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August 19, 2016

Re: Responses to proposed changes to CR28 and CR30

Dear Members of the Supreme Court Rules Committee:

A handful of court reporters are proposing five changes to the Civil Rules under the auspice of unethical behavior happening to lawyers and their clients. You must ask yourself: Why would court reporters be so concerned with protecting lawyers?

The proposed changes to the Civil Rules are really a smokescreen for an attempt to limit competition in the State of Washington! These proposed rule changes are being submitted with the assumed understanding that there is a vast amount of unethical and egregious behavior happening in the court reporting industry. In the last 26 years, there was not one complaint submitted to the Washington State Department of Licensing. However, we now understand that there was a complaint submitted by a lawyer, which was at the prompting of this "handful" of court reporters proposing the changes to the Civil Rules. The Department of Licensing found no merit to the complaint and, therefore, no correction transpired.

Thank you for your attention to this matter.

Respectfully,

Marsha J. Naegeli
President and CEO

SUGGESTED CHANGE TO CIVIL RULE 28(d)

(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. Any party or counsel of record for a party may request that the court reporter or court reporting firm providing or arranging for the court reporting services file an affidavit with the Court affirming that all such services have been provided to all parties on equal terms. The affidavit shall be filed within 10 days of any request. If the affidavit is not timely filed, the Court may sanction the court reporter and court reporting firm of whom the request was made. If court reporting services have not been provided on equal terms, the Court may sanction the court reporter, the court reporting firm, as well as the counsel or party who hired the reporter or firm to provide the court reporting services.

1) Attorneys would need to be charged for the preparation of the Affidavit, which would trickle down to their client as an additional expense.

2) Court Reporters are already ethically bound to provide equal services and equal fees by the already implemented CIVIL RULE 28 (d). The new language is redundant and unnecessary.

3) The majority of Court Reporters throughout the United States are bound by equal services and equal fees through their state regulations or via their membership in the NCRA.

4) The additional language provides the possibility of sanctions to the individual court reporter, the attorney, the attorney hiring the court reporter, the law firm hiring the court reporter, as well as the court reporting firm; this causes lawyers and their clients an additional risk and expense.

SUGGESTED CHANGE TO CIVIL RULE 28

(e) Final Certification of the Transcript. The court reporter reporting a deposition shall not certify the deposition transcript until after he or she has reviewed the final version of the formatted transcript. A court reporting firm, consortium, or other organization transmitting a court reporter's certified transcript shall not alter the format, layout, or content of the transcript after it has been certified.

1) The current WAC requirements already addresses the reporter being responsible for the final transcript. Please remember, the current regulation is for the individual reporter.

2) The final transcript is the deposition that is received from the court reporter to the lawyer or the deposition that is received from the court reporter to the court reporting firm.

3) The certificate page for the final transcript could be required to include the final numbered pages so no "supposed alteration" could occur.

SIDE NOTE: Regarding CR 28(e) and the submission of exhibit D, the facts are as follows:
In 2002, at the prompting of court reporter Leslie Sherman of Paradise Sherman, the Attorney General, did an investigation of the court reporting industry based on WAC 308-14-135 (1991):

(1) No fewer than twenty-five typed lines on a standard 8 ½ x 11 inch paper.
(2) No fewer than ten characters to the typed inch.
(3) No fewer than sixty characters per standard line.

Referring specifically to number (3) which states "No fewer than sixty characters per standard line", there was NOT ONE court reporter in the entire State of Washington putting the number of characters per line, as interpreted by the DOL at the given time period of 2002. Transcripts were submitted to the Attorney General for every court reporter that was a state employee in the courthouses showing that their own state employees were not abiding by the "No fewer than 60 characters per standard line." Also, as a matter of interest, the two proponents of the current change to CR 28 (e) also did all of their transcripts in non-compliance to the Washington Department of Licensing's interpretations at that given time.

In summation, this was much adieu about nothing. As of this date, 75% of the court reporters are still not in compliance as the DOL interprets WAC 308-14-135 (1991) (3). The Department of Licensing has completely backed away from this whole situation and has never clearly clarified what "Sixty characters per standard line" really means.

The WAC has since been changed, with my input and my attorney's input to state 54 to 60 characters per standard line; however, there is still no clarity how "54 to 60 characters per line" is really interpreted.

SUGGESTED CHANGE TO CIVIL RULE 30(b)(1)

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Video Tape Recording.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays) to every other party to the action and to the deponent, if not a party or a managing agent of a party. Notice to a deponent who is not a party or a managing agent of a party may be given by mail or by any means reasonably likely to provide actual notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs. The notice also shall state the existence of any contract between the noticing party, its counsel, or a third party paying to record the noticed deposition and the person, court reporting firm, consortium, or other organization providing a court reporter for the noticed deposition, and the notice will state whether the noticing party or a third party directed his or her attorney to use a particular court reporting firm, consortium, or other organization to provide deposition services. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A party seeking to compel the attendance of a deponent who is not a party or a managing agent of a party must serve a subpoena on that deponent in accordance with rule 45. Failure to give a 5 day notice to a deponent who is not a party or a managing agent of a party may be grounds for the imposition of sanctions in favor of the deponent, but shall not constitute grounds for quashing the subpoena.

1) An additional expense would need to be incurred by the attorney and their client for the time taken to provide a Notice.

2) This new proposal would also hold up due process; an attorney or party in the case could object to a discount being given and cancel the deposition at the very last minute. The requirement of 30(b) 1 would become a stall tactic for swift due process.

3) Again, we are already required to provide equal services and equal fees pursuant to the current CIVIL RULE 28(d). A violation of unequal services or fees, as of this date, is enforceable as currently stated in 28(d).

SUGGESTED CHANGE TO CIVIL RULE 80

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

1) I am opposed to this language being added to CIVIL RULE 80. Each Judge is in charge of his or her own courtroom and, via request by the attorneys involved in the case, the presiding Judge could rule that a stenographer be allowed to report the record during the trial and be the official record. In Oregon, each Judge makes that decision and it works very effectively!

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 22, 2016 10:42 AM
To: Tracy, Mary
Subject: FW: Opposition to Civil Rule Changes by WCRA
Attachments: DOC019.pdf

Forwarding.

From: Chenelle D. Miller [mailto:chenelle@naegeliusa.com]
Sent: Monday, August 22, 2016 10:31 AM
To: supreme@courts.law.gov
Subject: Opposition to Civil Rule Changes by WCRA

Dear Members of the Supreme Court Committee:

After much pondering, I have included information in opposition to the Washington Court Reporter Association's proposed Civil Rule changes.

Respectfully submitted,

Marsha J. Naegeli | Founder and CEO
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