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WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

Barbara J. Christensen, President
Clallam County Clerk
223 E 4th St, Suite 9
Port Angeles, WA 98362-3015
360-417-2333
bchristensen@co.clallam.wa.us

August 05, 2016

Supreme Court Rules Committee
c/o Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Letter of Comment Regarding CR 80 Proposed Changes

Dear Supreme Court Rules Committee:

On behalf of the Washington State Association of County Clerks I write to express our request that the Washington State Supreme Court not adopt the suggested change to Civil Rule 80 due to the number of issues caused by the proposed language change. The rule as it currently stands is not in need of any changes. The justification that this change will be beneficial to the litigants may not be accurate and does not outweigh the significant operational impacts it will have on the courts and county clerks, especially those that rely on electronic recording devices to capture the record.

The proponents of the rule state that the recording system can fail, and may require a new trial and cause a huge expense for litigants. The recording software used in the courts today have proven to be reliable systems. Systems are routinely tested and maintained regularly to ensure proper functionality during court sessions. In the unlikely event of an equipment or software issue, staff address any problems with little to no delay for the court. Even with a traditional court reporter there can be unforeseen disruptions to court, based on sickness or other unplanned staffing issues.

The proponents also state that even if the system functions properly an appellant will often have to pay more for a verbatim report of proceeding based on an electronic recording rather than one derived from stenographic notes. We know of no data to support this claim. What we have experienced is litigants' advantageous ability to listen to electronically recorded court proceedings for free and then be able to decide if they would like to order a transcript. In the past, the only way for litigants or their attorneys to know what happened in a court proceeding was to pay to have a transcript prepared.

The Clerks have very strong concerns with parties being allowed to bring in an outside court reporter who would be taking notes in addition to the electronic recording. First, there will be much confusion caused by the creation of two records of the same matter. This rule proposal appears to consider them equally as the official record. It will likely be confusing to the Court to receive one transcript prepared by a court reporter who was present during the proceeding and on the same case receive a transcript prepared from the audio record. Differences in the two records

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may bring up unintended arguments that the Court will need to resolve. While the Clerk would retain the court-sponsored electronic recording of the proceeding, Clerks would have no control over the record taken by an outside court reporter. If parties to the case or members of the public have concerns or issues with the timeliness or quality of a transcript prepared by a private court reporter, it is unclear what their remedy would be. If part of this proposal is to make a transcript less costly for litigants and the public, it would be important that the outside court reporter be obligated to prepare a transcript for any customer requesting it, including indigent parties, not only the party willing to bear the cost of engaging the private court reporter.

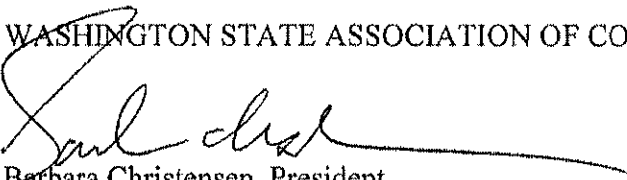
Currently, Clerks' Offices store the notes of court reporters. RCW 2.32.200 says that official court reporters shall file their notes with the clerk. It's unclear from the rule language whether the party-hired reporters are an official court reporter or would have any obligation to file their notes. Storing two sets of the record would be an unfunded expense that the Clerk's do not wish to take on and do not advocate. The private court reporter would instead need to adhere to record retention provisions and make their notes available to someone else should the private court reporter be unavailable to produce the transcript and there is a request for transcription of the court matter.

The proposed rule change would create confusion as to whether or not both methods of recording should be listed in the court minutes. It is unclear from this proposal whether the private court reporter will be sitting at the lower bench and will be required to report an entire court matter as opposed to certain portions of a matter or certain witness testimony. If both methods of capturing the record are listed on the clerk's minutes, anyone who was to view them at a later date would need to be able to determine the name of the court reporter and easily obtain their contact information. It is unclear how the WCRA is proposing to keep the contact information for the outside court reporter up to date so that the public has access to know who the reporter was and to know who to contact for a transcript, maybe years down the road from the court hearing.

In summary, the proposed rule is not fully developed and does not appear to promote long term public access to these privately arranged court reporter transcripts. This proposal creates many issues for the court, the clerks and parties which can have far reaching effects, none of which are positive. Ultimately it will reflect poorly on the court and jeopardize the Clerk's ability to maintain the official record. We urge you not to adopt the proposed changes to Civil Rule 80.

Sincerely,

WASHINGTON STATE ASSOCIATION OF COUNTY CLERKS



Barbara Christensen, President

cc: Members, Washington State Association of County Clerks

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 08, 2016 9:11 AM
To: 'Christensen, Barbara'
Subject: RE: Letter of Comment RE CR 80

Received 8/8/16.

Supreme Court Clerk's Office

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From: Christensen, Barbara [mailto:BChristensen@co.clallam.wa.us]
Sent: Monday, August 08, 2016 8:04 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter of Comment RE CR 80

Dear Supreme Court Rules Committee:

Please find attached our Letter of Comment regarding CR 80. I have placed a hard copy in the mail today to your attention. Please feel free to contact me should you have any questions or need additional information. Thank you for your consideration.

Sincerely,

Barbara Christensen

Clallam County Clerk

360-417-2333

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