



Olympia Address:
223 John A. Cherberg Building
PO Box 40437
Olympia, WA 98504-0437
E-mail: kline.adam@leg.wa.gov

Washington State Senate

Senator Adam Kline
37th Legislative District

Telephone: (360) 786-7868
FAX: (360) 786-7450
Legislative Hotline: 1-800-526-6000
TTY: 1-800-635-9993

May 16, 2013

Chief Justice Barbara A. Madsen
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

In re: Washington CR 28 (c) and (d)

Dear Chief Justice Madsen,

Earlier this year, Representative Roger Goodman and I introduced corresponding House and Senate bills in the regular session of the 2013 Legislature that would have added elements of Court Rule 28(c) and (d) into the Court Reporting Practice Act, RCW 18.145. The purpose of the legislation was to preserve the independence of court reporters as officers of the court and to prohibit certain practices that would reduce the possibility of bias in court reporter practices.

The bills passed the House and Senate Judiciary Committees unanimously, but both bills failed to come to a final vote. Meanwhile, it appears that the problem is not resolved. Despite the plain language of CR 28, certain court reporters refuse to follow the court rule, and some attorneys are asking that court reporters contract directly with party litigants. This puts the rule-abiding court reporters in an awkward position when they seek to follow the court rules.

The Washington State Court Reporters Association has asked the Department of Licensing to undertake a rule-making process to amend the existing Court Reporters Standard of Professional Conduct regulations in WAC 308-14-130 to include the prohibited practices found in Washington Supreme Court Rule 28(c) and (d). I have outlined the language below of ease of reference.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(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.

Both the legislation Rep. Goodman and I proposed and the need for administrative rule-making may be rendered unnecessary by a more assertive enforcement regime, perhaps best triggered by a message from the Supreme Court. The Court many years ago had the foresight to require by Rule that court reporters as officers of the court cannot show favoritism to any litigant over another. The Rule specifically prohibits certain contractual relationships. Nonetheless, some individual Court Reporters have continued to enter into these contracts. Reporters who seek to abide by the Rule have complained that this lack of enforcement has placed them at a competitive disadvantage. Their complaint was originally directed to the Legislature, which in my personal belief is the second most appropriate body to take action on it.

Given the clear existing language of CR 28, I don't know why the court reporters have not been more successful in seeking judicial enforcement. I would appreciate any action that the Court may take to enforce the Rule.

Thanks for your attention to this matter.

Yours truly,


Senator Adam Kline



National Court Reporters Association
8224 Old Courthouse Road
Vienna, VA 22182-3808
Tel: 703-556-6272
Fax: 703-556-6291
www.ncra.org

January 31, 2013

Washington State Capitol
416 Sid Snyder Avenue, SW
Olympia, Washington 98504

To Whom it May Concern,

On behalf of the National Court Reporters Association and the 19,000 stenographic court reporters, captioners, and CART providers that we represent, I am writing in support of H. 1085 and S. 869, legislation that would prohibit the practice known as third-party contracting as well as certify communications access realtime translation (CART) providers and captioners.

This legislation will serve to protect the integrity of the court reporter by protecting the profession from even the appearance of impropriety. This legislation does several things that NCRA strongly supports, including prohibiting court reporters from:

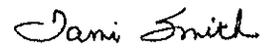
- Entering into an exclusive contract for more than one proceeding.
- Offering special financial terms and services that are not offered at the same time to all other parties to a proceeding.
- Restricting the ability of a party to select which court reporter or court reporting firm they would like to use.

Court reporters should not be entering into arrangements that could lead any party to a proceeding to believe that they are anything but a neutral guardian of the record. H. 1085 and S. 869 will do just that by requiring strong ethical standards of all court reporters in a deposition setting.

Furthermore, this legislation certifies captioners and CART providers will help ensure individuals who rely on those services in their daily lives, that the captioner or CART provider has met at least a minimum standard and their participation in civic activities, the classroom, through television programs, and many other day-to-day activities will not be compromised. NCRA commends the state of Washington for introducing this legislation and we fully support the certification of CART providers and broadcast captioners.

If you have any questions, do not hesitate to contact me directly at president@ncra.org, or Senior Government Relations Specialist Adam Finkel at 703-584-9059.

Sincerely,

A handwritten signature in cursive script that reads "Tami Smith".

Tami Smith, CSR, RPR, CPE

NCRA's Policy on Third-Party Contracting

1. A court reporter shall always disclose to all parties present at a deposition the existence of any direct or indirect contracting relationship with any attorney or party to the case, so that the other parties may exercise their rights under Rules 28(c), 29 and 32(d)(2) of the Federal Rules of Civil Procedure, and comparable state and local laws, to object to the taking of the deposition because of the possible disqualification of the court reporter. This disclosure shall include the identity of all principals and agents involved in the contracting group as well as a description of all services being performed by such court reporter, his or her employer, or any principal or agent of the contracting group. It is the court reporter's obligation to make reasonable inquiries and ascertain this information before accepting any assignment.
2. A court reporter shall always offer to provide comparable services to all parties in a case. However, nothing in this policy is intended to allow court reporters to directly or indirectly exchange information with competitors about the prices they charge, or to discourage in any other way competition in the services offered or prices charged by court reporters.
3. A court reporter shall not, in act or appearance, indicate that the court reporter is participating as part of an advocacy support team for any one of the parties.
4. A court reporter shall always comply with federal, state and local laws and rules that govern the conduct of court reporters (such as those that deal with certification, confidentiality and custody of transcripts, and contracting).

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 22, 2016 8:33 AM
To: Tracy, Mary
Subject: FW: Additional Comments from WCRA's Legislative Chair
Attachments: Senator Kline's Letter to Chief Justice.pdf; NCRA Policy on Third-Party Contracting.docx; NCRA Washington letter of support.pdf

Forwarding.

From: phyllis@centralcourtreporting.com [mailto:phyllis@centralcourtreporting.com]
Sent: Saturday, August 20, 2016 5:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Liz Harvey' <lizharvey.wcra@gmail.com>
Subject: Additional Comments from WCRA's Legislative Chair

Dear Esteemed Members of the Supreme Court,

I am writing to briefly refute some inaccuracies in the comments submitted by the Alliance of Deposition Reporters. In particular, the following paragraph:

"The complaints made by the WCRA (and fewer and fewer state associations), are pleas to turn back the clock to a simpler time, a time when adapting to technology and swift change was simply not a fact of life. The anxiety is understandable, but ultimately that anxiety is not supportable as a matter of public policy. Moreover, it is a discussion better suited to the legislature with its committee hearings and ability to investigate before regulating- an opportunity which has been repeatedly presented to the Washington legislature and through which it has chosen not to take further actions."

I have attached what is currently NCRA's policy on third-party contracting. It may have existed 20 years ago, but it also exists TODAY. I am also attaching NCRA's letter of support for WCRA's previous legislative attempt in 2013 related to third-party contracting.

Although WCRA did undertake two legislative efforts within the past ten years, the basis and concepts and language within the efforts were for two entirely unrelated causes. One was an attempt to enact firm licensure. Unfortunately, two bills which contained different language were inadvertently submitted and caused confusion. I believe both were voluntarily withdrawn by WCRA's leaders at that time. The second effort did relate to third-party contracting. Senator Kline was a sponsor. Although the bill passed both the House and Senate Judiciary Committees virtually unopposed, it failed to come to a vote in the Rules Committee. Senator Kline then wrote a letter to the Supreme Court asking that the judiciary undertake enforcement CR 28(c) and (d). The Supreme Court subsequently contacted the Washington State Superior Court Judges Association, which in turn contacted Senator Kline to request a meeting to be scheduled to determine the best way for them to be involved in enforcing the rules. Unfortunately, before the meeting could be scheduled, Senator Kline retired. I do have additional letters to back all of this up if they

need to be submitted. They reside on a retired computer, but I will have it pulled from storage and print them upon request.

What WCRA did was come up with a very simple solution for ensuring that existing rules can and will be followed: providing an affidavit of equal terms upon request. This has absolutely nothing to do with companies create the best transcripts. 95% of all firms in Washington offer access to the same kinds of advanced technology offered by the four firms that make up the Alliance.

Lastly, the Alliance states "The complaints made by the WCRA (and fewer and fewer state associations)" as though state associations are no longer concerned with third-party contracting and the ethical dilemmas it brings to itself. On the contrary, I would assert fewer and fewer states are up for the challenges presented in defending lawsuits being brought against them by members of the Alliance as a more heavily-weighted reason fewer states are willing to challenge the unethical practice. It is due to the chill factor of non-profit court reporting associations trying to defend themselves against suits brought by companies that, like Veritext, are being bought and sold for allegedly hundreds of millions of dollars. Veritext filed a lawsuit against the Louisiana Board of Examiners of Certified Court Reporters just two days ago on August 18, 2016. See Veritext Corp vs. Bonin, et al, U.S. District Court, Eastern District of Louisiana, Civil Action 16-13-903. It seems evident from reading the complaint that the business model blatantly touted in the comments made within this forum to the Supreme Court of providing discounts to large-scale companies to provide "preferred provider engagements," is being overcome by the demand that court reporters adhere to time honored ethical legal standards, which call for equal terms for ALL parties, not just financially well-off parties that receive "preferred provider" pricing structures. Please do not be fooled into believing court reporters all across America are somehow not keeping up with technology and need firms like the Alliance to help make that possible for them.

Phyllis Craver Lykken, RPR, CLR, CCR No. 2423
WCRA Legislative Chair
Liz Harvey, WCRA President

This e-mail may contain confidential information which is legally privileged. The information is solely for the use of the addressee(s) named above. If you are not the intended recipient, any disclosure, copying, distribution or other use of the contents of this information is strictly prohibited. If you have received this e-mail in error, please notify us by return e-mail and delete this message. Thank you.