



## WHAT'S THE DEAL WITH THE 1/3 RULE?

TEXDRA's genesis was an effort to amend the Texas "1/3 rule," which is contained in our Code of Professional Conduct (COPC), promulgated by the Texas Supreme Court, and enforced by the Texas Judicial Branch Certification Commission (JBCC), formerly known as the CRCB... but really, what's the deal with the 1/3 rule?

Put very simply, the COPC is a *code of ethics* and is neither a Texas statute nor a mandate of freelance business practices. Amendment of the COPC 1/3 rule will affect only freelance reporters and not officials. Officials' transcript copy rates are similarly capped at 1/3, as prescribed by Texas Government Code Sec. 52.047(c), but this statute applies *only to officials*, who enjoy salaries and benefits that freelancers don't have.

TEXDRA representatives, along with its attorney, have attended many meetings of the JBCC-appointed committee tasked to review and update the COPC. Earlier this year, the Texas Supreme Court sought guidance from the Court Reporters Certification Advisory Board (CRCAB) on the origin and current relevance of the 1/3 rule, and on April 1, 2016, a special meeting of the CRCAB was convened to discuss the issue. The Advisory Board heard from TEXDRA's and TCRA's attorneys and also listened to comments from people on both sides of the issue, pro-amendment and anti-amendment. The end result of that meeting was a vote, 4 to 2, to recommend that the 1/3 rule either be **amended or eliminated** from the Code altogether; however, the Advisory Board also made clear that it would welcome and consider proposed alternative language to amend the rule.

With our counsel's advice and assistance, TEXDRA then proposed a common-sense, very clear, and easily enforceable amendment: That Texas CSRs and CRFs may not charge more for a copy than what is charged for an original transcript. This simple principle will stop the **unethical** practice of offering low-priced or even free originals to noticing attorneys and gouging prices on copies, which was a primary reason for implementation of the 1/3 rule over 20 years ago.

As the COPC revision currently stands now, a motion has been passed to keep the "Fees" section in the Code but to AMEND the 1/3 number to 75%. While 75% is certainly higher than 1/3, it is not really the answer. Any such number in the Code comes dangerously close to anticompetitive/antitrust concerns, as it potentially interferes with free-market economic principles.

TEXDRA has paid careful attention to the ongoing dialogue and has heard the Advisory Board's message loud and clear: The Code of Professional Conduct governs ethical behavior, *not business practices*. TEXDRA'S proposal addresses the ethical problem of "cost-shifting" without dictating numbers or interfering in freelance reporters' business decisions.

Texas reporters must present a united front. TEXDRA has always advocated for amendment of the 1/3 rule, rather than its total elimination, but now there is a very real possibility that the rule will be stricken from the Code altogether because Texas reporters are so divided. Please support TEXDRA's efforts not to let that happen. A critical part of the revision process, public comment, is coming soon, and we need you. There is great strength in unity, and it is time for Texas freelancers to work together and be heard. It's time for TEXDRA.

Please join or renew your membership now.

Thank you.

For more information, please go to TEXDRA's website, <https://www.textdra.org>. Our original proposed amendment (which the CRCAB rejected) and our current proposal can be found there under "Recommended Reading," as well as a transcript of the CRCAB vote. Other documents and transcripts will be added there as they become available.