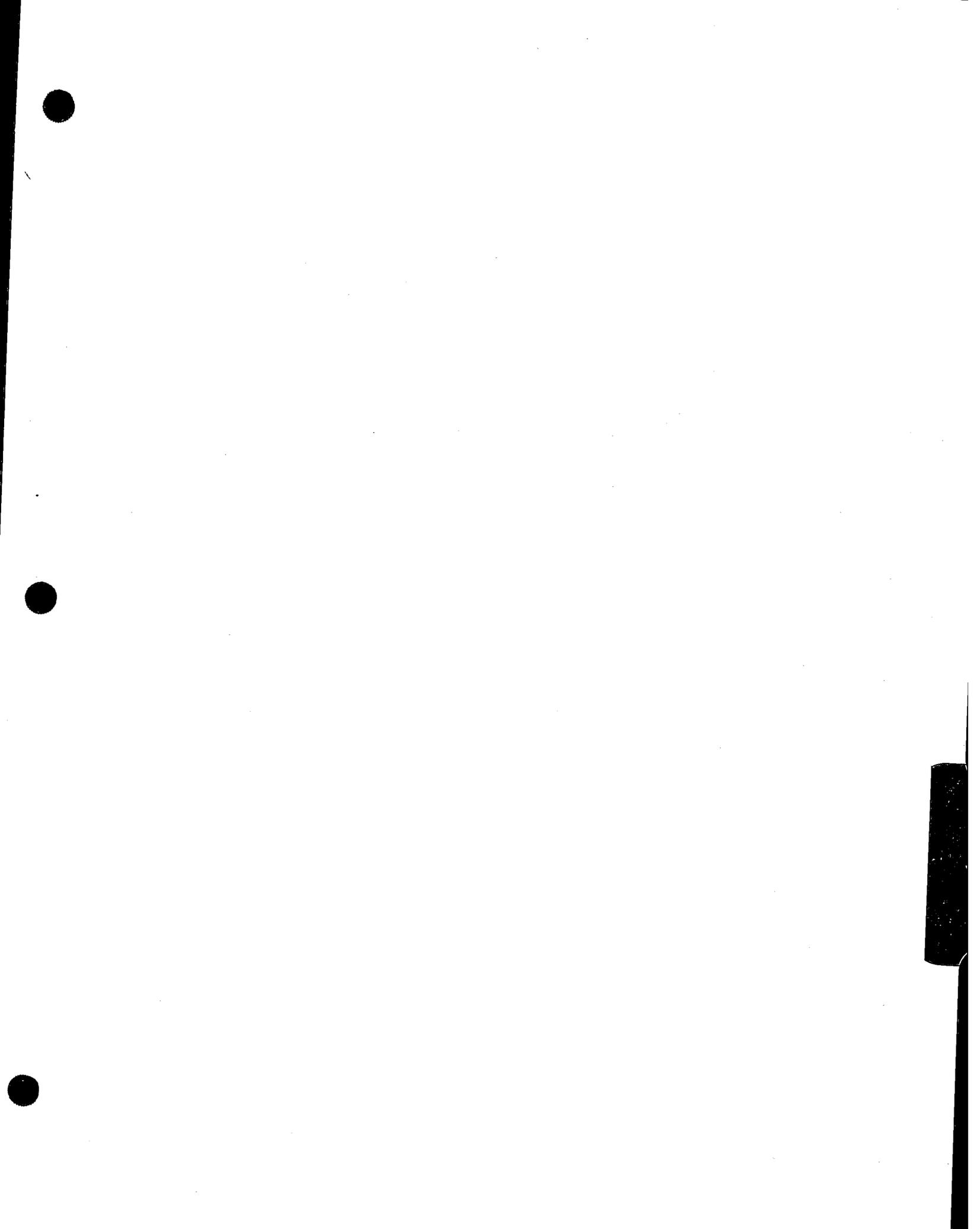


admin@elevatereportingllc.com

Corporate Headquarters

5682 Exotic Rosette Avenue, Las Vegas, Nevada 89139

702-561-0360 office



PROPOSED CHANGES TO NRCP RULE 28, 29 AND 30

*Delete language in yellow

*Substitute with language in blue

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) **Within the United States.** Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. Upon proof that the notice to take a deposition outside the State of Nevada has been given as provided in these rules, the clerk shall issue a commission or a letter of request (whether or not captioned a letter rogatory) in the form prescribed by the jurisdiction in which the deposition is to be taken, such form to be presented by the party seeking the deposition. Any error in the form or in the commission or letters is waived unless objection thereto be filed and served on or before the time fixed in the notice. The term "officer" as used in Rule 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29 certified court reporter or a certified voice writer

[As amended; effective January 1, 2005.]

(b) **In Foreign Countries.** Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention; or (2) pursuant to a letter of request (whether or not captioned a letter rogatory); or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in {here name the country}." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely for the reason that it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

[As amended; effective January 1, 2005.]

(c) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

[As amended; effective January 1, 2005.]

RULE 30. DEPOSITIONS BY ORAL EXAMINATION

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in subdivision (a)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) the person to be examined already has been deposed in the case; or

(B) a party seeks to take a deposition before the time specified in Rule 26(a), unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the state and be unavailable for examination in this state unless deposed before that time.

[As amended; effective January 1, 2005.]

(b) Notice of Examination: General Requirements; Special Notice; Method of Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice, not less than 15 days, in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

[As amended; effective January 1, 2005.]

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means. **Unless otherwise ordered by the court or by written stipulation of the parties as provided in Rule 29, the deposition shall be recorded by a certified court reporter or a certified voice writer with or without video technology, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for the transcription to be made from the recording of a deposition by the certified court reporter or certified voice writer.**

[As amended; effective January 1, 2005.]

(3) With 5 days' notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. **The additional record or transcript shall be made at that party's expense unless the court otherwise orders. to add video technology to record the deponent's testimony in addition to being recorded by a certified court reporter or certified voice writer.**

[As amended; effective January 1, 2005.]

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

[As amended; effective January 1, 2005.]