

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1469

S.P. 543

In Senate, April 30, 2013

An Act To Ensure Ethical Standards for Court Reporters

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GOODALL of Sagadahoc.
Cosponsored by Representative BERRY of Bowdoinham and
Senators: KATZ of Kennebec, VALENTINO of York, Representatives: BEAULIEU of
Auburn, DION of Portland, FREY of Bangor, GRAHAM of North Yarmouth, MORIARTY of
Cumberland, PRIEST of Brunswick.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 4 MRSA c. 15, sub-c. 4** is enacted to read:

3 **SUBCHAPTER 4**

4 **GENERAL PROVISIONS; ETHICAL STANDARDS**

5 **§771. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Court reporter.** "Court reporter" means a person who records legal proceedings
9 by stenotype machine or other means allowed under the Maine Rules of Civil Procedure,
10 Rule 30 and provides prompt preparation of an accurate, verbatim written transcript.

11 **2. Court reporting services.** "Court reporting services" means services provided by
12 a court reporter.

13 **3. Court reporting services provider.** "Court reporting services provider" means a
14 business, entity or firm that provides or arranges for court reporting services.

15 **4. Governmental entity.** "Governmental entity" has the same meaning as in Title
16 14, section 8102, subsection 2.

17 **5. Legal proceeding.** "Legal proceeding" means a proceeding or series of
18 proceedings by which a legal judgment is invoked and includes but is not limited to:

19 A. A court proceeding;

20 B. A deposition;

21 C. An administrative hearing;

22 D. An arbitration hearing;

23 E. An examination under oath; and

24 F. A sworn statement.

25 **6. Party.** "Party" means a party to an action that is the subject of the legal
26 proceeding for which court reporting services are provided or sought to be provided.

27 **§772. Relationship to party or proceeding; prohibition**

28 **1. Prohibition.** A court reporter or a court reporting services provider may not
29 provide court reporting services for a legal proceeding if that court reporter or the court
30 reporting services provider:

31 A. Has a contractual relationship with a party or an attorney, representative, agent or
32 insurer of a party;

1 B. Is associated with a business, entity or firm that has a contractual relationship with
2 a party or an attorney, representative, agent or insurer of a party;

3 C. Engages in any prohibited actions set forth in section 773; or

4 D. Is a party.

5 A court reporter may not provide court reporting services for a legal proceeding if the
6 court reporter is a relative, employee or attorney of one of the parties or is a relative,
7 employee or attorney of a person with a financial interest in the action or its outcome.

8 **2. Reasonable effort to determine; requirement.** Prior to the provision of court
9 reporting services, a court reporter or court reporting services provider shall make
10 reasonable efforts to determine whether the provision of court reporting services is
11 prohibited under this subchapter.

12 **§773. Prohibited actions**

13 A court reporter or court reporting services provider may not:

14 **1. Contract.** Enter into an oral or written contractual agreement for more than one
15 case, action or legal proceeding with an attorney, party to an action, insurance company,
16 3rd-party administrator or any other person or entity that has a financial interest in the
17 case, action or legal proceeding;

18 **2. Advantage.** Give an economic or other advantage to a party or a party's attorney,
19 representative, agent, insurer or employee without offering the advantage to all parties or
20 fail to offer comparable services, prices or financial terms to all parties, except that
21 different credit terms may be offered based on payment experience and creditworthiness;

22 **3. Outcome-based payment.** Offer or provide court reporting services if payment
23 for those services is made contingent on the outcome of the legal proceeding, base the
24 compensation for the court reporting services on the outcome of the legal proceeding or
25 otherwise give the court reporter or court reporting services provider a financial interest
26 in the action;

27 **4. Restrict choice of court reporter.** Enter into an agreement for court reporting
28 services that restricts an attorney from using the court reporter or court reporting services
29 provider of the attorney's choosing;

30 **5. List of preferred providers.** Include a court reporter or court reporting services
31 provider on a list of preferred providers of court reporting services that is maintained by a
32 person, business, entity or firm that has entered into an oral or written contractual
33 agreement for more than one case, action or legal proceeding with an attorney, party,
34 insurance company, 3rd-party administrator or any other person or entity that has a
35 financial interest in the case, action or legal proceeding;

36 **6. Allow manipulation.** Allow the format, content or body of a certified transcript
37 as submitted by the court reporter to be manipulated in a manner that increases the cost of
38 the transcript; or

1 **7. Advocacy; litigation support services.** Provide additional advocacy or litigation
2 support services, including, but not limited to, trial preparation assistance, deposition
3 summaries and nonpublished transcript databases.

4 **§774. Comparable treatment of parties**

5 **1. Itemized statement.** At any time during or following a legal proceeding, an
6 attorney or a party is entitled to an itemized statement of the rates and charges for all
7 services that have been or will be provided by a court reporter or court reporting services
8 provider that is providing court reporting services to any party to the legal proceeding.

9 **2. Information to parties.** A court reporter or court reporting services provider
10 shall provide to the parties information on prices, terms and conditions of court reporting
11 services in sufficient time prior to the commencement of the legal proceeding to allow the
12 parties the opportunity to effectively negotiate for any changes necessary to ensure that
13 comparable terms and conditions are made available to all parties.

14 **3. Information to court.** Upon request, a court reporter or court reporting services
15 provider shall provide an itemized invoice of all rates and charges for court reporting
16 services provided to the administrative body, court or administrative tribunal in which the
17 action upon which the legal proceeding is based is pending or scheduled to be heard.

18 **§775. Waiver prohibited**

19 The provisions of this subchapter may not be waived or otherwise modified. Any
20 waiver or modification is contrary to public policy and is void and unenforceable.

21 **§776. Exception; governmental entities**

22 Notwithstanding section 773, if authorized or required by law, ordinance or rule, a
23 governmental entity may obtain court reporting services on a long-term basis through
24 competitive bidding.

25 **§777. Construction; pro bono services**

26 Nothing in this chapter may be construed to limit the ability of a court reporting
27 services provider to provide pro bono services to persons or parties with limited means.

28 **§778. Penalties**

29 **1. Violation.** A person who willfully violates this subchapter is subject to a fine of
30 not less than \$500 for a first offense; the fine for each subsequent violation is increased
31 by an additional \$250 per violation.

32 **2. Separate action not necessary.** A person harmed by a violation of this
33 subchapter may file a motion alleging the violation with the administrative body, court or
34 administrative tribunal in which the action upon which the legal proceeding is based is
35 pending or scheduled to be heard. A person need not commence a separate action to
36 allege a violation of this subchapter.

1 **3. Filing of a complaint.** A complaint alleging a violation of this subchapter may be
2 filed by any person with knowledge of the offense or by the court on its own initiative.

3 **4. Venue.** A violation and request for fines and sanctions may be brought:

4 A. By motion in the administrative body, court or administrative tribunal in which
5 the case is pending or scheduled to be heard;

6 B. In small claims court; or

7 C. In District Court.

8 A person harmed by a violation of this subchapter may request mediation.

9 **5. Sanction.** An administrative body, court or administrative tribunal that receives a
10 complaint pursuant to this section and determines that a person violated this subchapter
11 may bar the person from providing services in matters before that administrative body,
12 court or administrative tribunal and may suspend or revoke any license, registration or
13 certificate held by that person that authorizes the person to do business in the State.

14 **6. Disclosure.** An administrative body, court or administrative tribunal that receives
15 a complaint pursuant to this section shall publicly disclose the final action taken and shall
16 issue periodic reports indicating the number and nature of complaints received and the
17 disposition of the complaints.

18 **§779. Application**

19 **1. Application to services.** This subchapter applies to court reporting services
20 performed in this State, whether a party appears in person or by remote means, provided
21 by:

22 A. A court reporter or court reporting services provider, whether or not based in the
23 State, in connection with a legal proceeding that is commenced or maintained in this
24 State; or

25 B. A court reporter or court reporting services provider based in this State in
26 connection with a legal proceeding that is commenced or maintained in a foreign
27 jurisdiction.

28 **SUMMARY**

29 This bill establishes ethical standards and requirements for the provision of court
30 reporting services, including prohibitions against providers of court reporting services:

31 1. Providing services if the court reporter is a party to or has a financial interest in
32 the proceeding;

33 2. Entering into contracts for more than one case, action or legal proceeding with an
34 attorney, party to an action, insurance company, 3rd-party administrator or any other
35 person or entity that has a financial interest in the case, action or legal proceeding; and

1 3. Providing additional advocacy or litigation support services, including, but not
2 limited to, trial preparation assistance, deposition summaries and nonpublished transcript
3 databases.