

Important Changes to the Arizona Code of Judicial Administration (ACJA) Governing Court Reporting and Their Impact on Arizona Attorneys

In September 2013, the Arizona Supreme Court released proposed amendments to the Arizona Code of Judicial Administration (ACJA) governing court reporting—ACJA § 7-206. Arizona court reporters had immediate concerns that the proposed amendments might affect the integrity and impartiality of court reporters and promote unfair billing, exorbitant costs, and a break in the chain of custody of the confidential record. These concerns were due in part to amendments that 1) allowed national court reporting companies, who are not currently licensed in Arizona and have no accountability to the Arizona judicial system, to take control of the confidential record and all production and billing for that record; 2) limited the court reporter's duty and accountability to accurately write the testimony; and 3) restricted the court reporter's ability to inquire about and ensure fair dealing and equitable treatment of all parties.

Moreover, these proposed code changes could have negatively impacted an attorney's duty to safeguard client information and confidences. The proposed amendments allowed the release of testimony and exhibits to an "authorized agent," such as a national court reporting company, without requiring permission or notification of the witness or any party to a proceeding. Attorneys, like certified court reporters, have ethical obligations to prevent disclosure of confidential and protected information to nonparties of a proceeding and to prevent confidential information from being archived by a third party. Thus, releasing transcripts and exhibits to, and archiving by, a third party may have violated attorneys' Ethical Rule 1.6.

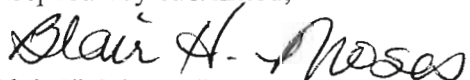
Following the expression of these concerns at various public forums and through public comment letters from Arizona court reporters, Arizona attorneys, and out of state court reporters facing similar amendments, Arizona Supreme Court Chief Justice Berch appointed a Task Force to evaluate the proposed amendments, receive input on concerns, and make final recommendations regarding amending the code. And after months of analysis, collaboration, and attendance at meetings with the Office of Administration, the Court Reporting Board, the Committee on Superior Court, Chief Justice Berch's Task Force, and the Arizona Judicial Council by Arizona court reporters and members of the Arizona Bar, the Arizona Judicial Council ("AJC") approved significantly revised amendments to ACJA § 7-206 on March 25, 2014. The Supreme Court Order amending ACJA § 7-206 as approved by the AJC was entered May 21, 2014, and becomes **effective September 15, 2014**.

The final amended code is a significant improvement over the initial proposed amendments and goes a long way to ensure fair treatment of all parties in an action, including equal billing to all parties, preserving the confidentiality of the record, and preserving the ethical obligations of court reporters and attorneys alike. Accordingly, certain changes in the final code impact attorneys' interactions with court reporters and reporting firms. A generalized summary of the more important of these changes to ACJA § 7-206 follows:

1. Individuals and entities, such as national court reporting companies, providing reporting services in Arizona must be registered with the Arizona Supreme Court, must comply with all provisions of ACJA § 7-206, including all ethical obligations in the Code of Conduct, and must submit to the authority of the Arizona Supreme Court.

2. Only an attorney, a party, or a registered reporting firm can retain court reporting services in Arizona cases. Arizona Certified Reporters and Registered Reporting Firms are prohibited from accepting assignments from any other individual or entity.
3. Reporters and reporting firms must now provide itemized rate disclosures prior to the commencement of a deposition and must charge all parties the same price for the same product or service.
 - a. Each invoice attorneys receive from a reporter or reporting firm must include a certification that the invoice and other business terms comply with the ethical obligations set forth in ACJA § 7-206.
 - b. If an attorney wants to review all parties' invoices, the attorney must make that request of the Certified Reporter. Upon the attorney's request, the Certified Reporter must provide copies of all parties' invoices.
4. Reporters and reporting firms in a continuing contractual relationship¹ with "a party, attorney, or an entity with a financial interest in a case" must give written notice of that relationship to attorneys in the case and any unrepresented parties.
 - a. The notice of contract must be made by the reporter and/or firm upon retention of their services and must contain the duration of the contractual relationship and whether it is exclusive.
 - b. Upon receiving written notice from a reporter or reporting firm that they are in a continuing contractual relationship, attorneys and unrepresented parties have five business days to respond with a written objection. If an attorney or any other relevant party objects, neither that reporter nor that firm can cover the deposition.
5. To enhance and ensure security, confidentiality and privacy, reporters and/or reporting firms may release (sell) transcripts only to witnesses, parties, and their attorneys, unless authorized otherwise by court order or agreement of the parties.
6. Attorneys and their clients can no longer receive from Arizona reporters, reporting firms, or their affiliates "additional advocacy or litigation support services, including but not limited to claim investigation assistance, trial preparation assistance, and deposition summaries."
7. Except as expressly set forth, attorneys cannot waive the Arizona Certified Reporters' and Registered Reporting Firms' duties and obligations under ACJA § 7-206 by disclosure, agreement, stipulation, or otherwise.

Respectfully submitted,



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¹ Under ACJA § 7-206(J)(1)(I), a "continuing contractual relationship" is one where a certified reporter or registered reporting firm has a *contractual* relationship in which reporting services are provided "in *multiple cases* with a party, attorney, or an entity with a financial interest in a case." (emphasis added).