

**Committee Name:**  
**Senate Committee –**  
**Judiciary, Corrections and Privacy**  
**(SC–JCP)**

**Appointments**

03hr\_SC–JCP\_Appt\_pt00

**Committee Hearings**

03hr\_SC–JCP\_CH\_pt00

**Committee Reports**

03hr\_SC–JCP\_CR\_pt00

**Clearinghouse Rules**

03hr\_SC–JCP\_CRule\_03–

**Executive Sessions**

03hr\_SC–JCP\_ES\_pt00

# Hearing Records

## 03hr\_ab0533b

03hr\_sb0000

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00

October 8, 2003

To: The Assembly Committee on Corrections and the Courts

From: Attorney Carmelo A. Puglisi

On behalf of: American Family Mutual Insurance Company  
The Wisconsin Insurance Alliance

Re: Opposition to 2003 AB 533

Mr. Chairman and Members of the Assembly Committee on Corrections and the Courts

I am an attorney licensed to practice law in the State of Wisconsin. I am employed by American Family Mutual Insurance Company and I am the Managing Attorney in their Brookfield legal office. My office handles hundreds of lawsuits that arise in Milwaukee, Waukesha, Ozaukee, Racine, Kenosha and Washington counties. I also appear on behalf of the Wisconsin Insurance Alliance. I appear in opposition to 2003 Assembly Bill 533.

Assembly Bill 533 seeks to disqualify court reporters from taking depositions if the court reporters have entered into a contract for court reporting services unless the contract is limited to a particular action. Yet, this bill allows for the state of Wisconsin, its municipalities and its agencies to contract with court reporters. This legislation is being endorsed by the court reporters' association on the ground that contracting with court reporters creates an appearance of ethical impropriety. The court reporters' association is attempting to clothe an economic issue in a suit of ethics. The bottom line is that this bill is anti-consumer and will raise the cost of litigation to all parties, i.e., to the citizens and businesses of Wisconsin.

Because of the volume of lawsuits that American Family Mutual Insurance Company handles in southeastern Wisconsin, I am able to contract with a court reporting firm at a discount rate. This reduction in litigation expense helps the company keep costs down for its policy holders. Not only do insurance companies contract with court reporters, but so do plaintiffs' law firms since deposition costs are paid out of the pockets of Wisconsin citizens who are represented by trial attorneys they hire. Deposition costs are only second to expert expenses in litigation. Law firms have sought to reduce the cost of litigation to their clients by entering into agreements with court reporters for discounted rates. This legislation is supported by court reporters who do not have the contracts. This

is a pocket book issue for reporters and this legislation is an attempt to shield them from the competition of the market place.

I have contracted with court reporters since 1988. In all those years, not once has anyone brought to my attention any type of ethical impropriety committed by the court reporters that do our work. I have never had a plaintiff's attorney refuse to have the contracted court reporter take the deposition. I contract with the same court reporting firm that is used by attorneys at the law firm of Habush, Habush, and Rottier, SC., a well known Wisconsin plaintiff's firm and other plaintiffs' law firms in southeastern Wisconsin. Those law firms seem to have no concerns in using a court reporting firm that is used by an insurance company. Not only do I get a discounted rate, but I also use a reporting firm on the cutting edge of technology and one that is large enough to handle the thousand lawsuits in our office. Law firms for years have used certain court reporters and no others and yet, there has been no outrage over ethical issues until contracting made official long standing informal agreements.

It is interesting to note that the proposed legislation allows the state, municipalities and public agencies to contract with court reporters. Why is it that the government can reduce the cost of court reporters, but private entities cannot reduce the cost of litigation to the consuming public? At this time of large state budget deficits and with pressure not to raise taxes, it only makes economic sense for the state to be able to reduce its expenses by being able to contract with court reporters for reduced rates. Wisconsin citizens and businesses face the same economic pressures, so it makes economic sense as well to reduce litigation expenses by obtaining reduced rates from court reporters.

Why is there no ethical dilemma when the state contracts with a court reporting firm? I submit to you that if an ethical dilemma exists with private contracting it also exists with state contracting. Official court reporters for the county circuit courts are employees of the state. The state is a party to thousands of criminal prosecutions a year. In a criminal prosecution, the liberty of a criminal defendant is at stake in each trial. Any appeal is based on the transcript which is prepared by a state employee. It would seem that the appearance of ethical impropriety would be greater in a situation where the court reporter is employed by the state which is trying to incarcerate one of its citizens. Yet, I do not see the court reporters' association raising the red flag of ethics impropriety in this situation. It would be absurd, in either situation, to argue ethical impropriety based on payment to a court reporter for services rendered.

The court reporters' association wants it both ways. When contracting is to their economic advantage, such as in government contracting, they will protect it. When contracting is not to court reporters' association's economic advantage they will hoist the banner of ethical impropriety and march into battle. The court reporters' association also recognizes that the state would not tolerate any bill that would limit its ability to contract with court reporters and save tax dollars for its citizens, so, there is an exception for government contracting. Private contracting with court reporters reduces litigation expenses to the consumer of legal services.

An issue that is not answered by the proposed legislation is what is a prohibited contract? If a law firm conducts 50 depositions a year and uses the same court reporting firm, does the frequency of use create a prohibited contract? What if the same court reporting firm is used for the second, third, fourth or fifth year? Does that frequency create a prohibited contract. If a court reporting firm offers volume discounts to all law firms that do business with it, does this create a prohibited contract? If those examples do not create prohibited contracts, then what about the appearance of ethical impropriety? Will lawsuits between private parties now have to litigate in the same lawsuit whether a court reporter may be used because of past and current business activities? If this legislation is passed what happens to the current contracts that private parties have with court reporting firms? Does this law unconstitutionally interfere with right to contract? This bill raises more questions than it answers.

Some time ago, the court reporters' association attempted to ban contracting by proposing rule changes to the Judicial Council. The Judicial Council is composed of judges and practicing attorneys. I testified at that hearing and so did members of the court reporters' association. The Judicial Council refused to ban contracting with court reporters because they viewed it as a pocket book issue and the Judicial Council did not see any ethical problems with contracting. Since the court reporters' association could not come through the front door, they are attempting to come through the back door. Judges and practicing attorneys refused to change the law to ban private contracting because they did not see an ethical problem with it. This position is supported by the unpublished California Appellate case of Saunders v. Truck Ins. Exchange 2000 WL 1609835 (~~Cal App 2 Dist, 2000~~). A copy of the case is attached.

In Saunders, a group of reporters sued another group of court reporters that had contracted with an insurance company to do all the deposition work for that company. The trial court dismissed the court reporters' suit and the California Court of Appeals

sustained the dismissal of the suit. The Court of Appeals ruled that the contract did not violate the rules for reporter impartiality. In discussing court reporter compensation and ethical obligations, the court reasoned as follows:

"Appellants argue that direct contracts with clients give reporters a financial interest in the actions in which they report, an interest prohibited by Code of Civil Procedure § 2025. However, the Code reference to a financial interest in the action is reasonably and usually construed to mean a share of the damages recovered in a case, or some other fiscal reward for a particular outcome--not pay given without regard to the outcome for services rendered. The vice of a financial interest would be to give the reporter a personal incentive to try to influence the outcome of the case. But there was no evidence in this case that pay for Alliance reporters was in any way contingent upon case or deposition outcomes.

Reporters don't usually work without compensation, and all of them are paid by clients. The legislature cannot have intended to equate "financial interest" with being paid for work. This strained construction would put the entire reporter industry in violation of the Code of Civil Procedure. Nor is pay for work under a direct contract transmuted into a "financial interest" because a particular reporter or group of reporters may get more pay from a particular client under a direct contract than they otherwise would.

Appellants also urge that reporters' impartiality, mandated by Business and Professions Code section 8025, is somehow undermined by "direct contracting" large blocks of business with clients. But the legislature cannot have intended that reporters be deemed in violation of the impartiality requirement by accepting pay from clients, since every reporter necessarily does so. Nor is there anything to indicate that the legislature intended to limit the amount of business a reporter could do for a particular client because of fear that impartiality would be compromised.

\*4 In reality, there isn't much a court reporter could effectively do to be partial to a large volume direct client (or any other client), even if inclined to do so. Reporters are not like arbitrators. They do not decide the case for one side or the other. They do not exercise discretion, except within the narrowest parameters. Their function is essentially mechanical: to accurately transcribe all the questions and answers, just as a tape or video recorder would do. A reporter's effort to shade or tamper with transcripts would quickly become known, would surely be loudly protested by the affected parties and lawyers, and would expose the reporter to suspension or loss of license and livelihood."

If an ethical issue should arise in the future it should be addressed on a case by case approach by the county circuit courts. This is not an appropriate subject for legislation. The only group who will benefit by the passage of this bill is the court reporters' association. The passage of this bill will only harm the citizens and businesses of Wisconsin by increasing the cost of litigation. Therefore, I would respectfully ask this committee to take no further action on 2003 Assembly Bill 533.



# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

**CHAIRPERSON**

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

**VICE CHAIRPERSON**

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

**MEMBER**

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: March 9, 2004 (hand delivered)

RE: Paper Ballot (1 page)

Please consider the following item and vote on the motion below. Return this ballot to Senator Dave Zien, Room 15 South, no later than 10:00am Wednesday, March 10, 2004. Committee members' ballots not received by the deadline will be marked as not voting.

### Assembly Bill 533

An Act to amend 804.03 (3) of the statutes; relating to: contracts with persons who take depositions.

Introduced by Representatives Gard, Ainsworth, LeMahieu, Towns, Albers, Rhoades, Freese, Hahn, Nischke, Petrowski, Kestell, Bies, Friske, F. Lasee, J. Wood, Huebsch, Hundertmark, Gunderson, Ott, Lothian, Montgomery, McCormick, Hebl, Ladwig, Cullen, Powers and Staskunas; cosponsored by Senators Leibham, Cowles, Lazich, George and Risser.

- Moved by Senator Zien that ASSEMBLY BILL 533 be recommended for CONCURRENCE:

Aye  No

Signature \_\_\_\_\_

Senator Cathy Stepp





# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

**CHAIRPERSON**

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

**VICE CHAIRPERSON**

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

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COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator Scott Fitzgerald, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: March 9, 2004 (hand delivered)

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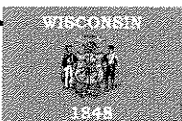
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- Moved by Senator Zien that ASSEMBLY BILL 533 be recommended for CONCURRENCE:

Aye   X   No \_\_\_\_\_

Signature \_\_\_\_\_

  
 Senator Scott Fitzgerald





# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON  
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY  
 VICE CHAIRPERSON  
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM  
 MEMBER  
 COMMITTEE ON SENATE ORGANIZATION  
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES  
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS  
 SENTENCING COMMISSION  
 COUNCIL ON TOURISM  
 JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator Tim Carpenter, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: March 9, 2004 (hand delivered)

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- Moved by Senator Zien that ASSEMBLY BILL 533 be recommended for CONCURRENCE:

Aye  No

Signature *Tim Carpenter*  
 Senator Tim Carpenter







# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON  
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY  
 VICE CHAIRPERSON  
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM  
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 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS  
 SENTENCING COMMISSION  
 COUNCIL ON TOURISM  
 JUDICIAL COUNCIL

## MEMORANDUM

TO: Senator G. Spencer Coggs, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: March 9, 2004 (hand delivered)

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- Moved by Senator Zien that ASSEMBLY BILL 533 be recommended for CONCURRENCE:

Aye  No

Signature \_\_\_\_\_

Senator G. Spencer Coggs

