



August 18, 2016

Proposed Amendments to CR 28(d)(e), CR30(b)(1) and CR80(d).

Thank you for the opportunity to comment on the proposed amendments to the above-referenced rules.

As a certified court reporter in Washington and as the president of the Washington Court Reporters Association, I urge you to adopt the proposed changes to CR 28(d) and (e), as well as to CR 30(b)(1). These amendments will ensure that consumers of legal services are treated fairly and equally, and make sure that all parties to the transaction share responsibility for making that happen.

Changes in the court reporting profession have created a gap in oversight that effectively allows companies offering court reporting services to violate the rules and laws governing the practice of court reporting in Washington, most specifically the requirement that all parties be offered services 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.

Rule 28(d) - The proposed change will allow any party who suspects a violation of the rule to request an affidavit be filed with the court, ensuring services have been provided to all parties on equal terms. The only person who can ensure that the same price is charged for the same service is the reporting firm or reporter. This change would not impose liability on a reporter or reporting firm for the failings of a party.

Second, this amendment makes it easier to uncover violations by the court in which they are taking place. This is a quick and efficient method to remedy any issues, and provides much-needed transparency to the litigation process. It would not create additional litigation,

merely the production of an affidavit in the court where the action is being heard.

Finally, the Washington State Department of Licensing only has authority over Washington certified court reporters. To provide some background that may be helpful, WCRA has worked very closely with the DOL for many years on this issue and had numerous meetings. DOL oversees many professions. In all cases, they regulate individual licensees, not firms or other entities. For example, they regulate architects, but not architectural firms. They have testified to this effect before the House Judiciary Committee. Last year, they requested an opinion from the Washington Attorney General's office on the ability of the Department to enforce court rules regarding court reporters. While they did not share the entire opinion with us due to attorney-client privilege, they did advise us that the opinion confirmed that they do not have that authority. We respect the concerns expressed by Judge Murphy, and wish to make clear that this issue has already been thoroughly explored with the Department of Licensing. Mr. Flygare was present at many of these meetings and is aware of the position taken by the Department.

The court has the authority to sanction the officers and parties before it. This is not the job of the DOL. And while the DOL does have authority over certified court reporters (CCRs), that authority is subject to the Administrative Procedures Act, a cumbersome process. In reality, the majority of the violations we are concerned with here occur at the firm level, not with the individual reporters that DOL oversees.

Rule 28(e): 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. So while the certified reporter is responsible for complying with rules governing page layouts and other transcript requirements, he or she has no way to verify that transcripts remain compliant. This change will preclude the entity producing the final transcript from making any changes to the layout or margins of the transcript, thereby creating a longer transcript to bill for. As a freelance reporter, I have personally received requests to use non-compliant formatting, and also to submit unnumbered signed certificate pages.

This practice has been the subject of at least one lawsuit in Washington, in which a settlement was reached. It is pervasive enough that the Department of Licensing issued a statement in the Standards of Practice Guidelines advising reporters to certify only properly formatted transcripts and never to sign blank certification sheets. I see that one commenter surmises this language is meant to

apply to a transcript that has been edited by what we call a "scopist" and returned to the reporter for final submission. That assertion is absolutely incorrect. It was a direct result of reformatting violations committed by entities producing and distributing the final transcript.

This change in the rule will provide additional protection for both the Washington certified reporter and for the consumer.

Courts have authority over how transcripts are created in cases pending before them. There is nothing inconsistent between proposed CR28(e) and any WAC or RCW provision, and the objections received cite no such conflict.

Rule 30(b)(1): This proposed amendment would require the deposition notice to disclose the existence of any known contractual relationships between the noticing party, its counsel, 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. It will also state whether the noticing party or a third party directed his or her attorney to use a particular court reporting firm. Similar rules have recently been adopted by California and Arizona.

Currently, only the noticing side knows which reporting firm will be hired to report the deposition. Oftentimes, counsel would prefer that the contracted firm not be used. They may elect not to order a transcript because of past billings they have received. This can negatively affect the ability of litigants and their counsel to effectively and fully develop their case. With prior notice, all counsel have the opportunity to voice their objections to the contractual relationship and find alternative arrangements if necessary. Disclosure of contractual relationships just makes sound sense for all parties.

This rule merely adds one or two lines to a deposition notice. There would be absolutely no delay in noticing depositions. It is a disclosure requirement similar to the requirement in FRCP 7.1 that corporate parties must disclose whether they are owned by any public entities. What the rule would do is help ensure that the principle set forth in CR28(d) is actually complied with.

Rule 80(d). WCRA supports the amendment as proposed by the King County official court reporters.

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.

The running theme throughout the opposing comments seems to be that the court should abdicate responsibility for ensuring equal terms to organizations such as the WSBA or the DOL. But the courts are charged with ensuring equal access to justice, which requires that justice does not cost more for one party than it does for another.

Third-party contracting in its current form also bypasses both counsel and the certified court reporter, the two people in the process who have ethical obligations to the court. This 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.

These proposed rule changes will promote fair and open competition, full disclosure and equal treatment for all, and shared responsibility, ensuring a fair and level playing field. They provide transparency for the consumer. There should be no reason for anyone to oppose treating all parties equally and playing by the same rules.

I urge you to adopt these proposed rule changes, placing Washington at the forefront of consumer protection.

Thank you for your consideration.

Sincerely,

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

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, August 19, 2016 8:17 AM
To: Tracy, Mary
Subject: FW: WCRA Comments on Proposed Rule Changes to CR28(d)(e), 30(b)(1), and 80.
Attachments: supremecourtcomments081816.pdf; image2016-08-18-092553.pdf; Letter to Supreme Court by Kevin.jpg

Forwarding.

From: Liz Harvey [mailto:lizharvey.wcra@gmail.com]
Sent: Thursday, August 18, 2016 9:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: WCRA Comments on Proposed Rule Changes to CR28(d)(e), 30(b)(1), and 80.

Good morning,

Attached please find the Washington Court Reporters Association's comments on the proposed rule changes.

We are also attaching an amendment to the proposed change for Rule 80 submitted by the King County official reporters, including an additional signature page for the King County reporters who work at the Regional Justice Center in Kent. WCRA supports this amendment.

Sincerely,

Elizabeth Patterson Harvey, CCR, RPR
President
Washington Court Reporters Association