



April 4, 2024

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

Re: Opposition to Proposed Changes to CR 28 and CR 30 (Order No. 25700-A-1501)

Dear Clerk of the Supreme Court:

The Washington State Association for Justice respectfully submits this letter opposing the proposed changes to CR 28 and CR 30. The proposal unnecessarily increases costs to litigants, reduces access to justice, and does nothing to advance the integrity of court proceedings.

Since the COVID-19 Pandemic arose in 2020 most depositions have transitioned to being taken by remote means. Video conferencing technologies have made recording these depositions as simple as a click of the "record" button on applications like Zoom. The video recording is complete and accurate and is done with no additional equipment or setup or cost to the parties. The proposed changes to CR 28 and CR 30 would arbitrarily limit who is authorized to click the "record" button to capture the video, prohibiting attorneys or their staff from doing it, and effectively requiring parties to hire a person/entity who will then submit a bill for doing so. The bill is not inexpensive, either, adding up to hundreds of dollars per deposition and thousands of dollars over the course of a single case, and tens of thousands in complex cases. It should be noted that the proponent of this rule change is a court reporting firm that would reap a significant financial benefit from the rule change.

Even before the COVID-19 Pandemic, many lawyers had worked within the current rules to set up their own video equipment and record depositions. This practice provided an effective means of pursuing justice in cases which could not accommodate higher costs of hiring a videographer.

The proposed changes would undermine the stated intent of the Court Rules which are to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." CR 1. The proposed changes would spike the cost of litigation. The additional cost would be directly placed on the litigant themselves, as the costs of litigation are borne by the litigants, and not the attorneys. RPC 1.8(e)(1). Increasing the cost of litigation hinders justice and limits access to the courts. Litigants must consider the cost before venturing into a lawsuit; and increased costs will deter or prevent some litigants from seeking the justice they deserve and in many cases they desperately need.

The proponent of this rule change claims that lawyers are "exploiting ambiguities in the rules" and "jeopardizing the integrity of the record and confidence in the system." These are strong accusations, but there is no evidence to support them. CR 30(b)(F)-(H) contains detailed procedural for ensuring and preserving a recording's integrity that must be documented at each step. *See* CR 30(b)(F) (requirements for ensuring quality of recording); CR 30(b)(H) (requiring operator of video equipment to certify recording as correct and complete record, digital storage medium for recording, and preservation efforts taken; specifying preservation requirements for custodian of recording) The proponent cites zero instances of attorneys tampering with videos of depositions. Attorneys are officers of the court, have the authority to make declarations, and have a duty to present proper



evidence, maintain candor to the tribunal and fairness to all parties. Additionally, there is the safeguard of the court reporter and the written transcript of a deposition, which is the official record of the deposition, and the required notice and objection procedure before any part of a recording may be used at trial. CR 30(b)(g). Any discrepancy between the video and the official transcript will be readily apparent to parties and to the court. Without any evidence of even a single instance of trouble from CR 28 as it is currently worded, the proposal is essentially a solution in search of a problem.

Finally, the proponent cites to Federal Courts interpreting Federal Rules of Civil Procedure but makes no citation to any Washington cases addressing this subject. Fed. R. Civ. P. 30 is significantly different from Washington's CR 30. Compare CR 30(b)(8)(A) (authorizing "[a]nt party" to "video record the deposition of any party or witness" and CR 30(b)(F)-(H) (distinguishing responsibilities of the "operator of the video recording equipment" from those of the "officer before whom the deposition is taken" and specifying preservation requirements for operators and custodians of recordings), with Fed. R. Civ. P. 30(b)(5) (limiting recording of depositions to an "officer personally or by a person acting in the presence and under the direction of the officer"). The Federal Courts are addressing the Federal Rules on this topic. There is no Washington Case cited addressing the issue or even raising it as a problem, despite this being a practice for Washington lawyers for several years.

The proposed changes to CR 28 and CR 30 will unnecessarily increase costs to litigants and reduce access to justice for the citizens of Washington State. Furthermore, the proposed rule change will not actually produce any difference to the integrity of the administration of justice in the Courts. For these reasons the WSAJ opposes the proposed changes.

Respectfully submitted,

Handwritten signatures of Colleen Durkin Peterson and Christopher E. Love in blue ink.

Colleen Durkin Peterson
WSAJ President

Christopher E. Love
Chair, WSAJ Court Rules Committee