

Supreme Court Board of Certified Court Reporters

Arizona State Courts Building
1501 West Washington, Phoenix, AZ 85007
Conference Room CLD1
10:00 a.m. - 2:00 p.m.

March 8, 2004

Approved Minutes

Members Present:

James Bouley
Douglas Brooks
Jennifer Stadler
Sandra Markham
Judge Jan Kearney
Jean Lea
William Druke

AOC Staff Present:

Rhonda Simmons
Lauren Hargrave
Nancy Swetnam

Members Absent:

Judge Philip Hall

Guests:

Michael A. Bouley
Tony Vaglica
Chris Green
Mary Meyer
Kim Tindall
Julie Ottman
Shirley Pearce
Mary Davis
Marta Hetzer
Michele Balmer
Kim Portik
Cyndi Morn's-Crowe
Jodie Guhr
Anita Lauders
Melinda Vollmer
Leslie Foldy
Beverlee Caperton
Scott Gallaher

Members Present By Phone:

Sandra McFate

Call to Order

The meeting was called to order by Sandra Markham at 10:04 a.m.

Recommendations and Board Action

Applicants for Initial Certification

The following court reporter requested he be granted Provisional Standard Certification based on staff awaiting the FBI results of his fingerprints. Rhonda Simmons informed the

Board the court reporter listed below meets all qualifications for certification, but because the FBI results have not been processed and returned for him, he should be granted Provisional Standard Certification:

Neal Husak

A **motion** was made by Judge Jan Kearney and seconded by Jean Lea to grant Provisional Standard Certification to the court reporter listed above based on all documents provided and because FBI results have not been processed and returned for him. Motion passed. **BCCR-04-027**

Applicants for conversion of certification

The following court reporter requested her certificate be converted from Provisional Standard Certification to Standard Certification based on staff receipt of the FBI results and having met all other qualifications for Standard Certification:

Jennifer Sullivan

A **motion** was made by Judge Jan Kearney and seconded by Jean Lea to convert the Provisional Standard Certification of the court reporter listed above to Standard Certification based on staff receipt of the FBI results. Motion passed. **BCCR-04-028**.

The following court reporter requested her certificate be converted from Provisional Standard Certification to Standard Certification. Rhonda Simmons reported the following court reporter's fingerprints have been rejected two times as non-discernable. The court reporter has signed the 5.9.3 Written Statement, and has met all other qualifications for Standard Certification:

Janice Webster

A **motion** was made by Judge Jan Kearney and seconded by Jean Lea to convert the Provisional Standard Certification of the court reporter listed above to Standard Certification. Motion passed. **BCCR-04-029**.

Postponement of certification after examination

Rhonda Simmons reported Maellen Pittman passed the Arizona Written Exam in early January of 2004. Ms. Pittman does not wish to move to Arizona for several years. Ms. Pittman would like to know if she will be required to take the Arizona Written exam again if she waits to move to Arizona. The Board discussed the issue and agreed if no substantial changes have been made to the exam passed, applicants will not be required to take the exam again prior to certification.

Continuing Education Issues

Renee Hunter requested the following lecture be approved for 1 1/2 hours of continuing education credits. Ms. Hunter stated she believes this lecture relates to medical terminology.

Finding a Footing on a Slippery Slope

Rhonda Simmons is requesting approval of the following December ASU Downtown lectures and is recommending 1 hour of continuing education credit for each:

Aging Gracefully

Organized for Success: Three Keys to Living a Balanced Life

Kick-Start Your Creativity

Down and Dirty Justice: A Chilling Journey into the Dark

Stay-Safe Defense Seminar

A **motion** was made by Jean Lea and seconded by Douglas Brooks to approve continuing education credit for the above entitled seminars and lecture. Motion passed. **BCCR-04-030**

Public Input on Pro Bono and Third-Party Contracting Issues

Sandra McFate joined the meeting by telephone.

Beverlee Caperton presents information on the issue of Pro Bono Services

Ms. Caperton introduced “For Love of Justice” a program put on by the Volunteers Lawyers Program (VLP). Ms. Caperton presented the Board with information regarding other state’s pro bono procedures. Ms. Caperton addressed the Arizona Code of Judicial Administration, Court Reporter Standard Certification Code of Conduct, and her opinions with regards to how it relates to pro bono issues. The Board discussed the VLP program which is a screening process individuals must go through prior to receiving pro bono services mandated by federal guidelines. Currently, all VLP’s are run by individual counties and are all handled differently.

Mary Meyer presents information on the issue of Third Party Contracting

Mary Meyer, Chair of the Third Party Control and Contracting Committee through the Arizona Court Reporters Association, introduced Chris Green, Co-Chair of the Third Party Control and Contracting Committee, and Mary David and Shelly Pearce, Board members of the Third Party Control and Contracting Committee. These individuals will be speaking on behalf of the Arizona Court Reporters Association and addressing the issue of third party control and contracting. Ms. Meyer presented the Board with a three page document entitled “Background and Overview”. This document gives a brief overview and synopsis of the evolution of contracting and its present course in Arizona today; it also supplies the Board with suggestions relative to resolving the issue. Ms. Meyer stated that 28 states, including Arizona, have researched the issue of contract and who controls the transcript. Ms. Meyers expressed her opinion regarding the guardian of the record and her concerns regarding contracts for court reporting services. Ms. Meyers stated a contractual relationship compromises impartiality. Ms. Meyers urged the Board to review all the material she provided to them in making a final determination with regards to this matter and encouraged the Board to enforce the code regarding contracting. Ms. Meyer’s explained that vendors of nationwide court reporting services enter into contracts with insurance companies and most often offer discounts or incentives to their customers. This practice compromises the court

reporters' impartiality. Ms. Meyers pointed out the Arizona court reporter does not distribute or even see the completed version of the transcript as the transcript is electronically mailed to the national firm. The reporter then mails a hardcopy signed certificate page. Ms. Meyers reported cost shifting is taking place with third party contracts. Further, Ms. Meyers stated there is a need to enforce the Board's intent in the Code regarding contracting. On behalf of the ACRA, Ms. Meyers urged the Board to address the issue and protect the profession and its integrity.

Julie Ottmar presents information on Third Party Contracting

Julie Ottmar presented the Board with examples of what they believe to be violations of the contracting provision of the Code of Conduct. Ms. Ottmar explained there are many insurance companies who do not allow attorneys to use the court reporter of their choice. Instead attorneys have been required to use a court reporter through a national firm who holds a contract with the insurance company. Ms. Ottmar requested the Board revise the Code of Conduct to provide clarification to court reporters regarding the contracting provisions. Additionally, Ms. Ottmar requested court reporter be a hefty penalty for violating the contracting provision of the Code of Conduct.

Scott Gallaher - Third Party Contracting

Mr. Gallaher informed the Board he did have a formal presentation prepared, but did offer to answer questions of the Board.

Other presenters

Mary Davis, a freelance court reporter, addressed the Board and explained she has worked through a national court reporting firm. Ms. Davis informed the Board she has requested invoices from the national firm and has been denied.

Michael A. Bouley, President of the Arizona Court Reporters Association, addressed the Board and urged the Board to give consideration to Ms. Meyer's and Mr. Green's materials and statements presented today.

Leslie Foldy, President Elect for the Arizona Court Reporters Association, addressed the Board and stated she has done work with insurance defense lawyers who have informed her they can no longer use her as a court reporter because she is not contracted with a national firm.

The Board requested someone from Esquire speak. Tony Vaglica, CEO of Esquire Depositions addressed the Board. Mr. Vaglica denied the statements made regarding contracts with national firms and offered to sit down with individuals and explain their services. Mr. Vaglica denied a database is being kept for attorneys and avowed Esquire abides by the applicable rules and laws pertaining to court reporters. Mr. Vaglica stated his company has never asked a court reporter to do anything unethical. Ms. Vaglica stated the attorney is their client; however, the bills are paid for by the insurance company. The Board questioned who does the invoicing and questioned if both sides pay the same amount to acquire a transcript. Mr. Vaglica stated the same rate scales apply to both parties. The Board questioned Mr. Vaglica about the ASCII disc and who has control over the transcript. The

Board explained the certification page is a certification of content and format and if the ASCII disc content can be changed the court reporter doesn't know what they're certifying as the final transcript. Mr. Gallaher stated the reporter is allowed to bring in a hard copy in addition to emailing the transcript. The Board requested information on what Esquire's management reports entail. The Board questioned whether the reports indicate that special benefits are provided to clients that is not given to the opposing parties, and therefore would give the appearance of impropriety.

Mary Davis stated national firms and specifically the practice of third party contracting compromises the court reporters duty to be impartial.

The Board discussed the Pro Bono issue and agreed court reporters should be permitted to provide pro bono services and under the current code of conduct, it is neither permitted or prohibited. The Board considered language used by attorneys regarding pro bono services. Nina Preston informed the Board that attorneys are advocates for particular clients and the language doesn't fit the role of the court reporter who does not advocate for one party of the other. The Board discussed court reporters providing pro bono services through legal assistance organizations. The Board agreed a working group should meet and propose language to the Board at the next Board meeting to allow for pro bono services and language to deal with the contracting issue. Jean Lea, Douglas Brooks, William Druke and Rhonda Simmons agreed to be part of the working group.

The Board discussed third party contracting and the ability for national firms to reformat the transcript when supplied through an ASCII disk. The Board agreed the contracting language should be clarified. Court reporting firms are not certified and therefore, outside the jurisdiction of the Board. The Board discussed certification of firms. NCRA has done research and requested the Department of Justice to do a business review regarding third party contracting. The Board would like to see the whole opinion from NCRA.

Call to the Public

There was no response from the public.

Adjournment

A **motion** was made by Judge Jan Kearney and seconded by Jean Lea to adjourn.
Motion passed. **BCCR-04-031**

The meeting of the Board of Certified Court Reporters adjourned at 1:53 p.m.