

RECEIVED

AUG 17 2016

Roger G. Flygare & Associates, Inc. WASHINGTON STATE
SUPREME COURT

Professional Court Reporters, Legal Video & Transcriptionists
1715 South 324th Place, Suite 250, Federal Way, WA 98003
253-661-2711 | (800) 574-0414 | RGFlygare@gmail.com

August 10, 2016

RE: Response To Proposed Amendments to CR 28

**Justices of the Washington
State Supreme Court,**

In April of 2015, I submitted a statement regarding the then proposed changes submitted by WCRA to CR 28 (c) and (d). I am again submitting my statement addressing WCRA's proposed changes to CR 28, CR 30, CR 80 (see attachment).

The current CR 28 (d) is appropriately written to handle equal terms being afforded; however, if the Washington State Bar Association would like to place language in CR 28 (d) to sanction lawyers who may violate the notification portion of the proposed language, I would invite the Court to solicit their input.

The normal procedure of scheduling depositions, et cetera, is via a phone call, email, fax contact initiated by a lawyer or a law firm rather than a court reporting firm doing the reverse. It is my opinion that any sanctions for failure to notify should rightly fall upon lawyers and law firms.

I have addressed the remainder by highlighting my responses in "green" ink to differentiate from the proposed language. Attached are Exhibits 1 and 2 for your review purposes and consideration in making your final determination. Exhibit 2 addresses how today's terminology is applied in regards to court reporters and court reporting firms and their interplay in the legal arrangements for depositions, et cetera.

Sincerely,



Roger G. Flygare
President & CEO

ATTACHMENTS

ROGER G. FLYGARE – CURRICULUM VITAE 2016

1715 South 324th Place, Federal Way, WA 98003 | (253) 214-2999 | RGFlygare@gmail.com

EDUCATION

Green River Community College aka Green River College, Auburn, WA

AA Degree – Court Reporting

AA Degree – General Business

1979

Chicago College of Commerce, Chicago, Illinois

General Business Degree

1982

PROFESSIONAL EXPERIENCE

CEO & President – ROGER G. FLYGARE & ASSOCIATES, INC.

1982 to present

Company provides court reporting services to a wide range of private sector lawyers, law firms and government sector (city, county, state & federal government) lawyers and agencies. RGF holds a GSA schedule and provides critical reporting services to the Department of Veterans Affairs, Homeland Security, Department of Labor, and many others.

CEO – Alliance Reporting, Inc.

2001 to present

Provides court reporting services mainly to the Washington State Board of Industrial Insurance Appeals providing state-wide coverage for the largest court reporting contract in the State of Washington.

Footnote: The two combined companies employ the most certified court reporters in the State of Washington outside of the state and federal courthouses.

NONPROFIT AFFILIATIONS

Association of Washington Generals - service organization under the Lt. Governor's Office of the State of Washington

Final board position held: President & Commanding General (2013-2015)

1997 – present

Provide assistance to the LTG Office on trade and tourism as well as acknowledging Washington State residents for their outstanding contributions to community.

Washington Freelance Shorthand Reporters Association

President of the Association – 2010 to present

1995 – present

Provide relevant educational opportunities to the community of court reporters across the State of Washington.

Washington Court Reporters Association

President – 2009 through 2010

1985 - present

Provide educational opportunities to the community, promulgate rules and regulations via the Washington State Legislature as well as the Washington State Department of Licensing.

PUBLIC OFFICE

Department of Licensing Court Reporter Advisory Board

Chairman of the CRAB for its duration until it was abolished due to sunset clause.

1990 – 1996

From time to time up to the present time, I have volunteered to serve on ad hoc committees for DOL upon request.

Commissioner – Federal Way Civil Service Commission

Federal Way, Washington

2016 - present

Precinct Committee Officer – Fed 30-2993 (d)

Provide my local community with updated information regarding important local, county and state issues.

2002 - present

Exhibit 1

SUGGESTED CHANGE TO CIVIL RULE 28(d)

(d) Equal Terms Required. Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms. This rule applies to any arrangement or agreement between the person before whom a deposition is taken or a court reporting firm, consortium or other organization providing a court reporter, and any party or any person arranging or paying for court reporting services in the case, including any attorney, law firm, person or entity with a financial interest in the outcome of the litigation, or person or entity paying for court reporting services in the case. Any party or counsel of record for a party may request that the court reporter or court reporting firm providing or arranging for the court reporting services file an affidavit with the Court affirming that all such services have been provided to all parties on equal terms. The affidavit shall be filed within 10 days of any request. If the affidavit is not timely filed, the Court may sanction the court reporter and court reporting firm of whom the request was made. If court reporting services have not been provided on equal terms, the Court may sanction the court reporter, the court reporting firm, as well as the counsel or party who hired the reporter or firm to provide the court reporting services.

FIRST OF ALL, IT IS FRIVOLOUS TO IMPOSE SANCTIONS ON A COURT REPORTING FIRM AND/OR COURT REPORTER FOR THE FAILURE OF THE NOTICING PARTY FAILING TO NOTIFY. THE PROVISION OF SERVICES ON EQUAL TERMS IS ALREADY NOTED IN CR 28(D). THE PENALTY AS IT STANDS TODAY IS TO SUE IN OPEN COURT. THE ADDITION OF DRAGGING AN ATTORNEY OR LAW FIRM INTO LITIGATION BECAUSE EQUAL TERMS WEREN'T AFFORDED IS WITHOUT MERIT. WASHINGTON STATE CERTIFIED COURT REPORTERS FAILING TO PROVIDE EQUAL TERMS CAN BE SANCTIONED BY THE DEPARTMENT OF LICENSING UNDER THEIR RCW AND WAC AUTHORITIES. THIS ENTIRE SUGGESTED CHANGE SHOULD BE STRUCK FOR THOSE REASONS PLUS THE ELEPHANT IN THE ROOM IS THAT IT IS VIRTUALLY UNENFORCEABLE.

SUGGESTED CHANGE TO CIVIL RULE 28

(e) Final Certification of the Transcript. The court reporter reporting a deposition shall not certify the deposition transcript until after he or she has reviewed the final version of the formatted transcript. A court reporting firm, consortium, or other organization transmitting a court reporter's certified transcript shall not alter the format, layout, or content of the transcript after it has been certified.

IT IS MY OPINION THAT REGULATORY AUTHORITY OVER COURT REPORTERS IS VESTED IN THE WASHINGTON STATE DEPARTMENT OF LICENSING AND THEIR OBLIGATION TO FOLLOW THE RULES PROMULGATED IN THE APPROPRIATE WAC AND RCW. I WOULD ASK THAT THE COURT REMAND THIS SECTION TO THE DEPARTMENT OF LICENSING AND NOT ENCUMBER THE COURT RULES WITH AN ISSUE THAT SHOULD CLEARLY BE HANDLED ADMINISTRATIVELY.

SUGGESTED CHANGE TO CIVIL RULE 30(b)(1)

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Video Tape Recording.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays) to every other party to the action and to the deponent, if not a party or a managing agent of a party. Notice to a deponent who is not a party or a managing agent of a party may be given by mail or by any means reasonably likely to provide actual notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs. The notice also shall state the existence of any contract between the noticing party, its counsel, or a third party paying to record the noticed deposition and the person, court reporting firm, consortium, or other organization providing a court reporter for the noticed deposition, and the notice will state whether the noticing party or a third party directed his or her attorney to use a particular court reporting firm, consortium, or other organization to provide deposition services. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A party seeking to compel the attendance of a deponent who is not a party or a managing agent of a party must serve a subpoena on that deponent in accordance with rule 45. Failure to give 5 days' notice to a deponent who is not a party or a managing agent of a party may be grounds for the imposition of sanctions in favor of the deponent, but shall not constitute grounds for quashing the subpoena.

I SEE THIS AS VIRTUALLY UNENFORCEABLE AND IMPOSSIBLE TO REGULATE. WHAT IT WOULD DO HOWEVER IS QUITE EASILY CREATE DELAY IN THE ADMINISTRATION OF JUSTICE BY LAWYERS FIGHTING OVER NOTICE LANGUAGE. I WOULD REQUEST THE COURT TO REMAND TO THE WASHINGTON STATE BAR ASSOCIATION IF IT FEELS THIS TYPE OF COURT RULE BE IMPOSED SO THAT WSBA MAY AVAIL ITSELF OF APPROPRIATE AND REQUISITE INPUT.

SUGGESTED CHANGE TO CIVIL RULE 80

(d) Supplemental Stenographic Record. If the superior court elects to record a proceeding solely by means of an electronic recording device, any party may, at its own expense, engage a certified court reporter to record the proceeding stenographically. Where a proceeding has been recorded both electronically and by a certified court reporter, either form of record, or both, may be used to create the verbatim report of proceedings for appellate review under RAP 9.2.

I HAVE NO OBJECTION TO THIS LANGUAGE BEING ADDED TO CR 80.

Exhibit 2

Roger G. Flygare & Associates, Inc.

Professional Court Reporters, Legal Video & Transcriptionists
1715 South 324th Place, Suite 250, Federal Way, WA 98003
253-661-2711 | (800) 574-0414 | RGFlygare@gmail.com

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