

April 24, 2006

Hon. Wm. Clifton Travis
Travis & Herbert, PLLC
The Ridgeway Building
4055 Shelbyville Road
Louisville, KY 40207-3106

Re: KRS 454.280

Dear Mr. Travis:

On behalf of the Kentucky Court Reporters Association you request an analysis regarding the validity and scope of KRS 454.280 and an investigation into whether certain conduct by court reporters and companies providing reporting services violates the statute. Because local prosecutors are responsible for the prosecution of violations of KRS 454.280, we respectfully decline to investigate. If you are aware of conduct that violates this statute you should contact the local prosecutor in the jurisdiction in which the illegal activity occurred.

We will, however, give an informal opinion on the question of whether KRS 454.280 prohibits an insurance company from contracting with an intermediary to obtain the services of independent court reporters to take depositions in court cases in which the insurance company has a financial interest in the outcome of the case. In our opinion the statute does prohibit such conduct.

The question arises because of a letter dated July 15, 2005, sent by me to Mr. Keith A. Di Loenzo, Vice President of Ambassador Legal Services, LLC. The letter, while it did not address this question, alarmed many court reporters, attorneys, and the Kentucky Court Reporters Association because it was seen by some as giving legal approval for insurance companies to pay a legal services company to procure the services of court reporters in court cases in which the insurance company has a financial interest in the outcome.

KRS 454.280 states as follows:

(1) Depositions taken in the Commonwealth that are to be used in its courts shall be taken before:

- (a) A hearing examiner;
- (b) A judge, clerk, commissioner, or official reporter of a court;
- (c) A notary public; or
- (d) Before other persons and under other circumstances authorized by law.

(2) (a) A deposition shall not be taken by a person who is:

- 1. A party to the action;
- 2. A relative, employee, or attorney of one (1) of the parties;
- 3. Someone with a financial interest in the action or its outcome; or
- 4. A relative, employee, or attorney of someone with a financial interest in the action or its outcome. For the purposes of this subparagraph, "employee" or "relative" shall not include an employee or relative of the attorney of one (1) of the parties.

(b) For the purposes of paragraph (a) of this subsection, "employee" includes a person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

(c) If a deposition is taken by a person described in paragraph (a) of this subsection, then that deposition shall be void.

(3) The provisions of subsections (1) and (2) of this section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or the Commonwealth.

(4) Any person who takes a deposition in violation of subsection (2) of this section shall be guilty of a Class B misdemeanor.

Subsection (2)(a) (4) prohibits an "employee" from taking a deposition where the "employer" has a financial interest in the outcome of the case. Accordingly, where an

insurance company has a financial interest in the outcome of the case, one of its “employees” would be prohibited under the statute from taking a deposition in the case.

Subsection 2(b) defines “employee” as one who has a contractual relationship with the entity interested in the outcome of the litigation, in this case the insurance company. Here the insurance company does not contract with or hire the court reporter directly. Instead, the insurance company contracts with an intermediary that contracts with the court reporter. We see no substantial difference for the purposes of the statute between an “employee” with whom the insurance company has a contract and a person selected by the “employee” taking the deposition. In both cases the insurance company has the ability to influence the criteria by which reporters are selected and the standards under which they perform.

By using a third party, the insurance company changes the form of the transaction, but not the substance. In situations where the public interest is at stake, courts have generally looked at the substance of the transaction rather than the form. See Anderson v. Abbott et al., 321 U.S. 349 (1944) and Alcoholic Beverage Control Board et al. v. Pebbleford Distillers, Inc., 303 Ky. 96, 193 S.W. 2d 1019, 1021 (1946).

KRS 454.280 seeks to prevent court reporters from taking depositions in cases where their “employer,” other than an attorney representing one of the parties, has a direct financial interest in the outcome. We think the purpose of the statute is defeated where an insurance company or any other entity with a financial interest in the outcome of the case, other than an attorney for one of the parties, hires a court reporter indirectly through another entity.

Traditionally, court reporters have been hired by the law firm or attorney who represents the insurance company’s insured. The statute recognizes this in Subsection 2(a) 4 by expressly exempting the attorney for one of the parties from the definition of “employee” in the statute. The exemption for attorneys makes sense to us because attorneys are officers of the court and are licensed, regulated, and disciplined by the Kentucky Supreme Court. See Ky. Const., Sec. 116.

It is our opinion then, that an insurance company may not use a third-party to do indirectly what they are prohibited from doing under the statute. Accordingly, it is our

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opinion that KRS 454.280 prohibits insurance companies from using intermediaries to hire court reporters to take depositions in cases in which the insurance company has an interest in the outcome of the case.

Very truly yours

GREGORY D. STUMBO
ATTORNEY GENERAL

Ryan M. Halloran
Assistant Attorney General

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