My name is James Cool and I am an attorney in Phoenix. I submit this comment on behalf of my client, the Arizona Court Reporters Association ("ACRA"). ACRA is a private professional association representing the court reporting profession in Arizona. For decades, ACRA has worked closely with the bench, bar, and public to improve and guarantee access to the highest quality court reporting services and ensure an accurate, credible and trustworthy record.

In response to Judge Barton's proposal to amend Supreme Court Rule 30, ACRA formed a committee to analyze potential benefits and consequences of the proposed changes. The committee closely reviewed Judge Barton's proposal in addition to all relevant statutes and code provisions. For additional guidance and context, ACRA's committee also looked to the policies and best practices adopted by other state courts regarding court reporter regulation and management. Last, but significant, the committee reviewed and carefully considered the findings published in 2005 by the Arizona Supreme Court's Committee on Keeping the Record.

For a variety of reasons discussed below, ACRA respectfully opposes the proposed amendment to Supreme Court Rule 30. In summary, the proposed amendment would contradict Arizona's law and public policy by dividing the single profession of certified court reporting into two distinct classes (those employed by the court and those engaged by the parties) without any rational basis because all certified reporters ("CRs") possess the same certification, base-level competence, and fitness of character, and all are quasi-judicial officers regulated by the Arizona Code of Judicial Administration. *See* ACJA 7-206, *et seq.* Equally concerning, the proposed amendment would restrict the absolute statutory right of litigants across Arizona to engage a certified court reporter to create a certified (read: official)[1] record of court proceedings anytime the court is unable to provide a court-employed CR. It would unintentionally convert the electronic record into the "official record" in any instance where the court could not provide a CR, despite a party's request. As a result, court administration would be tasked with providing a sufficient supply of readily available contracted CRs or risk violating A.R.S. § 38-424.[2]

Although ACRA acknowledges the proposed amendment is motivated by stated concerns regarding the integrity and security of court records when privately hired CRs report court proceedings, those concerns are better and more easily addressed by

[1] "Official Record" is a judicial term of art. According to Supreme Court Rule 30(b)(4), a transcript prepared from the notes of a certified reporter or "authorized transcriber" is the "official record" of court proceedings. Rule 30(a)(2) defines "authorized transcriber" as either a certified court reporter or an uncertified transcriptionist who is under contract with or employed by an Arizona court. Although any typewritten transcript of proceedings constitutes a "record" of the proceedings, only a "certified" transcript constitutes the court's "official record." "Certification" of transcripts is a power reserved to court reporters certified and regulated by the Board of Certified Reporters. *See* A.R.S. §§ 32-4002(3) and (4).

[2] Litigants have a statutory right to utilize a CR to report court proceedings. *See* A.R.S. § 38-424.

implementing requirements for the archival of CRs' notes with the Clerk of Court or another designated record keeper.[3]

At the outset, allow me to provide some brief historical and statutory context for this discussion. Unlike Florida, Arizona is among a number of states that officially regulates court reporters. In 1999, the Arizona Legislature passed laws creating the Board of Certified Reporters ("CR Board"), whose stated purpose is to regulate and oversee those who record Arizona court proceedings using voice writing or stenographic means. *See* A.R.S. § 32-4001 *et seq*. As one component of its mission, the CR Board sets requirements for certification governing a CR's professional competency, ethics / fitness of character, and their continuing education. *See* A.R.S. § 32-4005. These requirements are codified in great detail at Section 7-206 of the Arizona Code of Judicial Administration, which provisions are enforced by the CR Board.[4] The legislature also enacted A.R.S. § 32-4004, which provides that **only** a certified reporter may lawfully report Arizona court proceedings or depositions. The statute further prohibits any uncertified person from holding themselves out as a court reporter, regardless of their stenographic prowess.

The current version of Supreme Court Rule 30 was written by members of the Arizona Supreme Court's Committee on Keeping the Record ("KTR"), which provided a draft of the rule along with its final report in December 2005. Following a multi-year examination of the topic, the KTR Committee confirmed that Arizona law grants litigants an absolute right to engage a CR to record court proceedings: "This state or any agency of this state, including the judiciary, and each political subdivision of this state, including any courts of law, may for any purpose use tape recorders or other recording devices in lieu of reporters or stenographers. This section does not apply if the matter to be recorded arises out of court proceedings and either party requests that a court reporter or stenographer be used." A.R.S. § 38-424 (emphasis supplied). Indeed, the statutory right of litigants to insist upon a certified court reporter in lieu of electronic recording has been affirmed in an *en banc* decision of the Arizona Supreme Court. *See Matter of Maricopa County Juvenile Action No. JV-109482*, 156 Ariz. 439, 752 P.2d 1025 (1988*) (en banc).* In that case, our Supreme Court Justices all agreed that "tape recorders or other recording devices in lieu of reporters may not be used for court proceedings where either party requests that a court reporter be used." 156 Ariz. at 440.

[3] The most pragmatic solution may be the issuance of a standing order by the presiding judge in each County directing privately engaged CRs to deliver and archive their notes in the same manner required of the CRs employed by the Court directly.

[4] The Board of Certified Reporters is a Judicial Branch agency under the purview and supervision of the Arizona Supreme Court. A.R.S. § 32-4004. The CR Board enforces the Arizona Code of Judicial Administration, which imposes binding professional obligations on CRs. The Supreme Court alone has the power to amend or modify the ACJA. Put differently, the Supreme Court already has all power necessary to require all CRs – whether engaged by the parties or a court – to submit to its record-keeping requirements.

Particularly relevant to the current discussion, the KTR Committee also examined issues arising from the storage and maintenance of a CR's notes. At that time, the Committee observed that most CRs were utilizing laptop computers and advanced technology to create electronic notes of the proceedings in real time. Based on these observations, the KTR Committee drafted rules governing the format and production of CR transcripts and requiring uncertified transcriptionists to have a formal contractual relationship with the State in order to lawfully certify transcripts of court proceedings. In contrast to uncertified "transcribers," the KTR Committee clarified that certified reporters need no formal contractual relationship with the State in order to certify transcripts: "Arizona certified reporters by virtue of their State certification are not subject to inclusion on a vendor list and may transcribe [court proceedings] at any time." (Emphasis supplied).

Last, but significant, the KTR Committee also considered when electronic recording and not a certified reporter would constitute the Court's "official record" when drafting the current version of Rule 30: "The rule also preserves the statutory requirement that judges honor a party's request for a reporter for any type of hearing…Additionally, the rule specifies that when both a reporter and a recording system are in use, the reporter's notes are deemed the 'official' record." The Supreme Court's committee did not reach these conclusions lightly; in fact, they were the product of significant debate and a thorough analysis, but were ultimately adopted in service of sound public policy and the requirements of Arizona law: "The Committee struggled with striking a balance between local practices that appear to work well and the need to preserve the statutory right of practitioners to choose the manner in which the verbatim record of a proceeding would be made." (Emphasis supplied).

Turning specifically to the proposed amendment, there is an apparent disconnect between the change proposed and the rationale offered to support it. Simply put, if the chief concern is that using CRs hired by the parties to report court proceedings will deny courts control over the CR's notes (i.e. the record), a variety of minor reforms could achieve the same result without undermining the role of CRs as the "gold standard" for keeping the record. The proposed new language would unintentionally convert the electronic record into the "official record" in any instance where the court could not provide a CR, despite a party's request. As a result, court administration would be tasked with providing a sufficient supply of readily available contracted CRs or risk violating A.R.S. § 38-424. Put somewhat differently, the proposed change would cause more problems for the courts than it would solve.

So, what would be a better solution?

First, and most important, there is no practical or legal reason our Courts cannot impose the same record-keeping and archival requirements on all CRs reporting courtroom proceedings—regardless of who employs them. All CRs are overseen by the same regulatory authority, are subject to the same requirements of skill, fitness, and conduct, and are governed by the Court's code of judicial administration. Whether by a

court's order or an amendment to the ACJA, CRs engaged by the parties to report courtroom events could easily be required to archive their electronic notes and transcript file in the same manner as CRs employed or contracted by the court.[5] So, a simple modification to the rules pertaining to record-keeping and storage is all that is needed. Moreover, this simple solution would alleviate the problem identified without resulting in unnecessary complications or statutory conflict.

This simple amendment to the archival and storage requirements for CR notes is a superior solution because the alternative currently proposed would undermine the expressed intentions of the blue-ribbon committee that drafted Supreme Court Rule 30. The pending proposal contends that a 2006 comment to Rule 30 "implies that a court reporter hired by a party would be an unofficial record." Not so. The 2006 comment cited by the proposal is a commentary on subsection (a) of Rule 30, which defines and sets minimum standards for certified transcripts of court proceedings, specifically that the transcript must be certified by an "authorized transcriber" (i.e. a CR or a transcriptionist contracted or employed by an Arizona court). The comment merely clarifies the requirement that an "authorized transcriber" prepare "official" transcripts, but does not prohibit the parties from engaging a "transcriber" (i.e. an uncertified typist) to prepare unofficial transcripts for unofficial use. The 2006 comment does not apply to CRs for at least three reasons.

First, CRs are by definition not "transcribers." CRs are heavily regulated and must meet ethical and competency standards. Transcribers are unregulated and need not meet any objective standard of professional competency. Second, according to the KTR Committee, the Rule was specifically drafted to ensure that a CR's notes are the "official record," even when the proceedings are simultaneously recorded by electronic means. Third, the 2006 comment explicitly refers only to section (a) of Rule 30, but Judge Barton's proposal cites the comment as support for modifications to the different provisions of subsection (b)(4). Thus, it is apparent that neither the drafters of Rule 30, nor its subsequent commentators, intended for a CR's record of court proceedings to be "unofficial." So, no amendment to Rule 30 should result in a CR's record being deemed "unofficial," even if the CR was engaged by the parties and not the Court itself.

For at least these reasons, the proposed amendment to Rule 30(b)(4) should be rejected. In the event the Judiciary believes any rule change is necessary, ACRA submits the Courts need only amend the record-keeping and archival requirements binding on courthouse CRs to also apply to CRs engaged by the parties. This would solve for the theoretical problem identified by Judge Barton's proposal without also undermining the laws and regulatory scheme established to oversee the profession of court reporting.

[5] Concerns about the ability to contact a particular CR should be alleviated by the CR Board's maintenance of up-to-date contact information for all certified reporters, regardless of who employs them. Any CR that fails to respond to the CR Board's request for information is subject to discipline, up to and including revocation of their certification. *See* A.R.S. § 32-4041(1). In addition, A.R.S. § 32-4006 grants the CR Board power to subpoena information from certified personnel under threat of contempt sanctions.

ACRA, its legal counsel, and leadership are eager to assist the Judiciary in crafting any necessary reforms related to keeping the record. If ACRA, its members, or attorney can be of help to the Courts in this process, please contact James Cool (ACRA Legal Counsel) at jc@ashrlaw.com and (602) 248-8203 or Mike Bouley (ACRA President) at istenoit@yahoo.com and (520) 664-6360.