

STATE OF WEST VIRGINIA
SUNRISE REPORT
ON THE
LICENSING OF COURT REPORTERS

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

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.