

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.

ACRA has reviewed the proposal to amend Supreme Court Rule 30 dated January 10, 2018, and must respectfully oppose it. This proposal conflicts with existing statutes and rules, which statutes and rules have evolved only after many years of research, consultation, deliberation, and debate. Without a specific definition of “available,” there will be unpredictability and uncertainty from court to court in handling party requests for a certified reporter (CR). And, like a similar rules petition proposed in 2016, this proposal creates a false distinction between court-employed (“official”) and freelance certified reporters, effectively excluding qualified CRs from hire and exacerbating the problem he seeks to resolve.

ACRA is keenly aware of the difficulties outlined in the proposal. In fact, ACRA has met with representatives from Santa Cruz and Cochise counties to address exactly those issues. The association has always answered the call for assistance and is eager to participate in crafting and implementing solutions. And there are solutions at hand, both for the short and long term, that address the need outlined in this proposal but avoid its inherent conflicts, uncertainties, and pitfalls.

In general, and to provide some background, ACRA recently submitted a thorough description of the evolution of and rationale for current Rule 30 and how it aligns with other state law. It has detailed why Arizona has wisely codified litigant choice and deliberate allocation of its reporter resources. While accepting that ER has a place in the modern courthouse, ACRA has detailed why reliance on that method should be limited in its use. ACRA has highlighted the undisputed value the certified reporter brings to the judicial table specifically because of the mandated skills the CR must prove and codified ethical and professional standards the CR must meet.¹

In specific, the proposed amendment states that the courts must now resort to restricting the statutory right of litigants to choose the method of making their record and force ER upon them despite that litigant’s timely request. Further, it grants to the trial courts exclusive authority to determine if a CR is “available,” creating inconstancy and unpredictability from court to court when requests for CRs are made. By failing to expansively define “available,” the proposed rule change has the effect of excluding a pool of qualified willing and able freelance CRs from direct engagement by parties to cover court proceedings when a court-employed CR is denied them. Such restrictions contravene free market principles, place courts in the position of picking “winners and losers” among equally qualified CRs, and defeat the statutory right of litigants to engage CRs to report their proceedings. Restricting the ability of parties to directly hire freelance

¹ ACRA comment to Judge Barton’s proposal. <http://www.azcourts.gov/Rules-Forum/aft/566>

court reporters to cover their court proceedings if a court-employed reporter is denied them results in court administration continuing to be tasked with providing a sufficient supply of readily available contracted CRs or risk violating A.R.S. § 38-424.²

So, what is the solution?

There are no easy answers. However, since Arizona law recognizes a litigant's unqualified right to engage a CR to create the official record of court proceedings, any solution must focus on *expanding* the availability of CRs by broadening access and working with industry allies like ACRA and NCRA to improve CR coverage of court proceedings.

So, the first step in solving this problem involves relaxing or modifying any local court rules that inhibit the ability of freelance CRs (i.e. those not currently employed or contracted by the courts) to work in the courthouse. Accordingly, court rules should be clarified to permit litigants to engage freelance CRs to record courtroom proceedings when a court-employed CR is denied them. To alleviate previously stated concerns, freelance CRs hired privately will follow the same process for filing their notes as their court-employed counterparts.

In addition, the courts can and should work with industry allies, such as ACRA, to communicate the judicial branch's needs to the market of freelance CRs. Although underutilized as a resource, ACRA already works with court administrators in outlying counties to help them locate qualified and willing CRs to record specific court proceedings when no court-employed CR is available to cover the calendar. By leveraging social media and other technological advances and by working in partnership with ACRA and other industry allies, the courts can dramatically expand their reach and develop vital public/private partnerships between courts and the freelance reporting industry and its major players.

Also, looking at and modifying state processes that may discourage CRs from moving to Arizona (i.e., length of time from application to certification, expense of certification) is a worthwhile consideration. ACRA has recently compiled information regarding the length of time in each state for a reporter to become certified. There are 23 states in which certification is not required. Six states offer reciprocity. Thirteen states issue certification in under one month, and three states issue certification in two to three months. (There were three states with unclear information.) Arizona and California have a certification process which exceeds three months. Arizona is at a clear disadvantage in attracting reporters from other states because of the long wait time for certification.

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

Finally, to address the concern regarding a shortfall in court reporters, the National Court Reporters Association continues to promote and educate the public about court reporting in order to attract candidates to the profession on a national basis through a variety of methods, including vigorous online campaigns. NCRA's Education Department has also created an innovative new concept that is available across the country called the NCRA A-Z Intro to Machine Shorthand program. Locally, ACRA is working with the very successful and well-reputed East Valley Institute of Technology and Gateway Community College to develop and expand court reporter training programs, and these are in addition to multiple online court reporting programs that are now available.

ACRA and its leadership are eager to assist the judiciary in crafting any necessary reforms related to keeping the record. If ACRA, its leadership, or its members can be of help to the Courts in this process, please contact the Arizona Court Reporters Association at office@acraonline.org.

James Cool, Esq.
On behalf of the Arizona Court Reporters Association

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