

# STATE RULE CHANGES FOR COURT REPORTERS WARRANTS REVIEW

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Without much publicity or fanfare, the Arizona Supreme Court changed the rules governing Arizona court reporters' code of conduct in February of this year. In so doing, the Court has clarified rules relating to the way in which court reporting services are billed and how deposition transcripts are produced and distributed in state court cases. Violations of these rules will trigger disciplinary action against the court reporters themselves but also give rise to sanctions against the parties and lawyers with whom the court reporters do business. Arizona defense lawyers, the insurance companies and self-insured clients for whom they work should pay attention.

It has long been the law in Arizona that licensed court reporters were to avoid engaging in business practices that favored one litigant over another or created the appearance of any impropriety. The Arizona Code of Judicial Administration § 7-206(J)(1)(g) included a prohibition against "contracts for reporter services" between court reporters or court reporting firms and clients, attorneys or insurance companies. What the rules sought to prevent were discount services agreements offered to certain parties or lawyers which were not offered to other litigants in the same matter. The rules also prohibited court reporters from relinquishing control of the transcript production and billing process to anyone else. Amid concerns (and numerous formal complaints) that some court reporting firms were routinely skirting, if not blatantly violating, these rules, the state board of certified reporters was tasked by the Supreme Court to review the rules and their effectiveness in curbing these abuses. The result was a rewrite of the rules, led largely by board members Ty Taber and the Hon. Peter Swann. The new version of subsection 7-206 (J)(1)(g) is not intended to expand or change the law but merely to clarify prohibited court reporter conduct and to make enforcement of the rules less controversial.

Under subsection (1) of the "new rules" it is still unlawful for any certified reporter to enter into any contract or relationship that requires the reporter to relinquish control of transcript production. Control involves monitoring, overseeing and reviewing the process. It is also unlawful for reporters to relinquish control of the invoicing or billing processes for the transcripts under subsection (2). Here, control is defined as having the right to inspect and copy all billing records. Subsection (3) specifically prohibits special financial terms offered to some, but not all, parties, attorneys or insurance companies in any litigated matter. Finally, subsection (4) prohibits contracts that require reporters to work for fixed prices in other matters or control the use of particular reporting services in other proceedings.

It is important for all attorneys and their clients to understand that depositions taken in violation of these rules are subject to being "voided" by the presiding judicial officer in litigated matters, pursuant to ACJA § 7-206(1)(i). The Rules of Professional Conduct require lawyers to act honorably, lawfully and prohibit any act that assists a client in breaking the law. It seems clear, therefore, that lawyers who knowingly participate in depositions involving prohibited contracts, pricing or transcript production practices expose themselves to both professional discipline and possible

malpractice. Although regulation of the certified reporters is the first line of control for the Arizona court system, it may also be true that companies that facilitate violations of these regulations may also face legal action by the State of Arizona.

The point of the revised rules is clearly to better define abuses in the system and to equip the courts with a mechanism to stop them when they occur. This is precisely what the Arizona Court Reporters Association (ACRA), the state association for Arizona court reporters, is hoping for. In a general letter published on the topic last year, the ACRA alleged that out of state court reporting services and insurance companies have entered into prohibited agreements to fix discount reporting prices that favor certain litigants over others and obligate Arizona lawyers and litigants to use the services of certain reporting firms who control all aspects of transcript preparation and billing, thus subjecting the local certified reporters to disciplinary action before the regulatory board. Whether the extent of these abuses were accurately described by ACRA is difficult to determine. Likewise, the extent to which these rules changes will deter such abuses remains to be seen. What is clear, however, is the fact that the rules have been sharpened amid concern of widespread abuse and practicing litigators would be well advised to inquire about the pricing, billing and transcript production policies of the court reporting firms they hire, to protect themselves, their reporters and the integrity of the deposition process itself.

## LEGISLATIVE UPDATE

Talk of Tort Reform is in the air for the next legislative session. During the summer a number of informal roundtable discussions have focused on reform proposals concerning moving toward a "loser pays" system, eliminating the collateral source rule, modifying Arizona's comparative fault scheme, clarifying the application of contributory negligence in strict products liability actions, and delineating clearly the difference between non-economic and punitive damages, among other ideas. As these discussions crystallize into more concrete legislative proposals, the AADC's Legislative Committee will be active in keeping the membership informed about ongoing developments in the Legislature. If you have information about proposed legislation of interest to the defense bar or questions about proposals under consideration, please contact Scott Freeman at [sfreeman@lclaw.com](mailto:sfreeman@lclaw.com).