

STATE OF WEST VIRGINIA

**SUNRISE REPORT
ON THE**

LICENSING OF COURT REPORTERS

**In Circumstances Where Harm is Possible,
Regulation of Court Reporters Already Exists**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

June 2001

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June 2001

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

John Sylvia
Director

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



June 7, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to Chapter 30, Article 1A, Section 3, we are transmitting a Sunrise Report on the *Licensing of Court Reporters*, to the Joint Standing Committee on Government Organization. The issue covered herein are: "*In Circumstances Where Harm is Possible, Regulation of Court Reporters Already Exists.*"

Let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

JS/aml

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Sunrise Report on the Licensing of Court Reporters

Finding 1: In Circumstances Where Harm is Possible, Regulation of Court Reporters Already Exists.

Court reporters are employed in a variety of settings (a complete description of court reporter activities is included in Appendix B). Official Reporters work in courtroom settings as managers of the record. Freelance Reporters work as managers of the record for later use in court, such as: depositions, hearings, sworn statements, arbitration work, school board hearings, etc. Captioners or Realtime Translators apply reporting technology to create instant voice-to-text for captioning for television, meetings and interpreting for the deaf and hard of hearing in all settings. The Legislative Auditor concludes that the area of clear harm to the public from unregulated court reporters is in the courtroom setting. **However, these professionals are currently certified through competency testing provided by either the West Virginia Supreme Court or by two national associations. Furthermore, state licensure would provide no additional protection than is currently being provided.** The applicant did not provide required documentation of clear harm that has resulted from court reporters in the non-courtroom setting, many of whom are not certified. Furthermore, the applicant's proposed board would "grandfather" all non-certified court reporters by licensing them without competency testing. This feature of the proposal contradicts the need for the board and suggests that the applicant does not consider non-certified applicants a sufficient threat to the public. **Therefore, the Legislative Auditor does not recommend the establishment of a licensure board for court reporters, particularly if uncertified reporters will be licensed without competency testing.**

Analysis of the Recommendation

One of the analysis requirements within the West Virginia Sunrise Legislation (§30-1A-3) is to determine:

...Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public....

According to the applicant:

There are known instances within the state of West Virginia of incompetence on the part of court reporters. These instances have each caused tremendous stress to the litigants, additional cost and extremely long delays in obtaining transcripts. There has also been instances known of transcripts not being able to be produced, requiring further court hearings, expense and delays.

Although the application for licensure requires the applicant to provide documentation of demonstrated harm, the applicant did not provide documentation regarding the “*known instances*” of harm, despite the fact that this information was requested a second time by the Legislative Auditor’s Office. The applicant did provide general examples that clearly show potential harm from incompetent court reporters who are in the courtroom setting. However, these professionals are currently certified through competency testing. The applicant does not give evidence of potential harm from uncertified court reporters that are not in courtroom settings. Given the absence of documentation of actual harm or clear examples of potential harm from uncertified court reporters, **the Legislative Auditor determines that the potential for harm is not easily recognizable and is either remote or depends upon tenuous argument.**

According to the applicant, “*Court reporters predominantly deal with the litigants (general public), judges and attorneys, as well as assisting the hearing impaired to participate in public hearings and the educational setting.*” In instances in which court reporters are used in a court room setting, there exists potential for harm if court reporters are unregulated. However, in court settings and other quasi-judicial settings, there is already protection for the public from incompetence as these individuals have already demonstrated a sufficient level of competency by examination.

When court reporters are employees of the state (managers of the record for court, Public Service Commission work, EEOC hearings, school board hearings, etc.), their competence has already been certified. According to the WV Division of Personnel, for someone to be an employee of the State serving in the capacity of a court reporter, the individual must be “*Certified as a court reporter by the Supreme Court of Appeals, the National Shorthand Reports Association or by the National Court Reporters Association.*” Although some variation exists, these exams are mostly uniform in their requirements. Nearly all of the exams require a written test portion (for example the Supreme Court uses a battery of 100 multiple choice questions) and a dictation period (usually fifteen minutes broken up into three different five minute categories). Since this is the only requirement listed under minimum qualifications in the job description, clearly the Division of Personnel considers this to be sufficient.

Furthermore, even the applicant understands that these are the skills necessary to competently perform the duties of a court reporter. Question 16 on the application for licensure asks the applicant to describe the minimum competencies necessary to enter the occupation. According to the applicant, a court reporter must possess a “vast body of knowledge.” However, the only discussion of necessary skills are an in-depth description of the testing procedures administered by the Supreme Court and the National Court Reporters Association.

Therefore, it is clear that in a court room setting where harm exists, the public’s interest is already protected. It is also the Legislative Auditor’s opinion that the potential for harm from court reporters operating outside of a court room or other quasi-judicial setting (namely freelance reporters) is not clearly recognizable; it is remote and is dependent on tenuous argument. In addition, the applicant did not provide any of the required documentation illustrating clear harm from freelance court reporters. Furthermore, the permissive grandfather clause of the applicant’s

proposed legislation contradicts the need for the board and suggests that non-certified court reporters are not a significant risk of harm to the public.

According to the draft,

An applicant who has been engaged in the practice of court reporting for a minimum of one year prior to the effective date of this Act and who provides to the Board an affidavit setting forth his/her past education and work experience as a court reporter and the affidavits of three attorneys unrelated to him/her who are licensed to practice law in the state and who have utilized the services of the applicant which attest to the applicant's proficiency in court reporting, shall, upon payment of the fee determined by the secretary of administration and finance be licensed to practice as a court reporter. (Emphasis added)

Essentially the licensing board would grant a license to all individuals demonstrating references and proof of employment. This means that individuals would be issued a license without competency testing. As licensed members of the profession, they would enjoy all benefits as such, including employment in a court or quasi-judicial setting where the risk of harm is greatest.

Conclusion

The Legislative Auditor finds that there is not a need for a board to license the profession of court reporters. The Legislative Auditor finds that the potential for harm primarily exists in a court room or quasi-judicial setting and in those instances the public is already protected by the State's hiring practices. The applicant did not provide documentation to illustrate the harm from non-certified court reporters. Furthermore, the applicant would grandfather non-certified reporters, suggesting that the applicant does not consider these individuals a threat to the public. Therefore, the harm from non-certified court reporters is not clearly recognized or requires tenuous argument.

Recommendation 1

The Performance Evaluation and Research Division recommends that a separate licensing board for Court Reporters should not be created.

Appendix A
Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

May 9, 2001

Ms. Jo Ann Betler, President Elect
West Virginia Court Reporters Association
750 Fifth Avenue, Room 201
Huntington, West Virginia 25701

Dear Ms. Betler:

This is to transmit a draft copy of the Sunrise Report on the Licensing of Court Reporters. We would like to setup an exit conference with you during the week of May 14-18, 2001. Please contact me what day of the week you can meet with us, so we can schedule the meeting. At this meeting, we will also request your written response to the report by May 25, 2001, so it can be incorporated into the final report before it is distributed to the Joint Standing Committee on Government Organization. If you have any questions, please contact me.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

APPENDIX B

Background and Application Information

INTRODUCTION

A group of professional court reporters practicing in the State of West Virginia have submitted an application to the Joint Committee on Government Organization proposing licensure of their profession. According to information provided by the applicant, the exact number of court reporters practicing in the state of West Virginia is currently unknown although the number is estimated to be in excess of 200 individuals. These professionals are employed by local courts, by private companies to document information for later use in court, or where it is necessary to create a written text from verbal conversation. If approved, licensure would protect the occupation by making it illegal for anyone to engage in the occupation without a license approved by the governing board of the occupation.

The Performance Evaluation and Research Division of the Legislative Auditor's Office is required under West Virginia Code §30-1A-3 to analyze and evaluate the application of professional and occupational groups to determine if there is a need to regulate the profession. The analysis must be submitted to the Joint Standing Committee on Government Organization no later than the first day of July following the date the proposal is submitted to the Joint Committee.

The report submitted to the Joint Standing Committee shall include evaluation and analysis as to :

- Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
- Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- Whether the public can be adequately protected by other means in a more cost-effective manner.

Definition of Court Reporter

According to the West Virginia Court Reporters Association, court reporters are classified into three different categories:

Official Reporters - These individuals work in court settings as managers of the record.

Freelance Reporters- These individuals work as managers of the record in a variety of settings for later use in court, including, but not limited to: depositions, hearings, sworn statements, arbitration work, school

board hearings, etc.

Captioners/

Realtime Translators -

These individuals apply reporting technology to create instant voice to text for captioning for television, meetings and interpreting for the deaf and hard of hearing in all settings.

Application for Board of Court Reporters

According to draft legislation (shown in Appendix B) provided to the Committee, the proposed board would be made up of seven members appointed by the Governor. Four appointed members of the board would be court reporters (two official and two freelance). The draft legislation prescribes that the board would have the following duties:

- Determine the content of and administer examinations to applicants for licensure;
- Issue numbered licenses to those found qualified as licensed court reporters; and
- Establish guidelines and procedures for suspension, revocation and renewal of licenses.

The proposed board has also set minimum requirements for licensing individuals as court reporters. New licensees will be required to have a high school diploma or its equivalent, proof of good moral character, proof of English language proficiency, and must pass such examinations as developed by the board to determine court reporting proficiency. Initially, plans are for a \$100 application fee, with an annual renewal rate of \$75. Current practicing court reporters will not be required to meet the education or testing requirements but will be required to pay the licensing fees and receive a license to continue practicing as court reporters within the state.

The Applicant's Argument for Regulation

In the application for licensure, the group states:

There is clearly a public stake in the competent performance of court reporters. Or perhaps to put it a better way, there exist dangers to the state, the litigants, and the general public, if reporting is not done competently. The state itself has a large interest, financial and otherwise, in a competent force of court reporters, since judges, state-funded attorneys and other state employees use the reporter's work product each day in their jobs. Obviously, the state funds the cost of the court system. Thus, if a case has to be retried because of an incompetent reporting job, there is a direct cost to the state. If

there is a delay in the proceedings while the disputes over transcripts are being resolved, the state, at least indirectly, pays for it.

Question #12 on the licensure application states, “*Within the usual practice of this occupation, document the physical, emotional, or financial harm to clients from failure to provide appropriate service or erroneous or incompetent service.*” The applicant responded to this statement that:

In the usual practice of court reporting, there are many potential hazards for clients from the failure to provide appropriate service, or erroneous or incompetent service. Some potential harmful circumstances include the following: (1) Increased costs as cases are retried because of incompetent record; (2) Delay of crucial cases in criminal and civil courts which require speedy resolutions to disputes, where issues involving personal property, personal liberty, and even life are at issue, litigants and defendants have a constitutional right to justice within certain time frames; (3) Sensitive and delicate testimony from victims needing to be reproduced because of incompetent service, thereby creating additional emotional trauma to the victims.

Regulation by Other States

Currently, twenty-two states have mandatory regulation of court reporters while another five states (including West Virginia) have mandatory regulation for reporters directly employed by local courts.

