



Superior Court of the State of Washington
for the County of King

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Washington State
Supreme Court

August 5, 2016

Clerk of the Supreme Court
PO Box 40929
Olympia, Washington 98504-0929

RE: Comments to Proposed Changes to CR80

Washington Court Reporters Association recommends adding language to a new subsection under CR80. The proposed language would allow a party to choose a court reporter at their own expense if an electronic device is the only method used to take the record. It would allow for the simultaneous use of both court reporter and FTR and permits both to serve as a verbatim record of the proceeding.

The stated purpose for the new subsection include: (1) drawbacks to electronic recordings, (2) risk of system failure could result in a new trial at the expense of litigants, (3) verbatim reports created from recordings are more expensive than those created from stenographic notes, (4) same day transcripts require additional steps to obtain the recording before transcribing which increases time to prepare transcript (5) despite saving money for the courts, electronic recordings increase costs to litigants.

There are a number of concerns with this proposed rule change. Some are of a general nature and others are specific to King County Superior Court and our existing collective bargaining agreement with Superior Court court reporters.

General Concerns:

- This proposed rule appears to allow for more than one official record. This could result in additional litigation and expense, contrary to what this rule proposes to alleviate.
- Currently, court reporters employed by the court are required to submit their Personal Dictionary, which is the key to their steno record, to the Clerk's Office in the event they become ill or leave the court. The court would not have this authority under the proposal.
- It is unclear whether attorney/litigants will need to provide a court reporter for the entire proceeding or only portions they desire.
- If there are two records it is unclear whether a judge would be required to review/correct both before a transcript of their final decision is made. This would be very time consuming.
- Potential diminished courtroom control, as the proposed rule seems to authorize counsel to bring in a court reporter without prior approval of the judge anytime an electronic device is being used to take the record. It is also unclear if the judge can designate FTR as the official record if the court reporter is unsatisfactory in some manner. Further, it is not clear the judge could excuse a court reporter for inappropriate conduct.
- Potential conflicts of interests are not safeguarded when the creation of the record is taken by a court reporter hired by one of the parties. A similar issue has arisen in the context of deposition transcripts when preferential pricing was given to one of the parties.

- Quality control is not addressed in the rule other than “certified court reporter” and courts are expected to relinquish (pro tem) hiring decisions to attorney/litigants.
- In the event a court reporter reneged on his/her responsibility to produce a transcript, the court would lack leverage and authority to compel the court reporter to do so.

Collective Bargaining Conflicts:

King County’s current collective bargaining contract with the Court Reporters provides:

- Article 2, Union Recognition and Membership – L17 Contract
Section 5

It is expressly understood that the issue of electronic recording and the operation of the electronic recording equipment is not a part of this Agreement, whether such equipment is used in Juvenile Court, Mental Illness hearings or other Superior Court activities. **Judicial officers may not permit freelance court reporter services for use as the official record in any in-court or chambers proceedings. The official record shall be created only through the use of court sanctioned technology or Court reporters employed by the Superior Court.**

Section 8

The Court agrees not to contract out the work normally performed by members of the bargaining unit if the contracting out of such work eliminates or reduces the normal workload of the bargaining unit. Prior to any contracting out or in case of an emergency, as soon as practicable the Court agrees to inform the Union of its intent and the Union shall have the opportunity to discuss the matter.

- Addendum A (I) Assignment Procedure – L17 Contract

D) If a reporter is not available or requested, FTR will be used as the official record.

Conclusion:

The proposed CR80 as written is highly problematic. In smaller courts that maintain a court reporter for each judge there will be little impact, but jurisdictions which have moved to reliable electronic recording devices such as FTR will be significantly impacted. The assumption that the use of privately hired court reporters will save money for litigants cannot be supported given the large rate discrepancies between the court reporters themselves. Also, allowing one party to secure and pay the court reporter to take the official court record of the proceedings creates an unnecessary conflict of interest.

In addition, the passing of this rule change will create significant issues with our represented court reporters as noted above. It appears that the attorney/litigant could appear in court with a pro tem court reporter without advance notice, as there is no requirement that they first request the court to provide one. Matters such as daily copy would also need to be resolved as parties could secure their own court reporter for this body of work.

We would be glad to respond to any questions which you may have.

Sincerely,



Paul L. Sherfey
Chief Administrative Officer



Susan J. Craighead
Presiding Judge

PLS:rd/aj
Attachment

SUGGESTED CHANGE TO CIVIL RULE 80

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