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* EXCERPT *
Audio Transcription
Court Reporters Certification Advisory Board
Meeting, April 1, 2016
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Advisory Board Participants:

- Judge William C. Sowder, Chair
- Deborah Hamon, CSR
- Janice Eidd-Meadows
- Robin Cooksey, CSR
- Kim Tindall, CSR, RPR
- Whitney Lehmborg Riley, CSR

Also Present:

- Jeff Rinard, Certification Division Director
- Michele Henricks, Compliance Manager
- Scott Gibson, Esq., JBCC General Counsel
- Lesley Ondrechen, Licensing Manager
- Tyees Holcombe, Judicial Regulatory Assistant

1 (Recess.)

2 JUDGE SOWDER: All right. I'm going to
3 call the meeting to order again. Thank y'all for your
4 promptness and patience.

5 Tyees, would you call the roll again and
6 make sure we still have a quorum and who's present?

7 MS. HOLCOMBE: Yes. Yes, sir.

8 Judge William Sowder?

9 JUDGE SOWDER: Here.

10 MS. HOLCOMBE: Molly Pela?

11 (No response.)

12 MS. HOLCOMBE: Deborah Hamon?

13 MS. HAMON: Here.

14 MS. HOLCOMBE: Janice Eidd-Meadows?

15 MS. EIDD-MEADOWS: Here.

16 MS. HOLCOMBE: Robin Cooksey?

17 MS. COOKSEY: Here.

18 MS. HOLCOMBE: Kim Tindall?

19 MS. TINDALL: Here.

20 MS. HOLCOMBE: Wendy Lynn Romberger?

21 Sorry. Whitney Lehmborg Riley?

22 MS. RILEY: I'm here. Here.

23 MS. HOLCOMBE: My stomach is growling,
24 I'm sorry. It's all about food.

25 And, Judge, you have a quorum.

1 JUDGE SOWDER: Okay. Thank you very
2 much. So, if I've checked off the boxes, everybody that
3 was appointed to this advisory committee is here but
4 Molly. Is that correct?

5 MS. HOLCOMBE: Yes, sir.

6 JUDGE SOWDER: Okay. I've tried to kind
7 of get my mind straight on what we needed to do here. I
8 want to emphasize, first of all, that what we do and why
9 we're called "Advisory" is just that, advisory. I hope
10 it carries some weight; otherwise, we wouldn't have a
11 function.

12 At the same time, there's going to be two
13 more levels of scrutiny, questions, opportunities to be
14 heard, on top of us. We're kind of down in the weeds,
15 and we've got people that are in the business and that's
16 the way it is.

17 So the subcommittee, through the staff,
18 has said, listen, we're putting this whole package and
19 rewriting this code of conduct for court reporters, and
20 we're down to this one rule and a couple of others
21 that -- you know, that we need to bring the whole
22 package back to vote on and then send up. And the
23 practical part is that we don't know exactly what to do
24 on this rule of one-third, and it doesn't do us any good
25 to put that in there if we're going to bring it to the

1 Big Board and everything else is good but that's going
2 to cause us to reject the package, so let's go ahead and
3 get that issue decided.

4 So I am going to call for a vote as to
5 whether we should advise the subcommittee to leave that
6 out or to -- leave the one-third rule out, keep it --
7 and I'm thinking that everybody is on the same page, and
8 I may be wrong, that if we eliminate -- if the vote is
9 to recommend that we eliminate it, that there still be
10 some kind of language that 46 or 47 other states may or
11 may not have that talk about, you know, a reasonable fee
12 and maybe some criteria. I don't know if we want to get
13 into details.

14 But they need to know, before they bring
15 it to the Big Board, about this specific issue, because
16 there is a big difference of opinion on it. So, as a
17 practical matter, they don't want us to get it, have to
18 send it back, redo it, and then bring it again. We need
19 to get this done. We're under a duty to rewrite this
20 ethical conduct, so this is a big step in it and this is
21 going to save us some time.

22 So, along that thinking, I'm going to go
23 ahead and, unless somebody has some big objections, to
24 ask the board members to tell me, and -- on the record,
25 first of all, tell me your name, and I think in full

1 disclosure that is one way to get around the fact that,
2 you know, we have people on the board that are members
3 of both the organizations. We have one member who is an
4 officer. That needs to be disclosed, what your position
5 is, whether you're a freelancer or whatever, because --
6 that needs to be disclosed because it's just the right
7 thing to do.

8 So do not start with me. I'm going to
9 have Tyees call the roll again, and if you'll say, in
10 your own words, I'm in favor of keeping the one-third
11 rule, or I want to get rid of it with some type of
12 reasonableness statute -- or reasonableness language,
13 then I'm for that.

14 And I think it's pretty clear that those
15 are our two choices: Either keep it like it is, or put
16 some kind of deal in there about reasonableness -- and
17 maybe not just -- you know, I haven't thought about
18 this, but there's no governing the charge of the
19 original. Maybe we need to put in a sentence in the
20 ethical conduct that an original and a copy shall be
21 based on reasonableness and these criteria, something
22 like that.

23 But we've got to get past this one-third
24 rule. It's either -- you're either for it or you're
25 against it. And if we recommend to -- the subcommittee

1 puts what we vote on back in it and we vote on the big
2 package -- I mean, we could even reconsider at that
3 time, but we need to get moving on it.

4 So I know a lot of people can come talk
5 some more about the issues. I think, as a board, we
6 know what the issues are on one side; we know what they
7 are on the other side. And let's -- let's remember,
8 guys, that we're a group, and we do have some hard
9 decisions to make. This is the way the process works,
10 in opportunities for people to be heard, and then people
11 who are appointed to make decisions make decisions and
12 you move on. And I don't want to make any enemies here.
13 We're all trying to do the best. We all, you know, have
14 a job to do, and we all have our background experiences
15 and stuff.

16 But given the fact that the Advisory
17 Board is made up of five out of seven with court
18 reporters on it, given the fact that it is a
19 recommendation, and -- given those two things, I don't
20 see any reason why anybody on the board being a member
21 or even an officer of one of these two organizations
22 should -- should be excluded. If somebody feels like
23 they need to be excluded, they can do that on their own.

24 As the chair, I'm not asking anybody to
25 exclude themselves because of the reasons I've just

1 stated. We are who we are. We're made up of people in
2 the trenches, and it is advisory. And as you lessen the
3 standard as to exactly what we were doing and if we had
4 the final say, that dynamic or that measuring guide may
5 go up if we had the final decision. But we're in an
6 advisory position, an important advisory position, but
7 nonetheless we're not the final decision-makers.

8 So I feel like everybody on the board,
9 even if they are members of either or even an officer of
10 the committee, should be able to state their opinion and
11 vote whether we ought to get rid of it or not. But for
12 purposes of appearances and people looking at our
13 recommendation, I think everybody should state whether
14 they're a member of either one of these organizations,
15 or both, and whether they're a freelance reporter, a
16 firm owner, both, or an appointed or an official. Okay?
17 Does everybody agree with that? Let's just get down
18 to -- get down to it.

19 So, Tyees, if you'll call the roll and
20 start with Debbie, and we'll go from there. So just
21 tell us whether you're in favor or against it so we can
22 give the subcommittee -- and you may be talking to
23 yourself, but within y'all, y'all will be guidance for
24 the Big Board, and that's what we're doing.

25 So go ahead and call the roll.

1 MS. HOLCOMBE: Deborah Hamon?

2 MS. HAMON: This is Deborah Hamon. I am
3 an official court reporter. I am not a member of
4 TEXDRA. I am a member of the Texas Court Reporters
5 Association, although I've never been an officer. I am
6 for keeping the one-third that has been in statute for
7 decades, and I think that we should leave well enough
8 alone.

9 JUDGE SOWDER: Okay.

10 MS. HOLCOMBE: Janice Eidd-Meadows?

11 MS. EIDD-MEADOWS: Hi. This is Janice.
12 I am on the freelance side. I am no longer a practicing
13 freelance reporter. I'm a regional director over
14 operations for a large freelance firm in Texas. I am a
15 member of TCRA --

16 (Background noise.)

17 MS. EIDD-MEADOWS: Sorry, guys, I'm on a
18 shuttle getting to the airport.

19 JUDGE SOWDER: Okay.

20 MS. EIDD-MEADOWS: I'm flying out of
21 town.

22 So I am a member of TCRA. I am not a
23 member of TEXDRA. I have served officer positions in
24 the past with TCRA, but I do not at the present time and
25 not since I was brought on the JBCC board. I vote to do

1 away with the one-third rule.

2 (Background noise.)

3 MS. EIDD-MEADOWS: I vote to do away with
4 the one-third rule. I think that, through
5 documentation, it shows that Texas freelancers -- our
6 costs are way below other states'.

7 I know it's a real problem in our
8 industry when we do networking out-of-state, and our
9 firm does networking out-of-state every single day.
10 Many times it is Texas cases that we are doing
11 depositions in in another state, so it is a problem.
12 And I feel like that the market will dictate our
13 pricing. We've -- our original pricing hasn't risen
14 maybe 30 cents in 15, 20 years, so I don't foresee that
15 reputable court reporting firms are going to, you know,
16 skyrocket copies.

17 JUDGE SOWDER: Okay. Thank you.

18 MS. EIDD-MEADOWS: That's my position.

19 JUDGE SOWDER: All right.

20 MS. HOLCOMBE: Robin Cooksey?

21 MS. COOKSEY: My name is Robin Cooksey.
22 I'm an official court reporter. I'm a member of the
23 Texas Court Reporters Association, and I have been a
24 past officer of that association.

25 I vote against the removal of the

1 one-third rule. I think ultimately, as was previously
2 mentioned today, it will dramatically and negatively
3 impact not only our profession as a whole but I think
4 also that the litigants will be the ones in the end
5 who -- who suffer from this change.

6 JUDGE SOWDER: Thank you.

7 MS. HOLCOMBE: Kim Tindall?

8 MS. TINDALL: Hi. I'm Kim Tindall. I'm
9 a freelance reporter. I'm a firm owner. I'm a member
10 of TCRA and have been on many committees throughout the
11 years with them, and I am secretary/treasurer of TEXDRA.

12 And I vote to either do away with the
13 one-third rule or amend it, adding some type of
14 reasonable -- reasonableness language, perhaps some
15 language that says the copy can't be more than the
16 original, something like that. But, yes, I vote to
17 amend or do away with it.

18 JUDGE SOWDER: Okay. All right.

19 MS. HOLCOMBE: Whitney Lehmborg Riley?

20 MS. RILEY: I am neither an official nor
21 a freelance reporter at this time. I was a freelance
22 reporter until about 1998, and then I began to
23 transition and now I provide CART services and broadcast
24 captioning. I'm a member of TCRA, and I am a committee
25 chair for the CART and captioning -- actually, I'm no

1 longer the committee chair, but I am on the committee;
2 and I am not a member of TEXDRA.

3 I really didn't know that we were going
4 to get to this point today, and I feel like my reaction
5 is that I think we should amend the one-third rule with
6 some language, and that language, since we haven't
7 discussed it yet, I don't know that I would -- whether I
8 would be in favor of the new language or not. So that's
9 my position at this moment, that I would vote to amend
10 it with some language, based on what that language is.

11 JUDGE SOWDER: Okay. Well, realize,
12 again, this is going to come right back to us, but they
13 needed to get this part out of the way. They may bring
14 something, depending on what the vote is, alternatives
15 or whatever, but this first issue --

16 MS. RILEY: Sure.

17 JUDGE SOWDER: -- about whether to amend
18 or get rid of it has got to be decided and they'll go
19 from there.

20 So, am I next?

21 MS. HOLCOMBE: Yes, sir.

22 JUDGE SOWDER: Okay. All right. William
23 C. Sowder, District Judge in the 99th District Court of
24 Lubbock County, Texas, civil and juvenile and family
25 court, and I'm not a member of either one of the court

1 reporting associations.

2 I'll disclose that my court reporter
3 actually is an official, she owns a firm, and she's a
4 freelancer, and I've never asked her about any of this
5 stuff. I just want my court stuff done and she does it;
6 and if the other stuff doesn't interfere, I don't really
7 have much to do with that. As long as my court work is
8 done -- and we're very busy, and she takes care of it --
9 I don't concern myself with her other activities.

10 So I'm in favor of eliminating the
11 one-third rule. It's a tough question, but I think,
12 based on -- the lawyers in the room will appreciate --
13 the totality of the circumstances and the probative and
14 prejudicial value of it, but especially with 46 other
15 states relying on the good-faith efforts without being
16 told what they can charge, that they seemingly are able
17 to operate without this one-third rule. And I'm like
18 Mr. Gibson; I don't know that there's a big, compelling
19 State interest in what freelancers and court reporting
20 firms do out in the open market. And if it doesn't
21 work, then I'm sure that there will be some changes.

22 But -- so, with that, I think, Jeff, I
23 think you can go back with your subcommittee and say
24 here's how the Big Board feels, realizing that when you
25 bring it back, Molly may or may not be here, and that

1 might produce a different vote.

2 This is a -- this vote was for a
3 recommendation to let these folks get on down the road
4 with amending this ethical conduct manual that we're
5 charged with by the Supreme Court through JBCC. So
6 we're just a step further down that, knowing now that we
7 have official guidance to you guys as to how this board
8 felt on Rule 17, or whatever it's going to be or not be.
9 Is that what you were looking for?

10 MR. RINARD: It is.

11 JUDGE SOWDER: Okay. Even though we're
12 kind of talking to ourselves?

13 MR. RINARD: Do we need to make an
14 official recommendation?

15 MS. HENRICKS: A motion?

16 MR. GIBSON: I suppose it would be
17 clearer if you had a motion, but I think we've kind of
18 gotten a sense -- I'm counting it up. I see one, two --

19 JUDGE SOWDER: 4-2?

20 MS. HOLCOMBE: It's 4-2.

21 MR. GIBSON: It's 4 to 2 in favor of
22 doing -- doing something different than the one-third
23 rule.

24 JUDGE SOWDER: Yeah. I think I'm not
25 going to call for a motion and a second.

1 MR. RINARD: Okay.

2 JUDGE SOWDER: I think in the -- because
3 it's guidance that I think fulfills the purpose of why
4 you brought this to the table.

5 MR. RINARD: Okay.

6 JUDGE SOWDER: And everybody in this room
7 understands that it's going to be brought back and we're
8 going to vote on it as a whole. Some people may sleep
9 and learn something differently and vote differently.
10 But until we did this, y'all couldn't get it back to us
11 to face us with that situation.

12 So this is long from over, but this is a
13 big start on it. So you guys proceed with this guidance
14 and bring us back a full deal, and I don't know about
15 the other two sections. Are y'all close to filling
16 those or --

17 MR. RINARD: I think we can do all those.

18 JUDGE SOWDER: Okay. If you can do all
19 those, and do you think y'all will have the rough draft,
20 for lack of a better term, at our next meeting, given
21 this guidance that we've given you?

22 MR. GIBSON: I think so.

23 MR. RINARD: We will. We have a code of
24 conduct meeting, I think, coming up.

25 MS. HENRICKS: April 8th, we have an

1 invitation out. We wanted to see what the result of
2 this meeting was to confirm it and --

3 MR. RINARD: And we do have -- go ahead,
4 sorry.

5 MS. HENRICKS: And also get all of our
6 committee members to report back with on whether we have
7 a quorum or not.

8 MR. RINARD: And we do have a Commission
9 meeting on May 6th, so I doubt it's going to -- it's not
10 going to be back to this Advisory Board before then.

11 JUDGE SOWDER: Okay. Well, let's --
12 we'll schedule another one in about, what, three months?
13 But if we can get together earlier than that, if they
14 have that together, let's get together earlier. Let's
15 push this down the road so we can figure out where we're
16 going.

17 MR. RINARD: Yes, Judge, we'll do that.

18 MS. HENRICKS: And, Judge, maybe shoot
19 for August 5th to have it before the JBCC?

20 JUDGE SOWDER: Right. So we would look
21 at it before August 5th.

22 MS. HENRICKS: Right.

23 JUDGE SOWDER: That's their next meeting
24 other than this --

25 MS. HENRICKS: Other than the May 6th.

1 JUDGE SOWDER: -- the May 6th?

2 MS. HENRICKS: Yeah.

3 JUDGE SOWDER: So let's shoot to have it
4 in the JBCC hands with our recommendation for August
5 the 5th? Is that correct?

6 MS. HENRICKS: Yes, Your Honor.

7 JUDGE SOWDER: All right. That will be a
8 good timeline for us to work on.

9 MR. GIBSON: Okay. Yes, Judge.

10 JUDGE SOWDER: All right. That takes
11 care of future meetings. Do we want to set a date for a
12 future meeting and then move it up if that's what needs
13 to be done, or as long as we have one before August
14 the 5th --

15 MS. HENRICKS: If we may, Judge, look at
16 our calendars.

17 JUDGE SOWDER: Okay.

18 MS. HENRICKS: And then we'll send an
19 invitation out to the members.

20 JUDGE SOWDER: Okay. All right.

21 (End of excerpt.)

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