

December 6, 2005

VIA FAX-435-647-3614

Lisa Watts Baskin, Esq.
819 East Springwood Drive
North Salt Lake, UT 84054

President Sharon Hamilton
Utah Court Reporters Association
P.O. Box 1473
Ogden, UT 84402

Re: Authority to Administer Oaths
Requirement of Notarization on Court Reporter Work

Dear Sharon:

I have reviewed your request to amend statute to make it clear that certified court reporters may administer oaths and do not need to notarize their work product. After researching the statutory provisions in Utah regarding the important work performed by certified court reporters in Utah, I conclude that no legislation is necessary. Relevant code provisions, which I highlight in this letter, will show why I have concluded that your association does not need to amend statutes to achieve your goal as "officer of the court" status with the related ability to administer oaths. Furthermore, the notarization procedure used in practice at the conclusion of your transcripts appears to be unnecessary and therefore codifying any language regarding notarization seems likewise unhelpful. I will, however, provide sample language should you choose to move forward with your legislative effort.

First, Utah Code Ann. Section 78-56-104(2) provides: "A certified court reporter is an officer of the court whose impartiality shall remain beyond question." "Official court reporters" are not governed by this section nor do they need to be. Utah Code Ann. Section 58-74-102(3) defines a certified court reporter as "any person who engages in the practice of court reporting" who is "a shorthand reporter" or "voice reporter" properly certified by the national associations.

Next, Subsection (7) broadly defines the "practice of court reporting" to mean "the making of a verbatim record of any trial, legislative public hearing, state agency public hearing, deposition, examination before trial, hearing or proceeding before any grand jury, referee, board, commission, master or arbitrator, or other sworn testimony given under oath." Not only is this list very comprehensive regarding the proceedings you may make record of but it also adds the catch-all category of "other sworn testimony given under oath."

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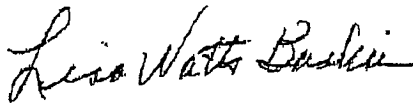
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Next, Utah Code Ann. Section 78-24-6 provides that "[c]very court, every judge, . . . and every officer or person authorized to take testimony in any action or proceeding . . . has the power to administer oaths or affirmations." This indicates that "every officer authorized to take testimony" is authorized to administer oaths. The only way to make this authority even clearer is to amend statute to read "every officer of the court" or "every officer of the court, including certified court reporters," has the power to administer oaths. You could further clarify by amending the statute to read "person authorized to take or record testimony." I conclude that the amendments are not necessary unless you have run into significant trouble regarding your authority to administer oaths to date.

Finally, Utah Code Ann. Section 78-56-109 provides that a transcript of an "official" court reporter's notes, certified as a correct transcript of evidence and proceedings, is *prima facie* a correct statement. No notary is required here. You could add "certified" to the court reporter's notes to cover instances where notarization has been required. I am surprised that notaries are needed with certified court reporters because you have sworn in the witness or deponent, transcribed the testimony or record, certified at the end of the document as to its accuracy, and subjected your profession to sanctions for willful dishonesty. This requirement seems rather overzealous in addition to the present safeguards. Rather than amend statute, I suggest you work with the state notaries association to curtail this practice or requirement.

If you have any other questions or need clarification on this analysis, please contact me immediately. I look forward to your comments and further direction.

Very truly yours,



Lisa Watts Baskin

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