

HOWARD ADVOCACY, INC.

717 K Street
Suite 509
Sacramento, CA 95814
(916) 844-5646
eh4@sbcglobal.net

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The Honorable Ronald M. George, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, AC 94102

Re: *Serrano v. Stefan Merli Plastering Co. and Coast Court Reporters*
Supreme Court No. S164378.

Dear Chief Justice George and Associate Justices:

This letter is submitted pursuant to California Rule of Court Rule 8.500(g) and is in support of the petition for review filed by Coast Court Reporters Association, objector and respondent in the above-captioned case. If review is declined, we respectfully request de-publication as an alternative.

I. INTEREST OF THE APPLICANT

The Deposition Reporters Association of California (“DRA”) represents more freelance deposition reporters – what the Code of Civil Procedure refers to as “deposition officers” -- than any other organization in California. As the case below holds for the first time that each of the State’s trial judges is empowered as a part of every civil case to set the prices charged by deposition reporters, even though the reporters are not parties to the case, even though the Legislature expressly repealed price regulation for these same reporters, even though the published opinion below sets forth utterly no standards for how trial judges are to perform what is usually a legislative or quasi-legislative task of rate regulation, and even though controlling state law provides that charges for depositions shall be “set by the deposition officer,” DRA has a direct and immediate stake in the outcome of this watershed litigation.

DRA was founded in 1995 by freelance deposition reporters seeking to preserve the impartiality and independence of their profession. In the early nineteen nineties certain deposition companies and firms began the practice of offering certain services or prices to one party but not others. DRA was founded to combat such practices.

DRA worked with the National Court Reporters Association to establish and fund Citizens for Impartial Justice, a nationwide organization that coordinated successful efforts across the country to preserve the impartiality of the deposition reporting profession. As a result court rules or laws were passed in fourteen states including Hawaii, Texas, Minnesota, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada, Kentucky, Michigan, Arkansas, Indiana, and North Carolina.

Thus, DRA supports laws that seek to ensure the even-handed treatment of parties by deposition officers. In point of fact, DRA was founded to advocate for such fairness and, by doing so, ensure the enduring credibility and impartiality of deposition professionals. For these reasons, DRA believes it has a perspective useful to the Court in deciding whether to grant review of this case.

II. WHY THIS COURT SHOULD GRANT REVIEW OF OR, IN THE ALTERNATIVE, DE-PUBLISH THE OPINION.

There are four reasons why the Court should grant review of or de-publish the opinion.

A. Review Should Be Granted Because The Published Opinion For The First Time Holds That Appellate Review Automatically Follows When A Non-Party Agrees To Have A Superior Court Adjudicate A Tertiary Question. This Holding Confounds The Intent of Those Who Make Such Agreements, Dissuades Them From Seeking Such Resolutions, And Burdens The Appellate Courts In Ways Unsupported By Law And Surprising To Litigants.

The Court of Appeal's published opinion holds that when a non-party to an ongoing litigation agrees to have the trial court resolve a separate matter, that agreement, according to the opinion, by operation of law must always extend to appellate review as well, even if the non-party did not actually agree to appellate review.

Phrased differently, according to the published opinion, appellate review must, by law, necessarily follow an agreement to have a trial judge hear a matter, even if the parties to the agreement never mentioned appellate review.

This appeal began when the attorneys for the Serranos – the counsel for the plaintiffs in the underlying case – filed an ex parte application with the judge presiding over the underlying lawsuit for an order requiring Coast to provide a copy of a deposition transcript to the attorneys without charging the Serranos an expedited service fee (Opinion at 5). The relief sought was not simply an order requiring the copy of the transcript be provided. The ex parte application went further. It sought to have the judge in its underlying case adjudicate the lawfulness of the fees charged to attorneys in the case by a corporation that was not a party to that case. (Opinion at 5)

The agreement between Coast and the Serranos' counsel to have the ex parte application resolved by the trial court did not explicitly include appellate review. The opinion is

quite clear on that. (Opinion at 5, fn. 2, Opinion at 7, Opinion at 9, fn. 3) Instead, the appellate court bootstraps appellate jurisdiction for a matter and over a non-party company the trial court would not normally have had jurisdiction over in the first instance by holding that, since the parties agreed to have the trial court hear the dispute, and since the decision “aggrieved” one of the parties, the trial court’s decision was one “collateral” to the underlying case and, hence, lawfully one that could be appealed from. (Opinion at 13-15)

Observe that *every matter* so submitted to a trial court will have a loser who will be “aggrieved.” Further, under the opinion’s reasoning, assent to the trial court’s jurisdiction to resolve a dispute with a non-party *automatically invokes the doctrine of collateral appeals* if there is a final order, as there would inevitably be.

Thus, this published opinion may now forever be cited for the proposition that when a non-party consents to have a matter decided by a trial court that would otherwise have jurisdiction over neither the matter or the non-party, *an appeal axiomatically may follow*. Indeed, because the published opinion does not confront the fact that the parties did not expressly agree to appellate jurisdiction, and impliedly treats the Coast’s and the Serranos’ attorneys’ silence on the question of appellate jurisdiction as assent to it while resolving the question of appellate jurisdiction as a question purely of law, there is no limiting principle in the opinion hinting that appellate jurisdiction is avoidable *even if Coast and the Serranos’ lawyers had expressly agreed to exclude it*.

Aside from re-writing the elementary principles of contract requiring a meeting of the minds, this holding will have one of two unwelcome real-world consequences: (i) non-parties that otherwise would have availed themselves of the convenience and economy of participating in an ongoing case for a limited purpose may refuse to do so based on the cost, delay, and uncertainty of an additional appeal; or (ii) unsophisticated non-parties who thought they were entering into a limited agreement to have a discrete matter heard by an identified judge will be unfairly lured into a longer and more costly appellate resolution than they anticipated, violating their contracting expectations, taking advantage of their lack of sophistication, and potentially placing them at settlement disadvantage if a quick resolution is in their interests.

Review Should Be Granted Because The Idiosyncratic Way This Dispute Avoided Small Claims Jurisdiction Makes This Case A Poor Candidate For Pronouncing A New, Sweeping Precedent That Imposes New Duties On Judges To Adjudicate Numerous “Cases Within Cases,” All Without Guidance From The Appellate Court As To How Those New Matters Should Actually Be Resolved.

The idiosyncratic way this case avoided small claims jurisdiction, the sweeping and novel principle announced by the case – that judges are empowered to set deposition transcript fee rates – and the opinion’s utter silence on how courts will adjudicate the reasonableness of freely set prices in the marketplace, together reinforce the need for the case to be reviewed.

Small claims courts have jurisdiction over suits seeking damages less than \$5,000. (Cal. Code of Civ. Proc. Section 116.220) As the opinion observes (at 13), the total disputed fee awarded by the superior court was \$2,871.57, far below the small claims jurisdictional limit.

The published opinion should have confronted the question of whether the parties could agree to circumvent the statutory requirements of small claims courts even if Coast did not raise the issue while opposing the Serranos' attorneys' ex parte application; it is, after all, a jurisdictional question.

Arguably, of course, because Coast agreed to the jurisdiction of the trial court, the published opinion may not have committed legal error by failing to confront a possible hole in the trial court's, and hence its own, jurisdiction, but when this small claims silence is added to the fact that the opinion bases appellate jurisdiction on an agreement between Coast and Serranos' attorneys that nowhere mentioned or on its face contemplated appellate review, the jurisdictional problem with this case as binding precedent is squared. Its facts are so idiosyncratic when contrasted with its sweeping, first-ever holding -- allowing judges to infuse their own ideas of price "reasonableness" into every civil deposition -- that either reviewing or confining the case to these parties via de-publication is warranted.

Moreover, these jurisdictional questions are of enormous practical consequence for our courts, for thousands of deposition professionals, and for those thousands of attorneys who routinely use and order their services. By its silence on whether the more appropriate place for resolution of these matters is the small claims courts with sole jurisdiction over them, and because the appellate opinion gave the attorneys the relief sought based on an agreement that does not mention appellate review, the published opinion *is all but inviting these small claims disputes between attorneys and deposition professionals to be heard before trial judges in ongoing cases throughout the state, distracting from the underlying case and burdening already challenged dockets.*

Thus – and this is key – the result of this published decision based on these unusual postures is predictable: every civil case where depositions are taken will have the possibility of becoming a forum for lawsuits within lawsuits, appeals within appeals, between the attorneys, deposition professionals, and the firms that independently contract with them. While litigating the underlying case, lawyers may file ex parte applications for relief against deposition firms or freelance individual reporters who are strangers to the underlying case and, at minimum, seek the same kind of jurisdictional agreements as were obtained here, the attorneys all the while knowing that if the party assents to trial court jurisdiction, a second bite at the apple via an appeal is a possibility.

Worse, the question will be the raw "reasonableness" of the deposition charges. Utterly no guidance is provided by the opinion as to what is and is not "reasonable." Expect, then, in the first instance and on remand, many discovery disputes as attorneys seek to discover the underlying business costs of deposition firms and professionals, additional

discovery motions, constitutional questions of fair rates of return (see below), and *additional cases within cases arising from the cost of new depositions* taken against the court reporters and their firms who took the depositions of the court reporters and their firms about the overhead and costs of deposition professionals and their firms.

Under the published opinion, these cases within cases are not just permitted *but encouraged* by the Court of Appeal's jurisdictional non-reasoning, holding and the open-ended "reasonableness" inquiry encouraged.

This case is a prime example as to why idiosyncratic bases for jurisdiction make an opinion a poor candidate for publication. This is especially true when the published opinion here pronounces brand new and unprecedented duties for trial judges; namely, the setting of deposition rates and services for every civil deposition statewide.

C. **Review Should Be Granted Because The Published Opinion Ignores The Plain Language Of Binding Code and Dispositive Legislative History, Leading To Gross Legal Error That Will Impose Terrific And Confusing Burdens on Judges And Litigants.**

The opinion holds that a statute that concededly applies only to non-parties (Opinion at 29) and that provides that the "reasonableness" of a "charge" is "set by the deposition officer," somehow authorizes a court to "set" a "charge" for a party to the case. (*Ibid*)

First, as alluded to, the published opinion simply re-writes code more to its liking. California Code of Civil Procedure section 2520.570(a)¹ governing copies of depositions provides that copies shall "be made available to any person requesting a copy, on payment of a reasonable charge *set by the deposition officer.*" (Emphasis added) Even so, and strangely based on this very statute, the published opinion holds the opposite: that courts, not deposition officers, shall set "reasonable" payments. (Opinion at 27-28)

Worse, although the published opinion concedes that "the legislative history suggests that section 2025.570, subdivision (a) was intended to apply only to *nonparties*" (emphasis in original), the published opinion over-rides that legislative history and holds that it applies to the party Serranos anyway. (Opinion at 29)

This holding not only trammels upon the plain language of this binding code and the legislative history cited by the opinion, it likewise casts aside other extremely relevant legislative history showing the Legislature's intent to repeal just the kind of regulation imposed by the published opinion.

Prior to 1981, the prices for deposition products and services were indeed set by statute. AB 1017 (Alatorre), enacted in 1980 and effective in 1981, changed that. Under the prior version of Government Code section 8211.5, deposition officers providing services in counties of certain population (i.e., Los Angeles County) had their prices for copies

¹ All "section" references are to the California Code of Civil Procedure unless otherwise indicated.

and originals set per page. All other counties had their prices set per 100 words. (“Existing [i.e., prior to 1981] law regulates the fees of a notary public² in connection with the taking of a deposition and, where applicable, for services in recording or transcribing a deposition.” (*Legislative Counsel’s Digest* for AB 1017) AB 1017 repealed that fee regulation. (“This bill would delete those provisions regulating the fees of a notary public for services in recording or transcribing a deposition.” *Ibid.*)

AB 1017 also increased the fees deposition officers had to pay the Court Reporters Board and used the increase to create the Transcript Reimbursement Fund. The Fund pays for deposition products and services for indigent litigants and deposition officers are required to provide such services at fixed rates. (*See* Business & Professions Code sections 8030.2 and 8030.4).

It is evident, then, that the Legislature sought to de-regulate prices for deposition products and services while at the same time establishing a mechanism to ensure that litigants who might not be able to afford de-regulated prices would not be disadvantaged. Not surprisingly, but equitably, the deposition officers whose fees were being de-regulated were also the ones who had to pay to establish and maintain the Transcript Reimbursement Fund; an obligation upon deposition officers that still exists to this day. (*Accord: Urban Pacific Equities Corp. v. Superior Court* (1997) 59 Cal.App.4th 688, 691-92, “Although the fees charged by court-retained reporters are fixed by statute [citations], there is no statute regulating the fees charged by private reporting firms, and deposition reporters are free to charge all the market will bear.”)³

Thus, if a court decrees which rates are “reasonable” and regulates those rates by judicially enforcing the court’s notion of “reasonableness,” the court would be reviving that which the Legislature has repealed; namely, government pricing. And it would be reviving government price regulation even though the obligation of deposition officers to pay for the Fund would endure.

Still another example of how the Legislature intended deposition officer prices to remain unfixed is seen from the fact that the Legislature has expressly commanded the price regulation of similar services in other contexts, illustrating that the Legislature knows full well how to express a regulatory intent if it wishes. Thus, for example, Government Code sections 69947-50 set the prices for official reporters but not for freelance deposition officers. (*Accord: Gamage v. Medical Board* (1998) 60 Cal.App.4th 936, 938, “Government Code section 69950 specifies the transcription fee which must be charged by official superior court reporters, but does not purport to set or limit reporting fees for other reporters or proceedings.”)

² Prior law required deposition officers to be notary publics. (*See, e.g.,* Government Code section 8211.5 (repealed).)

³ Notably, the published opinion “declines to follow” this longstanding precedent, making resolution of the conflict between these decisions another reason to grant review. (Opinion at 30, fn. 12)

Yet an additional indication of how far the opinion reaches to hold that it has the authority to regulate prices can be inferred from the existence of the Court Reporters Board, established at Business & Professions Code section 8000 *et seq.* The Board has vast regulatory powers over reporters, including the power to impair or revoke their licenses and cite and fine reporters for violations of laws such as section 2025.320(b). Consumers of reporting services such as the appellant are free to complain to the Board and seek expert administrative intervention and discipline. (*See* Business & Professions Code section 8008(f))

Second, and contrary to the reasoning and holding of the published opinion (at 27), section 2025.510(c) cannot support the judiciary’s power to fix individually-tailored prices for depositions either. Section 2025.510(c) reads as follows (emphasis supplied):

(c) *Notwithstanding subdivision (b) of Section 2025.320*, any other party or the deponent, at the expense of that party or deponent, may obtain a copy of the transcript.

This statute provides that the appellant here may obtain a copy of the transcript at his own expense and “[n]otwithstanding subdivision (b) of Section 2025.320.”

Section 2025.320(b) mandates that general deposition “products and services” “offered” to one party be “offered” to other parties. Likewise, such “products and services” “shall be made available at the same time” to all the parties.⁴

But, while section 2520.320(b) generally governs “products and services,” section 2025.510(c) governs copies specifically. It applies [n]otwithstanding” the even-handedness mandated for “products and services” by section 2025.320(b). It is hornbook law that courts, in harmonizing statutes, should look to and give force to a specific statute over a more general one because such specificity is a better indication of how the legislative branch sought to address a particular situation. (*See* Civil Code section 3534: “Particular expressions qualify those which are general.”; section 1859: “a particular intent will control a general one that is inconsistent with it”; *Woods v. Young* (1991) 53 Cal.3d 315, 325, “specific provision relating to a particular subject will govern a general provision’ ”.)

Hence, the Legislature has decreed that *copies of deposition transcripts* shall **not** be a general matter governed by the even-handedness requirement of section 2025.230(b).

⁴ Section 2025.320(b) reads as follows: “(b) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party’s attorney or third party who is financing all or part of the action shall be offered to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party’s attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.”

To rule otherwise is to delete by judicial fiat the phrase “*Notwithstanding subdivision (b) of Section 2025.320*” from binding law. But that is just what the published opinion did.⁵

All that remains of section 2025.510(c), then, is the portion that states that a party “may obtain a copy of the transcript” at “the expense of that party[.]” Nothing in this language hints of any normative limit to that expense that would support the judicial infusion of a “reasonableness” limit, decreed by judges, into it by interpretation. The word and hence the concept of “reasonableness” simply is not in the statute.

Third, assuming that the even-handedness between parties required by section 2025.320(b) must be applicable to copies (notwithstanding section 2025.510(c)’s use of the word “Notwithstanding”), the statute only requires that “products and services” be “offered” to the parties or be “available” to them all. The statute is one that on its face seeks to ensure an absence of bias as between litigants. It does not embrace the different issue of whether the prices charged are equally affordable to every litigant.

It is certainly true, at some theoretical level, that far higher prices charged to one party and not the other could in practicality violate the requirement that services be “offered” or “available at the same time ...to all the parties”. (Section 2025.320(b)) However, there is apparently no evidentiary showing by the appellant of hardship or unfair pricing that would establish the factual predicate for such a claim here. Even if there was, though, at most the implied judicial remedy in such a circumstance pursuant to section 2025.320(b) would be to *order that the same prices be charged to all the parties*.

A trial court seeking to enforce the even-handedness required by section 2025.320(b) need not delegate to itself the exercise quasi-legislative-like, price-regulatory powers – powers to be used without statutory grounding or guidance of any kind – to fix “reasonable prices.” This far broader remedy cannot be sustained by or inferred from a statute that simply mandates even-handed treatment.

Yet, this is precisely the holding of the published decision. This holding is not grounded in law but in the published opinion’s musings on such policy matters as the relative bargaining power between deposition professionals and the attorneys who can sue them at no cost to themselves (Opinion at 28) and speculations about the quality and nature of price competition in the deposition market. (*Ibid.*)

Fourth, observe this: every one of the published opinion’s reasoning pillars – that courts have inherent powers over officers of the court, that relative bargaining inequality involving such officers must be remedied by judicial rate-making – applies with greater force to the rates charged by counsel to their clients. Just as the court cannot, according to the published opinion, “condone such conduct by conditioning the party’s right to receive a copy of a transcript on payment of an unreasonable fee, does not this same

⁵ Official reporters are allowed to charge for expedited copies. That authority also derives from a statute specifically addressing copies, an indication that the Legislature does elect to address copies distinctly. (Government Code section 69951)

principle apply with far greater force when a lawyer conditions his or her representation on “the payment of an unreasonable fee”?

And even if the published opinion’s dicta on economics was proper and correct and could somehow be confined to deposition officers and not lawyers, expert witnesses, paralegals, and the like, the published opinion ignores the fact that *all of its concerns can be remedied simply by ordering the deposition to be produced without further grasping the power to determine the price.*

D. Review Should Be Granted Because The Published Decision Fails To Address The Significant, Practical Implications Of The Opinion For Attorneys, Deposition Professionals, Judges, If The Judiciary Were To Assume Quasi-Legislative Price Regulatory Powers In Every Civil Matter.

How will each of the individual trial judges throughout the state adjudicate the “reasonableness” of prices in a way that honors the constitutional implications of such “regulation” while affording deposition officers and attorneys the kind of certainty in their affairs essential for the adjudications to be credible and fair? Would, for example, the judge in each case also be the judge to adjudicate a challenge to the rate he set as being unconstitutionally confiscatory?

Price regulation such as the one decreed by the published opinion is usually a legislative and quasi-legislative matter because it is fraught with such policy-making questions as what rates of return are sufficient to encourage an ample supply of regulated entities (here, reporters); which costs should fairly be absorbed by the reporter as opposed to being passed on to customers; and what the remedies should be for a reporter who alleges that the rates set are unconstitutionally confiscatory under such authorities as *Federal Power Comm’n v. Hope Natural Gas Co.* (1944) 320 U.S. 591. Thus, “ratemaking is an essentially legislative act” *New Orleans Pub. Serv., Inc. v. New Orleans* (1989) 491 U.S. 350, 371.) See also *Prentis v. Atlantic Coast Line* (1908) 211 U.S. 210, 226 (the “establishment of a rate ... is an act legislative not judicial in kind”); *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (“in fixing rates, a regulatory commission exercises legislative functions ... and does not, in so doing, adjudicate vested interests or render quasi-judicial decisions”).

As demonstrated by such cases as this Court’s landmark *20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216, responsible and thoughtful rate regulation can involve a myriad of complex policy questions that to a large part are based on factual records evaluated by the subjective eye of the beholding regulator. (“But the ‘finding’ of such ‘facts’ does indeed belong to the quasi-legislative function. That is the case when, as here, the administrative agency’s task ‘was to receive and consider economic and social data, as well as opinion and argument, covering large numbers of people and wide sectors of the economy; to select a series of positions aimed at the statutory objectives but shaped by discretion and policy; finally, to express its selection in rules regulating the future conduct of relatively broad classes of persons.’”, *Id.* at 279, quoting *Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 586. Accord: *Federal Power*

Comm'n v. Hope Natural Gas Co. (1944) 320 U.S. 591, 602 (“[The] rate-making function ... involves the making of ‘pragmatic adjustments.’”)

And because rate-making is steeped in so many policy questions it is always grounded in policies enacted by the policy-making branches of government. (*See, e.g., id.* at 603 (“[T]he rate-making process ... i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and consumer interests.”))

Relatedly, as the 20th Century case discusses, there is no single way to determine “reasonable” prices. (*20th Century Insurance Co. v. Garamendi*, 8 Cal.4th at 257-58) One method is simply to impose a uniform price cap that suppresses prices no matter the individual circumstances of the regulated entity; however, such a regime is subject to tough judicial scrutiny. (*Calfarm v. Deukmejian* (1988) 48 Cal.3d 805, 817 (“any law which sets prices may prove confiscatory in practice”)) Another – the method preferred by commentators and the method adopted by the Public Utilities Commission and the Department of Insurance – is to examine the parts of each company’s rates (overhead, profit), test them against the regulator’s notion of reasonableness, and allow some portion to be passed onto customers, thus ensuring consistency and predictability for regulated entities and tailor-made constitutionality. *20th Century Insurance Co. v. Garamendi*, 8 Cal.4th at 257 (“The regulations,’ explained the administrative law judge, ‘avoid the administrative gridlock that would result from readjudicating over and over hundreds of issues that affect multiple insurers in lengthy hearings that would yield inconsistent results-if they ever yielded any result at all.’ ‘The regulations employ generic determinations and a detailed formula designed to ensure manageability and consistent treatment of insurers and insureds.’ ‘At the same time, the regulations incorporate multiple company-specific factors into the rollback formula, and then are applied in individual adjudicatory hearings. The company-specific hearings allow further tailoring to a company's situation”)

In its quest to determine a “reasonable fee,” which method would the trial courts and each subsequent trial court use? Measured against what evidentiary record? Would it use “multiple company specific factors”? How would price caps be determined to be “reasonable”? Would they be indexed to inflation to prevent creeping unconstitutionality?

It is virtually unimaginable for a court to engage in such deliberations absent the clearest of statutory commands to do so. Having judges resolve such myriad and subjective policy questions is flatly inconsistent with sound principles of judicial decision-making and is precisely why courts uniformly strive to defer to these policy determinations when they are made by legislators and regulators. (*Id.* at 272.)

And yet, here, the published opinion arrogates just such quasi-legislative power for the judiciary, even though binding statute provides that the “reasonableness” of charges are to be determined by the “deposition officer;” even when the Legislature specifically repealed less arbitrary and hence clearer form of generally applicable price fixing, now

only to see its legislation thwarted by unfortunate judicial fiat in a case that should have been heard in small claims court.

E. Review Should Be Granted Because The Published Decision Is Equitably Lopsided, Imposing Unique And Unjust Hardships On Deposition Professionals.

Trial courts are not empowered to promulgate substantive regulations. Trial courts do not issue binding precedents. Thus, no deposition professional will have any clue that his or her copy or other rates – and, thus, the source of their livelihoods – will be blessed as “reasonable” by resolution of an ex parte application until after services have been provided.

How can any business, especially small ones, operate under such uncertainty? How can a firm promise a certain level of pay to a reporter before a job is done and keep their word? How can a firm sign a lease for office space having no clue as to whether its charges will be permitted?

Moreover, there is already a widespread problem with attorneys refusing to pay what they have already previously and unambiguously agreed to pay. Too many attorneys regrettably seek to exploit the power disadvantage between deposition officers and themselves, as documented by the legislative history of a new law making it easier to collect from attorneys who -- after services have been provided at an agreed upon price - - were nevertheless disclaiming responsibility for payment.

Just last year, the Legislature enacted AB 1211 (Price), co-sponsored by DRA. This bill amended section 2025.510, adding a new subdivision (h). The Assembly Judiciary Committee analysis relates the reason for the amendment:

“In support of the bill the author states, ‘Freelance deposition reporting professionals sometimes have a difficult time collecting from the attorneys who have ordered their services and instructed them when and where to show up. After services have been provided at a deposition -- and the transcript even used in court by the attorneys who ordered them -- some attorneys will nevertheless deny any responsibility to pay the professional, arguing that payment was really his client's responsibility all along. Of course, reporters almost never talk to or meet a lawyer's client, let alone receive deposition orders from them. As well, clients in many cases are themselves injured, impoverished, and unable to pay. Many deposition reporters are women and part-time independent contractors. The failure to get paid, delay in payment, and the cost of collection imposes a unique burden on them.’ (Assembly Judiciary Committee Analysis of AB 1211 (Price), April 10, 2007)

AB 1211 was a “non-controversial” bill (*ibid*) and was passed by the Legislature unanimously.

The published opinion virtually guarantees that some segment of attorneys will routinely file ex parte applications forcing deposition professionals to hire counsel to defend themselves, their pricing, their overhead, and their rates of return against inherently arbitrary and uncertain “reasonableness” challenges that could drag out for years, costing deposition professionals tens of thousands of dollars in legal fees, all with no certainty at all as to the outcome, where as the counsel opposing them will risk nothing at all and incur no cost at all.

Needless to say, this outcome is unfair in the extreme. The Legislature would never enact such a lopsided price regulatory scheme. Unless review is granted or the opinion de-published, this will be the law of the land in California.

III. CONCLUSION.

For the foregoing reasons, it is respectfully imperative for the orderly administration of justice in our civil trial courts that review be granted or the opinion de-published.

Respectfully submitted:

Edward Howard
on behalf of the Deposition Reporters Association
of California
State Bar. No. 151936

CC: See attached service list