

Tracy, Mary

From: Hinchcliffe, Shannon
Sent: Monday, April 27, 2015 2:42 PM
To: Tracy, Mary
Subject: FW: Pending Supreme Court rule for court reporters

From: Dave Storey [dave@storeyandmiller.com]
Sent: Monday, April 27, 2015 2:32 PM
To: AOC DL - Rules Comments
Subject: Pending Supreme Court rule for court reporters

RULES COMMENTS

Change to Civil Rule 80 (d)

This rule change is appropriate and I support it. Living in Eastern Washington, my fellow reporters and I deal with many superior courts where electronic recording is the only option. The quality of the recordings makes preparation of an accurate transcript very difficult. This rule change will allow a “live reporter” to be present to protect the rights of litigants.

Change to Rules of Appellate Procedure 9.2 (g)

This provision will protect both litigants and Certified Court Reporters in Washington State from unauthorized and unknown alterations of court transcripts.

Today out-of-state firms require Washington CCRs to submit electronic versions of depositions and hearings for “production and billing” to transcript centers outside the jurisdiction of our regulatory entity, the Department of Licensing. A CCR may then be confronted with “dueling transcripts” to the detriment of his license and the integrity of our courts. This is a simple well-phrased rule which will provide peace of mind to all parties. I support it.

Amended Suggested Change to Civil Rule 28

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I assume, although it does not state it, this provision will exempt contractual arrangements with State entities such as the current contracts with the Attorney General’s Office. Such exemption has long been a feature of RCW and WAC rules.

If it can be effectively enforced, Rules (4) and (5) would likely eliminate the ability of a Washington CCR to accept work from so-called “national or foreign reporting firms,” whether domiciled in our state or not. However, I see several difficulties with this rule.

It is unclear to me how the parties to an action would learn of such a relationship. Many reporters who are sole providers for their families need access to such work to continue in business and may be forced to go “underground” to earn a living.

Furthermore, our experience, which I believe is very typical, operates as follows: an out-of-state firm contacts a Washington firm, asks if they will accept a reporting job in the next few days, rates are negotiated for the original + 1, the work undertaken, and a transcript and bill sent to the out-of-state firm. There is no “multi-case” written contract or employment relationship involved. The local reporter is free to accept or reject the work depending on his or her circumstances, and there is no commitment for future work. Also, one-time assignments and relationships related to one case have been traditionally been considered outside so-called contractual arrangements.

Unfortunately out-of- state firms have shown remarkable agility in their business dealings, and regulators often struggle to adapt to changing circumstances. Equal terms is a good proposition, but it may not cover all circumstances. Recently cost shifting has become the norm, allowing charges for

copies to escalate dramatically. As long as all copies are charged equally, how does this violate “equal terms?” And how would any regulator know about it?

There is a concern also for multiple regulators being involved. Currently aggrieved parties are free to file suit against the CCR for relief. They can also appeal to the Consumer Protection Division of the Attorney General’s Office. They can file a complaint with the Department of Licensing and attack one’s license. Now we are adding another set of rules to the thicket, none of which brings the out-of-state firms under our regulatory schema and which may lead to a confusing legal environment. I suspect judges will not relish adjudicating squabbles between court reporters any more than we do.

I would suggest that the solution arrived at by the State of Arizona is worth examining. In Arizona “foreign” firms which do business in their state must register with the judicial branch of the state, pay a minimal fee, and thus come under all the rules, taxes, and ethics in Arizona. This solution was thoroughly vetted in that state and appears to be the most effective approach my research has unearthed. It avoids the claim, successful in bills filed in the legislature, that such rules are simply an effort to shut out successful competitors all in the name of consumer protection.

I thank you for your attention to these comments. From much experience I understand how difficult it is to solve these problems permanently.

Yours truly, David Storey CCR 2927