



What's the Secret?

TWO VERY IMPORTANT QUESTIONS TO ASK THE COURT REPORTER AT YOUR NEXT DEPOSITION

By Craig E. Hilborn

Fast Facts:

Beware of the middleman—any time there is a third-party contractor in place, there is increased cost to the parties.

More than a considerable amount of depositions scheduled with reporting agencies are done through contracts held with third parties to the lawsuit. Protect yourself, your client, and the fees you're advancing by inquiring at your next deposition: Do you hold a contract with XYZ? What is my page rate? What is their page rate? Your money is at stake here.

Who's really paying for the transcripts? If one of the parties to the suit is getting a discounted rate on its transcript fees because of a blanket contract, who do you think is making up the difference? You and your client are, by paying higher fees.

Can you walk into your next deposition assuming that the court reporter will be an impartial keeper of the record, or that the reporter will charge you in accordance with statute, or that the reporter will not create a database including the testimony of your expert witnesses for use by the defense, or that the transcripts will be delivered to you in the same way they are delivered to opposing counsel? You could assume all of the above, but given the exclusive contracts often executed between court reporting firms and insurance companies or corporate litigants, such an assumption could prove to be a mistake.

Over the last decade or more, an increasing number of insurance companies and corporate litigants have entered into long-term agreements with court reporting agencies. These agreements require counsel to use a particular agency for every deposition they conduct. In return, the insurance agency or corporate litigant benefits by receiving reduced fees.

MCL 600.1491(1)(a) provides that a court reporter may not “[e]nter into or arrange for any financial relationship that compromises the impartiality of court reporters...or that may result

in the appearance that the impartiality of a court reporter...has been compromised,” and MCL 600.1491(1)(b) provides that a court reporter may not “[e]nter into a blanket contract with parties, litigants, attorneys, or their representatives unless all parties to the action are informed on the record in every deposition of the fees to be charged to all parties for original transcripts, copies of transcripts, and any other court reporting services to be provided.” In turn, MCL 600.1490(1)(a) defines a “[b]lanket contract” as “a contract under which a court reporter...or court reporting firm agrees to perform all court reporting or court recording services for a client for 2 or more cases at a rate of compensation fixed in the contract.” Accordingly, if such a blanket contract exists, it must be disclosed on the record and the court reporter must also advise each party of the fees it will be charged under the contracted rate.

Have you ever heard a court reporter make such a disclosure on the record during a deposition? I haven't. This statutory requirement is not being followed. The decision not to disclose the existence of these blanket agreements creates a multitude of questions that must be answered. For example, is a noncontracting litigant being charged fairly? Or are the fees that are lost by charging lower rates to contracting insurance companies or corporate litigants actually being recouped by charging increased rates to noncontracting parties?

MCL 600.1491 goes on to state that a court reporter shall not charge more than two-thirds of the price of an original transcript for a copy of that transcript. In simple numbers, if the ordering counsel is being charged \$2.25 per page for the original transcript, opposing counsel can only be charged two-thirds of that contracted price, or \$1.50 per page.

These statutes governing the execution of contracts with court reporters and court reporting firms¹ have been in effect since 1998, and as explained previously, such exclusive contracts are often executed between court reporting firms and insurance companies or corporate litigants. However, I have yet to hear a court reporter make a statutorily required “disclosure” on the record, let alone an announcement concerning the price I will be charged per transcript page. If the practice of entering into blanket contracts is legal in Michigan, and only requires that the court reporter dis-

close the contract on the record and advise the attorneys of their charges, why are the statutory requirements not being followed?

Michigan's statutory laws exist for a reason. Arbitrarily disobeying a statute is a grave concern, and those who choose to not play by the rules create questions in one's mind that are limitless.

Now that I understand MCL 600.1490 and MCL 600.1491, if there is no disclosure on the record by the court reporter at my next deposition, I will be certain to ask whether a blanket contract exists and, if so, what price each party will be charged for the transcripts.

As a plaintiff's attorney, I would obviously prefer that no financial relationship exists between the court reporter and the defendant or corporate litigant. But as long as Michigan allows such financial relationships and blanket contracts with court reporting firms, then it is critical that all parties follow the law. ■



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FOOTNOTE

1. MCL 600.1490 through MCL 600.1494.

