

STATE OF MINNESOTA

IN SUPREME COURT

HEARING ON PROPOSED MINIMUM
QUALIFICATIONS FOR COURT
REPORTERS

PETITION
TO
BROADEN PROPOSED
MINIMUM QUALIFICATIONS

Petitioner simply asks the Supreme Court to broaden the minimum qualifications for "a competent stenographer", as statutorily directed in Minn. Stat. §484.72, Subd. 4, to include not merely the suggested R.P.R. (Registered Professional Reporter) but also anyone who by the use of any reasonable method (electronic as well as stenographic machine) can produce the desired result, namely:

- a) accurately record the verbatim proceedings in court and
- b) produce (type) a readable transcript promptly when requested to do so.

COURT REPORTER QUALIFICATIONS

I. A competent stenographer who wishes to be considered for employment by a judge for the position of court reporter must have:

1. A high school diploma or the equivalent; and
2. Graduated from a court reporting school approved by the National Shorthand Reporters Association and the State Court Administrator, or have held the position of official court reporter for three of the previous five years; and
3. A valid Registered Professional Reporters certificate or the ability to meet those standards required by the R.P.R. to the satisfaction of the State Court Administrator.

OR

II. A competent stenographer for a trial judge shall be:

1. A person who serves as the trial judge's secretary pursuant to Minn. Stat. §486.01; and
2. A person capable of furnishing the accurate recording of court proceedings by any method including (a) stenographic machine; (b) electronic recording equipment; (c) Pittman shorthand; or (d) any other appropriate and reasonable device; and
3. A person thereafter capable of promptly furnishing an accurate transcript in typewritten form or an appropriate equivalent of the typewritten form.

A transcript so furnished promptly shall be furnished within 40 days of receipt of the order for any court proceeding of 5 days or less duration with an additional week extended for each additional day's courtroom proceedings — unless lengthened or shortened by appeal court order.

OR

III. A competent stenographer for a trial judge shall be:

A person duly appointed and serving as a court reporter as of the date of this order pursuant to M.S. §486.01 for judges of district court or M.S. §487.11, Subd. 2, for judges of county court.

I. Prior Statutory Law

A. In County Court

Since 1971, the county court judges have had an option as to the method of recording verbatim court proceedings. See, Minn. Stat. §487.11. This statute specifically permits the use of electronic recording equipment to record verbatim court proceedings but permits the trial judge in his discretion to require the use of a "competent court reporter" if requested by any party.

The statute did not place the option in the attorney (or party to a proceeding); it is discretionary with the judge, if a party requests the court reporter, to refuse or reject the request.

B. In District Court

Prior to the amendments in the statutes in the 1981 Session of the legislature, the statutory law on court reporters for the district court provided in Minn. Stat. §486.01 that each judge of district court could appoint "a competent stenographer" to perform two functions:

1. reporter of the court and
2. to act as his secretary in all matters pertaining to his official duties.

There was no explicit statutory prohibition against electronic recording of verbatim courtroom proceedings; on the other hand, there was likewise no explicit permission either to use electronic recording of these proceedings (as was explicitly permitted by statute in county proceedings since 1971. See M.S. §487.11, Subd. 2.)

A number of judges reportedly interpreted this lack of statutory authority as prohibiting the use of electronic recording alone in district court proceedings (Olmsted County by Special Legislation in 1977 Session Laws, Chapter 336, was the statutory exception).

C. In Summary

Prior statutory law in Minnesota has not prohibited electronic recording in either district or county courts but has explicitly permitted its use in county courts since 1971. A number of judges reportedly interpreted the statutory silence as to the district court as lack of authority for its sole use in district court (Statutory exception was Olmsted County since 1977).

II. Statutory Action of the 1981 Session

A. In County Court

There has been no change by statute in the manner of recording court proceedings in county court, i.e., the county court judge has discretion to use either electronic recording equipment or a "competent court reporter". See, Minn. Stat. §487.11.

However there is a subtle and compelling indirect effect on the county court judge as distinguished from county court proceedings resulting from the 1981 Session Laws, as argued hereinafter.

B. In District Court

Chapter 303 of the 1981 Session Laws, as codified in Minn. Stat. §484.72, contains statutory provisions which in Section 1 appears to permit electronic recording of court proceedings in district court but in fact for all practical purposes prohibits this if the proposed minimum qualifications are adopted by the Supreme Court.

This is because the statutory exemption in Subd. 4 consumes or excludes the permissive authority granted in Subd. 1.

Specifically, the permissive section Subd. 1 of §484.72 (a new provision in Chapter 484) itself contains an exception recited in Subd. 4 of §484.72 which recites "a competent stenographer ... shall make a complete stenographic record" of recited district court proceedings. The enumeration recited in Subd. 4 for all practical purposes covers all district court proceedings which normally need verbatim recording.

Thus the purported permissive authority to use electronic recording in Subd. 1 is without effect unless the term "a competent stenographer" as the term is used in Subd. 4 of Minn. Stat. §484.72 is defined by the Minnesota Supreme Court in this proceeding broadly enough to cover operators of electronic recording equipment.

The statutory direction in Subd. 4 of M.S. §484.72 (as enacted by the 1981 Session) then should be seen by this appellate court:

- (a) as directory not mandatory legislation and
- (b) as an occasion to clarify to the district court judges that the practice of recording courtroom proceedings by the stenograph machine method is not "engraved in stone".

III. Petitioner's Reasons for Defining "A Competent Stenographer" Broadly

A. Judicial Planning Council History

The Judicial Planning Council history to the enactment of Chapter 303 in the 1981 Session, as codified in Minn. Stat. §484.72, shows that the term "a competent stenographer" was substituted from the initial draft which read "registered professional reporter".

B. Broadened to Include Secretarial Duties

The term "a competent stenographer" as statutorily directed in the 1981 Session, Chapter 303, (to have minimum qualifications determined by the Minnesota Supreme Court) this petitioner submits should be consistent with Minn. Stat. §486.01. That statute states that a judge (of district court) may appoint "a competent stenographer" as (1) reporter of the court and (2) to act as his secretary in matters pertaining to his official duties.

The minimum qualifications of competent stenographers promulgated by the Supreme Court therefore should not be so limited as to suggest only reporting duties are required of that position of "competent stenographer". The secretarial duties should not be excluded from the duties of a competent stenographer in §486.01 by limiting the definition in §484.72, Subd. 4.

C. Assert Supreme Court's Power; Do Not Restrict It

The statutory direction however probably should be minimized in this matter of recording court proceedings.

Rather emphasis should rest on the power of the Minnesota Supreme Court to promulgate rules for all courts. This is an inherent power of the Minnesota Supreme Court. This rule-making authority for all courts is necessary to preserve litigants' rights in the best manner of achieving "... justice freely and without purchase ... promptly and without delay ...". Minnesota Constitution, Article I, Section 8. See also Article VI (Judicial power vested in a supreme court, a district court and such others ...).

As a necessary exercise of this judicial power in the face of legislative direction otherwise, assume this as a hypothetical: Assume at a given time in the future, electronic recording (with its superior monitoring capabilities) could be proven to be more accurate: Would due process allow the legislative direction for use only of the less accurate method to stand? I submit it would not.

D. Adverse Effect on County Court Judges' Discretion

The subtle effect upon the staffing by the county court judges by §484.72, Subd. 4, is great if the proffered minimum qualification is adopted by the Supreme Court.

While it is now true that county court judges have an option to use electronic recording equipment or "a competent court reporter" in county court proceedings, that option will now be explicitly denied to them if they serve on district court cases. Thus the pressure on a county court judge to appoint "a competent court reporter" will be almost overwhelming if the county court judge wishes to be adequately staffed to handle district court proceedings.

In the Third Judicial District, we have five of sixteen county court judges who now are able to use and do successfully use electronic recording almost exclusively; they limit their use to stenographic reporting service to selected cases which varies among those four counties in which those five county court judges preside.

By setting the minimum qualifications of "a competent stenographer" in Minn. Stat. §484.72, Subd. 4, broadly enough to include electronic recording, the Supreme Court will permit these county court judges to continue to exercise their discretion and to effectively serve as district court judges by use of electronic recording equipment.

E. Stifling Effect on Technological Advancement

The proposed minimum qualification which limits "a competent stenographer" to one who uses the stenograph machine would discourage and perhaps inhibit technological development in the electronic recording industry in so far as it effects court proceedings. This court should not adopt a rule which even suggests that.

F. "Product" Definition Permits Alternatives and Eliminates "The Bottleneck; Emphasize Standards Not Qualifications"

Petitioner submits the minimum qualifications for a competent stenographer if at all possible should be determined by result and product produced rather than training and experience of the operator.

That is possible in this situation.

What is wanted presumably is a competent stenographer who can perform

- (1) the necessary reportorial duties as well as
- (2) the necessary secretarial duties.

The reportorial duties can be measured rather objectively by simply requiring by any method

- (1) a reasonably accurate recording of court proceedings be obtained and
- (2) thereafter, when required, an accurate transcript be produced promptly.

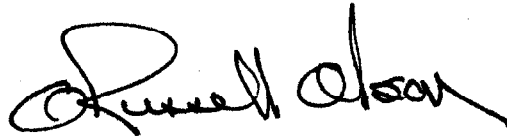
To adopt the proposed minimum qualification of a competent stenographer (which restricts personnel to those using the stenograph machine) would unnecessarily create a bottleneck in a particular technology; that would not augur well for the trial court nor for the appellate process.

In a sense then, this petitioner suggests this court be more concerned with the standards for work product than for qualifications for the person recording the verbatim proceedings and typing the transcript.

IV. A Bit of Philosophy: One Top-Grade Staff Person for Each Trial Judge

This petitioner does not seek to prevent a trial judge (of district or county court) from relying upon a court reporter with stenograph machine proficiency as his top staff person. In fact, petitioner supports that right of the trial judge to have such a top-grade staff person. That should be the judge's choice.

Likewise however, this petitioner supports the notion that every trial judge is entitled to one such top-grade staff person without stenograph machine skills. Like high level management personnel in the business world, a trial judge should have one such ~~a~~ competent staff person. This may be even more important at the county court trial level than at the district court trial level since that court probably entails more administration and administrative detail.

A handwritten signature in cursive script, appearing to read "Russell Olson". The signature is written in dark ink and is centered on the page.