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March 3 2011

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

In re: No. AF 06-0377, Proposed amendments to Rules for Privacy and Public Access

Dear Chief Justice and Justices of the Supreme Court:

The Montana Court Reporters Association (MCRA) respectfully submits comment on the proposed amendments to the Rules for Privacy and Public Access.

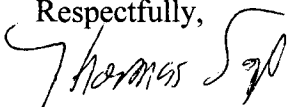
Version A, Section 4.60(a)(4) and (5) addresses transcript redaction. The language as proposed contains innumerable difficulties which may not be immediately obvious to anyone except official court reporters, who are responsible for transcript preparation and dissemination on a daily basis. The following is a listing of potential stumbling blocks with the language as proposed:

1. Although 4.60 (a)(5) doesn't specify who performs the requested redactions and files the redacted transcript, it must be the court reporter for the following reasons:
 - a. A court reporter's certificate attesting to the accuracy and authenticity of a transcript does not apply to a document other persons have modified; and
 - b. If redacted transcripts are used for appellate purposes the reporter would need to be aware of redactions required in previously-prepared non-appellate transcripts as those transcripts may later be designated as necessary on appeal.
2. 4.60 (a)(5) proposes 10 days for parties to review for redactions. Ten days is insufficient, particularly for the party who did not order a copy of the transcript and needs to travel to the office of the clerk of court to accomplish the review, keeping in mind that transcripts can range from a few pages to thousands of pages. Additionally, since parties must agree on the redactions, collaboration needs to occur.
3. 4.60 (a)(5) references recordings filed by court reporters. MCRA is unaware of recordings being filed by court reporters. If the reference is to recordings made from audio recording equipment used in some courtrooms, those recordings are not filed; and even if they were, as a technological safeguard to the record, they are not capable of being redacted.

4. There is no consideration of the Rules of Appellate Procedure, wherein reporters have 40 days, without extension, to file transcripts. It would be impossible to accomplish redaction within that time period.
5. The proposal includes redaction of "sensitive information." In certain types of hearings this may lead to redaction of pages and pages of transcript, which may make the transcript unusable, particularly for appellate review.
6. Consideration should be given to the additional costs to be borne by litigants in transcript redaction. If a party is represented by an attorney, there will be costs associated with the time and/or travel required to accomplish redaction.
7. Consideration needs to be given to the fact that some judicial districts contract for court reporting services. Those reporters are compensated only for time in the courtroom, not additional administrative time. Other districts use contract reporters on a fill-in basis, and the same consideration needs to be given.
8. Presumably deposition transcripts taken during discovery and subsequently filed with the clerk of court would also fall under the redaction rules, requiring parties to spend the time and money re-reading deposition transcripts for sensitive information. The freelance court reporters who report and transcribe these depositions would need to be informed of the redactions.
9. Transcripts of proceedings not statutorily mandated as confidential or ordered sealed by the court can be ordered by anyone. Court proceedings are, after all, open to the public. When transcripts are ordered by non-parties guidance needs to be given as to whether redacted or unredacted transcripts would be provided.
10. There needs to be a timeline for filing the redacted transcript. The proposed language only addresses the time for review, not the time for filing.
11. A transcript redaction request form, to be filed and sent to the official reporter, would need to be created.
12. In considering transcript redaction the direction to be taken may depend upon whether court transcripts will in the future be available via the Internet and what access the public will have to those transcripts. If not for this unknown, redaction of personal identifiers may have served the committee's purpose. The phrase "sensitive information" complicates transcript redaction beyond what the committee may have anticipated and possibly even beyond what MCRA foresees.
13. If transcripts were to be made available via the Internet, 3-5-604 MCA provides for transcript fees, and a procedure for collection and distribution of those fees would need to be established.

For the reasons stated above, MCRA strongly suggests any transcript redaction procedure be proposed by a committee comprised of court reporters, attorneys, and clerks of court.

Respectfully,


Tom Sapp, RPR
President, MCRA