

Opinion No. 2011-134

January 27, 2011

The Honorable John T. Vines  
State Representative  
123 Market Street  
Hot Springs, Arkansas 71901-5308

Dear Representative Vines:

This is my opinion on your questions about Certified Court Reporters:

1. Is the authority to administer oaths in Section 23 [of the Regulations of the Board of Certified Court Reporter Examiners] limited to court related proceedings as specifically identified therein, or can it be interpreted more broadly to include sworn statements, examinations under oath for insurance claims, or witnesses appearing at hearings before administrative bodies such as the Public Service Commission or the Pollution Control and Ecology Commission?
2. With the advances in technology, it is now possible to conduct a deposition through the use of interactive video and telephone or Internet access where the participants can hear and see each other. Can a court reporter administer the oath to a deponent and satisfy the requirement of the deposition being taken before an officer authorized to administer oaths in a video conference deposition where the participants can hear and see each other, but are not physically present at the same locale?

**RESPONSE**

In my opinion, the authority to administer oaths granted by Section 23 is limited to the circumstances set forth in Section 23; and a Certified Court Reporter may administer an oath to a witness in a videoconference deposition.

***Question 1 – Is the authority to administer oaths in Section 23 [of the Regulations of the Board of Certified Court Reporter Examiners] limited to court related proceedings as specifically identified therein, or can it be interpreted more broadly to include sworn statements, examinations under oath for insurance claims, or witnesses appearing at hearings before administrative bodies such as the Public Service Commission or the Pollution Control and Ecology Commission?***

The rule referred to in your question provides:

A Certified Court Reporter may administer oaths to witnesses in court proceedings, depositions, grand jury proceedings, or as otherwise authorized by a court of record.

Regulations of the Board of Certified Court Reporter Examiners, § 23 (“Section 23”).

The Board of Certified Court Reporter Examiners (the “Board”) promulgates and amends its regulations, including Section 23, under authority granted by the Arkansas Supreme Court, subject to the Court’s approval. *See* Ark. R. Ct. Rep. Cert. § 3.H. The Court publishes the Board’s regulations alongside the Court’s own rules. *See, e.g., In re: Rule Providing for Certification of Reporters; Regulations of the Bd. of Certified Court Reporter Examiners*, 354 Ark. Appx. 730 (2003) (per curiam) (“adopt[ing] and publish[ing]” Section 23 without comment on its substance). Accordingly, in my view, the Board’s regulations essentially amount to court rules.

Arkansas courts construe court rules using the same canons of construction used to construe statutes. *E.g., Ligon v. Stewart*, 369 Ark. 380, 255 S.W.2d 435 (2007). They construe unambiguous statutes according to the plain meaning of the words used. *E.g., May Const. Co., Inc. v. Town Creek Const. & Dev., LLC*, 2011 Ark. 281, \_\_\_ S.W.3d \_\_\_, 2011 WL 2477185.

In my view, Section 23 is clear and unambiguous. It authorizes Certified Court Reporters to administer oaths in connection with “court proceedings, depositions, [and] grand jury proceedings,” and not otherwise, unless “authorized by a court of

record.” The matters and circumstances referred to in your question simply do not fairly come within Section 23’s scope, indicated by its words’ plain meaning.<sup>1</sup>

My view is consistent with a Court rule relating to Certified Court Reporters. The rule, entitled “Scope,” requires that transcripts taken in “court proceedings, depositions, or before any grand jury” be certified by a Certified Court Reporter. Ark. R. Ct. Rep. Cert. § 11(a). The rule does not purport to apply to any other proceedings.

In my opinion, the authority to administer oaths granted by Section 23 is limited to the circumstances set forth in Section 23.<sup>2</sup>

***Question 2 – With the advances in technology, it is now possible to conduct a deposition through the use of interactive video and telephone or Internet access where the participants can hear and see each other. Can a court reporter administer the oath to a deponent and satisfy the requirement of the deposition being taken before an officer authorized to administer oaths in a video conference deposition where the participants can hear and see each other, but are not physically present at the same locale?***

An Arkansas court rule expressly provides for depositions to “be taken by telephone or other remote electronic means.” ARCP 30(b)(7). A predecessor in this office opined that a notary may administer an oath by telephone to a deposition witness not in the same location. Op. Att’y Gen. 89-040. My predecessor reached this conclusion in consideration of the quoted rule’s express

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<sup>1</sup> With respect to administrative proceedings before the bodies you specify in your question, oaths are governed by specific regulations. *See* Arkansas Public Service Commission Rules of Practice and Procedure, Rule 3.06 (presiding officer at any Commission hearing “shall . . . administer oaths . . . .”); Arkansas Pollution Control and Ecology Commission, Regulation No. 8, Administrative Procedures, Regulation 8.608(C)(2) (Administrative Hearing Officer “may . . . [a]dminister oaths and affirmations . . . .”). With respect to administrative proceedings before agencies subject to the Administrative Procedure Act, that law provides that the officer presiding over a hearing is empowered “[t]o administer oaths and affirmations.” A.C.A. § 25-15-203(3)(A)(ii) (Repl. 2002).

<sup>2</sup> Your question and my answer are limited to the meaning and effect of Section 23. This opinion should not be taken to imply that a person who is a Certified Court Reporter may not be authorized to administer oaths other than under Section 23.

authorization of telephone depositions and the absence of any relevant prohibition in the statute that authorizes notaries to administer oaths. *Id.*

The requirement you refer to in your question is contained in an Arkansas court rule:

[D]epositions shall be taken before an officer authorized to administer oaths . . . .

ARCP 28(a).

As discussed in my answer to your first question, Section 23 authorizes a Certified Court Reporter to administer an oath to a deposition witness.

In *Clone Component Dist. Inc. v. State*, 819 S.W.2d 593 (Tex. App. – Dallas 1991), the court held that a rule substantially similar to ARCP 28(a) did not require the officer and the witness in a telephone deposition to be in the same location. The court stated that one person is “before” another when in the other’s presence, and that, when speaking by telephone, people are in fact in each other’s aural and vocal, though not physical, presence. The court held that a person in another’s aural and vocal presence is “before” the other person for purposes of the rule.

I agree with my predecessor’s reasoning in Op. Att’y Gen. 89-040<sup>3</sup> and with the court’s reasoning in *Clone*. Participants in a videoconference are in each other’s aural, vocal, and visual presence.<sup>4</sup> A videoconference deposition is therefore held “before” an officer who can see and hear the witness and other participants.

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<sup>3</sup> My predecessor did not refer to ARCP 28(a)’s “before” requirement.

<sup>4</sup> Both my predecessor in Op. Att’y Gen. 89-040 and the court in *Clone* acknowledged that telephone depositions may present difficulties owing to the fact that the officer cannot see the person who takes the oath and testifies, and therefore can later identify the person, if at all, only by the sound of the person’s voice. See Op. Att’y Gen. 89-040 at 2; *Clone*, 819 S.W.2d at 599. These difficulties obviously will not arise in connection with videoconference depositions.

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As noted above, ARCP 30(b)(7) expressly provides for depositions by remote electronic means. And as noted by the *Clone* court, a significant part of such a rule's utility would be lost if the witness and the person administering the oath were required to be in each other's physical presence. *See Clone*, 819 S.W.2d at 598.

In my opinion, then, a Certified Court Reporter may administer an oath to a witness in a videoconference deposition.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:JMB/cyh