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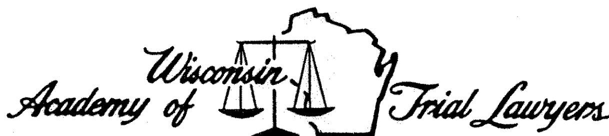

Keeping Wisconsin Families Safe

EXECUTIVE DIRECTOR
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WISCONSIN STATE SENATE

Committee on Judiciary

GARY GEORGE, CHAIRPERSON

Public Hearing on
2001 SENATE BILL 52

DECEMBER 18, 2001

CHAIRMAN GEORGE AND MEMBERS OF THE COMMITTEE, my name is Paul Sicula. I appear today in my capacity as Legislative Representative of the Wisconsin Academy of Trial Lawyers to support Senate Bill 52, relating to contracts with persons who take depositions. Thank you for this opportunity.

SB 52 would restrict private contracts between persons who take depositions and parties with an interest in the litigation. Wisconsin Academy of Trial Lawyers believes this restriction is necessary because all parties to a legal action are entitled to be secure in the knowledge they are being treated fairly during the court process. As officers of the court, persons who take depositions have a primary obligation to the court and to the integrity of the court system.

Private contracts between court reporters and parties in interest make it difficult to maintain the impartiality and the appearance of impartiality that is the central ingredient in the public's faith in our court system. This bill is a logical extension of the current statute that prohibits court reporters from taking depositions in actions where they are related to or have a business relationship with one of the parties in interest.

Besides the appearance of impartiality, the real problem is the concern court reporters are providing or will provide special services or exclusive services for one party. While our members do not report this happening often in Wisconsin, we are nevertheless concerned about this potential problem. We understand the most likely problem would be expedited transcripts for one side that might give that party an advantage. It would be very difficult for parties to know when they are being disadvantaged by these special services. This bill should allow Wisconsin to restrict these practices before there are substantial abuses or significant problems in the court system.

This legislation has received support and consideration from legislatures in more than a dozen states. The American Judges Association and many court reporters themselves also support it.

We believe Wisconsin should carefully consider this issue to preserve the integrity of our court system. We urge your support and passage of Senate Bill 52.

Thank you.

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Thank you.

Wisconsin Court Reporters Association

TO: Members, Senate Judiciary, Consumer Affairs, and Campaign Finance Reform Committee

FROM: Taunia Northouse, President
Wisconsin Court Reporters Association

DATE: December 18, 2001

RE: **Support for Senate Bill 52**

Senate Bill 52, as introduced, amends the rules of civil procedures to specifically prohibit parties in litigation from entering into contracts with members of the court reporting profession. Currently, 25 other states have either prohibited or required disclosure of contractual relationships between court reporters and litigants either through statutory law changes or Supreme Court Rule changes.

There is a substitute amendment that we have agreed to that would simply require disclosure of a contractual relationship at the time of the setting of the deposition and on the record before the commencement of the legal proceeding. This would allow other parties to the litigation the ability to timely object to this arrangement and seek a neutral deposition officer.

The goal of this legislation 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.

Court reporters are responsible for the preparation and protection of the official verbatim record. More and more, major litigation payors are entering into contracting arrangements with court reporting firms. These contracting arrangements give the appearance of partiality by contracting court reporters that undermines the integrity of the judicial system as a fair and neutral mechanism for resolving disputes.

The Wisconsin Court Reporters Association (WCRA) believes that, as officers of the court, we must do our part to ensure the public's faith in our judicial system and we respectfully urge your support of Senate Bill 52 as amended.

P.O. Box 2157 • Madison, WI 53701-2157 • (608) 258-9506

Analysis of Contracting by Court Reporters on the Judicial System

May 3, 1999

Prepared by

Diane Karpman
Karpman & Associates
9200 Sunset Boulevard, Penthouse 7
Los Angeles, CA 90069-3502
310.887.3900 Telephone
310.887.3901 Fax
karpethics@aol.com

I. EXECUTIVE SUMMARY:

I am a practicing attorney who specializes in legal ethics, professional responsibility and fiduciary duties. I am a former State Bar Court Referee, a professor of law, and a widely published author on the aforementioned topics.

I strongly support an anti-contracting amendment to existing statute because I believe it would be an invaluable addition to the integrity of our system of justice.

- Court reporters acting as deposition officers historically are independent, neutral participants.
- Their nonpartisan character is critical to the objectivity and integrity of our judicial system.
- There is a recent movement toward commercial consolidation, in which court reporting entities are controlled, by purchase, merger or exclusive contract, by other entities, such as law firms. Such a close relationship would severely damage the fairness and neutrality of the court reporter.
- Current law forbids the court reporter from being an employee or relative of someone with a financial interest in the case.
- Current law should be amended to prohibit a court reporter from contracting with a participant in the litigation or anyone with a financial interest in the matter.
- Current law should be amended to safeguard the fairness and integrity of the court reporter's role in litigation.

II. HISTORY:

Independent neutral court reporters are an essential feature of our judicial system. Because of the non-intrusive manner in which they perform their duties as officers of the court, they are frequently taken for granted.

As guardians of the record, court reporters guarantee a verbatim, unbiased, nonpartisan, objective record that is critical to our open court system. Their role enhances the concept of a level playing field, where everyone is treated with respect and fairness, regardless of origin, social class, or economic background. The product of their labor is the foundation of our

appellate system. It is an intrinsic aspect of the checks and balances supported by the Supreme Court. They guarantee that our judicial system is carrying out its charge in an unbiased manner, absent any abuse of power.

With the advent of modern litigation techniques, with some litigants exhibiting "Rambo-esque" tactics and a "win-at-all-cost" mentality, it is often the court reporter's record that determines appropriate behavior and conduct (as opposed to disciplinable or sanctionable misconduct) by the lawyers involved in the process.

Since court reporters are a direct link to judicial officers, their conduct is evaluated by the "appearance of impropriety" standard, just as applied to members of the bench.[1] This is a tough, unrelenting burden that permits absolutely no deviation.

Yet, the merger mania that has swept through our commercial society in the 1990's is poised to attack the court reporter's core values, supported by our judicial system, which are the cornerstones of the court reporting profession. Until recently, no one had apparently realized that court reporting was an industry ripe for consolidation. The court reporting industry has become alluring and attractive to corporations and insurance carriers.

Some business entities are purchasing court reporting agencies and using "their" court reporters in their litigation. This cozy relationship means that sometimes they can get the transcript before the other side, and sometimes they can shift the cost of the deposition to the other side. This type of shenanigan is inconsistent with the ethical requirements of court reporters and their inherent impartiality.

The existence of this financial relationship need not be disclosed, and could seriously impair parties ability to obtain a fair result. In addition, it would negatively impact upon the lawyers ethical obligations owed to their clients, not to mention the repercussions upon the appearance of impropriety standard, when the existence of this relationship is discovered.

The merger of court reporting organizations with other legal service providers is highly problematic. It clouds the clarity of impartiality. Providing a litigation team in which the court reporter is a direct player, by virtue of "contracting" with a corporate team manager, shifts the scales of justice terribly askew.

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[1] *Ex parte Reis*, 64 Cal. 233. They are regarded as official adjuncts to the court, and the laws relating to them pertain to the judicial system of the state, and are part and parcel of it.

III. SUMMARY OF EXISTING LAW FOR CERTIFIED COURT REPORTERS:

A. EXISTING LAW: Code of Civil Procedure section 2025 requires that the deposition officer be authorized to administer an oath. This is true even if a videographer is anticipated. Further, existing law prohibits these officers from having a financial interest in the action, or being employed by or related to a party or attorney for a party.

IV. ETHICS RULES AND OBLIGATIONS:

Often, the type of profession will govern the standards applicable to a participant. Since lawyers are required to be vigorous and zealous advocates of their client's positions, they are liable for an ethical breach if there is clear and convincing evidence of misconduct. Misconduct for lawyers is delineated within the Rules of Professional Conduct and relevant sections of the Business and Professions Code (section 6000 et seq.). In addition to those obligations, lawyers are governed by existing case precedents in terms of their ethical obligations. Lawyers also can incur civil liability for legal malpractice by virtue of pure negligence or breach of fiduciary duties.[2] However, the standard of proof for misconduct is "clear and convincing evidence."

Members of the judiciary are held to a significantly different standard and substantially higher code. They can be disciplined or found to have violated their ethical obligations based upon conduct which merely appears improper[3] to a reasonable person.[4]

Court reporters are an extension of the judiciary. Historically, someone was needed to record the proceedings or take notes, while the judge actually ran the trial. Since they are the extension of the judicial branch, they too are governed by the "appearance of impropriety"

---

[2]Note, in other states in terms of conflicts of interest, lawyers are on occasion held to the appearance of impropriety, but not in California.

[3]Canon 2 of the California Code of Judicial Conduct.

[4]For instance, during Hon. Robert Bork's confirmation hearings, video movies he had rented were questioned. Although this would ordinarily call into issue the First Amendment's guarantee of free speech, a judge is held to a different standard, and certain rentals could appear questionable.

standard. This concept is incorporated into the Federal Rules of Civil Procedure (Rule 30(e)), which describes officer as an independent court reporter, licensed as a notary public. (These rules are reflected in state codes.)

V. CODE OF PROFESSIONAL CONDUCT:5

Court reporters are governed by a specific Code of Professional Conduct, which could be seriously compromised by the contracting relationship. The following Rules are in jeopardy:

RULE 2: [A Member Should] Be totally impartial and disinterested in all aspects of reporting and transcribing proceedings, treating all participants in like manner.

> An affiliated or contracted reporter is no longer disinterested and has a stake in the success of the corporate parent. Additionally, it should be presumed that related entities will receive discounts or other benefits, thereby evidencing the violation of the principals articulated in this concept.

RULE 3: [A Member Should] Guard against actual impropriety and/or any appearance of impropriety.

> Where one is a member of the litigation team, with a vested interest, the circumstance is beyond the mere appearance and results in actual impropriety.

RULE 4: [A Member Should] Fully disclose to the presiding officer and/or all parties present at a proceeding for which verbatim court reporting services are to be provided any conflict of interest or the possibility of a conflict of interest. Following that disclosure, decline to report the proceeding upon the request of the presiding officer or any party.

> Clearly a relationship with a party to the action, whether it is a flow-through due to a mutual parent ownership or a more direct status, presents serious actual conflicts of interest.

RULE 11: [A Member Should] Charge fees for services as established by statute. In the absence of statute, provide comparable services under the same fee structure to all parties in a case.

> Since the purpose of these contracting relationships is to decrease the costs of litigation,

5 California Court Reporters Association Code of Professional Conduct

and since the corporate partners or carrier has a direct relationship or indirect relationship with the reporter, then some form of a discount should be presumed which will undermine this egalitarian fee structure.

Therefore, legislation should be adopted to maintain the integrity of certified court reporters by not allowing their reputations to be sullied by these types of interlocking relationships, possibly hidden from the opposing litigant, which would consequently be deceptive.

VI. MODERN LITIGATION TACTICS:

The skyrocketing costs of modern litigation are exacerbated by the conduct of some litigants. This involves the contemporary legal topic of civility or the absence of it. Hostile lawyers need an umpire to make certain that there is a modicum of professionalism in this win-at- all-costs environment. Often that referee is the court reporter, a true neutral with no vested interest.

It is regrettable that the reporter is placed in this position, between hostile adversaries, but it is a reality of our contemporary legal society. The neutral status allows the court reporter to maintain the integrity of the process. That status is seriously compromised by an existing contract with a particular party involved in the action. Such a relationship, or one of employer/employee, would significantly encroach on the trust placed in the independent reporter by both the litigation adversaries and the courts.

The Code of Professional Conduct also restricts the giving of gifts (Rule 12). That coupled with the contractual prohibition should adequately protect the court reporter, in that the reporter cannot be put in the position of giving or receiving anything that could give rise to an appearance of impropriety, which should help to maintain a pristine status.

It is well settled that a lawyer's fee agreement does not represent an interest in the litigation. Although the argument has been suggested that where the lawyer is a prosecutor and employed by a governmental agency that is tantamount to an interest in the litigation, this position has been consistently rejected by the courts.

VII. CONCLUSION:

This is an extremely important issue because it impacts on the integrity of the judicial system, and maintenance of its freedom from conflict. Additionally, it is consistent with the organization's expressed Professional Code of Conduct and it reaffirms the core values of the profession.

NCRA Board of Directors

CONTRACTING RESOLUTION

Adopted 11/10/97

Whereas, NCRA has long been concerned with the practice under which court reporters enter into contracts for court reporting services. The basis of this concern arises from ethical rules and laws that require reporters to maintain impartiality and independence in their capacity as officers of the court.

Whereas, in 1995, after review by the United States Department of Justice, NCRA issued a Contracting Disclosure Policy. This Contracting Disclosure Policy requires a court reporter to disclose to all parties present at a deposition the existence of any direct or indirect contracting relationship with any attorney or party to the case. The Contracting Disclosure Policy also requires a court reporter to offer comparable services to all parties in a case and prohibits a court reporter from acting or appearing to act in any proceeding on behalf of any one of the parties.

Whereas, NCRA also has issued several Advisory Opinions which address aspects of certain contracting arrangements under NCRA's Code of Professional Ethics.

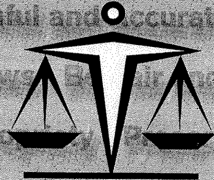
Whereas, NCRA's members and affiliated organizations increasingly have expressed their concern about contracting and have contacted NCRA to request information and assistance on methods and means by which they can access legislatures and governmental rule-making bodies in order to lobby for legislation, regulations and/or rules to limit or prohibit contracting arrangements.

Whereas, a number of states have enacted or are considering laws or court rules that limit or prohibit contracting arrangements, or require full disclosure to all parties of the existence of such contracting arrangements.

Whereas, NCRA believes that such laws and court rules are the best way to address the ethical and legal problems raised by contracting arrangements.

Now, therefore, it is MOVED, seconded and carried that NCRA lobby at the state and federal level and work with its affiliated organizations and coalitions at the state level to seek the enactment of laws and court rules that will limit or prohibit contracting arrangements in order to maintain the impartiality and independence of court reporters in their capacity as officers of the court.

National Court Reporters Association • 8224 Old Courthouse Road • Vienna, Virginia 22182-3808
Tel: 703-556-NCRA (6272) • Fax: 703-556-6291 • TTY: 703-556-6289 • 1-800-272-NCRA (6272)



NCRA Code of Professional Ethics

Also included:

- Guidelines for Professional Practice
- Ethics Complaint Procedures

National Court Reporters Association

CODE OF PROFESSIONAL ETHICS

A Member Shall:

1. Be fair and impartial toward each participant in all aspects of reported proceedings, and always offer to provide comparable services to all parties in a proceeding.
2. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the Member shall disclose that conflict or potential conflict.
3. Guard against not only the fact but the appearance of impropriety.
4. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the Member by any of the parties in a proceeding.
5. Be truthful and accurate when making public statements or when advertising the Member's qualifications or the services provided.
6. Refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations.
7. Determine fees independently, except when established by statute or court order, entering into no unlawful agreements with other reporters on the fees to any user.
8. Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with the litigation, or to the representatives or agents of any of the foregoing, except for (1) items that do not exceed $100 in the aggregate per recipient each year, or, (2) pro bono services as defined by the NCRA Guidelines for Professional Practice or by applicable state and local laws, rules and regulations.
9. Maintain the integrity of the reporting profession.
10. Abide by the NCRA Constitution & Bylaws.

GUIDELINES FOR PROFESSIONAL PRACTICE

Section I — Court Reporter

Common sense and professional courtesy should guide the Member in applying the following Guidelines.

In making the official record, a Member should:

A. Accept only those assignments when the Member's level of competence will result in the preparation of an accurate transcript. The Member should remove himself from an assignment when the

Court Reporters Make Special Deals With Insurers

Do Exclusive Contracts Give the Defense an Unfair Advantage?

By Eric Berkman

Most lawyers walk into a deposition assuming that the court reporter will be an impartial keeper of the record.

But thanks to "exclusive contracts" between court-reporting agencies and insurance companies, this may no longer be the case.

Over the last decade, an increasing number of insurance companies have entered into long-term agreements with court-reporting agencies which require their counsel to use a particular agency for any deposition they call. In return, the insurance company gets reduced fees.

Under some contracts, the court-reporting agency will also provide the insurance company with expedited transcript delivery, "deposition databases" to use in future cases and free deposition summaries.

But these contracts have encountered stiff opposition from plaintiffs' lawyers, smaller reporting agencies and even some members of the defense bar.

Plaintiffs' lawyers say that these arrangements put them at an unfair disadvantage by giving defendants what amounts to free litigation support services.

"I suspect [insurance companies] are getting their original transcript faster than I'm getting my copy," says Fred Halstrom, a personal-injury lawyer who practices in Boston. As Halstrom explains, having an extra couple of days to look over a deposition transcript before a hearing or to incorporate it into a legal brief can make all the difference in the world.

Ross Gallen, a plaintiffs' lawyer in San Antonio adds that these contracts compromise the court reporter's appearance of impartiality. Doubts about a reporter's impartiality can often be as harmful as actual bias, he says.

"When a client learns that the court-reporting firm is financially tethered to the insurance company, he feels that maybe he's not getting the transcript he deserves," says Gallen. "One thing we could always count on in the past was the integrity of the court reporter. I could always make that assurance to my client. But now I can't vouch for something I don't know."

Similarly, many defense lawyers hate being told which court reporter they can use for a particular case. They'd rather pick the best one for the job instead of risking the shoddy, unreliable service they say accompanies the discounted rates.

"It's a real reliability problem, especially when [the agency] sends a reporter who's not local," says a Pennsylvania insurance-defense lawyer who asked not to be identified in this article. "They get lost on the way, they don't set things up in the right form and they don't know the local litigation culture, which is very important. If a judge sees a transcript in an unfamiliar format, it really hurts the litigant."

Meanwhile, smaller court-reporting agencies fear that these exclusive contracts threaten their existence and the affordable services they offer to small-scale litigants.

"A lot of small agencies have gone out of business," says Stephanie Grossman, who runs a small agency in Palo Alto, Calif. "And if this keeps going forward as it's happening, you'll see only big agencies out there and the prices will go through the roof."

Grossman adds that many plaintiffs' lawyers aren't aware that contracting agencies may be gouging them on transcript copy rates to make up for the discount they've given the insurance company.

"So the plaintiff is essentially subsidizing the other side's litigation," she says. "They're cost-shifting."

The larger agencies, however, insist that there's nothing improper about these contracts.

"We're merely providing a client what good court-reporting firms have done at the local level for years – quality service at a competitive price," says Carol Hughes, a senior vice president with New York-based Esquire Communications Ltd., the nation's largest court-reporting agency. "Large corporations and insurance companies are looking for value-added services and that's what we're giving them. ... And whatever's offered to one side is always offered to the other side at the same price."

Hughes conceded, however, that the company does not provide the deposition databases to plaintiffs, but insists this is a minor point since the depositions are a matter of public record.

Woody Waga, vice-president of Veritext, a large agency in Basking Ridge, N.J., adds that these contracts have absolutely no bearing on a court reporter's impartiality.

"Veritext agrees that the court reporter should be impartial," says Waga, a past-president of the National Court Reporters Association. "But it also agrees that a client – whether a corporation, law firm or insurance company – should be entitled to a discount for large-volume discovery. This is all about business and we see nothing wrong with that."

Nonetheless, concerns about these contracts have found a foothold among state legislators and court administrators across the country. Sixteen states have already passed legislation or court rules either banning these arrangements or requiring disclosure to the other side – and 10 more states are considering similar measures (see accompanying chart).

Additionally, the National Court Reporters Association, the Association of Trial Lawyers of America and the American Judges Association have all passed resolutions advocating that these agreements be banned.

Cost Shifting

One of the more serious accusations against contracting agencies is that they're inflating plaintiffs' copying fees to make up for the discounts given to defendants.

Grossman tells of a Louisiana-based court-reporting network that wanted her firm to cover some of its depositions in northern California for a company it had a contract with.

"They were to be paid very little on the copy rate," says Grossman. "When I told her we don't work for that little, she said, 'Well then, we'll have to make it up somewhere,' because she'd given her client, who was calling the deposition, a very low rate. So they ended up charging the other side an outrageous amount."

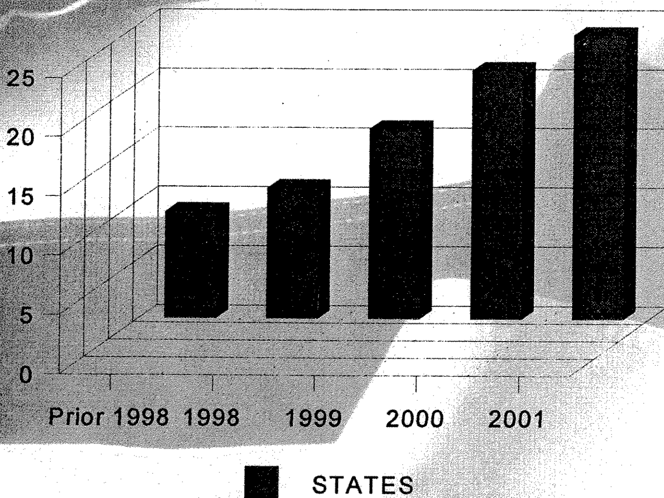
Grossman says the agency charged the other side $2.50 a page when the area going rate was between $1.75 and $2.00. She points out that this can really add up.

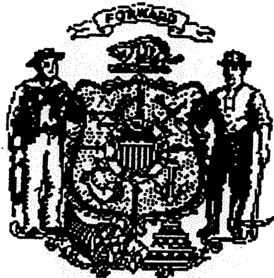
"If it's a slip-and-fall, a deposition will go on for a few hours," she says. "But I've done as much as 18 volumes for one witness. And some depositions go on for days and days. So you're talking about a lot of money."

Similar complaints have been fielded by the Court Reporters Board of California, a state consumer-protection agency, according to Rick Black, the agency's executive officer. He notes that the board does not oppose quantity discounts for court-reporting services. But a problem arises when the opposing side is charged more than market value to make up for it, he says.

"It can really affect litigation," he says. "The reporter is helping to support one side's litigation at the expense of the other. It's not fair to consumers because they have to pay to offset the discounts the other side is getting."

Prior to 1998	1998	1999	2000	2001
Hawaii	Kentucky	Arkansas	New Hampshire	Oklahoma
Minnesota	Michigan	N. Carolina	Tennessee	Arizona
Georgia		Oregon	S. Dakota	Ohio
Utah		Illinois	Connecticut	
Louisiana		Indiana	California	YOUR
New Mexico				STATE
Nevada				NEXT!
W. Virginia				
Texas				





Senator Gary R. George
State of Wisconsin
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From: Office of State Senator Gary R. George

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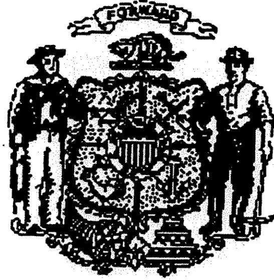

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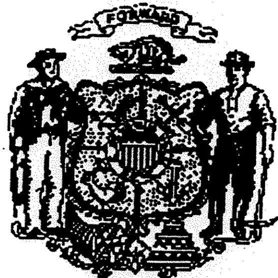

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From: Office of State Senator Gary R. George

Recipient's Fax Number: (608) 251-9166

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(Court Reporter's Bill)

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State of Wisconsin
2001 – 2002 LEGISLATURE

LRBs0127/3
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SENATE SUBSTITUTE AMENDMENT ,

TO 2001 SENATE BILL 52

1 AN ACT *to create* 804.03 (4) of the statutes; **relating to:** court reporting services.

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

2 SECTION 1. 804.03 (4) of the statutes is created to read:

3 804.03 **(4)** COURT REPORTER RESPONSIBILITIES; DISCLOSURE OF CONTRACTUAL
4 RELATIONSHIPS. (a) In this subsection:

5 1. "Court reporting firm" means a business that provides services of private
6 court reporters.

7 2. "Private court reporter" means a court officer who captures and transcribes
8 verbatim legal proceedings and who is authorized to administer oaths to witnesses.
9 "Private court reporter" does not include a court reporter while working in a
10 courtroom setting as an employee of the court.

11 3. "Contract or agreement for court reporting services" means a contract or
12 agreement, whether oral or written, for court reporting services between a private

1 court reporter or court reporting firm and an attorney, law firm, party to a legal
2 proceeding, or party having a financial interest in a legal proceeding that provides
3 for ongoing court reporting services not limited to a particular case or reporting
4 incident.

5 (b) 1. The existence of a contract or agreement for court reporting services must
6 be disclosed as provided by this paragraph. Written notice of a contract or agreement
7 for court reporting services must be provided at the time of the setting of the
8 deposition or included with the notice of legal proceeding before commencement of
9 a legal proceeding at which court reporting services are being provided. In addition
10 to this written notice requirement, oral disclosure of a contract or agreement for
11 court reporting services must be made on the record by the court reporter at the
12 commencement of the legal proceeding.

13 2. A private court reporter shall comply with all of the following requirements:

14 a. Shall treat all parties to an action equally, providing comparable services to
15 all parties.

16 b. May not act as an advocate for any party or act partially to any party to an
17 action.

18 c. Shall comply with all state and federal court rules that govern the activities
19 of court reporters.

20 3. An attorney or party to the proceeding may object, in writing, to the provision
21 of court reporting services by a private court reporter or court reporting firm at any
22 time after receipt of a notice of a contract or agreement for court reporting services.

23 **SECTION 2. Initial applicability.**

1 (1) This act first applies to court reporting services provided on the effective
2 date of this subsection.

3 (END)

Rossmiller, Dan

From: PETER C. CHRISTIANSON [PCC@quarles.com]
Sent: Monday, February 11, 2002 10:55 AM
To: boyer@hfomadison.com; Dan.Rossmiller@legis.state.wi.us
Cc: dmanna@mw.aiadc.org
Subject: Re: Court Reporters Bill

Amy & Dan -

The Substitute Amendment is an improvement over the original bill. The American Insurance Association has two remaining concerns, however:

1. The Substitute Amendment permits the opposing attorney to object to the court reporter. That's so vague that it will lead to unnecessary wrangling among attorneys. Object on what basis? What happens if he or she does object? Does it mean the court reporter can't be used? (I assume that this is the goal.) In fairness to court reporters, the opposing lawyer should only be able to object/block a court reporter from taking a deposition if the attorney has reason to believe that the court reporter is not licensed in that state or that his or her license has been suspended or that he or she is under investigation for an ethical violation. Otherwise, attorneys will be objecting just to delay depositions they don't want the other side to take.

2. This brings up the second concern. On page 2, lines 20-22, it states that an objection may be entered "...at any time after receipt of a notice...". To me this says that you could walk into the deposition and object, thus delaying the deposition at the 11th hour, after all of the parties and lawyers have been assembled. I don't think that this makes sense. If any objection is to be entered, it should be at the front end, when the deposition is being scheduled, and not at the moment that it is about to begin.

Is it possible to address these concerns? Thank you for asking, by the way!

Peter C. Christianson
Quarles & Brady LLP
pcc@quarles.com
MKE OFFICE: 414-277-5745
MKE FAX: 414-271-3552
MSN OFFICE: 608-283-2492
MSN FAX: 608-251-5139

>>> "Rossmiller, Dan" <Dan.Rossmiller@legis.state.wi.us> 02/02/02 02:32PM >>>
Dear Pete:
Sen. George asked me to check out your client's position on the Court Reporter's bill--SB 52--as amended by a substitute amendment (LRBs0127/3).
Are you o.k. with this language? (let me know if you need a copy. I believe you have seen it.)
Thanks.

Dan

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PRESIDENT
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February 20, 2002

The Honorable Gary George, Chair
Senate Committee on Judiciary
P. O. Box 7882
Madison, Wisconsin 53707-7882

RE: 2001 Senate Bill 52

Dear Senator George:

The Wisconsin Academy of Trial Lawyers (WATL) testified in support of Senate Bill 52 at the public hearing on December 18, 2001. We are writing to express some concern about a proposed substitute amendment, LRBs0127/3.

The substitute amendment, as we understand it, changes the concept of the bill. The original bill prohibited private contracts between persons who take depositions and parties with an interest in the litigation. The substitute does not prohibit contracts but instead requires notification that a contract exists. The court reporter would be required to disclose the existence of the contract at the time a deposition is scheduled. The substitute allows another party to object to that court reporter, but there do not appear to be any consequences that arise from the objection.

WATL supported the original bill because all parties to a legal action are entitled to be secure in the knowledge they are being treated fairly during the court process. While the substitute amendment says court reporters are required to treat all parties equally, regardless of whether that court reporter is under contract to one of the parties, there is no enforcement mechanism to insure that fairness will prevail.

If this notification approach is chosen, then there have to be some consequences that follow from an objection to a court reporter with a contract. Right now, it appears a court reporter could continue to act, even if an objection has been raised. We would suggest, as an appropriate sanction, that language be added making it clear that any deposition testimony taken after an objection to a court reporter has been raised could not be used in any subsequent proceedings.

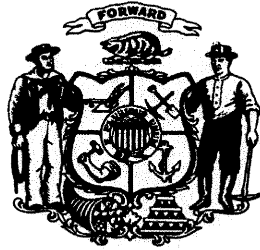
Thank you.

Very truly yours,

Keith R. Clifford, President
Wisconsin Academy of Trial Lawyers

cc: James Hough, Wisconsin Court Reporters Association

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs and Campaign Finance Reform

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs and Campaign Finance Reform

RE: Amendments for Bills to Be Considered at Tuesday's Hearing.

DATE: December 17, 2001

Attached please find copies of amendments to two bills scheduled to be taken up during tomorrow's public hearing:

Substitute Amendment to SB 52—LRB s0127/3

Simple Amendment to SB 277—LRB a0843/2