

**REPORT OF THE
BOARD FOR PROFESSIONAL AND
OCCUPATIONAL REGULATION ON**

**THE NEED FOR STATE
REGULATION OF
COURT REPORTERS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 21

**COMMONWEALTH OF VIRGINIA
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COMMONWEALTH OF VIRGINIA



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November 17, 1997

TO: The Honorable George Allen, Governor of Virginia
Members of the Virginia General Assembly

SUBJECT: State Regulation of Court Reporters, HJR 445

The Board for Professional and Occupational Regulation respectfully submits the following report pursuant to House Joint Resolution 445, which directed the board to evaluate the need for state regulation of court reporters.

The board determined that the practice of court reporting does not meet the criteria for regulation as established by Section 54.1-100 of the *Code of Virginia*. The board acknowledges that the occupation requires specialized skill and training, but through the public hearing and investigation did not find that the unregulated practice of the occupation poses a threat to public health, safety and welfare.

This report, approved November 17, 1997, outlines the board's findings, conclusions and recommendations. Members of the Board for Professional and Occupational Regulation would be pleased to answer any questions.

Respectfully submitted,



Donald E. Sours
Chairman, Board for Professional and
Occupational Regulation

Board for Professional and Occupational Regulation

**Report on the Need for State Regulation
of Court Reporters**

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**Board for Professional and Occupational Regulation
Report on the Need for State Regulation of Court Reporters**

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I. INTRODUCTION

A. Statutory Criteria for Regulation

The Board for Professional and Occupational Regulation has the statutory authority for evaluating the need for regulation of an occupation. In making such determinations, the Board refers to Section 54.1-100 of the *Code of Virginia* which states:

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

B. Background

A Joint Ad Hoc Committee was formed by members of the Virginia Court Reporters Association and the National and Tri-State Stenomask Verbatim Reporters Association to seek a voluntary certification program for this profession. The committee

presented its proposal to the Virginia Judicial Council in October 1996. Council members suggested that a legislative resolution be introduced requesting the Board for Professional and Occupational Regulation to evaluate the need for regulation and to recommend the degree of regulation, if any. To that end, House Joint Resolution 445 was introduced and passed by the General Assembly. (See Attachment A for a copy of House Joint Resolution 445.)

C. Methodology

The Board for Professional and Occupational Regulation, by means of a public hearing and surveys to interested parties, studied the nature of this occupation, and its effect on public health, safety and welfare. The board's recommendations are based on an analysis of the information gathered.

II. Findings

A. Profile of the Occupation

Court reporters are charged with recording testimony and impartially creating a verbatim record of trials, depositions, hearings, and meetings. Reporters are hired by Clerks of the Courts, attorneys, corporations, unions, associations, state agencies, zoning boards, county or city councils, and other individuals and groups who need accurate records. They record a variety of events such as pretrial depositions, arbitrations, boards of directors' meetings, stockholders' meetings, public hearings, and convention business sessions, to name a few. The reporter then translates the notes into text which requires editing, printing, proofreading, correcting, and producing a final document.

The three methods of court reporting most frequently used are steno type, stenomask, and electronic recording. A steno type machine looks like a small typewriter with twenty-four keys. By pressing one or more keys, the reporter captures the sound of words in a phonetic code, with each line of characters usually representing one sound or syllable. The notes are usually printed on a paper tape in addition to being captured in computer format. A growing number of reporters use their computerized reporting skills to convert spoken words into written words almost instantly. Computer-aided transcription means the reporter makes a digital record of the keystrokes on a computer disk or an internal memory unit in addition to the paper tape. At the conclusion of the proceeding, the digitized notes are loaded into a computer which translates them into text.

A stenomask reporter takes proceedings by voice rather than with a steno type machine. The stenomask device fits snugly against the reporter's face and a microphone in the mask carries the reporter's voice to an audio recorder. The proceeding is then transcribed from the audio cassettes. Electronic recorders are court reporters trained in the use of multiple tape recorders which tape a proceeding and the transcriber who produces the

transcript. Changing technology will continue to affect all forms of court reporting as real-time systems instantly translate the spoken word into editable text.

B. Education and Training

Most court reporter training programs are two to four years long and require a high school diploma. Reporters must have good English skills and take various courses including computer-aided transcription, law, and specialized terminology used in medical, engineering, chemical, insurance, environmental, and other technical fields. All schools require the same speed levels for graduation, but the testing practices vary from school to school. The length of training also varies according to the type of court reporting.

C. Court Reporting Associations

The following national associations were identified through the board's study process: the National Court Reporters Association (NCRA), the National Stenomask Verbatim Reporters Association (NSVRA), and the American Association of Electronic Reporters and Transcribers (AAERT). Each association has certification programs based on tested abilities to produce a record of a proceeding accurately, impartially and timely. The National Court Reporters Association, for example, offers the Registered Professional Reporter Certification (RPR) which is obtained through passage of skills and knowledge tests including dictation at speeds up to 225 words per minute. In addition, the associations have established standards of conduct, and require continuing education to maintain membership in the association.

The National Court Reporters Association (NCRA) has supported and encouraged state regulation of court reporters. A 1995 study by the Council on Licensure, Enforcement and Regulation (CLEAR) was funded by the NCRA to determine the status of regulation in every state and the impact of state regulation on the costs for services.

Written comments received by the board raised the concern that state certification programs have been revenue producing for the NCRA because several states accept the NCRA's examination in lieu of a state exam. Many states also require continuing education to retain licenses or certificates, and most education courses are obtained through the associations. Written comments from members of the profession argued that associations require annual membership fees in order for reporters to maintain their credentials (RPR, etc.), and noted that mandatory continuing education requirements can only be obtained through the association courses. According to the NCRA, only four states use the Registered Professional Reporter exam for the skills portion of the court reporters certification. The certification exam is then supplemented by a written knowledge test of state laws and rules of procedure. However, the board notes that some states may waive the state exam if certain certifications have been obtained from national associations. If states require an annual renewal fee for state certification and the court reporter must maintain his

membership in the national association to retain his credentials, this could present a costly burden for reporters.

D. Regulation by Other States

According to the National Court Reporters Association, there are currently twenty-eight states that have some form of state regulation of court reporters. The board's research revealed that surrounding states like West Virginia and North Carolina do not require certification of freelance reporters, but have requirements for official reporters in the courts. Some states require reporters to possess the Registered Professional Reporter (RPR) certification from the National Court Reporters Association. The board received numerous written comments expressing concern that if Virginia adopted a regulatory program for court reporters it must be inclusive of the three types of reporting currently performed (stenotype, stenomask and electronic recording). A regulatory requirement which requires passage of the RPR exam could exclude court reporters who practice stenomask or electronic recording.

E. Public Comment

The Board for Professional and Occupational Regulation conducted a public hearing in Richmond on May 19, 1997, to gather information and opinions on the need for state regulation. Over twenty individuals attended the public hearing including the Executive Secretary of the Supreme Court and representatives from the American Association of Electronic Reporters and Transcribers, the Virginia Court Reporters Association, and the Tri-State Stenomask Verbatim Reporters Association.

The American Association of Electronic Reporters urged the board to maintain free and open competition. The AAER presented the position that the system is not broke and probably not in need of fixing.

Representatives from the Virginia Court Reporters Association and the Tri-State Stenomask Verbatim Reporters Association argued that currently there is no venue for complaints to be heard from citizens on the quality of the reporter's product or on a reporter's unethical conduct. The associations proposed that a voluntary certification program would not limit anyone from entering the profession, but would provide some assurance of minimum competency for attorneys or the courts who hire court reporters. Members of these associations also supported state certification as a means of establishing uniform rules of practice.

Written comments were received from attorneys and one clerk of the court. Attorneys submitting written comments supported state certification of court reporters in order to establish some form of guarantee that the court report is competent. One of the main concerns voiced was the need for disclosure of any conflicts of interest by court reporters and the need for professional standards.

Proponents of state certification argued that there are too many court reporters who have not had adequate training or testing, but have printed a business card and entered the profession. Reporters submitted that the accuracy of a legal record is essential to the welfare of the citizens and a system of minimum competency should be in place.

Written comments from court reporters opposing state certification were based on concerns that state certification could eliminate one of the current methods of court reporting which would result in higher costs for the end users of reporters. Opponents proposed that the free market system works and additional government bureaucracy is unnecessary.

F. Lack of public harm

Surveys were sent to members of the profession, the clerks of the courts and Virginia Bar Associations. A high percentage of the responses supported some form of state regulation of court reporters. The board questions, however, the basis for state regulation when over ninety percent of the clerks of the courts and the Virginia Bar Associations responding to the survey were not aware of situations in which incompetent practices of a court reporter posed a threat to public health, safety or welfare. In addition, seventy percent of the court reporters responding to the survey indicated that they obtain work assignments from attorneys. Since court reporters services are predominantly used by a highly specialized segment of the population, the board questions whether a state regulatory program is necessary to protect the general public.

III. Conclusions

The Board for Professional and Occupational Regulation clearly finds that regulation of court reporters is not necessary at this time.

The board cannot clearly find that the unregulated practice of court reporting meets the criteria for regulation under § 54.1-100(1) (*The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument*) and under § 54.1-100(4) (*The public is not effectively protected by other means.*) However, the board did find that the practice of court reporting does meet the criteria of § 54.1-100(2) (*The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor*) and (3) (*The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability.*)

The board further finds that if the General Assembly were to find that there is a need for the regulation of court reporters, it would be appropriate for the Supreme Court of Virginia to administer regulation thereof.

And finally, the board finds that if the General Assembly approves regulation of court reporters, a program of volunteer certification should be established, not a mandatory licensure program.

GENERAL ASSEMBLY OF VIRGINIA -- 1997 SESSION

Attachment A

HOUSE JOINT RESOLUTION NO. 445

Requesting the Board of Professional and Occupational Regulation to evaluate the need for and recommend the degree of regulation of court reporters, if any, and the licensing of court reporters.

Agreed to by the House of Delegates, February 20, 1997

Agreed to by the Senate, February 19, 1997

WHEREAS, while the actual number of court reporters is unknown, it is estimated that there are 600 court reporters who offer their services in the Commonwealth; and

WHEREAS, approximately half of this number are members of professional associations, including the Virginia Court Reporter Association and the Tri-State Verbatim Stenomask Reporters Association, which strive to ensure the skill and integrity of their profession; and

WHEREAS, the importance of the services provided by court reporters in civil, criminal and other cases cannot be overstated; and

WHEREAS, Virginia is one of the few states in the United States which do not have official court reporters; and

WHEREAS, the Board of Professional and Occupational Regulation is authorized by § 54.1-310 of the Code of Virginia to evaluate professions and occupations not regulated in the Commonwealth, consider whether such professions and occupations should be regulated, and make recommendations as the public interest requires concerning such regulation to the General Assembly; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Board of Professional and Occupational Regulation be requested to evaluate the need for and recommend the degree of regulation of court reporters, if any, and the licensing of court reporters in the Commonwealth.

The Department of Professional and Occupational Regulation shall provide staff support for the study. All other agencies of the Commonwealth shall provide assistance to the Board, upon request.

The Board shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution shall be subject to the Board's ability to obtain sufficient funding to conduct this study, estimated to be \$6,000, from the Virginia Supreme Court and Virginia Court Reporter Association. Funding transferred from the Virginia Supreme Court shall not exceed \$5,000.

Board for Professional and Occupational Regulation
Survey of Court Reporters
580 Survey Sent; 200 Completed Surveys Returned

1. In your opinion, are there court reporters practicing in Virginia who do not adhere to a standard of ethics which require fairness and confidentiality of information?

48.0%; 96 Yes 41.5%; 83 No 10.5%; 21 No Answer

2. Are there court reporters who practice in Virginia who are not familiar with the Rules of the Courts?

60.0% 120 Yes 29.5%; 59 No 10.5%; 21 No Answer

3. Are there court reporters who practice in Virginia who do not adhere to the Rules of the Courts?

46.5%; 93 Yes 38.0%; 76 No 15.5%; 31 No Answer

4. In your opinion, are there court reporters practicing in Virginia who do not disclose conflicts of interest?

44.5%; 89 Yes 41.0%; 82 No 14.5%; 29 No Answer

5. Which of the following associations are you currently a member? (Check all that apply.)

90.0%; 180 *National Court Reporters Association*
47.5%; 95 *Virginia Court Reporters Association*
7.0%; 14 *Tri-State Verbatim Stenomask Reporters Association*

6. What certifications have you received?

57.5%; 115 *Registered Professional Reporter Certification*
27.5%; 55 *Other Certifications*
17.5%; 35 *Registered Merit Reporter*
6.0%; 12 *Certified Realtime Reporter*
2.0%; 4 *Registered Diplomate Reporter*

7. Over the past two years, indicate the percentage of time spent performing reporting functions in the following locations. (Use whole numbers only.)

68.0% 136 *Ranked law offices as the location where the greatest percentage of time was spent in performing reporting functions*
37.0%; 74 *Ranked Circuit Court as the location where the greatest percentage of time was spent in performing reporting functions*

8. If you record administrative hearings for government agencies, please indicate the three agencies for which you perform the most work?

Agencies listed most often: Department of Professional and Occupational Regulation; Alcoholic Beverages Control Board; Equal Employment Opportunity Commission; Department of Health Professions

9. Are you: 87.5%; 175 *Full Time* 8.5%; 17 *Part Time*

43.5%; 87 *Self-employed*
31.0%; 62 *Employed by a court reporting firm*
10.0%; 20 *In a corporation or LLC*
4.0%; 8 *Employed by a court*
3.5%; 7 *Employed by a government agency*
1.0%; 2 *In partnership*
7.0%; 14 *No Answer*

10. How many other court reporters work in your organization?

42.5%; 85 *over ten reporters*
17.0%; 34 *six to ten other reporters*
15.0%; 30 *two to five other reporters*
11.5%; 23 *no other reporters*
4.5%; 9 *one other reporter*
9.5%; 19 *no answer*

11. From whom do you most often obtain work assignments?

70.0% 140 *Lawyers*
11.0%; 22 *Judges/courts*
5.0%; 10 *Other*
3.0%; 6 *Government Agencies*
4.0%; 0 *Individual Concerns*
9.0%; 18 *No Answer*

12. Should uniform rules of practice for court reporters be established in Virginia? If yes, who should promulgate and administer such rules?

71.5%; 143 *Yes*
21.5%; 43 *No*
7.0%; 14 *No Answer*

13. If yes to questions #12, who should promulgate and administer such rules?

29.5%; 59 *Other*
14.0%; 28 *Virginia Supreme Court*
1.0%; 2 *Other Courts*
55.5%; 111 *No Answer*

13. Based on definitions below, what level of state regulation do you believe is necessary to ensure fair and competent reporting? Check only one.

37.5%; 75 *Certification*
33.5%; 67 *Licensure*
12.5%; 25 *No State Regulation*
9.5%; 19 *Registration*
4.0%; 8 *Registration with Supreme Court*
0.0%; 0 *Registration with other courts*
3.0%; 6 *No Answer*

- 1. Licensure is the most restrictive form of regulation. Under licensure, it is illegal for a person to practice a profession without meeting state standards.**
- 2. Certification is a voluntary program that grants title protection (state certified) to those persons meeting predetermined standards. Those without the certification may perform the duties of the occupation, but may not use the title.**
- 3. Registration, the least restrictive form of state regulation, requires practitioners to file their name, address and qualifications with a state agency before practicing.**

Please provide additional comments on the reverse side.

**Board for Professional and Occupational Regulation
Survey of Clerks of the Court
314 Surveys Sent; 215 Completed Surveys Returned**

1. Please indicate the court for which you serve? *215 responses from Circuit Courts, General District Courts, Juvenile and Domestic Relations Courts, and Combined Courts*

2. Are you aware of situations in which the incompetent practices of a court reporter posed a threat to public health, safety or welfare?

94.9%; 204 No 3.3%; 7 Yes 1.9% 4 No Answer

3. Are you aware of situations in which a court reporter failed to disclose a conflict of interest?

98.1%; 211 No 1.9%; 4 Yes 0.0%; 0 No Answer

4. Are you aware of instances in which the judicial process was disrupted due to an incompetent court reporter?

95.3%; 205 No 4.2%; 9 Yes 0.5% 1 No Answer

5. Should uniform rules of practice for court reporters be established in Virginia?

58.1%; 125 Yes 27.0%; 58 No 14.9%; 32 No Answer

6. Based on the definitions below, what level of state regulation do you believe is necessary to ensure fair and competent reporting? Check only one.

*31.6%; 68 Licensure
22.8%; 49 Registration with VA Supreme Court
16.3%; 35 Certification
15.3%; 33 No State Regulation
8.4%; 18 Registration
5.1%; 11 No Answer
0.5%; 1 Registration with other courts*

Attachment D

**Board for Professional and Occupational Regulation
Survey of Virginia Bar Associations
122 Surveys Sent; 36 Completed Surveys Returned**

1. Have attorneys in your association reported situations in which incompetent court reporters were found to be a threat to public health, safety or welfare?

94.4%; 34 No 5.6%; 2 Yes 0.0%; 0 No Answer

2. Have attorneys in your association reported situations in which a court reporter failed to disclose a conflict of interest?

97.2%; 35 No 2.8%; 1 Yes 0.0%; 0 No Answer

3. Have attorneys in your association reported situations in which the judicial process was disrupted due to an incompetent court reporter?

88.9%; 32 No 11.1%; 4 Yes 0.0%; 0 No Answer

4. Should uniform rules of practice for court reporters be established in Virginia?

52.8%; 19 No 36.1%; 13 Yes 11.1%; 4 No Answer

If yes, who should promulgate and administer such rules?

73.0% VA Supreme Court 11.1% BPOR

5. Based on definitions below, what level of state regulation do you believe is necessary to ensure fair and competent reporting?

33.3%; 12 No state regulation
19.4%; 7 Registration with VA Supreme Court
13.9%; 5 Licensure
13.9%; 5 Certification
11.1%; 4 Registration
2.8%; 1 Registration with other courts
5.6%; 2 No Answer

