



## **Is anti-contracting legislation being ignored in Mass?**

**By Massachusetts Court Reporters Association**

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Over the past decade, the procedure for hiring a court reporter has dramatically changed. In the past, if an attorney required a court reporter to record a proceeding, he or she called a court reporting agency of his/her own choosing.

Today, the scheduling of a court reporter can take place through national, investor-owned court reporting agencies and involve a third-party agreement between the national reporting firm and a large corporation or insurance company that mandates national agency services be used to the exclusion of all others.

In November 1997, the National Court Reporters Association (NCRA) Board of Directors issued a resolution “that NCRA lobby at the state and federal level and work with its affiliated organizations and coalitions at the state level to seek the enactment of laws and court rules that will limit or prohibit contracting arrangements in order to maintain the impartiality and independence of court reporters in their capacity as officers of the court.”

The American Judges Association in 1998 passed a resolution to support legislative and judicial measures prohibiting financial arrangements between court reporters and parties in interest. The resolution notes that “court reporters are officers of the court whose impartiality, as with judges, must remain utterly beyond question in order to ensure the enduring confidence and faith from which our judicial system derives its legitimacy.”

Massachusetts agreed with both of the above assessments, thereby enacting the Acts of 2002, G.L c. 221, s. 91D(b) which states, “Contracts entered into pursuant to the practice of court reporting, not related to a particular case or reporting incident, between a court reporter or any person with whom a court reporter has a principal and agency relationship and an attorney at law, party to an action, or party having a financial interest in an action shall be prohibited.”

Half of the states in the US have also passed legislation against contracting. There are currently national investor-owned court reporting firms conducting business within the commonwealth. It is believed these national investor-owned reporting firms are securing agreements with large corporations and insurance companies (parties in interest).

That seems to run contrary to G.L.c.221,§.91D(b). These secured agreements often provide special services and reduced rates that are not equally made available to the opposing parties in litigation. As a result, it is felt by some that the insurers and corporate interests have greater leverage and advantages over consumers who seek redress in the courts.

Despite our statute, local law firms and staff continue to receive notice of these agreements and are confused by the directives contained therein. Neither the noticing attorneys who are supposedly bound by these agreements nor the opposing counsel have full, or any, knowledge as to the contract detail, as the contracts are negotiated beyond their purview.

It is integral to American jurisprudence that transparency to all parties be maintained. To this point, contracting entities are unwilling to divulge the details of their engagements and provide full and effective disclosure.

Opposing counsel who by default are the recipient of the national firms' services and who have little say in the selection of the reporters complain that they receive invoices in summary fashion without line-item detail or description, and are charged for word index pages at full transcript per-page rates, for services not ordered and for high postage costs and aberrant administrative fees, all of which are generally not charged by local independent providers.

What can you do about this? When you receive a Notice of Taking Deposition, you should promptly inquire whether the court reporting firm that will be providing services for your client's deposition has a contractual relationship with the taking attorney's law firm and/or client. If so, you might want to have the pertinent law handy and advise opposing counsel of its existence. After that, you may request that an independent court reporting firm be used for the deposition.

Lastly, pursuant to 91D(b), "A person aggrieved by a violation of this section shall be entitled to review in the Superior Court and shall be entitled to all legal and equitable relief with the jurisdiction of the court." Fairness and equal access to justice for all is the cornerstone of the American judicial system.