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IN THE SUPREME COURT OF FLORIDA

SID J. WHITE
MAY 15 1996

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN RE: AMENDMENTS TO THE FLORIDA RULES
OF JUDICIAL ADMINISTRATION

CASE NO. 87,678

COMMENTS OF THE FLORIDA COURT REPORTERS ASSOCIATION
REGARDING FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.070(d)

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TABLE OF CONTENTS

INTRODUCTION	ii
ARGUMENT	1
CONCLUSION	6

INTRODUCTION

The Florida Court Reporters Association ("FCRA"), an organization made up of more than 500 professional court reporters and reporting firms located throughout Florida, has serious concerns about the effects of changes proposed to Rule 2.070(d) by the Rules of Judicial Administration Committee ("committee"). The proposed language at Rule 2.070(d) would require the party who orders a transcript to make the transcript available for inspection and copying by any other party within 15 days of receipt. While the intent of these changes is to reduce the costs of litigation, FCRA believes these proposed changes will cause results contrary to the intent of the changes. In fact, the changes will likely have little or no impact on the overall cost of court reporting services and will create a number of problems for attorneys.

The Board of Governors of the Florida Bar voted unanimously not to approve the proposed changes to Rule 2.070. The proposed changes are also opposed by the Florida Academy of Trial Lawyers and the Trial Lawyers Section of the Florida Bar.

The Florida Court Reporters Association respectfully requests that the Court not approve the proposed rule changes.

ARGUMENT

The proposed rule will have numerous, negative consequences that were not anticipated by the committee. In practical effect, the rule will eliminate the sale of transcript copies by court reporters in most cases. Court reporters have traditionally been compensated based on the sale of an original transcript and two copies. This provides an original transcript, with all attached exhibits, for filing with the court, and a certified copy for each party. The total cost of the court reporter's services is thus apportioned between the parties.

By eliminating the sale of transcript copies in most cases, the proposed rule will lead to an increase in the original transcription fee. As a result, the party ordering transcription will pay more for the original transcript. There will likely be little or no change in the overall cost of court reporting services. Instead, the proposed rule will shift the entire cost of court reporting services to the party that orders the original transcript. This could have a serious adverse impact on parties with limited resources who must order a transcript.

A similar result occurred when the Florida Rule of Appellate Procedure 9.200 was amended in 1987. The Florida Bar re: Amendments to Florida Rules of Appellate Procedure and Rules of Judicial Administration, 509 So.2d 276 (Fla. 1987). Under the prior rule, the court reporter was required to file the original transcript of designated lower tribunal proceedings with the court, and provide a copy to each party. The rule was revised to require

the court reporter to transcribe and file the original transcript, but furnish copies only "as requested in the designation." The intent of the appellate rule change was to reduce the cost of the the record on appeal. However, the actual result was quite different. When it became apparent that appellants were no longer requesting that transcript copies be furnished to all parties, court reporters were forced to increase their charges for original transcripts. The end result was no appreciable change in the cost of preparing the transcript for the record on appeal.

The same result can be expected if the proposed change to Rule 2.070(d) is approved. The overall cost of transcription will not change. The only change will be in how that cost is apportioned among the parties.

Under the proposed rule, the integrity of original transcripts and exhibits will be entirely in the hands of an adversarial party. This could lead to disputes over the accuracy and completeness of transcripts and exhibits. Currently, the court reporter is responsible for the accuracy and completeness of transcripts and exhibits. Under the proposed rule, once the original transcript is delivered to the ordering party, the court reporter's responsibility would end. The ordering party and not the court reporter would be responsible for ensuring other parties receive complete and accurate copies. The proposed rule does not address the consequences if a page of an original exhibit, or an entire exhibit, is lost or misplaced by the ordering party.

The committee argues that parties could seek redress from the

court when disputes arise over the integrity of original transcripts and exhibits. If courts are required to resolve such disputes, litigation costs will increase and the court system will be further burdened with needless disputes, thereby defeating the primary intent of the proposed rule.

The proposed rule requires the party ordering a transcript to make it available to all other parties within 15 days of receiving the transcript. This gives a significant time advantage to the party that orders the transcript. The rule does not address what happens if another party wants or needs to inspect or copy the transcript sooner than 15 days after it is received by the ordering party, except when an expedited transcript is ordered, nor does it address a method by which non-ordering parties are notified that an ordering party has received an original transcript, thereby beginning the 15-day period. This situation could give rise to further litigation disputes.

Under the proposed rule, photocopies of transcripts provided by the ordering party will not be certified by the court reporter. Thus the transcript will not meet filing requirements under Florida Rule of Civil Procedure 1.310(f). The committee argues that the proposed language does not prohibit parties from ordering certified copies of transcripts from court reporters. However, if parties are forced to continue ordering certified copies of transcripts from court reporters, the committee's intention of reducing litigation costs will be undermined.

The proposed rule does not contain a procedure for reading and

signing transcripts. Currently, when a witness asks to "read and sign" a transcript, the court reporter retains the original for a period of time (Federal Rule of Civil Procedure 30(e) provides 30 days for reading and signing; Florida rules do not provide a specific time period). A copy of the transcript is usually provided to the ordering party pending the reading and signing of the original, and the signature page and errata sheet follow upon their completion. Under the proposed rule, the ordering party would not be required to make the original transcript available for copying until 15 days after receipt. However, the rule does not address when the 15-day period begins (upon receipt of the unsigned transcript, or upon receipt of the signature page). Therefore, non-ordering parties could have to wait as long as 45 days before obtaining a final, signed transcript copy from the ordering party.

Finally, the proposed rule will create additional burdens for the staffs of large and small law firms alike. Small litigation firms will be especially hard hit, and may have to hire additional staff to keep up with the copying requirements. Further, the proposed rule does not specify how much parties will have to pay for copies of transcripts and exhibits. It is safe to assume that the ordering party will want to recover its copying and staff costs. There is no assurance that the proposed rule will result in lower costs than parties now pay for transcript copies.

In response to many of the foregoing problems, the committee argues that parties will still be able to obtain certified transcript copies from court reporters. This is not disputed; the

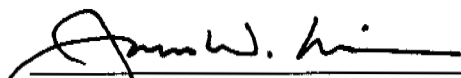
proposed rule does not prohibit parties from ordering copies directly from the court reporter, as they have in the past. The proposed rule will, however, make the production of complete copies of transcripts and exhibits more difficult -- and time consuming -- if copies are not requested at the time of transcription. Under the proposed rule, the court reporter must provide the original exhibits with the original transcript, to the ordering party. Court reporters are not required to retain copies of all exhibits. Thus, if a party that does not order a copy at the time the original transcript is prepared, but later requests a copy, the court reporter will be unable to provide copies of the exhibits without obtaining them from the ordering party.

Moreover, and perhaps more importantly, the fact that parties will still be able to order transcript copies from the court reporter defeats the primary purpose of the rule: reducing litigation costs. As shown above, the cost of the original transcript will likely increase under the proposed rule. If parties are required to order copies from the court reporter to ensure that they receive a timely and complete transcript, total costs will actually increase.

CONCLUSION

For the reasons set forth herein, the Florida Court Reporters Association believes the proposed changes to Rule 2.070(d) will not produce the result intended by the committee: lower litigation costs. Indeed, when disputes over inaccurate, incomplete, or untimely transcript copies are taken into account, as well as increased charges for original transcription and charges for certified copies, the proposed rule may result in higher costs. The Florida Court Reporters Association strongly believes that the integrity of original transcripts and exhibits is of utmost importance to the judicial system, and that independent court reporters are the best way of ensuring that transcripts are accurate, complete, timely and furnished simultaneously to all parties. Accordingly, FCRA respectfully requests that the Court not approve the proposed changes to Rule 2.070.

Respectfully submitted this 15th day of May, 1996.



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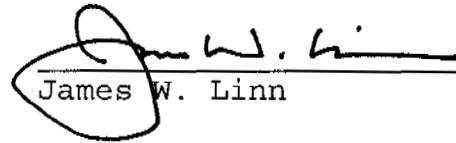
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by United States Mail this 15th day of May, 1996 to:

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