



**ISSUED BY THE 2020 MCRA BOARD
NOVEMBER 9, 2020**

The Massachusetts Court Reporters Association (MCRA) hereby fully subscribes to the National Court Reporters Association's (NCRA) Code of Professional Ethics (COPE) Advisory Opinions and adopts them as ethical guidelines Massachusetts stenographers should refer to and follow should situations arise which are addressed by any and/or all COPE Advisory Opinions.

MCRA puts forth its own state-specific Advisory Opinion in conjunction with:

- NCRA COPE Advisory Opinion 44;
- Supreme Judicial Court Updated Order Regarding Remote Depositions dated October 23, 2020;
- Supreme Judicial Court Order for the Administering of Oaths at Depositions via Remote Audio-Video Communication Equipment dated March 20, 2020; and
- Massachusetts Rules of Civil Procedure 30A.

Topic:

Attorney Requests The Stenographer To Record Deposition Through The Remote Video Conference Platform

Statement of Facts:

While making the official record, an attorney and/or party to the case makes a request for the stenographer to record the deposition within the remote video conference platform in lieu of hiring the services of a Certified Legal Video Specialist (CLVS) - i.e. videographer; such recording to be used at trial and/or for in-house purposes.

Discussion:

It is widely known that most remote video conference platforms have recording capability. It is becoming increasingly common for attorneys and/or parties to request that, instead of hiring a CLVS/videographer, a recording be made using the remote video conference platform, capturing both the audio and video of all participants during a deposition.

NCRA's COPE Advisory Opinion 44 speaks to the ethics issues involved when a stenographer acts as both the verbatim reporter and the videographer for the same proceeding. It is advised that the stenographer has an ethical duty not to compromise his/her ability to produce an accurate record. By taking on the dual role of stenographer and videographer, it creates the appearance of impropriety and undermines the integrity of the profession. NCRA's COPE Committee believes a single person cannot continuously monitor the recording while simultaneously producing a stenographic reporting of the proceeding. It would violate the stenographer's ethical duties for a stenographer to agree to perform another duty that would take away from his/her ability to focus on reporting the proceeding.

In the Commonwealth of Massachusetts, depositions taken pursuant to the Massachusetts Rules of Civil Procedure (MRCP) have requirements in order to properly conduct an audio-visual deposition. Specifically:

- 30A(b) which states the notice of deposition and/or subpoena must indicate it is to be recorded by audio-visual means;
- 30A(c)(1) and 30A(c)(2) each list specific read-on instructions and counsel identifications;
- 30A(c)(6) requires a digital clock be displayed at all times which shows hour, minute, second, and date;
- 30A(d) specifies the view of the witness; and
- 30A(g) speaks to editing of the recording.

Conclusion:

It is the opinion of the Massachusetts Court Reporters Association that stenographers are not to take on the dual role as videographer. To do so would violate their ethical duty to report the proceeding with impartiality and integrity. The duties of a videographer as outlined in MCRP 30A are vastly different than the usual and customary duties of a stenographer. The paramount duty of the stenographer is to provide an accurate transcript of the proceeding. To be responsible for two roles during a deposition would compromise the stenographer's ability to accurately report the proceeding.

Additionally, the stenographer is not ethically bound to report a deposition if attorneys and/or parties are in violation of the Rules.

If an attorney and/or party to an action wishes to have the deposition recorded, it is advised that they notice the deposition appropriately and employ the professional services of a CLVS/videographer.

NOTE: For advice on distribution of a recording to an attorney and/or party, if made by the stenographer for their own convenience as a backup to their stenographic notes, please refer to NCRA COPE Advisory Opinion 38 and also follow MRCP 30A.

References:

- NCRA COPE Advisory Opinion 44 - [https://www.ncra.org/home/professionals_resources/NCRA-Code-of-Professional-Ethics/COPE-Advisory-Opinions/group-page-\(advisory-opinions\)/Advisory-Opinion-44](https://www.ncra.org/home/professionals_resources/NCRA-Code-of-Professional-Ethics/COPE-Advisory-Opinions/group-page-(advisory-opinions)/Advisory-Opinion-44)
- Supreme Judicial Court Updated Order Regarding Remote Depositions dated October 23, 2020 - <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-updated-order-regarding-remote-depositions>
- Supreme Judicial Court Order for the Administering of Oaths at Depositions via Remote Audio-Video Communication Equipment dated March 20, 2020 - <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-order-for-the-administering-of-oaths-at>
- Massachusetts Rules of Civil Procedure 30A - <https://www.mass.gov/rules-of-civil-procedure/civil-procedure-rule-30a-audiovisual-depositions-audiovisual-evidence#:~:text=Rule%2030A%20%28m%29%20allows%20a%20party%20to%20depose,apply%20to%20another%20party%E2%80%99s%20treating%20physician%20or%20expert>