

**1999 DRAFTING REQUEST**

**Bill**

Received: **03/16/1999**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Rude (608) 266-5490**

By/Representing: **James Hough**

*Send to Sen. George's office*  
This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Taking of depositions in civil actions

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	nelsorp1 04/14/1999	wjackson 04/14/1999	jfrantze 04/14/1999	_____	lrb_docadmin 04/14/1999		
/1	nelsorp1 04/19/1999	wjackson 04/20/1999	martykr 04/21/1999	_____	lrb_docadmin 04/21/1999		
/2	nelsorp1 08/27/1999	wjackson 08/31/1999	hhagen 08/31/1999	_____	lrb_docadmin 08/31/1999	lrb_docadmin 10/13/1999	

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FE Sent For:

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Subject: Courts - civil procedure

Extra Copies: Amy Beyer - by  
FAX at 283-2589

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/1	nelsorp1 04/19/99	wjackson 04/20/99	martykr 04/21/99	_____	lrb_docadmin 04/21/99		

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CH/CA 8/31

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**Topic:**

*8/8 LMA for James Hough*

Taking of depositions in civil actions

**Instructions:**

*Need by 4/20.*

See Attached

**Drafting History:**

*Please submit*

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	<i>1/pt Wlj 4/14</i>	<i>Jo 4/14</i>	<i>To XM</i>			
				<i>4/14</i>			

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**MODEL POLICY PROVISIONS  
TO PRESERVE COURT REPORTER IMPARTIALITY**

**1) Duty of Impartiality**

- Court reporters shall perform all court reporting services in a fair and impartial manner and take all steps to avoid the even the appearance of impropriety.

**2) Court Reporter Firms Should Abide by Same Ethical Standards As Individual Court Reporters (in states with certification of court reporters)**

- All firms practicing court reporting in a state must register with the state's court reporters' board.
- All firms registered with the state board must comply with the statutes, regulations, rules and standards of conduct applicable to court reporters.

**3) Prohibit Contracts Between Court Reporters or Firms And Interested Parties**

- Contracts to perform court reporting services for any duration beyond an action/case/matter pending before a court or administrative agency, between court reporters or court reporting firms doing business in a state and any attorney, party to an action, party with a financial interest in the outcome of litigation, or party paying for the provision of court reporting services in litigation should be prohibited.

**4) Treat all parties to litigation equally**

- All parties to an action should be offered comparable services under comparable terms.
- No gifts, incentives, rewards should be offered by a court reporter or court reporting firm to any party to an action, attorney, or party with a financial interest in the outcome of the litigation, except for nominal items that do not exceed \$25 each transaction and \$50 in the aggregate per recipient per year.
- Unless all parties to the pending action are offered the same service, a court reporter or reporting firm shall not engage in the practice of assisting any interested party in compiling a database of transcripts for use in litigation or providing any other form of litigation support.
- Unless all parties are informed and give their consent, a court reporter or reporting firm shall not sell or otherwise provide copies of transcripts to anyone other than the parties in an action.

**5) Penalties for violation**

- Court reporter subject to revocation of license and the court reporting firm to a fine not less than \$5,000. (in states with certification)
- Depositions taken in violation of these provisions shall be rendered void.
- Deposition reporters shall be guilty of a misdemeanor for violation of any of these provisions. (states without certification)

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Court Reporters are responsible for the preparation and protection of official verbatim legal records. To maintain the integrity of our justice system, court reporters must retain an impartial role in the process. More and more, major litigation payors, such as insurance companies and large corporations, are entering into contracting arrangements with court reporting firms. The mere appearance of these contracting arrangements undermines the integrity of the judicial system as a fair and neutral mechanism for resolving disputes.

The Wisconsin Court Reporters Association (WCRA) is opposed to the above mentioned contracting arrangements. WCRA is working, through the legislative process, to prevent contractual relationships between court reporters and party litigants. Currently, 15 states are in the process of passing legislation preventing contractual relationships between court reporters and litigants and 9 other states are in the process of obtaining Supreme Court Rule changes.

Other organizations that support this initiative include: National Court Reporters Association (NCRA); Association of Trial Lawyers of America (ATLA); American Judges Association; Citizens for Impartial Justice; and, Center for Law in the Public Interest.

The WCRA believes that, as officers of the court, we must do our part to ensure the public's faith in the fairness and impartiality of our judicial system.



# Center for Law in the Public Interest

## Fair Justice Project

### THE PROBLEM

As keepers of the official record, it is essential to the integrity of our justice system that court reporters retain an impartial role in the adversarial process. Increasingly, major litigation payors, completely circumventing counsel and their related ethical obligations to the courts, are contracting directly with some court reporting agencies. These arrangements, at the very least, create an appearance of partiality, and, at worst, give preferential treatment and special services to the contracting party that are not made available to the opposing parties. The ultimate and most serious consequence of this trend is the undermining of the integrity of the judicial system in and of itself as a neutral mechanism for resolving disputes.

Despite the passage of laws in a number of states prohibiting certain contracting arrangements, practices which threaten the impartial role of court reporters have continued virtually unabated on a national scale. Thus, there is a definite need for a strong and coordinated effort to lobby for broader protections and to bring actions to enforce existing laws. Such a unified campaign is necessary to prevent duplication of efforts and devote resources to strategies which will yield the most fruitful results.

### PLATFORM

The overall goal of the Fair Justice Project is to preserve the integrity and impartiality of the judicial system by preserving the neutral and impartial role of court reporters, deposition officers, and officers of the court. To this end, the Center for Law in the Public Interest employs a full-time staff attorney to organize the Project working in close consultation with a national non-profit headed by court reporters dedicated to preserving the integrity and impartiality of their profession, "Citizens for Impartial Justice," to lobby for legislative and/or rule changes at the state and local levels and to coordinate impact litigation activities seeking to prohibit parties in litigation from entering into contracts with members of the court reporting profession which diminish or appear to diminish their neutral and impartial role in the administration of justice.

### STRATEGY

The Project works with state and local groups to give them the tools they need to wage effective campaigns to preserve court reporters' impartiality by performing the following roles:

**Clearinghouse role**--gathering factual and legal information and disseminating to state groups to be used for educational campaigns, legislative advocacy and litigation.

**Organizing role**--mapping out campaign strategies for various states to include public education, media work, coalition building, targeting decision-makers; preparing sample press packets, op-ed pieces, LTEs, and developing fundraising plans.

**Legal Research/Co-counsel role**--consulting with sympathetic public interest/consumer attorneys in various states on litigation strategies; performing legal research and co-counseling cases; drafting amicus briefs and organizing other groups to join as amici.

**Legislative Advocacy role**--researching state and local rules, drafting legislation, advising lobbyists on technical legal issues, advising bill sponsors on appropriate strategy and tactics.



## SAMPLE ARTICLE FOR BAR JOURNALS/LEGAL NEWSLETTERS

### The Growing "HMO-ization" of the Legal Profession: The Impartiality of the Keepers of the Record is at Stake

#### Introduction

Undoubtedly, countless doctors have fought over the last decade against the position they now find themselves in with HMOs whose financial interests are in conflict—sometimes directly—with the physician's code of ethics. One could argue that it is too late for doctors to save their profession. There is no turning back for them.

Many in the legal profession are now asking—are we next? Imagine that the judge in one of your cases has a contractual arrangement with the opposing party or their insurance company setting the terms and conditions of his duties. Suppose further that the contract requires the judge to arrive a half hour prior to when the proceedings were to begin without you or your client being present. Under these conditions, an oath by the judge to remain impartial would probably not do much to allay your skepticism. It would likely be even more difficult to assure your client, if the case was lost, that he or she got a fair shake.

This scenario may not be that farfetched. You may not know it, but such HMO-like arrangements already exist with other impartial officers of the court—court reporters.

Think back to the last deposition you took. You probably did not think twice about the court reporter who dutifully sat off to one side and made a record of the proceeding that ultimately was sent back to you as a written transcript. You take for granted—as well you should—that court reporters, as with the judges, are neutral, impartial officers of the court who will perform their duties in an unbiased manner.

Unfortunately, you may no longer be able to take as a given that the court reporter in your next deposition is, in fact, free from any business ties to the opposing party in your lawsuit. As part a growing trend to "HMO-ize" the legal profession, large litigation payors, particularly insurance companies, are contracting directly with certain court reporting firms on a national scale in a way that circumvents counsel's independent professional judgment and related ethical obligations to the court.<sup>1</sup> One national court reporting consortium engaged in contracting with insurance companies throughout the country actually claims: "We are to litigation control what HMOs are to health insurance providers."

What is most alarming about these contracting arrangements is that they often provide the contracting party with special services that are not given to the opposing parties in litigation, such as free access to realtime services or expedited transcripts. At the very least, these contracting arrangements give the appearance of partiality by the court reporter that our system of justice cannot tolerate. "When court reporters are working

under exclusive contract for one side in litigation, the pledge that our membership takes to avoid even the appearance of impropriety becomes meaningless," states John Prout, immediate past-president of the National Court Reporters Association.

### **A Court Reporter's Duty of Impartiality**

Like doctors, court reporters do not fit neatly into the HMO models being implemented by major defense litigants. Just as with doctors, court reporters are professionals (not simply service providers) with independent codes of ethics requiring them to be fair and impartial. Under the Federal Rules of Civil Procedure, as well as under most state rules, including California, a court reporter taking a deposition cannot be a relative or an employee of any attorney or party in the litigation.<sup>2</sup>

Under the Code of Professional Ethics of the National Court Reporter's Association, a member court reporter must be "fair and impartial toward each participant in all aspects of reported proceedings" and "guard against not only the fact but the appearance of impropriety." Many states have incorporated these ethical rules into their civil codes or administrative regulations. In Nevada, for example, a court reporter must "perform the practice of court reporting in a fair and impartial manner" and "take steps to avoid the appearance of impropriety in a proceeding." Nev. Admin. Code ch. 656, § 340.

### **Contractual Arrangements Between Court Reporters and Interested Parties Compromise Impartiality**

Despite the fact that reporters are supposed to be impartial, these new court reporting "HMOs" themselves boast that their services will help one side gain an advantage in litigation. As one major court reporting firm boasts, their services will "enhance the quality of [attorneys'] legal representation."

Thus, some court reporters under contract with particular parties to litigation are now routinely required to provide on disk or other easily accessible format all transcripts in any other cases where a particular party and/or witness in a current litigation may have been involved. One major national court reporting firm, for example, claims their "witness database saves hours of time preparing for trials, depositions, and interviews."

What this potentially means is that court reporters are in danger of losing their independence as surely as doctors toiling in managed care plans have already lost theirs. Instead of being neutral parties in the judicial process, reporters are now actively involved in helping one in the prosecution of their cases.

### **Insurance Companies Argue Contracting is Necessary to Cut Costs**

Those who engage in contracting for court reporting services argue that contracting is simply a facet of the free market, and so long as it decreases costs, it is *ipso facto* good.

This argument ignores the fact that the success of our system of justice is not measured solely by how it affects corporate balance sheets. Regardless of whether certain contracting arrangements result in a cost savings to insurers (and there is a lot of evidence that both the short term and long term savings are illusory), the point is that the higher—or, at least, different—aims of the justice system should not be compromised in favor of the bottom line. Otherwise, why not simply contract out judges to insurance companies? As the American Judges Association has recognized in a resolution supporting efforts to prohibit contracting, “court reporters are officers of the court whose impartiality, *as with judges*, must remain utterly beyond question in order to ensure the enduring confidence and faith from which our judicial system derives its legitimacy.”<sup>33</sup>

As a practical matter, exclusive contracting arrangements between parties in interest and court reporters, in many instances, may serve to lengthen and drive up the costs of litigation. One can envision many litigations within litigations, where plaintiff's counsel and defendant's counsel variously refuse to proceed with "their" court reporters versus "our" court reporters. The deterioration of an already needlessly complex civil litigation system would be the result.

### **Why Contractual Arrangements with Court Reporters are Such an Alarming Threat to our Judicial System**

Aside from judges and juries, the only other facet of the judicial process with nearly as much power conclusively to determine what, in reality, took place, are court reporters. Whatever the subjective memories of the individual participants may be, say, in a deposition, the "truth" of what occurred is, for all intents and purposes, conclusively determined by the court reporter's transcript. Because of this, whole cases can turn on the accuracy and integrity of court reporters' work, with the result that often numerous lives and millions of dollars hinge on every single word. Given the court reporting profession's uniquely powerful position in our adversarial process, it is proportionately important that their impartiality remain above reproach. Otherwise, the system as set up will simply erode.

As a matter of legal policy, when interested parties are essentially employing the allegedly impartial, the rule of law becomes a sham. The rule of law is based upon losers agreeing to lose, and, in turn, litigants depend upon a feeling that they “got a fair shake”—that the process was “due,” meaning fair and impartial, and not a part of any bigger war. It is absolutely essential that the judicial system be completely beyond reproach to ensure that litigants who lose, while certainly unhappy, do not feel as though the decision was biased against them as a consequence of an apparent or actual conflict of interest. Any arrangement that threatens the actual or perceived impartiality of the court reporter or suggests even a scintilla of adherence to one party over another is a dagger aimed at the heart of the rule of law.

## **The HMO-ization of the Defense Bar**

The court reporters are not the only members of the legal profession being "HMO'ed." A growing number of insurance defense attorneys are becoming increasingly frustrated with being told by their client that they can no longer use a particular court reporter that they have come to know is skilled and competent. Instead, they are being directed to exclusively call an "800" number of a company, likely based in some other state, with whom the insurance company has a direct contract whenever they need to schedule a deposition. As more of these and numerous other legal decisions are being wrested from their control, defense attorneys are increasingly finding that their independent judgment and skill as a professional is slipping away, just the same loss of independence as occurred with doctors in HMOs.<sup>4</sup> The President of the Michigan Defense Trial Counsel (MDTC) in a recent letter in her organization's publication adeptly captured the current state of affairs:

A core objective of our ethical rules is to protect the lawyer's capacity to exercise independent judgment in the best interests of his client. The potentially conflictual triangular relationship between the doctor, the patient, and the patient's insurer may at times be present in the relationship between the lawyer, the client, and the client's insurer. Once realized, a conflict of interest is an insurmountable professional obstacle precisely because it inevitably affects the exercise of the independent judgment that defines us as professionals. ... It seems that with the increasing domination of the managed services model in the medical field, lawyers need to be especially vigilant and jealous of their professional autonomy. This is why it is essential that members of both sides of the Bar become involved in the political process that will inevitably affect our professional identity as well as our livelihood.<sup>5</sup>

## **What Is Being Done To Reverse This Trend?**

Where state legislatures and state supreme courts have considered legislation and/or rule changes, the trend has been to outlaw or strictly curtail long-term contracts with court reporters. So far, ten states, including Hawaii, Texas, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada, Kentucky, and Michigan have enacted legislation, approved rules or taken other actions through their state board to limit or ban contracting. Kentucky, one of the most recent states to consider anti-contracting legislation during the 1998 legislative session, prohibits depositions from being taken by anyone who "has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may be ultimately responsible for payment to provide reporting or other court services" or by anyone who is "employed part-time or full-time under a

contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.” At least five other states have legislation or rule changes currently pending before their legislatures or state supreme courts to prohibit contractual arrangements between parties and court reporters.

Court reporters, judges, attorneys and public interest groups across the country have joined forces to support measures to ensure court reporter impartiality. The National Court Reporters’ Association (NCRA) and the American Judges’ Association (AJA) have adopted resolutions to support lobbying activities at the state and federal level to prohibit contracting arrangements that threaten court reporter impartiality. The AJA recognizes that such arrangements ‘could create an appearance of partiality that is inimical to the public’s faith in the fairness and impartiality of the judicial system.’<sup>6</sup>

“Public interest and consumer attorneys need to take a hard look at what’s happening with court reporters, as we have a huge stake in ensuring a level playing field in the judicial process, the only arena in which an average American can take on the powerful, where truth and justice still have a fair chance over money and influence,” stated Ed Howard, Director of Program Development and Senior Counsel for Foundation for Taxpayer and Consumer Rights.

#### **What Can Attorneys Do About Contracting?**

Both the plaintiffs and defense bars should take the time to inquire into whether the court reporter in their case may have a contractual arrangement with the opposing party, and exercise the right to object to the use of that court reporter.<sup>7</sup> Attorneys should also start a dialogue with court reporters outside the context of a particular case. Many states have pending, or are considering introducing, legislation or rule changes to ban or strictly curtail the practices of contracting between court reporters and parties in interest in litigation.

**In states with pending rules/bills:** In STATE XXX, there is a measure before the legislature/Supreme Court that would . . . .

“BILL/RULE ### is step in the right direction toward eliminating practices that give an unfair advantage to one side in litigation,” stated Susie Court Reporter of CITY X.]

**In all other states:** “Attorneys can and should inquire into what kind of arrangements the court reporter in their case has with the opposing side,” stated Susie Court Reporter. “Then demand and take steps to receive the same special services and litigation advantages being provided to your opponent or object to the use of that court reporter.”

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<sup>1</sup> See ABA Model Rules 1.7 (b), 1.8(f), and 5.4(c), mirrored in various states' ethics codes, under which attorneys have ethical obligations to not allow third parties who pay them to render legal services for another, such as the insurer for the represented insured, to regulate their professional judgment in rendering legal services.

<sup>2</sup> Under the Federal Rules, "no deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action." Fed. R. Civ. P. 28(c). California law similarly requires that a deposition must be taken before an officer who "shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties." Cal. Civ. Code Section 2025(k) (West 1992).

<sup>3</sup> American Judges Association Resolution unanimously adopted April 24, 1998.

<sup>4</sup> See, e.g., National Law Journal article, *Fed up with insurers' auditors, defense lawyers go to work for plaintiffs*, by Lisa Brennan, May 18, 1998: "

<sup>5</sup> Michigan Defense Trial Counsel President's Page by Barbara H. Erard, President, MDTC, March 1998

<sup>6</sup> American Judges Association Resolution unanimously adopted April 24, 1998.

<sup>7</sup> See Federal Rule of Civil Procedure 32(d)(2) (mirrored in California Civil Code § 2025(k): "Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence."

State Legislation/Rules or Board Actions  
Prohibiting Certain Contracting Arrangements for Court Reporting Services (as of July 10, 1998)

State	Provisions of Legislation/Rule
Hawaii	<p>Rule 14, originally adopted in February 1984, amended in March 1986, August 1986, and November 1992 prohibited "contracts covering reportorial services having a fixed period of time, minimum or otherwise, between persons holding certificates under these rules or any person for whom such reporters act as agents and any attorney at law or agent thereof or any insurance company or agent thereof or any other person." The Rule also provided that "the charge for the original will be no less than 60% higher than the charge per copy," required disclosure of any arrangement, financial or otherwise, and expressly prohibited all incentive programs.</p> <p>SB 3171 as enacted in June 1996 provides that "any contract for private court reporting services not related to a particular case or reporting incident shall be prohibited between a private court reporter or any other person with whom a private court reporter has a principal and agency relationship, and any attorney, party to an action, party having a financial interest in an action, or any entity providing the services of a certified shorthand reporter."</p>
Minnesota	<p>The Hawaii Supreme Court ruled in June 1996 that the contracting provisions of SB 3171 essentially superseded Rule 14.</p> <p>Rule 28.03 of the Minnesota Rules of Court was amended in 1988 to disqualify persons from taking a deposition who "is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, or who has a contract with the party, attorney, or person with an interest in the action that affects or has a substantial tendency to affect impartiality." In the official author's comments to the rule, it is stated that "the rule does not prohibit all contracts between reporters and parties, attorneys or insurers, only those that affect impartiality or tend to do so."</p>
Georgia	<p>HB 1321 as enacted in April 1994 requires court reporters to "disclose on the record in every deposition the complete arrangement, financial and otherwise, made between the reporter or any person or entity making arrangements for the reporter's services and the attorney or other party making such arrangements with the reporter; person or entity." The law also prohibits contracts for court reporting services that are "not related to a particular case or reporting incident, between a certified court reporter or any person with whom a certified court reporter has a principal and agency relationship and any attorney at law, party to an action, party having a financial interest in the action, or agent for an attorney at law, party to the action, or party with a financial interest." The court reporter must make inquiries regarding the nature of the contract for his or her services. Contracts for court reporting services for the courts, agencies, or instrumentalities of the U.S. or State of Georgia are excluded.</p>
Utah	<p>HB 189 as enacted in March 1995 provides that "any contract for court reporting services not related to a particular case or reporting incident shall be prohibited between a certified shorthand reporter or any other person with who a certified shorthand reporter has a principal and agency relationship and any attorney, party to an action, or party having a financial interest in an action." Violation is grounds for revocation of license.</p>
Louisiana	<p>HB 1534 as enacted in June 1995 provides that a deposition shall not be taken before anyone who is "an employee or attorney of any of the parties or otherwise interested in the outcome of the case." Employee is defined to include "a person who has a contractual relationship with a party litigant to provide shorthand reporting or other court reporting services" and also includes a person employed part or full time under contract or otherwise by a person who has a contractual relationship with a party litigant to provide shorthand reporting or other court reporting services. No penalties for violation are included.</p> <p>The Louisiana CSR Board adopted a disclosure rule effective January 1995 that provides for on-the-record disclosure of transcript rates and all other arrangements to all parties prior to rendering reportorial services.</p>

State	Provisions of Legislation/Rule
New Mexico	<p>Rule 22-605 K as adopted in January 1996 includes as grounds for disciplinary action: "to protect the integrity of the record and to avoid the appearance of partiality, contracting or agreeing with any person or entity, other than a government entity, to provide reporting or incidental services in any action not yet pending, or failing to provide comparable services, in both quality and price, to all parties in any given action. This rule does not prohibit agreeing to provide reporting or incidental services on a matter-by matter basis prior to the institution of litigation; it also does not prohibit agreeing to provide reporting services for non-litigation matters."</p>
Nevada	<p>On July 19, 1996, the State of Nevada Certified Court Reporters Board sent the following notification to all reporters: "This is to advise you that it is unlawful in the State of Nevada for any person to practice court reporting or advertise or put out any sign or card or other device which might indicate to the public that he or she is entitled to practice as a certified court reporter, unless that person is licensed by this Board. To our knowledge, the owners of several national court reporting businesses are not so licensed and attempt to circumvent the laws of this jurisdiction by advertising, soliciting, and contracting for work with attorneys, then independently contracting with licensed local court reporters. This practice is not permitted by the laws of this jurisdiction and, in fact, may constitute a misdemeanor under NRS 656.350."</p> <p>On April 13, 1998, regulations adopted by the Nevada Board went into effect to amend Chapter 656 of the Nevada Administrative Code to include the following provisions, among others:</p> <p>"A court reporter shall provide uniform service to all persons involved in a proceeding, including, but not limited to, providing uniform price and quality for comparable service." NAC 656.310(2)</p> <p>"A court reporter shall not accept work or assignments from a firm that is engaged in the practice of court reporting if the owner of the firm is not a court reporter. A court reporter may make inquiries to the board to determine whether an owner of a firm is a court reporter." NAC 656.320(1)</p> <p>"A court reporter shall not enter into a contract or other agreement with a person or entity to provide ongoing services as a court reporter or ongoing services which are incidental to the practice of court reporting for an action that is not pending before a court or administrative agency. This subsection does not apply to: 1. The provision of services to a governmental body; 2. A court reporter who agrees to provide services for a matter that is not related to litigation." NAC 656.330</p> <p>"A court reporter shall: (a) perform the practice of court reporting in a fair and impartial manner; (b) Take steps to avoid the appearance of impropriety in a proceeding." NAC 656.340</p>
West Virginia	<p>SB 293 as enacted in May 1997 renders a deposition void if taken by "any person who is a relative or employee or attorney of any of the parties, or is a relative or employee of the attorney or a relative or employee or attorney of one who has a financial interest in the outcome of the case, or who is otherwise financially interested in the action." Employee is defined as including a person with a contractual relationship with a party litigant" and also "a person who is employed full or part time under contract or otherwise by a person who has a contractual relationship with a party litigant to provide reporting or other court services." A party litigant does not include federal, state or local governments and the subdivisions thereof.</p>



State	Provisions of Legislation/Rule
Texas	<p>HB 697 as enacted in June 1997 prohibits court reporters from providing services under any contractual agreement that "(1) undermines the impartiality of the court reporter; 2) requires the court reporter to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney; 3) requires a court reporter to provide any service not made available to all parties to an action; or 4) gives or appears to give an exclusive advantage to any party." Court reporters who violate these provisions may be reprimanded, or have their certification revoked or suspended. Contracts for a court, agency or instrumentality of the U.S. or state of Texas are excluded from this prohibition.</p>
Kentucky	<p>HB 537 as enacted in March 1998 renders a deposition void if taken by "a party to the action, a relative, employee or attorney of one of the parties, a relative or employee of an attorney of one of the parties, someone with a financial interest in the action or its outcome, or a relative, employee, or attorney of someone with a financial interest in the action or its outcome." An employee of a party is defined to include "a person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services." Contracts for court reporting services for courts, agencies, or instrumentalities of the U.S. or the Commonwealth are excluded. Violation is punishable as a Class B misdemeanor.</p>
Michigan	<p>HB 5604 as enacted July 10, 1998:</p> <ul style="list-style-type: none"> <li>• prohibits court reporters from providing services in any action where court reporter is a relative, employee, attorney or counsel of any of the parties or is a relative or employee of an attorney or counsel of any of the parties without disclosing relationship</li> <li>• prohibits court reporters from providing or arranging services if he or she is financially interested in the action</li> <li>• prohibits court reporters from entering into or arranging a financial relationship that compromises the impartiality of court reporters or that may result in the appearance that the impartiality of the court reporter has been compromised.</li> <li>• prohibits court reporters from entering into "blanket contracts" with parties, litigants, attorneys or their representatives unless the parties to the action disclose "on the record" fees charged for originals, copies and other services. "Blanket contracts" are contracts under which a court reporter agrees to perform all court reporting services for a client for 2 or more cases at a rate of compensation fixed in the contract.</li> <li>• prohibits giving incentives, rewards, or anything of value to attorneys, clients or their representatives or agents, except for nominal items—less than \$25 per transaction; \$100 aggregate/yr.</li> <li>• prohibits charging more than 2/3 the price of an original transcript for a copy.</li> <li>• court reporters are required to inquire into existence and nature of the contract between the person, employer, or entity engaging his or her services and confirm that the contract is not a blanket contract.</li> <li>• court reporters must charge all parties same price for like services.</li> <li>• specifically excludes official reporters from its provisions</li> <li>• penalties for violation include discipline, censure, suspension or revocation of certification or refusal to issue or renew certification.</li> <li>• court reporting firms are subject to same prohibitions as individual reporters and all firms, including out-of-state firms must register with the State Court Admin. Office.</li> </ul>

Senator Brian Rude

*or is financially interested*

Section 804.03 (3) of the statutes is ~~repealed~~ and <sup>repealed</sup> recreated to read:

**(3) Disqualification For Interest.** No deposition shall be taken before an officer who is a relative or employe or attorney or counsel of any of the parties, or is a relative or employe of such attorney or counsel. Other than arrangements for attendance to report and transcribe a deposition, contracts, exclusive or otherwise, express or implied, between any financially interested party to an action and a deposition officer, either directly or indirectly, are prohibited. A financially interested party includes any party to the proceeding, a real party in interest, an insurance company, an attorney, or any agent or employe thereof. Any deposition taken by an interested party, as described above, shall be void.

LRB-2510



4/20 am  
State of Wisconsin  
1999 - 2000 LEGISLATURE

D-date

LRB-2510/P1

RPN.../.....

Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GenCat

1 AN ACT */*; relating to: contracts with persons who take depositions.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 804.03 (3) <sup>✓</sup> of the statutes is amended to read:

3 804.03 (3) DISQUALIFICATION FOR INTEREST. No deposition shall be taken before  
4 a person who is a relative or employe or attorney or counsel of any of the parties, or  
5 is a relative or employe of such attorney or counsel, or is financially interested in the  
6 action. No contract, other than for the attendance to report and transcribe a  
7 deposition, may be entered <sup>into</sup> between a financially interested party and an officer  
8 taking a deposition related to that action. A financially interested party includes any  
9 party to the action, a real party in interest, the insurer of a party to the action or real

1 party in interest or an attorney, agent or employe of a party to the action, real party  
2 in interest or the insurer.

3 History: Sup. Ct. Order, 67 W (2d) 585, 663 (1975); 1975 c. 218.

(END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2510/P1dn

RPN...f:....

WJ

I changed this draft from the wording suggested <sup>g</sup> ~~although~~ <sup>but</sup> I tried to maintain the substance of the request.

Please review this draft carefully to ensure that it complies with your intent.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511

---

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2510/P1dn  
RPN:wlj:jf

April 14, 1999

I changed this draft from the wording suggested but I tried to maintain the substance of the request.

Please review this draft carefully to ensure that it complies with your intent.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511



D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

1 AN ACT to amend 804.03 (3) of the statutes; relating to: contracts with persons  
2 who take depositions.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

insert only

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 804.03 (3) of the statutes is amended to read:

4 804.03 (3) DISQUALIFICATION FOR INTEREST. No deposition <sup>may</sup> shall be taken before  
5 a person who is a relative <sup>1</sup> or employe <sup>2</sup> or attorney or counsel of any of the parties, or  
6 is a relative or employe of such attorney or counsel, or is financially interested in the  
7 action. No contract, other than for the attendance to report and transcribe a  
8 deposition, may be entered into between a financially interested party and an officer  
9 taking a deposition related to that action. A financially interested party includes any  
10 party to the action, a real party in interest, the insurer of a party to the action or real

1 party in interest or an attorney, agent or employe of a party to the action, real party

2 in interest or the insurer.

3 (END)



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2510/lins  
RPN:wlj:jf

INSERT anl:

Under current law, a deposition may be taken before a person authorized to administer oaths, including judges, court commissioners, administrative hearing officers, district attorneys and court reporters. Generally, a deposition is taken before a court reporter, who records and transcribes the deposition. Currently, a deposition may not be taken before a person who is a relative, employe, attorney or counsel of any of the parties to the action, before a relative or employe of the attorney or counsel of any of the parties or before a person who is financially interested in the action.

This bill also prohibits any contract between a person financially interested in the action and the person taking a deposition, except a contract to report and transcribe a deposition. The bill includes the parties to the action, a real party in interest, the insurer of a party to the action or real party in interest, and an attorney, agent or employe of a party to the action, real party in interest or <sup>the</sup> insurer as persons who are financially interested in the action.

end

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2510/1dn  
RPN:wlj:jf

The bill prohibits a contract between the person taking the deposition and a financially interested party, except for the "...attendance to report and transcribe a deposition...". Is the word "report" correct, or should that be "record"? Also, if the action involves a public body, such as a county or the state, could this bill be construed to prohibit a court reporter employed by the county or state from taking a deposition in the action, since they are under an employment contract with the county or state? ✓

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2510/1dn  
RPN:wj:km

April 20, 1999

The bill prohibits a contract between the person taking the deposition and a financially interested party, except for the "...attendance to report and transcribe a deposition...". Is the word "report" correct, or should that be "record"? Also, if the action involves a public body, such as a county or the state, could this bill be construed to prohibit a court reporter employed by the county or state from taking a deposition in the action, since they are under an employment contract with the county or state?

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511



The State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU  
P.O. Box 2037  
Madison, WI 53701-2037

Telephone: Area 608  
Reference: 266-0341  
Legal: 266-3561  
FAX: 266-5648

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Name: Bob Nelson Date: 8/17 Time: 10:38 am

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MESSAGE: Re. Draft 2510/1  
Bob- Here is the sample language  
from other states that we discussed  
earlier.

If problems occur with this transmittal, please call (608) 258-9506.

Sent by: \_\_\_\_\_

deposition may modify or attempt to modify the record or report

of the deposition, except to the extent allowed for the correction of errors in the record or report.

(2) Any person employed or otherwise engaged to record or report a deposition must provide equal services to all parties to the action for which the deposition is taken, including but not limited to:

(a) Providing or making available copies of the record or report to all parties at the same time; and

(b) Making equal charges to all parties for the costs of the record or report. + )

SECTION 3. ( + Violation of section 1 or 2 of this 1999 Act is a violation. Notwithstanding ORS 161.635, a person violating section 1 or 2 of this 1999 Act is subject to a fine of up to \$500. + )

SECTION 4. ( + (1) Before recording or reporting a deposition, the person recording or reporting the deposition must disclose if the person has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the following persons:

(a) A party in the action;

(b) A person with a financial interest in the outcome of the action;

(c) An attorney for a party in the action; or

(d) An attorney for a person with a financial interest in the outcome of the action.

(2) If the person recording or reporting a deposition has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the persons specified in subsection (1) of this section, any party to the action may object to the person employed for the purpose of recording or reporting the deposition. Upon objection, the parties shall attempt to agree upon a different person who shall record or report the deposition. If the parties cannot reach agreement, any of the parties may move the court to appoint an independent person who shall record or report the deposition.

(3) A party that objects to a person employed for the purpose of recording or reporting a deposition in the manner provided by this section is not subject to any penalty or sanction for making the objection and is not required to pay any fee of the person objected to.

(4) This section does not apply to contracts for reporting services for a single deposition, case or incident.

(5) This section does not apply to a person who records or reports depositions for a public body, as defined in ORS 30.260, or for a federal agency or any instrumentality of the federal government. + )

FROM : ANDOR

PHONE NO. : 6062543162

Apr. 01 1998 12:36PM P4  
98 RS HB 137/GA

- 1 (3) The provisions of subsections (1) and (2) of this section shall not apply to  
2 contracts for court reporting services for the courts, agencies, or instrumentalities  
3 of the United States or the Commonwealth.  
4 (4) Any person who takes a deposition in violation of subsection (2) of this section  
5 shall be guilty of a Class B misdemeanor.

8/27

99-2510

Amy Boyer returned  
my call with these  
changes:

p 2, l. 4, change "report"  
to "record"

p 2, l. 6, after "officer"  
add "or to officer's  
principal"

p 2, l. 9. Add a new  
par. excepting reports  
for a public body.

"public agency" - (66.073(3)(h)





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2510/2  
RPN:wlj:km

1999 BILL

1 *repeal*  
AN ACT to amend 804.03(3) of the statutes, relating to: contracts with persons  
2 who take depositions.

*Analysis by the Legislative Reference Bureau*

Under current law, a deposition may be taken before a person authorized to administer oaths, including judges, court commissioners, administrative hearing officers, district attorneys and court reporters. Generally, a deposition is taken before a court reporter, who records and transcribes the deposition. Currently, a deposition may not be taken before a person who is a relative, employe, attorney or counsel of any of the parties to the action, before a relative or employe of the attorney or counsel of any of the parties or before a person who is financially interested in the action.

This bill also prohibits any contract between a person financially interested in the action and the person taking a deposition, except a contract to report and transcribe a deposition. The bill includes the parties to the action, a real party in interest, the insurer of a party to the action or real party in interest, and an attorney, agent or employe of a party to the action, real party in interest or the insurer as persons who are financially interested in the action, *but excludes persons who take depositions for a public agency*

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

*renumbered 804.03(3)(a) and*

3

SECTION 1. 804.03 (3) of the statutes is amended to read:

**BILL**

(a) 9

1           804.03 (3) DISQUALIFICATION FOR INTEREST. No deposition shall may be taken  
2 before a person who is a relative ~~or~~, employe ~~or~~, attorney or counsel of any of the  
3 parties, ~~or~~ is a relative or employe of such attorney or counsel, or is financially  
4 interested in the action. No contract, other than for the attendance to ~~report~~ <sup>record</sup> and  
5 transcribe a deposition, may be entered into between a financially interested party  
6 and an officer taking a deposition related to that action. <sup>or that officer's principal</sup> A financially interested  
7 party includes any party to the action, a real party in interest, the insurer of a party  
8 to the action or real party in interest or an attorney, agent or employe of a party to  
9 the action, real party in interest or the insurer.

(END)

10

insert 2-9

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2510/2ins  
RPN:wlj:km

Insert 2-9

#

1 SECTION ~~4~~. 804.03 (3) (b) of the statutes is created to read:  
2 804.03 (3) (b) This subsection does not apply to an officer who records or  
3 transcribes depositions for a public agency, as defined in s. 66.073 (3) (h).

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LS: Local Scan

RE: Resend  
MP: Multi-Poll  
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PD: Polled by Remote  
PG: Polling a Remote  
DR: Document Removed  
FO: Forced Output

MB: Receive to Mailbox  
PI: Power Interruption  
TM: Terminated by user  
WT: Waiting Transfer



## 1999 BILL

- 1 **AN ACT to renumber and amend 804.03 (3); and to create 804.03 (3) (b) of the**  
2 **statutes; relating to: contracts with persons who take depositions.**

---

### ***Analysis by the Legislative Reference Bureau***

Under current law, a deposition may be taken before a person authorized to administer oaths, including judges, court commissioners, administrative hearing officers, district attorneys and court reporters. Generally, a deposition is taken before a court reporter, who records and transcribes the deposition. Currently, a deposition may not be taken before a person who is a relative, employe, attorney or counsel of any of the parties to the action, before a relative or employe of the attorney or counsel of any of the parties or before a person who is financially interested in the action.

This bill also prohibits any contract between a person financially interested in the action and the person taking a deposition, except a contract to report and transcribe a deposition. The bill includes the parties to the action, a real party in interest, the insurer of a party to the action or real party in interest, and an attorney, agent or employe of a party to the action, real party in interest or the insurer as persons who are financially interested in the action, but excludes persons who take depositions for a public agency.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***



Per RPN on 10/13/99—  
Send jacketed 99-2510  
to Senator George's  
office, per Senator  
Rude's office.

KJG