



December 13, 2005

05-CV- 013

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
1 Columbus Cir., Ste. 4170
Washington, D.C. 20544

Dear Mr. McCabe,

On behalf of the National Court Reporters Association, I respectfully submit the following comments regarding the 2005 style revisions to the Federal Rules of Civil Procedure proposed by the Advisory Committee.

First, I would like to commend the Committee on the countless hours they spent on this project. Many of the proposed stylistic changes make the Federal Rules much easier to understand.

That said, the proposed substantive changes to Rule 30(b) and stylistic changes to Rule 80, while appearing to be innocuous on their face, may need clarification.

The proposed substantive change to Rule 30(b) makes the rule unclear as to which party is responsible for the original cost of preparing the transcript. The proposed stylistic rule states, "The noticing party bears recording costs. Any party may arrange to transcribe a deposition that was taken nonstenographically." The proposed substantive rule changes that last sentence to state, "Any party may arrange to transcribe a deposition."

In depositions taken stenographically, this change may put an obligation on the noticing party to pay attorney's fees as well as pay the cost of an original even if they don't want the transcript simply because the other party orders a copy.

The current rule 80 states:

Rule 80 Stenographer; Stenographic Report or Transcript as Evidence

(a) [Abrogated]

(b) [Abrogated]

(c) Stenographic Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

The proposed stylistic rule states:

Rule 80 Transcript as Evidence

If testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who recorded it.

The purpose of the proposed rule change according to the Committee notes was “to reflect the use of other methods of recording testimony at trial or hearing.”

Generally, if a stenographic reporter took testimony at a hearing or trial, that individual would transcribe and certify the transcript. This comports with the requirements of the current Rule 80(c). However, in trials or hearings where the testimony is recorded electronically, oftentimes the individual who takes/records the testimony will not be the individual to transcribe and certify the record. The proposed changes to Rule 80 do not reflect these realities and may cause unintentional issues with compliance.

Thank you for your consideration of our comments. We appreciate the herculean effort undertaken by the Advisory Committee to revise the Rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Golden', written in a cursive style.

Mark J. Golden, CAE
Executive Director & CEO