Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 24, 2015 3:09 PM
To: Tracy, Mary
Subject: FW: Support for Proposed Changes to CR 28, CR 80, and RAP 9.2
Attachments: supremecourtcomments.docx

For you ☺

From: epharvey@aol.com [mailto:epharvey@aol.com]
Sent: Friday, April 24, 2015 3:06 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Support for Proposed Changes to CR 28, CR 80, and RAP 9.2

Good afternoon,

Attached please find a copy of the letter contained in the body of this e-mail below.

Thank you for your consideration.

Elizabeth Harvey, CCR, RPR
Seattle, Washington

April 22, 2015

Proposed Amendments to CR 28

As a certified court reporter in Washington and as the vice president of WCRA, I support the proposed changes to CR 28, CR 80, and Rule of Appellate Procedure 9.2(g.).

Changes in the court reporting profession have created a gap in oversight that effectively places locally owned court reporting firms and Washington certified court reporters (CCRs) at risk of being sanctioned for rules violations committed by out-of-state court reporting firms for whom they perform services.

In the past, law firms did business with the local court reporting firm of their choice. Firms were owned and operated by CCRs, who are subject to oversight by the Department of Licensing.

Over the past few years, that model has changed. There are now many firms that are not owned or operated by court reporters. They are corporate entities headquartered around the country. The Department of Licensing only has authority to oversee licensed court reporters, not court reporting firms; thus a gap in enforcement of the rules. These large firms have entered into contracting arrangements with large insurance carriers. In exchange for an agreement

that the insurance carrier will use the court reporting firm for all work, the court reporting firm offers incentives to one side that are not offered to all parties. Among the incentives offered are:

Preferential pricing
Free or reduced rates on expedited transcripts
Free online repositories and archiving of transcripts
Free exhibits and word indexes
Free rough drafts or realtime

These firms also have opaque pricing, adding on services that were not requested, or adding vague "processing fees" or "handling fees." Invoices are not broken down and it is almost impossible for the consumer to determine what is being billed.

These practices violate the requirement that all parties be offered service on equal terms. The proposed rule changes will more clearly prohibit these practices, which give an unfair advantage to one side in the litigation process.

Some of the comments received seem to confuse equal terms with equal pricing. Those are two completely different things. The pricing model used in the court reporting profession has always recognized that the first transcript is billed at a higher rate than subsequent copies that are ordered. That is the custom and practice throughout the country, and nothing in this language would change that.

Another concern with third-party contracting is the inability for individual attorneys or law firms to use their preferred court reporter. Almost every court reporter in the country has found themselves in a conversation with a long-time client who can no longer use the reporter or reporting firm of their choice because the insurance company client has dictated the use of a national contracted firm. Again, it appears from the comments received that there is some confusion about the proposed rule changes. Some commenters seem to think the proposed rule changes attempt to restrict which court reporter a law firm or attorney can hire. In fact, that is what is happening right now, and this language would reverse that practice. Attorneys and law firms would be free to work with any reporter they wish.

An additional area of concern arises with transcript format requirements and invoicing. Very few court reporters produce and invoice their own transcripts. Once the reporter completes the transcript, it is sent to the court reporting firm for production and billing. Locally owned firms are familiar with and generally comply with the page layout requirements. The majority of them copy the reporter on the invoice so the reporter is able to monitor what was billed. The reporter can compare the pages invoiced to the pages produced to insure that transcript layouts have not been changed or manipulated. National contracting firms do not provide the reporter with this information, so while the reporter is responsible for complying with rules governing page layouts and equal terms, he or she has no way to verify that transcripts remain compliant and that billing is done on equal terms. The proposed rule changes will

give the reporter the means to verify this process, thereby offering additional protection to the consumer. It does not, as some commenters fear, mean that the individual reporter will have to produce all transcripts.

The current practice of third-party contracting effectively shifts the cost of litigation to the party least able to afford it, usually an individual plaintiff. The individual consumer is being charged more for the same service, and in most cases has no way of knowing they are not being offered the same terms. The foundation of our justice system is providing fair and equal access and treatment to all. To allow one party a financial advantage over the other side is contrary to these fundamental principles. It places individual citizens at an even greater disadvantage against those with deeper pockets and more assets. The success of our justice system cannot be measured by how it affects corporate balance sheets, but by honest, fair and equal treatment for all parties.

Contracting gives the appearance of compromising the court reporter's impartiality and integrity and restricts the ability of the reporter to be accountable to the court, to the public, and most importantly, to the individual litigant. As an officer of the court, I am proud of my profession, and am dismayed at any practice that gives even the appearance of impropriety.

So far, twenty-nine states, including Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, West Virginia and Wisconsin have enacted legislation, approved rules or taken other official actions through their state board to limit or ban contracting. Presently, at least five other states have anti-contracting legislation or rule changes currently pending before their legislatures or state supreme courts.

I urge you to join them by adopting the proposed rule changes, incorporating the revision contained in Mr. Axel's letter of April 13, 2015.

I also urge the adoption of the amendment to CR 80 as originally submitted by the CMC. The unintentionally added words "or different" should be excluded. I also favor the adoption of the proposed amendment to 80 (d) and RAP 9.2 (g).

Thank you for your consideration.

Sincerely,

Elizabeth Patterson Harvey, CCR, RPR
CCR No. 2731
Vice President, WCRA

April 22, 2015

Proposed Amendments to CR 28

As a certified court reporter in Washington and as the vice president of WCRA, I support the proposed changes to CR 28, CR 80, and Rule of Appellate Procedure 9.2(g.).

Changes in the court reporting profession have created a gap in oversight that effectively places locally owned court reporting firms and Washington certified court reporters (CCRs) at risk of being sanctioned for rules violations committed by out-of-state court reporting firms for whom they perform services.

In the past, law firms did business with the local court reporting firm of their choice. Firms were owned and operated by CCRs, who are subject to oversight by the Department of Licensing.

Over the past few years, that model has changed. There are now many firms that are not owned or operated by court reporters. They are corporate entities headquartered around the country. The Department of Licensing only has authority to oversee licensed court reporters, not court reporting firms; thus a gap in enforcement of the rules. These large firms have entered into contracting arrangements with large insurance carriers. In exchange for an agreement that the insurance carrier will use the court reporting firm for all work, the court reporting firm offers incentives to one side that are not offered to all parties. Among the incentives offered are:

Preferential pricing
Free or reduced rates on expedited transcripts
Free online repositories and archiving of transcripts
Free exhibits and word indexes
Free rough drafts or realtime

These firms also have opaque pricing, adding on services that were not requested, or adding vague "processing fees" or "handling fees." Invoices are not broken down and it is almost impossible for the consumer to determine what is being billed.

These practices violate the requirement that all parties be offered service on equal terms. The proposed rule changes will more clearly prohibit these practices, which give an unfair advantage to one side in the litigation process.

Some of the comments received seem to confuse equal terms with equal pricing. Those are two completely different things. The pricing model used in the court reporting profession has always recognized that the first transcript is billed at a higher rate than subsequent

copies that are ordered. That is the custom and practice throughout the country, and nothing in this language would change that.

Another concern with third-party contracting is the inability for individual attorneys or law firms to use their preferred court reporter. Almost every court reporter in the country has found themselves in a conversation with a long-time client who can no longer use the reporter or reporting firm of their choice because the insurance company client has dictated the use of a national contracted firm. Again, it appears from the comments received that there is some confusion about the proposed rule changes. Some commenters seem to think the proposed rule changes attempt to restrict which court reporter a law firm or attorney can hire. In fact, that is what is happening right now, and this language would reverse that practice. Attorneys and law firms would be free to work with any reporter they wish.

An additional area of concern arises with transcript format requirements and invoicing. Very few court reporters produce and invoice their own transcripts. Once the reporter completes the transcript, it is sent to the court reporting firm for production and billing. Locally owned firms are familiar with and generally comply with the page layout requirements. The majority of them copy the reporter on the invoice so the reporter is able to monitor what was billed. The reporter can compare the pages invoiced to the pages produced to insure that transcript layouts have not been changed or manipulated. National contracting firms do not provide the reporter with this information, so while the reporter is responsible for complying with rules governing page layouts and equal terms, he or she has no way to verify that transcripts remain compliant and that billing is done on equal terms. The proposed rule changes will give the reporter the means to verify this process, thereby offering additional protection to the consumer. It does not, as some commenters fear, mean that the individual reporter will have to produce all transcripts.

The current practice of third-party contracting effectively shifts the cost of litigation to the party least able to afford it, usually an individual plaintiff. The individual consumer is being charged more for the same service, and in most cases has no way of knowing they are not being offered the same terms. The foundation of our justice system is providing fair and equal access and treatment to all. To allow one party a financial advantage over the other side is contrary to these fundamental principles. It places individual citizens at an even greater disadvantage against those with deeper pockets and more assets. The success of our justice system cannot be measured by how it affects corporate balance sheets, but by honest, fair and equal treatment for all parties.

Contracting gives the appearance of compromising the court reporter's impartiality and integrity and restricts the ability of the reporter to be accountable to the court, to the public, and most importantly, to the individual litigant. As an officer of the court, I am proud of my profession, and am dismayed at any practice that gives even the appearance of impropriety.

So far, twenty-nine states, including Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, West Virginia and Wisconsin have enacted legislation, approved rules or taken other official actions through their state board to limit or ban contracting. Presently, at least five other states have anti-contracting legislation or rule changes currently pending before their legislatures or state supreme courts.

I urge you to join them by adopting the proposed rule changes, incorporating the revision contained in Mr. Axel's letter of April 13, 2015.

I also urge the adoption of the amendment to CR 80 as originally submitted by the CMC. The unintentionally added words "or different" should be excluded. I also favor the adoption of the proposed amendment to 80 (d) and RAP 9.2 (g).

Thank you for your consideration.

Sincerely,

Elizabeth Patterson Harvey, CCR, RPR
CCR No. 2731
Vice President, WCRA