

IN THE SUPREME COURT OF FLORIDA
CASE NO. 76,962

IN RE: CERTIFICATION AND REGULATION
OF COURT REPORTERS

BRIEF
FLORIDA SHORTHAND REPORTERS ASSOCIATION

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I. BACKGROUND/INTRODUCTION

This brief is filed by the Florida Shorthand Reporters Association ("FSRA"), an organization representing the shorthand reporters of the State of Florida. There are approximately 2500 to 3000 shorthand reporters active in the State at this time. Shorthand reporters represent over 95% of all reporters functioning in the Florida state court system. The other two kinds of reporters are stenomask reporters and electronic reporters. Stenomask reporters speak into a mask thereby recording electronically what is said during the proceeding. Electronic reporters record what is said during the proceeding by one or more tape recorders plus a system of logging by the reporter. Shorthand reporters use stenotype machines and a system of keystrokes. Each reporter produces a verbatim transcript which is then certified by the reporter to be an accurate transcript of what actually occurred during the court proceeding.

Professionalism and Competence

The FSRA has long been interested in a certification program for court reporters. The purpose of this program is to promote and foster professionalism and competence among court reporters. There are presently no standards or minimum requirements for court reporters in the courts of Florida. Obviously, court reporters are an integral and necessary part of the court system. The reporter serves to safeguard the rights of the parties by preserving an accurate and timely record of proceedings. Such transcripts are used during trial court

proceedings and in review of all cases on appeal. The transcript is absolutely necessary in all appellate proceedings.

The advent of many new electronic and technical advances has substantially affected court reporting in the past several years. Record generation through electronic devices has become commonplace and these technological advances also require regulation by a board composed of persons who are both knowledgeable and interested. These new developments must occur in a manner consistent with the interest of the courts, the rights of the parties and the ends of justice.

Efforts of FSRA to institute a certification program for court reporters in this State have been going on for at least nine years. As indicated by the petition filed by the Committee of the Florida Bar on Rules of Judicial Administration, the shorthand reporters originated the process in 1982. Various studies have been done, including a study by the Office of the State Court Administrator and a study committee appointed by this Court. FSRA submitted a proposal to the Rules of Judicial Administration Committee in 1989, which eventually resulted in the present petition and proposed rule changes.

The certification effort has long been endorsed by the Florida Bar which has made certification of court reporters one of its lobbying efforts over the years. Finally, in the 1990 session of the Florida Legislature, Chapter 90-188, was passed and that statute states that the Supreme Court shall establish minimum standards and procedures for qualifications, certification,

discipline and training for court reporters. During the legislative process, this Court took the position in writing that court reporter certification might not be necessary in view of short resources but further indicated that, if court reporter certification was to become a reality, it should occur under the auspices of the Court.

With this end in mind, the Florida Bar Committee on Rules of Judicial Administration completed its work on the proposed set of rules now submitted along with the petition in Case No. 76,962. The Florida Bar Board of Governors approved this proposal.

FSRA Supports the Petition

The present brief is submitted by FSRA in support of the petition and this brief will not repeat the many arguments already contained in the petition. This brief will deal only with areas of disagreement and areas where further clarification is necessary.

This brief will use the same subject categories as used in the petition of the Committee.

FSRA is advised that the Office of the State Court Administrator ("OSCA") will be submitting a brief and further documentation in which various changes to this proposed set of rules will be recommended. In view of this development, FSRA would appreciate leave to file a further brief commenting on the proposals of the Office of State Court Administrator.

Rule 2.070

This is the basic rule dealing with when court reporting is required and what will constitute the official record of the

court proceeding. The new rule, 2.070(b), requires that the record be reported by a Certified Court Reporter (CCR) who will receive certification under this new proposed program. Except for Rule 1.020D, only one exception exists; that is, when the chief judge of a circuit so orders. The chief judge, in a uniform order, may order that "certain types of court proceedings" be recorded electronically by "court support personnel" or other non-court reporters. This uniform order must provide for transcription in case of an appeal.

The rule, as presently proposed, gives very little guidance and FSRA suggests the addition of a qualification as follows:

. . . except where the chief judge has entered an order pursuant to Rule 2.070(c) providing that certain types of court proceedings not likely to generate an appellate transcript may be electronically recorded by a person other than a certified court reporter.

This addition would convey the intent that proceedings likely to result in appeals and transcripts should not be merely electronically recorded but should instead be reported by a certified court reporter. The chief judge will still have adequate discretion in dealing with local conditions but will be given some guidance as to the circumstances in which recording by non-court reporters would be appropriate. This qualification is consistent with the current practice in existence regarding court proceedings which, by law or rule, must be reported. Juvenile proceedings are high in volume but generate few appeals and transcripts. Of course, the parties may continue to stipulate to tape recorded

depositions if they so desire. FSRA has never asserted that a certified court reporter is absolutely required in every situation.

Certification of Experienced Reporters
During First Calendar Year

FSRA respectfully submits a three-year rather than a five-year period should be required for certification based on experience. Numerous other states have similar experience/certification provisions. No other state requires a five-year period. Experienced reporters possess vested property rights to retain their right to work and their existing positions. A three-year experience requirement is adequate under the circumstances.

This certification without testing option would be in effect for only one calendar year after the program went into effect. Further, each reporter seeking certification without testing will be required to submit sworn letters from three members of the Bar or a sworn letter from a judge and one lawyer, all testifying to the competence of the reporter. These letters must be based upon adequate knowledge possessed by the lawyers or judges from experience with the reporter.

In addition, each reporter to be certified without testing must pass Part D of the test related to the Florida court system and applicable rules of court.

There must be an orderly transition to certification and the three-year provision will promote this orderly process while guaranteeing to reporters the right to reasonably continue in their chosen professions. Similar rules are commonplace in new regulatory schemes of many other professions, including the Florida

Bar. Experienced lawyers were excused from the Bar examination based on a "diploma privilege." A three-year rather than a five-year requirement should be imposed.

Composition of the Board

FSRA strongly urges that the majority of the Board should be composed of court reporter members. Further, a majority of the court reporter members should be shorthand reporters. FSRA thus respectfully submits that the Board should be composed of seven members; four of whom should be court reporters. Of the four court reporter members, at least two should be shorthand reporters.

Since court reporters are to be regulated, they should be judged by their peers and a majority of the Board should be comprised of court reporters. Again, this is the model of self-regulation which has been adopted by numerous other professions. Medical doctors regulate doctors and lawyers regulate lawyers under the supervision of this Court. Instead of self-regulation by a board with a majority of reporters, the petition would establish a Board composed of a majority of non-court reporters on the theory that the consumers of the services should judge the competence of the service providers.

This approach of "consumer regulation" as to professional services has not been adopted in any other form of professional self-regulation and should not be adopted herein. This is particularly true in the face of the amply demonstrated good faith of the court reporters who seek to impose higher standards of professionalism and competence through self-regulation of their own

profession.

In addition, Rule 1.040(a) specifically provides that the Florida Supreme Court shall have supervisory authority over the certification Board. Thus, at all times, the Court will have the final say as the Board policies and procedures. There is no need to also put the court reporters in a non-majority position. In addition, judicial review of Board decisions will be guaranteed.

We thus respectfully suggest that there is no necessity to place the users of court reporter services in the majority and that the better view would be to allow court reporters to regulate themselves by comprising a majority of the Board.

As to the makeup of the court reporter members of the Board, FSRA again respectfully disagrees with the petition. The petition suggests one shorthand reporter, one stenomask reporter, one electronic reporter and a fourth reporter from any of the other categories. Shorthand reporters make up over 95% of the reporters in the State of Florida. As stated in the petition, the shorthand reporters represent "the vast majority" of reporters in the state. As such, the shorthand reporters should have a majority of the Board. There are 2500 to 3000 shorthand reporters and fewer than 100 electronic and stenomask reporters. If these numbers change, then adjustments can be made. However, the initial Board should reflect reality and be representative of those court reporters who will be regulated.

II. TRAINING PRIOR TO APPLICATION

There is no training available for electronic reporters

and thus, electronic reporters would be unable to fulfill the educational requirements set as minimum standards for other reporters. Prior to the final meeting of the Rules of Judicial Administration Committee, there was no organization of electronic reporters. The petition recognizes that it is inequitable to excuse electronic reporters from educational requirements but concludes that, since electronic reporters have no schools available to them, this inequity should be allowed and remedied with the suggestion that schooling programs should be encouraged in the future.

FSRA suggests that uniform requirements regarding education be maintained. Due to the complexity of today's litigation, no branch of court reporting should be able to abolish its schools and thus absolve itself from having to meet minimal education requirements. Such educational requirements should be mandated before certification of that form of court reporting is allowed. Thus, electronic reporters should be required to meet appropriate and substantially similar educational standards as all other reporters. Of course, electronic reporters with substantial experience will also be able to become certified based on experience without testing or educational requirements during the first year of the program.

Absent a uniform educational requirement, the only fair approach is to simply to do away with all educational requirements. FSRA suggests education should be required of all.

Testing

The present proposal contains detailed descriptions and requirements for the tests to be administered by the Board. After long consideration, FSRA submits that the details of the testing process should not be included in the actual rules but should simply be left to the discretion of the Board to formulate as they gain experience with the process. Inclusion of all testing details in the actual rules would be cumbersome and impractical.

At present, the National Court Reporters Association ("NCRA"), the parent organization of FSRA, administers a national test of a standardized nature to all shorthand reporters. This Registered Professional Reporter test is administered across the country by NCRA which goes to great time and expense to formulate, administer and grade it as a national standard. The many years of experience with this test have resulted in its general acceptance as the standard by which reporters can be judged. The national test is offered twice yearly by NCRA and the creation of a completely independent test by the Florida CCR Board would be both expensive and unnecessary. The NCRA test is continually updated and is reviewed by an independent testing consultant service.

The NCRA test should be adopted as the basic test for shorthand reporters in the event that the testing details are to remain in the rule.

One aspect of the present testing proposal warrants comment. If a four-voice courtroom simulation is used, it should be done live or on videotape. Generally, reporters need to see and

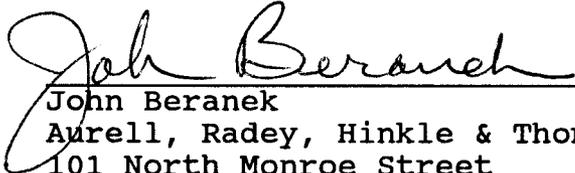
hear the speakers in any courtroom setting. Use of a multi-voice audiotape alone would make speaker identification difficult and in some cases impossible.

Substantial revisions in the testing portion of the proposal are expected by the OSCA. FSRA thus requests leave to respond to those proposed revisions.

III. CONCLUSION

Although FSRA has certain disagreements as outlined above, it strongly supports the petition presently before the Court and urges its adoption. FSRA expresses its gratitude to the judges and lawyers and members of the staff of the Office of the State Court Administrator who have worked so long and diligently on this project.

FSRA urges the adoption of the petition with the changes suggested herein.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S Mail to ANTHONY MUSTO, Florida Rules of Judicial Administration Committee, Musto, Zaremba & Rosenthal, 999 Ponce de Leon Boulevard, Suite 510, Coral Gables, FL 33134, this 22nd day of January, 1991.



John Beranek

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