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April 19, 2017

To: Court Reporters Certification Advisory Board (“Advisory Board”)
From: Craig Enoch
Re: Proposed language for amendment to Rule 17 of the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms (“one-third rule”)

As the Advisory Board is aware, I represent the Texas Deposition Reporters Association (“TEXDRA”), which is an association of Certified Shorthand Reporters and Court Reporting Firms (“CSRs and CRFs”). On May 10, 2016, following the Advisory Board’s April 1, 2016 meeting, I wrote a letter to the Judicial Branch Certification Commission (“JBCC”) urging adoption of the following as a substitute for the current one-third rule:

A Certified Shorthand Reporter or Court Reporting Firm may not charge more for a copy of a transcript than is charged for the original transcript, exempting charges for real-time services, expedited delivery, rough drafts, and other ancillary services that may apply to a copy but not to the original transcript.

I urge the Advisory Board to recommend the adoption of this proposed language.

As I also mentioned in my letter, at the April 1, 2016 Advisory Board meeting, several concerns were discussed, including competing concerns (1) that the one-third rule sets an arbitrary cap on charges by Texas freelance CSRs and CRFs in an otherwise competitive national market and (2) that some consumers, because of their strength in the market, may attempt to pressure CSRs and CRFs to transfer the costs of depositions from the party contracting for reporting services to third parties through high copy rates. I continue to believe that TEXDRA’s proposed language ensures a proper balance by encouraging the contracting parties to negotiate for a reasonable rate for the originals and by then limiting the amount a CSR or CRF can charge for copies to no more than the amount the reporter charges for originals. TEXDRA’s proposed amendment to the rule will prevent any “backroom deals” that could negatively affect the impartiality of Texas freelance CSRs and CRFs.

Further, the Code of Professional Conduct establishes the *ethical* rules governing the profession of court reporting. TEXDRA’s proposed amendment is a more appropriate ethical rule than one that dictates a numeric cap on the amount freelance CSRs and CRFs may charge. An ethical rule seeking to ensure that freelance CSRs and CRFs do not engage in abusive fee-

setting should embody a reasonableness standard rather than establish anti-competitive fee caps. TEXDRA's proposed amendment embodies this sort of reasonableness standard: it ensures freelance CSRs and CRFs do not charge more for copies than originals, while allowing the free market to regulate the amount freelance CSRs and CRFs charge for originals and copies. In short, TEXDRA's proposed amendment encourages the competitive market to regulate the amounts charged while preventing the abuses the one-third rule was originally adopted to counter.

Thank you for your consideration. Please do not hesitate to contact me should you have any questions or would like additional explanation.

Respectfully,

/s/ Craig T. Enoch

Craig T. Enoch

cc: Bill Aleshire
Judicial Branch Certification Commission