

Roger G. Flygare & Associates, Inc.

Professional Court Reporters, Legal Video & Transcriptionists
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April 7, 2015

RE: Proposed Amendments to CR 28(c) and (d)

The profession of court reporting has evolved over the past three decades and terminology used in the 1980's is no longer appropriate to describe court reporters or court reporting firms.

It is my opinion that the commonly accepted terminology applied to court reporters and court reporting firms today is as follows:

- a) **Washington Certified Court Reporter:** An individual who has attained certification by the Department of Licensing (DOL) to represent themselves as court reporters by passing an examination propounded by DOL.

These individuals are customarily independent contractors or subcontractors. Washington Certified Court Reporters are required to maintain continuing education requirements as regulated by DOL.

- 1) **An independent court reporter** is an individual who holds themselves out as an independent contractor may deal directly with attorneys, law firms, and the employees thereof who actually contact the reporter and schedule depositions, et cetera.
 - 2) **A subcontracting court reporter** is an individual who offers their services through court reporting firms on a regular and routine basis.
- b) **Court Reporting Firm:** An entity engaged in mainly providing subcontracting court reporters as well as independent contractors on occasion to report various legal matters, from public hearings to depositions under oath, as scheduled by attorneys, law firms, and others.
- 1) A court reporting firm may be owned by a court reporter, a group of court reporters who have formed a corporation, or a number of professionals for example lawyers, paralegals, legal videographers, also non-court reporter individuals, or former office managers of court reporting firms, and now other types of corporations to include foreign-owned corporations.

This list is not meant to be all inclusive but simply an example of the evolution of what has been referred to as owners of a "court reporting firm."

- 2) Court reporting firms may exist in state as well as out of state in conducting business in the State of Washington.

Third-party court reporting firm contractors, as pointed out in the submission by Washington Court Reporters Association, are typically national court reporting firms who by operation of law seemingly escape the rules that Washington-based court reporting firms have to adhere and comply with whose owners are often Washington Certified Court Reporters thereby providing for an unequal field of ethical behavior for which penalties can be levied on such Washington court reporting firms.

The profession of court reporting is often thought of and referred to as "*officers of the court*" and it is WFSRA's position that all court reporting firms operating within the State of Washington should be held to the same standards as certified court reporters as is enforced by the Department of Licensing.

Regulatory authority of the Department of Licensing as of today: At a very recent meeting on October 16, 2014, it was expressed by people in attendance as well as from staff from DOL that DOL has no authority extending to court reporting firms, only Washington State certified court reporters.

The history of the RCW pertaining to court reporters is important for the Court to consider in deciding how to implement revisions or amendments to CR 28. When Chapter 18.145 RCW was authorized by the state legislature, a Court Reporter Advisory Board was also authorized to help assist in implementing subsequent Washington Administrative Code (WAC) to provide guidelines for regulation.

I should point out that I was chair of the DOL CR committee for its entirety until it was eliminated due to lack of funding.

Looking back to the 1980's when the WACs were being contemplated, the definition for equal terms was drafted and eventually included into the law, most if not all Washington State court reporting firms were owned by Washington State Certified Court Reporters.

Obviously, in the 1980's, the Department of Licensing had legal leverage to enforce compliance with equal terms but as has been pointed out the ownership of court reporting firms has evolved into entities owned by corporations or others who are not Washington Certified Court Reporters and, thereby, the Department of Licensing has no

authority to regulate out-of-state court reporting firms or firms who are owned by others who are not Washington Certified Court Reporters.

Common sense and legal determinations must dictate the use of the correct terminology as it applies to court reporters as well as court reporting firms today. Most recently in the State of Arizona, the issue of third-party contracting erupted into a huge debate and what resulted was, from all appearances, a fair balance of regulation and free enterprise as applied to the court reporting profession.

The Arizona statutes provide for full and immediate disclosure upon scheduling of depositions to all parties to a specific litigation if there is an ongoing contract that could be described as a third-party contract.

The laws of Arizona require that "court reporting firms" have a license, which is obtained by paying a nominal fee; that violations of the law could result in revocation of a court reporting firm's ability to conduct business in Arizona.

I would urge the Court to closely examine the Arizona statute and to implement a revision or amendment that covers the same ground rules with the same authority and perhaps that be provided to a state agency, the Department of Licensing, for regulatory authority rather than burdening the judicial system with oversight.

Sincerely,

Roger G. Flygare
President & CEO

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 07, 2015 1:57 PM
To: Tracy, Mary
Subject: FW: Proposed Changes to CR 28
Attachments: Flygare & Associates - CR 28 submission 2015.docx

From: RGFlygare@aol.com [mailto:RGFlygare@aol.com]
Sent: Tuesday, April 07, 2015 1:48 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: RGFlygare@aol.com
Subject: Proposed Changes to CR 28

To Whom It May Concern,

Please see attachment.

Sincerely,

Roger G. Flygare
CEO | President
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1715 South 324th Place
Suite 250
Federal Way, WA 98003
(800) 574-0414

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 28, 2015 11:35 AM
To: Tracy, Mary
Subject: FW: CR 28 - Supplemental Information to Public Comment - April 28, 2015

Here is another one, although it seems to be similar.

From: RGFlygare@aol.com [mailto:RGFlygare@aol.com]
Sent: Tuesday, April 28, 2015 11:35 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: RGFlygare@aol.com
Subject: CR 28 - Supplemental Information to Public Comment - April 28, 2015

Dear Supreme Court Justices,

The Cost Of Litigation Versus The Cost Of A Business License

From my own personal research, I discovered that, on average, getting it wrong cost plaintiffs at about \$43,000; however, the total cost could be more because information on legal costs was not available in every case. For defendants, who were less often wrong about going to trial, the cost was much greater: \$1.1 million on average.

The cost of a Washington contractor's business license could well be under \$250.00 per year and the rules and regulations would be, in all fairness, very similar if not enhanced for different responsibilities as extant certified court reporter (CCR) rules and that DOL could possibly revoke the privilege of operating as a Washington business for other reasons along with ones currently imposed on CCRs.

As has been pointed out, the lawsuit avenue has always been available. There has been no conviction or adverse judgment in any case that I am aware of and having been the president of both state associations I would certainly have been made aware of such; however, there have been lawsuits filed but none taken to the point of a judgment rendered by a jury or a judge.

The Department of Licensing is in charge of protecting the public from unscrupulous activity from privately owned entities.

Again, if there is a problem as outlined by WCRA, then DOL would be the agency to be the source of discipline and regulation. If third-party contracting is truly the issue, then again I would ask that the Supreme Court of the State of Washington to defer this to the Department of Licensing as the appropriate entity to monitor this activity and be given the authority to take regulatory action as necessary.

The laws of Arizona as well as Nevada which recently addressed this issue are meaningful and in my opinion quite fair. They require court reporting firms to have a license to conduct business as a court reporting firm. The issue seems quite simple to me.

Sincerely,

Roger G. Flygare

CEO & President – Flygare & Associates, Inc.

CEO & Director – Alliance Reporting, Inc.

WFSRA – President

WCRA – Past President, 2009-10