

*The Court of Appeals  
of the  
State of Washington*



August 19, 2016

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

**Re: Proposed Changes to CR 80-Court Reporters**

The Washington Court Reporters Association proposed additional language to Civil Rule 80 (CR 80) raises concerns. As the current rule language sets out the superior courts have the "sole discretion" to utilize electronic recording equipment to capture the court proceedings. Courts also, under the current rule language, may cause "shorthand or stenographic notes thereof to be taken". In either case, the court is responsible to create an official objectively created record not the case participants.

The suggested change would be in direct conflict with the spirit of General Rule 35-Official Certified Superior Court Transcripts (GR 35) in terms of the certification language provisions in part (e) 4, "I am in no way related to or employed by any party in this matter, nor any counsel in the matter;". It would seem possible now for a party to privately hire a court reporter to sit in a courtroom and take notes (provided it is not disruptive) for their own use and not be construed as an official court record. Likewise with current technology anyone can sit in a courtroom with a hand held recorder and record the proceeding. If a transcript is created from the private recording there would be similar concerns. That practice would then conflict with the certification provisions of GR 35 under part (e) 2, "I received the electronic recording directly from the trial court conducting the hearing;".

The appellate courts rely upon verbatim report of proceedings on cases under review. The integrity and reliability of the official record of court proceedings must be maintained. The proposed rule would create an environment where those litigants with financial means could lawfully produce a private record to be filed with the court. It will be very difficult for the appellate court to determine which record is the official record if this rule proposal is adopted and more than one transcript is filed for the same proceeding. The proposal allowing a party to arrange for record creation and allow its use for appellate review has the potential to introduce confusion and conflicts to the process, and ultimately threaten the integrity and reliability of the official court record. In addition, the proposed practice has the potential to delay the perfection process while the trial court settles the record. RAP 9.5(c) & (d). For all of the aforementioned reasons, we do not support the proposed change to Civil Rule 80 (CR 80) currently under consideration by the Supreme Court.

Sincerely,

Handwritten signature of Richard D. Johnson.

Richard D. Johnson  
Clerk/Administrator  
Court of Appeals, Division I

Handwritten signature of David Ponzoha.

David Ponzoha  
Clerk/Administrator  
Court of Appeals, Division II

Handwritten signature of Renee S. Townsley.

Renee S. Townsley  
Clerk/Administrator  
Court of Appeals, Division III

## Tracy, Mary

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**From:** Carlson, Susan  
**Sent:** Friday, August 19, 2016 4:39 PM  
**To:** Tracy, Mary  
**Cc:** Townsley, Renee  
**Subject:** FW: Proposed rule change-CR80  
**Attachments:** Proposed rule change-CR80-COA Clerks.pdf

Mary -- Attached are rule comments from the Court of Appeals Clerks for the Court's consideration.

Susan

**From:** Townsley, Renee  
**Sent:** Friday, August 19, 2016 4:14 PM  
**To:** Carlson, Susan <Susan.Carlson@courts.wa.gov>  
**Subject:** Proposed rule change-CR80

Susan,

Please accept the attached comment jointly signed by the Court of Appeals, Clerk/Administrators on the proposed CR 80 rule change language and forward to the Supreme Court Rules Committee for consideration.

Thank you for your assistance.

*Renee Townsley*  
Clerk/Administrator  
Court of Appeals, Division III  
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