



## Court Reporters – On And Off The Record – California Code Of Procedure 2025.470

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Court reporters are often put in a position wherein one attorney tells the court reporter/legal videographer to go off the record and the other attorney insists the court reporter/videographer stay on the record.

Section 2025.470 reads, "*The deposition officer may not suspend the taking of testimony without the stipulation of all parties present unless any party attending the deposition, including the deponent, demands that the deposition officer suspend taking the testimony to enable that party or deponent to move for a protective order under Section 2025.420 on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.*"

As the deposition officer, the court reporter cannot stop writing unless someone says the words "protective order" or if all parties agree to go off the record. If the attorney who noticed the deposition insists that she/he is paying for the transcript, and therefore has the right to stop the deposition, the attorney is wrong.

I know of two occasions lately where the court reporter believes everyone is agreeing to go off the record (because of body language or standing up to leave the room), but a comment is made (seems to be innocuous or a side comment, profanity), and the other attorney looks at the court reporter and says, "You got that, right?" The court reporter says, "I thought we were off the record." Then there is nothing but huge problems.

Because this situation can become a nightmare, I have developed the habit (no matter how friendly everyone is) in which every time one attorney says, "Off the record," I look at the other counsel and say, "Off the record?" Then when I get any kind of agreement (a nod of the head, whatever) I put my hands up so everyone can see them (palms facing the attorneys). And say, "We're off the record." I don't make it a dramatic statement, but a statement of fact. Sometimes the attorneys smile or tease me about putting my hands up, but the bottom line is there is never any question.

I believe the more proactive a court reporter is, can anticipate potential issues that might arise at a deposition, the better everything will be.



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