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IN THE ARIZONA SUPREME COURT

In the matter of PETITION	)	R-05-0037
TO AMEND VARIOUS RULES	)	
OF PROCEDURE RELATING TO	)	
VERBATIM RECORDING OF	)	COMMENT ON
PETITION JUDICIAL PROCEEDINGS	)	PETITION
	)	

I am an attorney practicing in Arizona. My practice focuses on personal injury litigation. I am also Past President of the Arizona Trial Lawyers Association and currently serve as AzTLA’s Amicus Curiae Chair. In the past, I served on the State Bar’s Civil Practice and Procedure Committee. As a trial attorney and through these professional activities, I have an interest in the Arizona Rules of Civil Procedure.

As a member of the Supreme Court’s Committee on the Superior Court, I heard a presentation by Justice Michael Ryan and Jennifer Greene on the work of the Committee on Keeping the Record (“COKR”), including this Petition. In the past, I was consulted by members of the COKR, specifically about changes to Ariz. R. Civ. Proc. 30, concerning depositions. On behalf of myself and interested trial attorneys, I filed an Opposition to a previous petition to amend Rule 30 to

1 eliminate the requirement of stenographic recording of depositions. I appreciate  
2 the COKR's effort to maintain the 2003 amendments to Rule 30, so as to continue  
3 the requirement of stenographic recording absent a stipulation or agreement by the  
4 parties.  
5

6 I believe the COKR's proposed amendments to Rule 30(b) make a change  
7 that is not the COKR's intention, regarding who should pay for depositions.  
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9 There are two issues of cost for depositions: the cost of the recording (the  
10 court reporter's attendance and charge for recording) and the cost of the transcript  
11 itself. Currently, Rule 30(b)(4) states as to the first, "The party taking the  
12 deposition shall bear the cost of the recording." As to the second cost, Rule 30(b)  
13 states, "A party may arrange to have a stenographic transcription made at the  
14 party's own expense."  
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17 Under the current rule, a party may notice a deposition, and at its conclusion,  
18 elect not to order a transcript. The reporter simply maintains the recording. The  
19 noticing party then pays the reporter's charge for showing up, which runs about  
20 \$30 per hour, depending on the party's arrangement. In this way, the noticing  
21 party may memorialize the testimony but avoid the cost of the transcript and  
22 therefore avoid unnecessary litigation costs.  
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1 If a transcript is prepared, that second cost is very high for example, \$300-  
2 500 for a two hour deposition. The noticing party cannot be forced to bear the  
3 transcription cost.  
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5 Based on comments in the Petition and by Justice Ryan, the committee did  
6 not mean to change this practice. However, the language of the proposed  
7 amendment seems to place the burden of producing a transcript on the noticing  
8 party. The current proposal states,  
9

10  
11 When a deposition is recorded by a certified court reporter and the testimony  
12 is requested to be transcribed by one of the parties, the party noticing the  
13 deposition shall be responsible for the cost of the transcript. \* \* \* If audio or  
14 audio-video is additionally requested by one of the parties, the requesting  
15 party shall be responsible for the cost of such recording. If the deposition is  
16 recorded only by audio or audio-video, the party noticing the deposition  
17 should bear the cost of the recording.

18 However, the amendment also leaves but modifies the sentence, “A party may  
19 arrange to have a certified transcription made at the party’s own expense.”

20 I respectfully suggest that the current practice should continue: the party  
21 noticing the deposition should be responsible for paying for the *recording*; any  
22 party ordering a copy of the deposition, either a transcript or a audio or audio-video  
23 version, should pay for the copy. I suggest Rule 30(b)(4) should be amended as  
24 follows:  
25

26 4) Unless the parties stipulate or the court orders otherwise, the deposition  
27 shall be recorded by a certified court reporter and may also be recorded by  
28 audio or audio-video means. The party taking the deposition shall bear the

1 cost of the recording. If the deposition is not to be audio or audio-video  
2 recorded by the party taking the deposition, but is additionally requested by  
3 another party, the requesting party shall be responsible for the cost of such  
4 recording. Any party may arrange to have a certified transcription of the  
5 deposition made at the party's own expense. If an audio or audio-video  
6 copy of the deposition is requested, the party requesting the copy shall be  
7 responsible for the cost of the audio or audio-video copy. The stipulation or  
8 order shall designate the person before whom the deposition shall be taken,  
9 the manner of recording, preserving and filing the deposition, and may  
10 include other provisions to assure that the recorded testimony will be  
11 accurate and trustworthy. The deposition shall contain the certified court  
12 reporter's name, certification number, and business address; the date, time,  
13 and place of the deposition; the name of the deponent; the administration of  
14 the oath or affirmation to the deponent; and an identification of all persons  
15 present.

16 RESPECTFULLY SUBMITTED this \_\_\_\_ day of April, 2006.

17 LAW OFFICE OF JOJENE MILLS, P.C.

18 By \_\_\_\_\_  
19 JoJene E. Mills

20 Original, six (6) copies, and a CD  
21 sent this \_\_\_\_ day of April, 2006 to:  
22 Clerk of The Court  
23 Supreme Court of Arizona  
24 1501 W. Washington  
25 Phoenix, Arizona 85007-3231

26 Copies of the foregoing  
27 sent this \_\_\_\_ day of April 2006 to:  
28 Jennifer A. Greene, Committee Staff  
Committee on Keeping the Record Court Programs Unit – Court Services Division  
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Honorable Michael Ryan  
Supreme Court of Arizona Justice,  
1501 W Washington Rm 443  
Phoenix, AZ 85007-3231

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