Tracy, Mary

From: Hinchcliffe, Shannon
Sent: Thursday, April 30, 2015 10:07 AM
To: Tracy, Mary
Subject: FW: CR 28, CR 80(d), and Rule of Appellate Procedure 9.2(g)

From: Sidney Weldele-Wallace [mailto:sweldele@greenriver.edu]
Sent: Thursday, April 30, 2015 9:58 AM
To: AOC DL - Rules Comments
Subject: CR 28, CR 80(d), and Rule of Appellate Procedure 9.2(g)

Dear Honorary Members of the Supreme Court:

As a certified court reporting instructor in Washington State, **I support the proposed changes to CR 28, CR 80(d), and Rule of Appellate Procedure 9.2(g)**. Unfortunately, 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.

There are now many nationwide firms conducting business within Washington State that are neither owned nor operated by CCRs. They are corporate entities that are headquartered around the country. The Washington State Department of Licensing currently has authority to oversee certified court reporters here in Washington, but not court reporting firms, either in state or out of state, resulting in a gap in enforcement of the rules. Many nationwide firms have entered into contracting arrangements with large corporations or insurance carriers. In exchange for an agreement that the insurance carrier or corporation will use the contracted court reporting firm for all cases scheduled throughout the country, the contracted court reporting firm offers incentives to one side that are not being offered to all parties. Among the incentives offered are: preferential reduced pricing; free or reduced rates on expedited transcripts; access to transcripts before opposing counsel is given access, use of databanks to track multiple cases, among other things.

Many of these nationwide firms are charging "administrative fees" or "handling fees" to non-contracted parties while contracted parties are not charged these fees. Invoices are not broken down and it is almost impossible for the consumer to determine what is being billed. Also non-contracted parties are charged inflated rates to make up for the loss of discounted rates charged to contracted parties.

These practices violate Washington's existing language that requires equal terms for all parties. 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.
Reference has been made in some comments submitted that 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. Currently large corporate clients dictate what court reporting firm will be used to report deposition, i.e., contacted firms. Opposing counsel is unaware and unadvised of contractual arrangements that have been made with one of the litigant parties and the court reporting agency covering the deposition.

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 send a copy of the invoice to the reporter responsible for reporting the deposition and transcript so they are 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 and preventing the process of "transcript stretching" that some firms engage in in order to lengthen the transcript and add bill for more pages. It does not, as some of the comments allege, mean that the individual reporter will have to produce all transcripts. What the language actually states is: "The court reporter reporting a deposition shall not relinquish control of the deposition transcript in a manner that would *prevent* (emphasis added) the court reporter from reviewing the production, distribution, charges and invoicing for the transcript before the transcript is certified and delivered to the custodial attorney."

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 29 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. Please 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 considerations herein.

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