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## CIVIL PRACTICE Civil Practice Act: Disallow Waiver of Disqualification of Court Reporter for Interest; Disallow Continuing Contracts for Court Reporting Services

Leonard Hope

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## CIVIL PRACTICE

### *Civil Practice Act: Disallow Waiver of Disqualification of Court Reporter for Interest; Disallow Continuing Contracts for Court Reporting Services*

CODE SECTIONS: O.C.G.A. §§ 9-11-28, 15-14-33, -36 (amended),  
-37 (new)  
BILL NUMBER: HB 1321  
ACT NUMBER: 1124  
SUMMARY: The Act prohibits the waiver of disqualification of financially interested court reporters and requires disclosure by the reporter of the financial arrangement between the reporter and the party paying for the reporting services. The Act prohibits continuing contracts for court reporting services. The Act also provides penalties for violations of the Act.  
EFFECTIVE DATE: July 1, 1994

#### *History*

Prior to the passage of HB 1321, many large litigation support firms were contracting on a long-term basis with a large number of Georgia court reporters.<sup>1</sup> Enough contracts were made that the large litigation support firms were effectively monopolizing the reporting market.<sup>2</sup> This resulted in increased costs of reporting services and the elimination of many small, independent reporting services and contractors.<sup>3</sup> Additionally, the litigation support firms were transferring the depositions into computer databases and selling the information to outsiders.<sup>4</sup> Therefore, because control of the work product, traditionally left to the reporter, was transferred to a third-party, there was the possibility the integrity of the work product would be compromised prior to use in court.<sup>5</sup> In order to protect the integrity of the reporter's

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1. Telephone Interview with Rep. Tom Cauthorn, House District No. 35 (Apr. 7, 1994) [hereinafter Cauthorn Interview]; Telephone Interview with Rep. John Hammond, House District No. 32 (Apr. 4, 1994) [hereinafter Hammond Interview]. Rep. Hammond and Rep. Cauthorn co-sponsored HB 1321. Representatives Barnes, Groover, and Thomas also co-sponsored the bill. HB 1321, as introduced, 1994 Ga. Gen. Assem.

2. Cauthorn Interview, *supra* note 1; Hammond Interview, *supra* note 1.

3. Cauthorn Interview, *supra* note 1.

4. *Id.*

5. *Id.*; Hammond Interview, *supra* note 1.

work product and to protect the local reporting industry from the effects of monopolization, HB 1321 was introduced.<sup>6</sup>

### *HB 1321*

#### *Waiver of Disqualification of Interested Court Reporters*

The Act amends the Civil Practice Act<sup>7</sup> by amending Code section 9-11-28(c).<sup>8</sup> Prior to the passage of the Act, a reporter who was financially interested in an action was disqualified from taking depositions in the action, unless the disqualification was waived in writing by all parties.<sup>9</sup> HB 1321 prohibits the waiver of disqualification of financially interested court reporters.<sup>10</sup> To ensure compliance, HB 1321 provides two types of penalties.<sup>11</sup> First, HB 1321 adds subsection (a)(11) to Code section 15-14-33, which provides that depositions taken by a financially interested reporter may result in discipline or revocation of the reporter's license.<sup>12</sup> Second, HB 1321 adds paragraph (3) to Code section 15-14-36, which makes reporting by a financially interested reporter a misdemeanor.<sup>13</sup> Each day of the offense is a separate misdemeanor.<sup>14</sup>

#### *Arrangement Disclosure Requirement*

HB 1321 amends Code section 9-11-28 by adding subsection (d).<sup>15</sup> This subsection requires that the "complete arrangement, financial or otherwise, made between the reporter or any person or entity making arrangements for the reporter's services and the attorney or other party making such arrangements with the reporter, person, or entity" be disclosed upon the record by the court reporter.<sup>16</sup> This subsection was added to ensure compliance with amended Code section 9-11-28(c), which addresses financially interested court reporters, and new Code section 15-14-37(a), which prohibits continuing contracts for court

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6. Cauthorn Interview, *supra* note 1; Hammond Interview, *supra* note 1; Telephone Interview with Rep. Roy Barnes, House District No. 33 (Apr. 4, 1994) [hereinafter Barnes Interview]. Rep. Barnes indicated the purpose of HB 1321 was also to ensure all court reporters were disinterested and their work product was both accurate and fair. *Id.*

7. O.C.G.A. §§ 9-11-1 to -132 (1993 & Supp. 1994).

8. *Id.* § 9-11-28(c) (Supp. 1994).

9. *Id.* § 9-11-28(c) (1993), amended by *id.* § 9-11-28(c) (Supp. 1994).

10. *Id.* § 9-11-28(c) (Supp. 1994).

11. Hammond Interview, *supra* note 1.

12. O.C.G.A. § 15-14-33(a)(11) (1994).

13. *Id.* § 15-14-36 (1994).

14. *Id.*

15. *Id.* § 9-11-28(d) (Supp. 1994).

16. *Id.*

reporting.<sup>17</sup> In an additional effort to ensure the financial arrangement is disclosed on the record, HB 1321 provides two penalties for failure to disclose.<sup>18</sup> First, the Act creates Code section 15-14-33(a)(11), which permits discipline or revocation of a reporting license in the event the arrangement is not disclosed upon the record.<sup>19</sup> Second, it adds paragraph (3) to Code section 15-14-36, which makes the failure to disclose the arrangement upon the record a misdemeanor.<sup>20</sup> Each day of the offense is a separate misdemeanor.<sup>21</sup>

### *Prohibiting Continuing Court Reporting Contracts*

HB 1321 adds new Code section 15-14-37 which relates to continuing contracts for court reporting services.<sup>22</sup> Code section 15-14-37(a) prohibits “[c]ontracts . . . for court reporting services not related to a particular case or reporting incident.”<sup>23</sup> Originally, the bill prohibited “[c]ontracts . . . having a fixed period of time, minimum or otherwise.”<sup>24</sup> However, this provision was amended in the House of Representatives to make the bill stronger and more clear, and to prohibit a relationship between a reporter and an attorney which did not relate to a particular piece of litigation.<sup>25</sup> Additionally, to ensure attorneys could consistently use the same reporting firm, but only upon a case-by-case basis, the Senate Judiciary Committee amended HB 1321 to provide explicitly that “[a]ttorneys shall not be prohibited from negotiating or bidding reasonable fees for services on a case-by-case basis.”<sup>26</sup>

To ensure compliance, HB 1321 added Code sections 15-14-33(a)(12) and -37(b).<sup>27</sup> Under Code section 15-14-37(b), the reporter must inquire about the “nature of the contract for his or her services.”<sup>28</sup> Additionally, Code section 15-14-33(a)(12) allows discipline or revocation of the reporting license for failure to make the inquiry concerning the nature of the contract.<sup>29</sup>

17. Hammond Interview, *supra* note 1; see O.C.G.A. § 9-11-28(c) (Supp. 1994); O.C.G.A. § 15-14-37(a) (1994).

18. Hammond Interview, *supra* note 1.

19. O.C.G.A. § 15-14-33(a)(11) (1994).

20. *Id.* § 15-14-36(3) (1994).

21. *Id.*

22. *Id.* § 15-14-37 (1994).

23. *Id.* § 15-14-37(a) (1994).

24. HB 1321, as introduced, 1994 Ga. Gen. Assem.

25. Cauthorn Interview, *supra* note 1; see HB 1321 (HCA), 1994 Ga. Gen. Assem.

26. HB 1321 (SCA), 1994 Ga. Gen. Assem.; Hammond Interview, *supra* note 1; Cauthorn Interview, *supra* note 1.

27. Hammond Interview, *supra* note 1; see O.C.G.A. §§ 15-14-33(a)(12), -37(b) (1994).

28. O.C.G.A. § 15-14-37(b) (1994).

29. *Id.* § 15-14-33(a)(12) (1994).

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HB 1321 also adds subsection (c) of Code section 15-14-37, which excludes the “courts, agencies, or instrumentalities of the United States or the State of Georgia” from the prohibition against continuing contracts for court reporting services and the duty of inquiry.<sup>30</sup>

*Leonard Hope*

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30. *Id.* § 15-14-37(c) (1994).