



Washington Court Reporters Association

www.washingtoncourtreporters.org

May 4, 2020

Hon. Charles W. Johnson, Associate Chief Justice
Chair, Court Rules and Procedures Committee
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

In re: Proposed Amendments to CR 30(c) – Emailed and hard copy mailed via USPS

Dear Justice Johnson and Honorable Members of the Supreme Court:

The Washington Court Reporters Association (WCRA) appreciates the opportunity to respond to the comments published related to its proposed rule amendment to CR30.

RCW 5.28.010 provides the authority for state-certified court reporters to administer oaths. While the RCW is silent as to where the person administering the oath or the person bound by the oath may be located when the oath is administered, as a Washington law, it is necessarily border specific to Washington. WCRA does not intend to overreach or supersede existing laws in other jurisdictions, it does not intend to supersede or interfere with notary laws in Washington, nor does it intend to supersede or interfere with any other rules as they relate to members of the judiciary or court clerks administering oaths. For purposes of RCW 5.28.010 and the proposed rule amendment, WCRA interprets the word “officer” in WA CR 30(c) as it relates to state-certified court reporters administering the oath. In Washington, all court reporters must be certified and abide by the Court Reporting Practice Act as well as court rules related to court reporters.

The question raised in submitted comments as to whether a Washington court reporter located in another state may administer an oath from their state is not one WCRA is asking the Court to address for purposes of this proposed rule. Situations where either the officer or the witness are not located within state boundaries will necessarily be affected by rules and regulations within their respective jurisdictions and are too variable to be addressed within Washington court rules. For the given example of a witness located in Washington in a Washington-venued case, Rule 30(b)(7) would still provide for obtaining a court order or stipulation of counsel to proceed with an officer located outside of the state.

I think it is relevant to note that Washington’s electronic notary provisions (set to take effect in October 2020 but are currently in effect by order of Governor Inslee see attached) also contain a requirement that the electronic notary public be located in this state. WCRA’s language mirrors

that language. WCRA does not view its language or the language in the Notary RCW to be “anticompetitive” or “unconstitutional.”

RCW 42.45.080

Notarial act in this state.

- (1) A notarial act may be performed in this state by:
 - (a) A notary public of this state;
 - (b) A judge, clerk, or deputy clerk of a court of this state; or
 - (c) Any other individual authorized to perform the specific act by the law of this state.
 - (2) The signature and title of an individual authorized by chapter 281, Laws of 2017 to perform a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
 - (3) The signature and title of a notarial officer described in subsection (1)(a) or (b) of this section conclusively establishes the authority of the officer to perform the notarial act.
- [**2017 c 281 § 10.**]
-

RCW 42.45.090

Notarial act in another state—Effect in this state.

- (1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:
 - (a) A notary public of that state;
 - (b) A judge, clerk, or deputy clerk of a court of that state; or
 - (c) Any other individual authorized by the law of that state to perform the notarial act.
- (2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
- (3) The signature and title of a notarial officer described in subsection (1)(a) through (c) of this section conclusively establishes the authority of the officer to perform the notarial act.

RCW 42.45.280

Electronic records notary public. (*Effective October 1, 2020.*)

- (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.
 - (a) "Communication technology" means an electronic device or process that:
 - (i) Allows an electronic records notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
 - (ii) When necessary under and consistent with other applicable law, facilitates communication with a remotely located individual with a vision, hearing, or speech impairment.

(b) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(c) "Identity proofing" means a process or service by which a third person provides an electronic records notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(e) "Remotely located individual" means an individual who is not in the physical presence of the electronic records notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual complies with RCW **42.45.040** by using communication technology to appear before an electronic records notary public.

(3) An electronic records notary public *located in this state* (emphasis added) may perform a notarial act using communication technology for a remotely located individual if:

For all of the reasons enumerated above, WCRA respectfully requests that the Court adopt the proposed rule amendment as written and submitted: “However, such oath and recording may be administered by the officer from a location remote from the deponent, provided that the officer is located within this state.” Thank you for your considerations herein.

Sincerely yours,

WASHINGTON COURT REPORTERS ASSOCIATION

s/s

Phyllis Craver Lykken, Co-President, Co-Legislative Chair

Valerie Seaton, Co-President

Liz Harvey, Co-Legislative Chair



**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05**

20-27

Electronic Notary Effective Date

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State of as a result of the coronavirus disease 2019 (COVID -19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, 20-24, 20-25, and 20-26, exercising my emergency powers under RCW 43.06.220 by waiving and suspending specified laws and regulations;

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, many professional services require the use of notary services for a variety of purposes that impact our vulnerable populations, including the need for advanced healthcare directives, wills, deeds of trust, durable powers of attorney for health care, irrevocable trusts or living trusts, real estate transfers, consents to travel documents for minors, adoptions, and affidavits of identity for a variety of purposes;

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health (DOH) continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the DOH in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamation 20-05 is amended to waive or suspend specified statutes that prevent, hinder or delay necessary action in coping with impacts to taxpayers resulting from the COVID-19 State of Emergency and to prohibit certain activities impacting taxpayers to help preserve and maintain life, health, property or the public peace.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the DOH, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(2)(g), I also find that strict compliance with the following statutory obligations or limitations will prevent, hinder or delay necessary action in providing relief to vulnerable populations and the businesses and professionals that serve them in the provision of estate and end of life planning, travel and adoptions, while applying appropriate social distancing measures, by removing the delayed effective date of and allowing for the new electronic notary services provisions authorized by, Senate Bill (SB) 5641, An Act relating to electronic notarial acts by remotely located individuals, Chapter 154, Laws of 2019, and codified within RCW 42.45, to take effect immediately, which relief is necessary for coping with the COVID-19 State of Emergency under Proclamation 20-05, and that the specific effective date provisions in Section 10 of SB 5641 is hereby waived and suspended, effective March 27, 2020 until midnight on April 26, 2020:

The result of this proclamation is that the delayed effective date in Laws of 2019, ch. 154, § 10 (codified as a note following RCW 42.45.280), is removed and SB 5641, An Act relating to electronic notarial acts by remotely located individuals, will take effect immediately, until expiration of this Order.

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 24th day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State