

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

IN RE: CERTIFICATION AND REGULATION
OF COURT REPORTERS

SUPPLEMENTAL BRIEF
FLORIDA SHORTHAND REPORTERS ASSOCIATION

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INTRODUCTION

This is a rule revision proceeding in which the Florida Bar Committee on Rules of Judicial Administration has recommended a certification program concerning court reporters. This proposal is consistent with Chapter 90-188 as enacted by the Florida Legislature. The initial petition and suggested rule changes were filed with this Court and responses have been filed by the Florida Shorthand Reporters Association ("FSRA"), the Office of the State Court Administrator ("OSCA"), the Electronic Reporters Association and others. In addition, this Court has received numerous letters from interested court reporters who will be directly affected by the proposed certification program.

RESPONSE TO PROPOSAL OF THE OFFICE OF THE STATE COURT ADMINISTRATOR

OSCA has filed an extensive response to the Committee's petition. FSRA wishes to respond to OSCA's position because several of these suggestions are completely new and were not completely considered by the Committee. OSCA has made a total of 16 recommendations and has submitted a substantially revised set of rules.

FSRA is in general agreement with much of what has been suggested by OSCA but there are certain areas of disagreement. OSCA will respond to each of the recommendations in order.

Recommendation 1

OSCA suggests that a chief judge have discretion to allow "certain types of court proceedings" to be electronically recorded by a non-certified persons.

FSRA invites the Court's attention to the comments made on this proposal at page 4 of its initial brief. FSRA stands by these suggestions and urges that the rule be amended by addition of the phrase "not likely to generate an appellate transcript." This qualifying language should be added to the rule to give guidance to the chief judge in exercising his discretion and to encourage the use of certified court reporters in situations where an appellate transcript is probable. This language will serve to ensure the accuracy of appellate records.

Recommendation 2

FSRA has no objection to OSCA's suggestion.

Recommendation 3

FSRA has no objection to OSCA's suggestion.

Recommendations 4 and 5

OSCA has recommended that "official court reporters" not be subject to certification based on experience as all other court reporters will be. In short, OSCA has suggested that official court reporters must be tested and that without testing or certification based on reciprocity with another state, that they cease working as official court reporters. FSRA is in strong disagreement with this proposed change. Initially, such a requirement as to official court reporters alone was not considered by the Rules of Judicial Administration nor by the Florida Bar Board of Governors. This is an idea which should have been subjected to scrutiny and fact finding during the committee process.

FSRA submits that the same standards should apply to all court reporters -- including official reporters and to all other deputy, special or free-lance reporters.

Official court reporters are appointed by the chief judge of each circuit and serve "at the pleasure of the chief judge and the majority of judges of the court in which the reporter is serving." See Section 29.01, Florida Statutes (1989). All court reporters (official and free-lance) actually reporting proceedings before Florida courts serve as an "officer of the court" and when a free-lance reporter prepares the transcript in a civil jury trial, that record constitutes the official record. Rule of Judicial Administration 2.070(h) states as follows:

Reporter as Officer of Court. A court reporter, whether an official court reporter or not, is an officer of the court for all purposes while acting as a reporter in a judicial proceeding or discovery proceeding. The court reporter shall comply with all rules and statutes governing the proceeding that are applicable to court reporters.

FSRA suggests, on behalf of the official court reporters of this state, that no stricter testing requirement is appropriate. There is one or more official court reporters in each of the 20 judicial circuits in the State of Florida plus deputy reporters. No special rule is necessary for this group of reporters.

The OSCA proposal would force all official and possibly deputy official court reporters to be tested or to resign their positions. There is no necessity to impose this stricter standards on official court reporters and to allow all other court reporters who routinely function in the courts as "officers" in most of the

civil jury trials to be certified based on their experience and demonstrated ability based on the actual observations of lawyers and judges.

Official court reporters throughout this state are generally the reporters with the most experience rather than the least experience. Such reporters have gained their positions after years of service and recognition by the judges of the trial courts as competent and deserving of the "official" position.

Allowing official court reporters to be certified based on their experience presents no risk whatsoever because these court reporters, more than any others, function under the direct supervision and observation of the chief judge and all trial judges for whom they work. They occupy these positions only "at the pleasure" of the judges. Thus, official court reporters, more than any other class of reporters, are already within the direct supervision of the court.

FSRA respectfully suggests that a substantial number of the reporters now functioning as officials would leave those positions if they were subjected to mandatory testing. Many official reporters function in the capacity of managing reporters who supervise a staff of deputy official reporters in large circuits. These managing reporters usually have extensive experience but some no longer remain active reporters on current cases.

If official reporters are to be singled out for this absolute testing requirement, then some of them may be forced to

resign from lifelong vocations where they now serve with distinction based on long years of labor.

A better alternative would be to amend the proposed rules to provide for a "managing reporter" classification. This clarification would preserve both the job and the valuable services now being performed by this narrow but important group of reporters. Such a classification should certainly not be rejected without adequate study which we suggest has not yet occurred.

In fact, circuit courts in Florida are not uniform at all when it comes to official reporters. The state currently pays official reporters the meager sum of \$5,400 per year. Official deputies receive no remuneration at all other than an appearance fee of \$10 per hour after the official has performed 60 hours of reporting in a given month. The state pays no overtime or appearance fees. It is absolutely inconsistent to create a higher standard for official and deputy official reporters when the pay scale is below the standards in the free-lance market. Official court reporters should not be subjected to additional scrutiny in order to remain in a lower paying position.

FSRA submits that official court reporters should be treated the same as all other reporters and that no special requirements should be set.

Recommendation 6

FSRA concurs in the recommendation that this Court consider assigning a justice to the Board as an ex officio advisor.

Recommendation 7

OSCA recommends that the requirements for certification and testing be made consistent and FSRA concurs in this recommendation.

Recommendation 8

OSCA has recommended that no educational requirements whatsoever be required for certification of court reporters. FSRA disagrees and stands by the arguments previously stated under II. TRAINING PRIOR TO APPLICATION, as stated at pages 7 and 8 of FSRA Initial Brief.

Recommendation 9

OSCA suggests changes regarding temporary certification. FSRA submits that the proposed rules submitted by the Committee on Rules of Judicial Administration are adequate. Under the initially proposed temporary certification procedure, the applicant would have to provide letters from two circuit judges or from one circuit judge and two lawyers or a letter of recommendation from another certified court reporter for whom the temporary applicant had worked. FSRA suggests that this is adequate protection.

Recommendations 10 and 11

FSRA agrees with the OSCA suggestions in regard to these changes.

Recommendation 12

OSCA has recommended less than full Board participation at the initial investigation of a complaint. FSRA agrees but suggests the probable cause determination by a single member of the

Board not be limited to a judge or attorney member of the Board. The court reporter members of the Board should not be relegated to a lesser position and the court reporter members should be recognized as equally capable as serving in the initial investigatory stage. Further, the "admonishment" portion of this recommendation requires an additional definitional section.

Recommendation 13

OSCA recommends deletion of fines and costs and FSRA is in agreement.

Recommendation 14

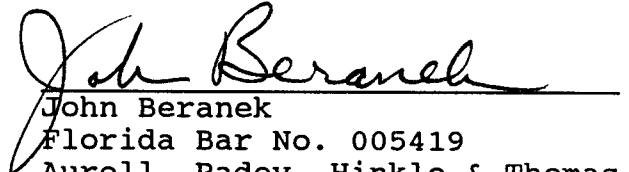
OSCA has presented the obvious three alternatives for appellate review. FSRA submits this matter for the Court's consideration and decision and would only suggest that the matter not be further returned to the Legislature.

Recommendations 15 and 16

OSCA suggests changes regarding continuing education and the transcript reimbursement fund and FSRA concurs in those suggestions.

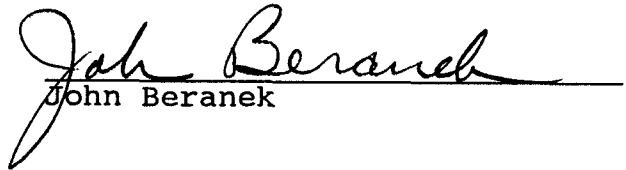
CONCLUSION

FSRA again thanks the Court and respectfully requests that the petition be granted and the court reporter certification and regulation program adopted.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Hand Delivery to the Office of the State Court Administrator, Supreme Court Building, Tallahassee, Florida and 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 1st day of March, 1991.


John Beranek

MAREE/BRIEF.SUP