

1 Honorable Janet E. Barton
2 Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 125 W. Washington
5 Phoenix, AZ 85003
6 (602) 506-5340

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

9 } Supreme Court No. R-16-____

10 } PETITION TO AMEND RULE 30
11 } OF THE RULES OF THE SUPREME
12 } COURT OF ARIZONA

13 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
14 Judge of the Superior Court of Arizona in Maricopa County, respectfully
15 petitions this Court to adopt the attached proposed amendment to Rule 30 of the
16 Rules of the Supreme Court of Arizona.

17 The proposed amendment would clarify that the official record of the
18 court is either a court reporter employed or contracted by the court or the audio
19 recording of the proceeding. The proposed amendment would exclude private
20 court reporters and those hired by counsel from being the official record of the
21 court. *See* Exhibit A.

22 Recently notices have been filed in civil cases in the Superior Court that
23 indicate that private court reporters will attend trial, presumably to produce the
24 official record. (*See, e.g.*, Notice of Intent to Use Court Reporter for the Jury
25 Trial Commencing September 14, 2015 filed 9/8/2015 in CV2013-054396.)
26 Rule 30 of the Rules of the Supreme Court of Arizona governs the record of the
27 court and it does not specify that the court reporter must be a court employee or
28 contractor to be the official record of the court. A 2006 comment to Rule 30
implies that a court reporter hired by a party would be an unofficial record:

1 **Rule 30(a).** This rule is not intended to prevent a party from retaining
2 a transcriber, at the party's expense, to prepare an unofficial transcript
3 of all or part of a proceeding. An unofficial transcript cannot be
referenced or used in any court proceeding.

4 2006 Comment to Ariz. R. Sup. Ct. 30.

5 The text of Rule 30, however, does not make a distinction as to whether
6 the court reporter for the official record is required to be a court employee or
7 contractor. The Rule provides in part:

8
9 4. Official record. When an Arizona-certified court reporter records a
10 proceeding in a superior court that is simultaneously recorded by
11 electronic recording equipment, the court reporter's record shall be
the official record...

12 The rule merely requires an Arizona-certified court reporter. Allowing a private
13 court reporter to provide the official record is concerning. The court would have
14 little or no control over assuring the timely preparation of transcripts. The court
15 also would not have access to the record or the court reporter's notes. Currently,
16 court reporters hired by the court and those contracted by the court are required
17 by local rule to store their notes with the Clerk of Court, ensuring the court has
18 access to the notes if the court reporter becomes unavailable. *See Superior Court*
19 *in Maricopa County Local Rule 1.10.*

20 Other jurisdictions have enacted rules to ensure the official record of the
21 court is taken by a court employee or contractor and that the record is controlled
22 by the court. For example, Rule 2.535 of the Florida Rules of Judicial
23 Administration provides in part:

24 **(a) Definitions.**

25 (1) "Approved court reporter" means a court employee or contractor
26 who performs court reporting services, including transcription, at
27 public expense and who meets the court's certification, training, and
28 other qualifications for court reporting.

...

1 **(d) Ownership of Records.** The chief judge of the circuit in which a
2 proceeding is pending, in his or her official capacity, is the owner of
3 all records and electronic records made by an official court reporter
4 or quasi-judicial officer in proceedings required to be reported at
public expense and proceedings reported for the court's own use.

5 FL ST J ADMIN Rule 2.535.

6 To clarify the rule regarding the official record of the court, the Superior
7 Court proposes amending Rule 30 in part as follows:

8 4. Official record. When an Arizona-certified court reporter
9 EMPLOYED OR CONTRACTED BY THE COURT records a
10 proceeding in a superior court that is simultaneously recorded by
11 electronic recording equipment, the court reporter's record shall be
the official record...

12 This proposed amendment will ensure the court controls the official record and
13 has access to the official record, even if the court reporter is no longer available.
14 The proposed amendment, however, is not intended to preclude parties from
15 having their own court reporter at the proceedings. Parties would still be allowed
16 to bring their own court reporter. Any transcript prepared by the private court
17 reporter would be an unofficial record of the proceedings.
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1 For the foregoing reasons, the Presiding Judge of the Superior Court of
2 Arizona in Maricopa County respectfully requests this Court amend Rule 30 of
3 the Rules of the Supreme Court of Arizona as detailed in Exhibit A, to clarify that
4 the official record is either a court reporter employed by the Court or contracted
5 by the Court, or the audio recording that is made by the Court.

6 Respectfully submitted this 5th day of January, 2016.

7 /s/ Janet E. Barton

8

Hon. Janet E. Barton
9 Presiding Judge
10 Superior Court of Arizona, Maricopa County

11 Electronic copy filed with
12 the Clerk of the Supreme
13 Court of Arizona this 5th
14 day of January, 2016.

1
2 Exhibit A

3 Rules of the Supreme Court of Arizona

4 Rule 30. Verbatim Recording of Judicial Proceedings

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6 **(a) Transcripts of court proceedings; standards.** A transcript is a document
7 containing a verbatim record of the spoken words of a court proceeding prepared
8 from either the certified reporter's notes or other verbatim record of the
9 proceeding. Transcripts certified for use by any court shall be:

10 1. Prepared and certified by an authorized transcriber in accordance with
11 the standards set forth in the Arizona Manual of Transcript Procedures. The
12 current version of this manual is available from the Administrative Office
13 of the Courts.

14 2. For purposes of this rule, an “authorized transcriber” means:

15 a. a certified reporter;

16 b. an individual or a transcription service under contract with an
17 Arizona court; or

18 c. An individual employed by a court whose official duties include
19 the preparation of transcripts.

20 **(b) Use of Court Reporting Resources.**

21 1. Request for certified reporter. Any party to any action in superior court
22 may request that any proceeding in that action be recorded by a certified
23 court reporter. The court shall grant the request if it is made at least three
24 days prior to the proceeding to be recorded unless a different time frame has
25 been established by local rule.

26 2. Making the record in the absence of a timely request for a court reporter.
27 Except as provided in (3) below, in the absence of a timely request for a
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1 certified court reporter the record will be made in a manner within the
2 sound discretion of the court.

3 3. Proceedings requiring a certified court reporter. The following
4 proceedings shall be recorded by a certified court reporter and not solely by
5 electronic means, unless this requirement is waived by the parties and the
6 court approves the waiver:

7 a. Grand jury proceedings;

8 b. All proceedings in a first degree murder case, pursuant to A.R.S. §
9 13-1105, once the intention to seek the death penalty notice has been
10 filed;

11 c. Felony jury trials;

12 d. Initial determinations of sexually violent person status, pursuant to
13 A.R.S. § 36-3706;

14 e. Proceedings on a request for authorization of abortion without
15 parental consent, pursuant to A.R.S. § 36-2152.

16 4. Official record. When an Arizona-certified court reporter EMPLOYED
17 OR CONTRACTED BY THE COURT records a proceeding in a superior
18 court that is simultaneously recorded by electronic recording equipment, the
19 court reporter's record shall be the official record. The transcript in any case
20 certified by the reporter or other authorized transcriber shall be deemed
21 prima facie a correct statement of the testimony taken and proceedings had.
22 No transcripts of the proceedings of the court shall be considered as official
23 except those made from the records certified by the reporter or other
24 authorized transcriber.