

My name is David Ross. I was a certified shorthand reporter for 40 years and owned and operated a freelance service for 34 of those years. I would like to speak to my experience with the one-third rule and the difficulties that we confronted as a result.

When the one-third rule was promulgated, deposition copy rates for our firm marginally exceeded the mandate. To come into compliance without a loss of revenue, we were left with no option but to increase the charges to our clients for the original transcript.

Going forward, any time our operating expenses dictated that we increase our rates, we were unable to spread those increases evenly to all parties. **The one-third rule required that we place at least two thirds of the burden on the original transcript.**

This situation gave me considerable pause, as it probably did most firm owners when considering a rate increase, as it placed a disproportionate share of our operating expenses directly on the person or entity paying for the original transcript while holding copies of the transcript artificially low.

Low income litigants are disproportionately impacted in the prosecution of their cases. **The existence of this rule makes it impossible for reporters to assist in the reduction of litigation expenses to the indigent without impacting the charges to all parties in the case.**

Networking is an important and necessary aspect of freelance reporting if a reporting service is to properly service their clients. The one-third rule has had the impact of placing Texas reporters at a disadvantage when networking with reporting services from other states.

During my time in business, we were frequently contacted by our clients with requests that we procure court reporters in other states for depositions in Texas cases. **In such cases, the out-of-state reporting service reports the deposition, produces a transcript and forwards the transcript and their invoice to us, along with all copies. Copy charges from our out-of-state associates habitually exceeded the limits of the Texas one-third rule. Consequently, we were forced to realign the invoices, shifting much of the cost to the original transcript -- costs that the taking attorney would not have incurred but for the one-third rule.**

An argument frequently set forth by the proponents of the one third rule is that official reporters are constrained by statute to the same one-third rule, and that it is, therefore, reasonable that freelance reporters should abide by the same restrictions. That is a fallacious argument. **While both freelance and official reporters practice the same profession in name, our professional worlds have virtually no similarities.** Official reporters receive salaries, retirement and medical benefits in

addition to their transcript fees. Freelance reporters receive no employment benefits. **The sole compensation to the freelance reporter is the percentage received from original transcripts and the sale of transcript copies.**

The official court reporter's customer is captive. The freelance reporter's customer is free to select from hundreds of available court reporting services. There simply is no equivalency between the freelance reporter and the official reporter. **Frankly, official reporters simply have no valid standing in this matter, as this rule does not impact them.**

Freelance reporters must be allowed to compete in the open market without undue burdens, and deposition costs should be allowed to find their natural level through the marketplace, rather than the artificial levels currently resulting from the one-third rule.

Regardless of how well intentioned this rule was, history has demonstrated to those of us in the freelance community that it was ill conceived. The one-third rule has caused significant difficulties for the freelance community, much of which cannot be quantified.

If preventing cost shifting is the goal, as the supporters of this rule claim, then it is already adequately addressed within the Code of Professional Conduct Rule with what I will call the fairness rule, which requires equal treatment to all parties.

TCRA cites as a justification for their opposition to the proposed amendment that approximately 34 percent of their membership supported the amendment while 66 percent opposed the amendment. TCRA has provided no breakdown with regard to what percentage of those participating in their survey are freelance reporters and how they voted and what percentage are official reporters and how they voted. So we do not know how many of its freelance membership support, nor how many oppose, the amendment. However, the 34 percent of TCRA members supporting the amendment is roughly

equal to the percentage of freelance reporters within that organization.

Texas is approaching a critical shortage of court reporters. From 2006 until the end of 2015, Texas experienced a 21 percent decline in certified court reporters -- and it continues. The primary reason for this decline is that Texas cannot compete. We cannot attract qualified reporters to the State, and the schools are experiencing a precipitous decline in enrollment. There simply is not enough financial incentive for out-of-state reporters to relocate to Texas or for newly graduated high school students to enroll in a program that less than 10 percent are capable of completing, and then upon graduation, subject themselves to the significant financial investment the profession requires just to earn an income of less than \$60,000 per year with absolutely no benefits.

The amendment of the one-third rule will not solve Texas's problem, however, it is one step in the right direction.

I am no longer in the court reporting business and will not be personally impacted by any decision of this board. For my friends and colleagues remaining in the freelance community, it is my hope that this Board will recommend the amendment of the one-third rule, or its removal from The Code of Professional Conduct so that the freelance community may conduct their business without unreasonable and artificial constraints.