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NCRA President

May 22, 2006

Clerk of the Arizona Supreme Court
1501 West Washington, Suite 402
Phoenix, Arizona 85007

Re: Petition No. R-05-0037-
Comment on Petition to Amend Various Rules of Procedure Relating to Verbatim
Recording of Judicial Proceedings

The National Court Reporters Association (NCRA) represents 24,000 court reporters, captioners and CART providers nationwide. As an organization with 107 years of experience partnering with the courts to ensure a fair and impartial judicial process, we would like to offer our comments concerning Rule Change Petition R-05-0037 in Arizona.

NCRA concurs with the Arizona Court Reporters Association (ACRA) regarding its support for the following portions of the petition in:

- Modernizing language in your court rules;
- Recommending that court reporters must be used to make the official record in grand jury proceedings, capital case proceedings, felony jury trials, initial hearings to determine sexually violent person status, and proceedings on a minor's request for authorization of abortion without parental consent;
- Preserving the statutory requirement that a party can request a court reporter for any proceeding;
- Making the court reporter's record the official record in a proceeding also recorded electronically; and
- Recognizing that a court reporter's record of proceedings is the "gold standard" of record making.

NCRA also agrees with ACRA that in addition to the five case types listed above, it is absolutely essential to have a court reporter in civil jury trials, juvenile delinquency hearings, and hearings on contested parental rights termination. It appears that the data needed to judge the utility of the best method for capturing the record in these types of cases was not collected. Such an approach has led to a conclusion that is subjective and has no basis in fact. Before making a decision of such magnitude, empirical information captured through the study of current electronic recording systems in Arizona and careful budget analysis should be gathered and reviewed, to ensure that the decision made is one that best meets the needs of the Arizona courts and the courts' users. Moreover, when conducting such research, it would be necessary to also examine the complete record-making process in order to fully analyze the implications of shifting away from ensuring a complete and accurate record.

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There are many costs associated with utilizing electronic recording that are not typically identified upon initial examination. There are first-time purchasing costs, of course, but there are also maintenance costs, yearly fees, software updates, tech support, transcription costs, equipment costs, potential electronic recording monitor salaries, storage costs, and potential retrial costs. Another important cost-related aspect to note is time, the most valuable resource to everyone concerned. Reviewing a CD or video rather than a transcript of a court proceeding can take considerably more time for a judge, attorney or litigant, increasing the cost of the judicial experience.

The court reporter is a critical component to the judicial process, helping to ensure that justice is carried out by serving as the impartial guardian of the record. Stenographic court reporters create the most efficient and accurate record possible for the citizens of Arizona, and through the application of realtime, provide a series of benefits, ranging from immediate access to the record for attorneys, judges, other court personnel and the public to communication access for people with hearing loss. These benefits simply cannot be matched by electronic recording. Moreover, as a part of the court team, court reporters' duties in most courtrooms go beyond just preserving the record, as they also perform several vital administrative tasks.

Relying solely on a machine can lead to a miscarriage of justice, putting at risk the promise of a fair trial that is constitutionally guaranteed to all Americans. Every citizen in Arizona should be guaranteed the right to have an accurate, complete, and secure court record, to have every word spoken captured, gestures noted, for accents to be interpreted and understood through human interaction, and ultimately for their case to be preserved for their protection. Proposed cost savings, and particularly proposed costs savings that have not been supported by empirical data, should not determine how the record is made in Arizona. The needs of those individuals making use of the justice system should come first, and the only way to ensure that those needs are being fairly met is to ensure the use of a stenographic court reporter.

The National Court Reporters Association strongly supports the position taken by the Arizona Court Reporters Association and encourages a thorough review be made to ensure that empirical data comparing the use of a stenographic court reporter to electronic recording is captured and used in determining how to make the record in the courts. Costs of electronic recording are not as cut and dry as they may appear. The citizens of Arizona deserve that objective analysis.

Thank you again for the opportunity to comment on Rule Change Petition R-05-0037.

Sincerely,



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President
National Court Reporters Association