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October 22, 2018

Via U.S. Mail

Honorable Nathan Hecht
Chief Justice
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Dear Chief Justice Hecht and Justices of the Supreme Court of Texas:

I write on behalf of the Texas Deposition Reporters Association (“TEXDRA”), an association of freelance certified shorthand reporters and court reporting firms.¹ A concern that has become a priority for TEXDRA is the developing critical shortage of court reporters to serve the needs of Texans by accurately recording the spoken word for investigations and litigation. Other than in the judicial setting, court reporters are also needed for captioning, conferences, and board of director meetings. CART (Communications Access Real Time) is utilized at the elementary, middle, high school, and university levels for the hard of hearing students, as well as at conferences, meetings, and in the courtroom. Court reporters are also used in arbitrations, EEOC hearings, Department of Workers’ Compensation hearings, and in many other settings. On TEXDRA’s behalf, I have been asked to offer their explanations for why this Court should be concerned and to offer suggestions for ameliorating the problem, which include amending certain Court Reporter Certification Rules (Judicial Branch Certification Commission (JBCC) Rules) and Texas Rules of Civil Procedure.

The Shortage of Reporters in Texas

The public policy of Texas is to protect the integrity of recorded testimony, and that policy is best served by a regulated profession—certified court reporters. Citizens are generally free to use whatever recording device they wish to use, but use of an independent reporter professional who can stenographically or orally record the words said and stop a deposition or other matter to clarify what had been said serves that purpose well.

More and more, court reporters in metropolitan areas of the state are receiving complaints about depositions being canceled or less preferred substitute arrangements being accepted

¹ Many TEXDRA members are also members of the Texas Court Reporters Association (“TCRA”), which is a separate organization of court reporters. Unlike TCRA, TEXDRA focuses especially on the concerns of freelance court reporters, captioners, and CART providers.

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because there is no certified court reporter available, yet applications for enrollment in court reporter schools are down and graduation rates have significantly dropped. I have attached for your perusal some news articles highlighting our current shortage and the difficulties imposed on our justice system and the other areas mentioned above. *See* Appendix A.²

TEXDRA has reached out to the JBCC regarding this problem. The JBCC's director, Jeff Rinard, is aware of the court reporter shortage and is sympathetic to the need to encourage an increase in the number of certified reporters; however, existing regulatory and court procedural rules create impediments to entry into the market of new certified court reporters.

Amendments to JBCC Rules Governing the Certification of Reporters

As this Court is aware, the JBCC is charged with the day-to-day regulation of court reporting in Texas. *See* TEX. GOV'T CODE § 152.151. Subject to the Court's oversight, the JBCC evaluates and recommends qualifications for reporter certification, registration, and licensing. *Id.* §152.151(a)(5). Additionally, the Court has charged the JBCC with determining whether to allow reciprocity for a reporter from another state. In turn, the JBCC relies on the Court Reporters Certification Advisory Board for advice and recommendations. Only this Court, though, has the power to adopt rules governing the reporting profession. *Id.* § 152.101.

TEXDRA has identified certain JBCC rules governing the certification of reporters that erect unnecessary obstacles to becoming a court reporter in Texas. TEXDRA asks this Court to study and consider amending the JBCC rules governing examination requirements and reciprocity for reporters from other states to ameliorate the reporter shortage.

A. Create provisional licensure program

The Court should consider authorizing provisional licenses, which would enable earlier entry into the reporter profession.

Numerous states, including New Mexico, Alabama, Michigan, Georgia, Iowa, and Kansas, provide for provisional, emergency, or temporary licensing programs. A provisional licensing program could work in Texas to effectively move prospective CSRs into the field and combat the current shortage.

TEXDRA is currently researching options for a provisional licensing program that includes mentoring and oversight for provisional licensees. Such a program will be beneficial to the State of Texas to help alleviate the current shortage. TEXDRA is willing to provide draft language for a provisional licensing program if it would be helpful.

² Appendix A contains news stories regarding the court reporter shortage. A video regarding the shortage is also available at https://www.easttexasmatters.com/news/court-reporter-shortage-in-texas_20180303004446/1004594971.

B. Eliminate duplicative “mock” examinations

One seeking certification as a court reporter is not permitted to apply for the certification examination without first demonstrating twice his or her proficiency under “mock” versions of Part A, and provide a certification that the student has passed these mock examinations in a statement of proficiency submitted to the JBCC. *See* JBCC Rule 6.2(f)(2). In short, the applicant must essentially pass Part A three times—two times in mock examinations and once in the actual examination.

The Court could eliminate the requirement that an applicant take two mock examinations, or at least limit this requirement to one mock examination, as part of the examination eligibility requirements.

C. Encourage licensure by endorsement/reciprocity

The JBCC “may waive any prerequisite to obtaining a certification, registration, or license for an applicant after reviewing the applicant’s credentials and determining that the applicant holds a certification, registration, or license issued by another jurisdiction that has certification, registration, or licensing requirements *substantially equivalent* to those of this State.” *Id.* 3.3(a) (emphasis added). Additionally, “[s]ubject to the approval of [this Court], the [JBCC] may make an agreement with another state to allow for certification, registration, or licensing by reciprocity.” *Id.* 3.3(b). Rule 3.3 tracks statutory language governing reporters from other states wishing to obtain licensure in Texas by endorsement or reciprocity. TEX. GOV’T CODE § 152.202. Yet, the phrase “substantial equivalency” is undefined.

As mentioned earlier, the JBCC relies on the advice and recommendation of the Court Reporters Certification Advisory Board, and the members of that board are in conflict about what the phrase “substantial equivalency” requires. Quite often reporters moving to Texas are denied licensure by endorsement for no other reason than the Advisory Board’s internal dispute about the meaning of substantial equivalency.

The Court should consider amending this rule to clarify “substantial equivalency.” For instance, a reporter who possesses a reporting license in good standing from another state that has certification requirements the JBCC has determined is similar to Texas, or a reporter who currently reports in a state that does not have a certification requirement but who holds the National Court Reporters Association (NCRA) certificate of Registered Professional Reporter (RPR), Registered Merit Reporter (RMR), or Registered Diplomat Reporter (RDR), could meet the substantially equivalent requirement as these certifications meet or exceed the current requirements for certification in Texas.

Additionally, the Court should encourage the JBCC to enter reciprocity agreements with other states. Even though the JBCC is expressly authorized by statute and rule to enter into reciprocity agreements, it has not done so.

Amendments to the Texas Rules of Civil Procedure to Address the Reporter Shortage

While the suggested amendments to JBCC rules should provide some relief from the reporter shortage in Texas, the Court should consider amendments to the Texas Rules of Civil Procedure. TEXDRA offers suggestions for amendments to those rules that could better attract and retain qualified reporting professionals, as well as encourage reporters wishing to relocate from other states to locate here.

A. Amend Texas Rule of Civil Procedure 203

To protect the integrity of the oral record, a necessary element is to avoid regulatory restrictions that undervalue the effort provided by certified reporters. Certified reporters dedicate their time, experience, and training, which should be appropriately compensated, and also assure retention and protection of the true record, which should be recognized. TEXDRA asks this Court to consider amending Texas Rule of Civil Procedure 203, which governs the signing, certification, and use of oral and written depositions. Specifically, Rule 203.3(c) provides:

The party receiving the original deposition transcript or nonstenographic recording must make it available upon reasonable request for inspection and copying by any other party. Any party or the witness is entitled to obtain a copy of the deposition transcript or nonstenographic recording from the deposition officer upon payment of a reasonable fee.

TEX. R. CIV. P. 203.3(c).

While this rule recognizes the right of the reporter to receive remuneration for producing the testimonial record, it undervalues the need for security of the captured testimony by requiring any purchaser of that transcript to distribute the transcript to any other party, who in turn has no obligation to protect the integrity of the captured word. Reporters are accountable for the integrity of the record, yet are uncompensated for and without authority to maintain the integrity of the testimonial record. This language has substantially impacted the financial attractiveness of freelance court reporting.

Since the inception of this rule, freelance reporters have been moving out of freelance reporting into other areas, such as CART and captioning. Fewer reporters are choosing to relocate to Texas because they believe they cannot attain a level of compensation commensurate with compensation levels available in other communities in the country based on a similar level of education, experience, and training. Impediments to market-setting rates for Texas freelance reporters should be removed.

TEXDRA understands that a primary responsibility of the Court is to assure litigants have access to a fair, impartial tribunal to resolve their disputes, and that the Court sees the cost of litigation as a major obstacle to access to justice. Yet whenever government partners with the private sector to meet the needs of the people, reality requires any regulation that attempts to

control costs be weighed against the need for enough freedom in the market that service providers are incentivized, rather than discouraged, to provide the service. The average freelance reporter in Texas spends at least three years in training and education. On graduation, before reporters report their first deposition or earn their first dollar, they must invest thousands of dollars in equipment. Annually a certified reporter must pay for operating expenses and continuing education. To stay in business, a freelance reporter must have the opportunity to earn a level of compensation that covers the operations and provides a reasonable standard of living.

Since Rule 203.3(c) was amended to require the custodial attorney to provide copies of the transcript to all parties, the freelance reporter has seen a significant reduction in his or her compensation—though responsibility to produce and assure the reliability of the transcript has remained the same. Because of this, the reporting profession simply cannot attract enough students or veteran reporters from other states to keep pace with the attrition. TEXDRA believes a modification of the rule will reverse this trend. Additionally, this Court should note that the Federal Rules of Civil Procedure and procedural rules in many other states do not require parties to provide copies of the deposition to other parties in a case. *See, e.g.*, FED. R. CIV. P. 30(f)(3) (“Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.”). Additionally, California Government Code, Section 69954 provides: “(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.”

Also, Texas Rule of Civil Procedure 203.3(a)(2), in requiring that the actual original hard-copy transcript must be provided to the witness or the attorney for the witness, sacrifices the integrity of the original and allows for destruction of the original during the copying process and the ability to make intended or unintended changes which, when eventually returned, the court reporter would not be aware of. Most of the time these original depositions are never returned to the court reporter at all.

TEXDRA’s proposed amendment to Rule 203 is attached as Appendix B.

B. Deposition Copies as Taxable Costs

In addition to amendments to Rule 203, an inclusion of deposition copies in the taxable cost of a litigant’s case would provide a fair opportunity to ameliorate concerns over the high cost of litigation. Texas Rule of Civil Procedure 167 (concerning offers of settlement and award of litigation costs) already considers deposition costs as litigation costs for purposes of that rule. TEX. R. CIV. P. 167.4(c)(2). Texas Rule of Civil Procedure 131, governing taxable costs, could similarly clarify that deposition costs are taxable costs. TEXDRA’s proposed amendment to Rule 131 is attached as Appendix C.

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I would be pleased to meet with members of the Court to discuss and assist in a solution, and, in any way possible, to facilitate the necessary changes to reverse the current trend.

Respectfully,

/s/Craig T. Enoch

Craig T. Enoch

cc: **Via Email**

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Staff Attorney to Chief Justice Hecht

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APPENDIX A

News

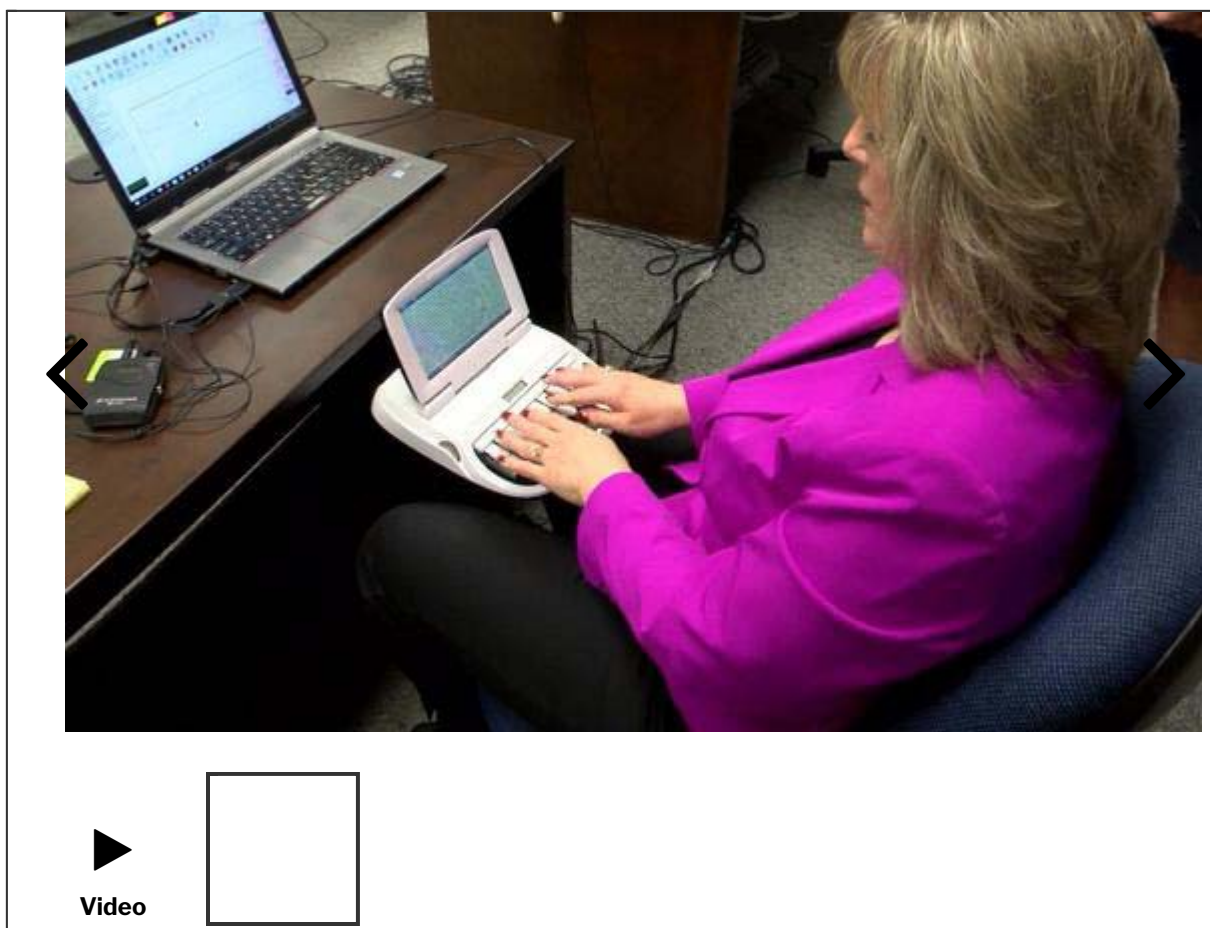
Texas court reporter shortage threatens to delay hearings

By:

Wes Rapaport (<https://www.kxan.com/meet-the-team/wes-rapaport/882319296>)

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Updated: Mar 02, 2018 06:00 AM CST



AUSTIN (KXAN) -- A shortage of court reporters in Texas could spell delays for the more than 3,300 judges and their courtrooms across the state.

Court reporters, or stenographers, are in short supply, according to the Texas Court Reporters Association ([TCRA](#)). The lack of qualified record-keepers is "very real." Depositions and hearings may have to be delayed or rescheduled.

"It delays the justice system when there are not court reporters available," freelance court reporter Lorrie Schnoor said. A 27-year veteran, she and her special steno keyboard have documented thousands of judicial proceedings. The keyboard uses a series of keystrokes to write word by word rather than a traditional keyboard's letter by letter process.

"It's really just listening to the words and then processing in our mind, and then writing it on the machine, and doing it in split seconds," she said with a smile. Schnoor joined the "family business," following her sister into court reporter school in Abilene after her dad served on a jury and told her about how it worked.

"I enjoy being part of the system," she said. "I know that's going to help them in their case by providing them a good accurate transcript."



Court Reporter Lorrie Schnoor uses her steno keyboard to capture a conversation in a hearing on March 1, 2018. (Nexstar Photo/Wes Rapaport)

Schnoor is now on the board of the TCRA, working closely with the Texas Office of Court Administration, the entity responsible for certifying stenographers. Administrative director David Slayton said the agency has seen a 20 percent decline in active licensed court reporters since 2005.

"We expect to see that trend continue or perhaps get even worse, and so the question becomes, what do we do? How do we back-fill those positions?" he questioned.

With the requirement of an official record made for all court proceedings, every judge needs a court reporter.

"If there's not a court reporter there, there's no way to take the record, then a court proceeding can't occur," Slayton added.

"Individuals who need justice, whether that's a criminal defendant sitting in jail, a victim who needs resolution, a protective order needs to be issued, a civil case where there's a no contract case," he continued. "No matter what it is, it becomes a real problem when there isn't someone there to take that record."

For TCRA board member Chavela Crain, who has been a stenographer for 32 years and now serves as an official court reporter in Travis County's 53rd Civil District Court, her job security comes with the assertion that there is no way to replace the "human element" in the room.

"We deal with dialects, accents, coughing, sneezing, sirens going by, somebody says they were offered 15,000 for something, and I can say 'Wait, was that 15,000 or 50,000?'" Crain explained. "On an audio (recording) you're not going to be able to tell that, and if somebody's not in the room there is nobody to clarify that."

Lawyers argue the value of an accurate record versus a shift into the digital age.

"You need to have a record that is truthful, that is correct, that is complete, and only court reporters can do that," attorney Patrick Reznik said. "Machines can't do that."

Reznik, who married a court reporter said having a real person in the room reassures him that the official record will be kept accurately, because some attorneys have trouble recalling exact statements they have made, and they will sometimes talk over each other.

State records show there are about 2,200 licensed stenographers in Texas. Crain worries that when she retires, there will not be anyone to take her place.

"So many people that have been doing it for many years like I have are going to be exiting the workforce about the same time, and we need people to fill our spots," she mentioned.

To access more information about court reporting in Texas, [click here](#).

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JOBS [#]

Need a job? Court reporters in demand in Bexar County

Enrollment at court reporter schools dwindling, experts say

By Paul Venema [<https://www.ksat.com/author/pvenema>] - Reporter

Posted: 4:32 PM, July 18, 2017

Updated: 4:32 PM, July 18, 2017

SAN ANTONIO - At a time when litigation is increasing, the number of professionals tasked with documenting court proceedings is shrinking, local members of the court reporter profession say.

"They projected about 5,500 job openings within the next five years, and we're already feeling that shortage," court reporter, Erminia Uviedo, said.

Uviedo said the shortage reflects a national trend.

Court reporters use stenography machines, which generate a written record of court proceedings, from testimony in high-profile cases to simple hearings.

"Without a record, we have nothing to establish what went on in that courtroom," District Judge Kevin O'Connell said. "It's actually as if it never happened at all."

The job is complex, but rewarding, veteran court reporter Tonya Thompson says.

Two years of training and a unique method of typing is required. Court reporters normally write 200-280 words per minute.

"You're literally learning a language with your hands. It's phonetic," Thompson said. "I can write a phrase with one stroke, like a chord on a piano."

Thompson said fears of voice-recognition technology replacing court reporters are unfounded.

"The English language is so complex, that it takes a human to be able to know whether it is affect or effect, for example," she said. "And we do that at the speed of sound."

Thompson said that the shortage could not come at a worse time.

"There's so much litigation, and there are so few bodies to handle that," Thompson said.

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Student Shortage

To combat the issue of student shortages and to respond to the increasing demand for reporters who are realtime trained, NCRA has taken a multifaceted hands-on approach to advancing education for court reporters. NCRA's efforts have led to a dramatic improvement, with student enrollment increasing almost 38 percent at NCRA-approved programs after an almost decade-long decline in enrollment.

Outreach efforts

In an effort to improve the quality of realtime reporter education programs, NCRA has:

- Visited 23 approved and non-approved programs;
- Assisted 38 reporter-training programs with earmarks to seek federal funding for next year's budget; and
- Offered schools direct assistance through NCRA's Education Initiative in the form of curriculum development, teacher / training workshops, and implementing standards.

In addition to offering schools direct assistance, pursuing passage of the Training for Realtime Writers Act has been a top priority. The legislation,

which was introduced to the Senate and passed by the Senate Commerce, Science, and Transportation Committee earlier this year, authorizes \$80 million in federal spending over four years. The bill (S. 268) has 27 co-sponsors and is expected to be approved by the full Senate shortly. A House version of the bill is pending.

If the act passes, the federal funding for realtime writer student training would benefit not only current students and programs looking to enhance their realtime training capacity, but also veteran reporters, as some schools are using funds for realtime retraining.

Enhancing reporter education

NCRA is also focusing its efforts on researching ways to enhance and strengthen the reporter education system and to strengthen schools. To accomplish this goal, the Reporter Education Commission was formed to capture all relevant information from both within and outside the profession.

National Court Reporters Association

Connect

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APPENDIX B

TEXDRA – Proposed Amendments to Texas Rule of Civil Procedure 203

203.1. Signature and Changes

(a) Review by Witness; Changes Deposition Transcript to be Provided to Witness. On request by the witness or a party before the deposition is completed, the witness must be allowed 30 days after being notified by the deposition officer that the transcript is available in which:

(1) to review a digital copy of the transcript; and

(2) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. ~~The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness.~~

(b) **Waiver of Right to Make Changes.** The witness must sign the statement described by Subdivision (a). If the witness does not sign a copy of the transcript within 30 days of the date the transcript was made available to the witness, the witness may be deemed to have waived the right to make changes. ~~**Changes by witness; signature.** The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer. If the witness does not return the transcript to the deposition officer within 20 days of the date the transcript was provided to the witness or the witness's attorney, the witness may be deemed to have waived the right to make the changes.~~

(c) The deposition officer must note in the certificate prescribed by Section 203.2 whether a review was requested and, if so, must attach any changes the witness makes during the 30-day period.

(d) ~~(e)~~ *Exceptions.* The requirements of presentation and signature under this subdivision do not apply:

- (1) if the witness and all parties waive the signature requirement;
- (2) to depositions on written questions; or
- (3) to nonstenographic recordings of oral depositions.

203.2. Certification

The deposition officer must file with the court, serve on all parties, and attach as part of the deposition transcript or nonstenographic recording of an oral deposition a certificate duly sworn by the officer stating:

(a) that the witness was duly sworn by the officer and that the transcript or nonstenographic recording of the oral deposition is a true record of the testimony given by the witness;

(b) if the witness requested to review that the deposition transcript, that a digital copy of the deposition transcript, if any, was made available submitted to the witness or to the attorney for the witness for review examination and signature, the date on which the digital copy of the transcript was made available to the witness submitted, whether the witness returned the digital copy of the transcript, and if so, the date on which it was returned.

(c) that changes, if any, made by the witness in a signed statement are attached to the deposition transcript;

(d) that the deposition officer delivered the digital deposition transcript or nonstenographic recording of an oral deposition in accordance with Rule 203.3;

(e) the amount of time used by each party at the deposition;

(f) the amount of the deposition officer's charges for preparing the original deposition transcript, which the clerk of the court must tax as costs; and

(g) that a copy of the certificate was served on all parties via electronic filing and the date of service.

203.3. Delivery

(a) *Endorsement; To Whom Delivered.* The deposition officer must:

(1) protect the digital deposition transcript and, along with any signed statement described in Section 203.1, transmit it to the party who asked the first question appearing in the transcript or the party who noticed the deposition, or

(2) seal the original nonstenographic recording in an envelope or package bearing the title of the action and marked "Deposition of (name of witness)" and must send the recording to the party who requested it.

~~The deposition officer must endorse the title of the action and "Deposition of (name of witness)" on the original deposition transcript (or a copy, if the original was not returned) or the original nonstenographic recording of an oral deposition, and must return:~~

~~(1) the transcript to the party who asked the first question appearing in the transcript, or~~

~~(2) the recording to the party who requested it.~~

(b) The party who receives the digital transcript or nonstenographic recording of an oral deposition under this section must, until the party seeks to use the transcript or recording in

court, retain the digital transcript or recording.

(c) Notice. The deposition officer must serve notice of delivery on all other parties.

(d) ~~(e) Inspection and Copying; Copies.~~ ~~The party receiving the original deposition transcript or nonstenographic recording must make it available upon reasonable request for inspection and copying by any other party.~~ The deposition officer must retain a copy of the deposition transcript or the nonstenographic recording of the deposition. Any party or the witness is entitled to obtain a copy of the deposition transcript or nonstenographic recording from the deposition officer upon payment of a reasonable fee.

203.4. Exhibits

At the request of a party, the original documents and things produced for inspection during the examination of the witness must be marked for identification by the deposition officer and annexed to the deposition transcript or nonstenographic recording. The person producing the materials may produce copies instead of originals if the party gives all other parties fair opportunity at the deposition to compare the copies with the originals. If the person offers originals rather than copies, the deposition officer must, after the conclusion of the deposition, make copies to be attached to the original deposition transcript or nonstenographic recording, and then return the originals to the person who produced them. The person who produced the originals must preserve them for hearing or trial and make them available for inspection or copying by any other party upon seven days' notice. Copies annexed to the original deposition transcript or nonstenographic recording may be used for all purposes.

203.5. Motion to Suppress

A party may object to any errors and irregularities in the manner in which the testimony is transcribed, signed, delivered, or otherwise dealt with by the deposition officer by filing a motion to suppress all or part of the deposition. If the deposition officer complies with Rule 203.3 at least one day before the case is called to trial, with regard to a deposition transcript, or 30 days before the case is called to trial, with regard to a nonstenographic recording, the party must file and serve a motion to suppress before trial commences to preserve the objections.

203.6. Use

(a) Nonstenographic Recording; Transcription. A nonstenographic recording of an oral deposition, or a written transcription of all or part of such a recording, may be used to the same extent as a deposition taken by stenographic means. However, the court, for good cause shown, may require that the party seeking to use a nonstenographic recording or written transcription first obtain a complete transcript of the deposition recording from a certified court reporter. The court reporter's transcription must be made from the original or a certified copy of the deposition recording. The court reporter must, to the extent applicable, comply with the provisions of this rule, except that the court reporter must deliver the original transcript to the attorney requesting the transcript, and the court reporter's certificate must include a statement that the transcript is a true record of the nonstenographic recording. ~~The party to whom the court reporter delivers the~~

~~original transcript must make the transcript available, upon reasonable request, for inspection and copying by the witness or any party. Any party or the witness is entitled to obtain a copy of the transcript from the deposition officer upon payment of a reasonable fee.~~

(b) *Same Proceeding*. All or part of a deposition may be used for any purpose in the same proceeding in which it was taken. If the original is not filed, a certified copy may be used. “Same proceeding” includes a proceeding in a different court but involving the same subject matter and the same parties or their representatives or successors in interest. A deposition is admissible against a party joined after the deposition was taken if:

(1) the deposition is admissible pursuant to Rule 804(b)(1) of the Rules of Evidence, or

(2) that party has had a reasonable opportunity to redepose the witness and has failed to do so.

(c) *Different Proceeding*. Depositions taken in different proceedings may be used as permitted by the Rules of Evidence.

APPENDIX C

TEXDRA – Proposed Amendments to Texas Rule of Civil Procedure 131

131. Successful Party to Recover

The successful party to a suit shall recover of his adversary all costs, including reasonable deposition costs, incurred therein, except where otherwise provided.