



April 25, 2024

Sent via email to supreme@courts.wa.gov

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

In re: Opposition to Proposed Changes to CR 28 and 30

Dear Clerk:

The Washington Court Reporters Association (WCRA) formally opposes the proposed changes to CR 28 and 30 and respectfully asks that the Court reject both submitted amendments as they are currently worded for numerous reasons.

First, it is important to note that under the Court Reporting Practice Act (CRPA), to practice court reporting in Washington, an individual must be certified by the Department of Licensing (DOL). The CRPA defines the "practice of court reporting" as "the making by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding."¹

Certified Court Reporters Must Comply with Professional Standards of Conduct

Certified court reporters must comply with a range of professional standards under both the CRPA and the WAC.² Their legal duties include, among others:

- Offering their services to all parties on equal terms;
- Preparing transcripts in accordance with State formatting guidelines;
- Preserving and filing shorthand notes for up to ten years;
- Disclosing potential conflicts to all involved parties;
- Truthfully and accurately advertising their qualifications and services;
- Preserving the confidentiality of all information obtained during a proceeding; and
- Supplying certified copies of transcripts to any involved party upon appropriate request.

These obligations fall on every certified court reporter in our state and failure to comply jeopardizes the court reporter's licensure. In this regard, court reporting is akin to practicing law. Just as an attorney's failure to abide

¹ [RCW 18.145.020](#).

² [WAC 308-14-130](#).

by the Rules of Professional Conduct can result in suspension or disbarment, so too failure to comply with professional standards can lead to the suspension or revocation of a court reporter's certificate.

Court Reporters are Certified Professionals and Must Comply with Washington Court Rules

In addition to compliance with the CRPA and WAC, certified court reporters must also comply with court rules.³ In Washington, the Civil Rules clarify that absent an order or stipulation, depositions *must be recorded stenographically by a court reporter in the first instance.*

The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.⁴

Any recording methodology other than by stenographic means requires a written stipulation or court order. Civil Rule 30(b)(8) further provides that when a deposition is recorded by video, a stenographic record must be created at the same time as the video at the expense of the recording party. Unless otherwise stipulated in writing, the court reporter's written transcript of a deposition is the official record of the deposition.

Additionally, WCRA has adopted the National Court Reporters Association's (NCRA) formal advisory opinion that it is unethical for court reporters to function as both the videographer and the court reporter for the same proceeding. "The paramount duty of the court reporter is to provide an accurate record of the proceeding."⁵ Mr. Crandall is an attorney and certified legal video specialist (CLVS), which is a certification NCRA offers to individuals after they undertake intensive training, testing, both written and hands-on, and are required to participate in continuing education to stay abreast of emerging technology. If they do not comply with the required standards, their certification can be revoked. Court reporters are not attempting to usurp the role of a videographer.

Videographers are Not Certified Professionals in Washington

Mr. Crandall has propounded an amendment calling for an "impartial professional legal videographer" to be recognized as an "officer" before whom depositions may be taken without addressing the fact that there is currently no law in existence in Washington that defines what constitutes a professional legal videographer; videographers are not required to be certified.

Amending the proposed court rules as currently written would impliedly leave the misimpression that a service is being provided by a licensed professional practitioner, which would be deceptive and violate the CRPA, the Consumer Protection Act (CPA), and the Uniform Regulation of Business and Professions Act (BPA). The BPA

³ See, e.g., CR 30(d) and (e).

⁴ CR 30(b)(4).

⁵ [https://www.ncra.org/home/the-profession/NCRA-Code-of-Professional-Ethics/COPE-Advisory-Opinions/group-page-\(advisory-opinions\)/Advisory-Opinion-44](https://www.ncra.org/home/the-profession/NCRA-Code-of-Professional-Ethics/COPE-Advisory-Opinions/group-page-(advisory-opinions)/Advisory-Opinion-44)

prohibits engaging in unlicensed practice of court reporting⁶ as well as aiding or abetting an unlicensed person to practice . . . a profession when a license is required.⁷

Mr. Crandall states in his GR9 cover sheet, “It has become standard practice in Washington Courts to employ audio/video recording systems in place of stenographic court reporters.” Courts in Washington have the discretion to utilize electronic recording equipment to capture court proceedings. In that case, the court is solely responsible for creating an official, objectively created record rather than the case participants and/or videographers.

Cause for Concern

Although some of the comments that have been submitted refer to videographers simply hitting the Zoom record button to record depositions, it is not generally that simple. Most professionally trained videographers do not record to the Zoom platform for confidentiality reasons. Rather, they record utilizing proprietary software that keeps the recording separate and apart from residing on the Zoom platform, or if they do utilize Zoom, they select an option to download the recording directly to an in-house computer for safekeeping. They also have multiple simultaneous back-up recordings in place. What those who are unfamiliar with the process may not understand is that untrained attorneys or staff members recording using Zoom are frequently recording without continuous monitoring, which could inadvertently capture off-the-record private conversations, most especially during breaks in the proceedings

It is also important to note that with the advancement of artificial intelligence (AI) and automatic speech recognition (ASR) apps, there may be multiple parties and/or attorneys using AI video recording apps and/or notetaking programs without the knowledge or consent of the parties or the deponent. This practice could call into question the integrity of the transcript and increase the costs of litigation to have parties creating competing versions of a deposition. Earlier this month, a King County judge overseeing a triple murder case barred the use of a video enhanced by artificial intelligence as evidence in what experts said may be the first-of-its-kind ruling in a United States criminal court.⁸

It is also important to note there can only be one official record, and when depositions are being video recorded by a party, that record must be the record of an independent certified court reporter or other designated officer. Rules 28, 29 and 30 were adopted before AI was developed to the extent it is today and these rules do not address its use in any way. An AI app is neither a person nor an officer recognized under Washington court rules.

Possible Amendment to CR 30 Suggestion

Frequently attorneys object to parties to the case functioning as the videographer in depositions. Some view it as a conflict of interest. This often causes a delay in the proceedings and at times causes a cancelation of the deposition so the objection can be ruled upon by the court. That is costly for all parties. In the spirit of keeping even the appearance of a conflict of interest from arising when parties to the case or their legal counsel wish to record video depositions, a minor technical amendment could be made to the proposed amendment. For comparison purposes, the existing language and possible amending language are both included below.

⁶ [RCW 18.235.130\(15\)](#) and [RCW 18.235.10\(7\)](#).

⁷ [RCW 18.235.130\(9\)](#).

⁸ <https://www.nbcnews.com/news/us-news/washington-state-judge-blocks-use-ai-enhanced-video-evidence-rcna141932>

EXISTING LANGUAGE:

WA CR 30(b)(8) (A) Any party may video record the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be video recorded. Failure to so state shall preclude the use of video recording equipment at the deposition, absent agreement of the parties or court order.

SUGGESTED AMENDED LANGUAGE:

WA CR 30(b)(8) (A) Any party may video record the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be video recorded. Failure to so state shall preclude the use of video recording equipment at the deposition, absent agreement of the parties or court order. No deposition shall be video recorded before a person who is a relative or employee or attorney or counsel of any of the parties or is a relative or employee of such attorney or counsel, or is financially interested in the action, absent the agreement of all parties or court order.

Thank you for your considerations herein.

Sincerely,

WASHINGTON COURT REPORTERS ASSOCIATION

Jennifer Pollino, RPR, CCR
WCRA 2023-2024 President

Phyllis Craver Lykken, FAPR, RPR, WA CCR 2423
WCRA Past President, Legislative Co-Chair

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed Rule Amendment
Date: Thursday, April 25, 2024 1:02:35 PM
Attachments: [WCRA Letter to Supreme Court re Proposed Rule Changes.pdf](#)

From: Phyllis Lykken <pclykken@gmail.com>
Sent: Thursday, April 25, 2024 12:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Jennifer Pollino <jencpollino@gmail.com>
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Good afternoon,

Please find attached WCRA's opposition to the Proposed Rule Amendment for Rule 28 and 30.

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Phyllis Craver Lykken, FAPR, RPR, WA CCR 2423, OR CSR (she/her)
WCRA Past President and Legislative Co-Chair
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