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April 12, 2012

The Honorable Mike Feuer  
Chair, Assembly Judiciary Committee  
1020 N Street, Room 104  
Sacramento, CA 95814

### **Re: Support for and Sponsorship of AB 2372 (Hill)**

Dear Chairperson Feuer:

On behalf of the Deposition Reporters Association of California (DRA), I write respectfully to request your support for AB 2372 (Hill), sponsored by DRA, as it will be amended by the author.

#### **Deposition Reporters Association of California**

DRA represents more deposition reporting professionals than any organization in California and is the only organization in the nation solely devoted to representing such professionals. DRA is the California affiliate of the National Court Reporters Association (NCRA).

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 in litigation but not to 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 preserving the impartiality of freelance deposition professionals were passed in fourteen states including Hawaii, Texas, Minnesota, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada, Kentucky, Michigan, Arkansas, Indiana, and North Carolina.

#### **AB 2372 (Hill)**

In 2007, the Assembly Judiciary Committee, analyzed (and enormously aided in the crafting) of AB 1211 (Price), which lead to the enactment of Code of Civil Procedure section 2025.510(h). California Code of Civil Procedure section 2025.510(h)(1) provides that “[t]he requesting attorney ... shall timely pay the deposition officer or the entity providing the services of the deposition officer”)

In introducing the bill in 2007, the Committee’s analysis of AB 1211 said as follows:

[The bill] seeks to improve the reporters' ability to collect payment for the services they provide at the request of lawyers by clarifying that, absent specified circumstances, the obligation to timely pay the deposition officer or entity providing the services of the deposition officer for transcription and any other deposition products or services that are requested shall be the responsibility of the requesting attorney or party appearing in propria persona.

AB 2372 (Hill) seeks to ensure that those very few attorneys adjudged to be liable under AB 1211 who then refuse to pay the final and legal judgment cannot escape a deposition officer's efforts to collect on a final judgment by evading service of collection-related legal documents.

### **Proposed Amendment**

In response to the concerns express by your Committee staff to the bill currently in print, the author proposes deleting the current bill and replacing it with language similar to the following that would add a new (h)(4) to California Code of Civil Procedure section 2025.510:

(4) The requesting attorney or party appearing in propria persona, upon request of a deposition officer who has obtained a final judgment for payment of services provided pursuant to this subdivision, shall provide the deposition officer an address that can be used to effectuate service in the manner specified in Section 415.10.

### **Background & Problem**

As foreshadowed in the Committee analysis of AB 1211, court reporters cannot be analogized to run-of-the-mill vendors used by attorneys. This was confirmed just last year. In *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4<sup>th</sup> 1018, 1021 the Supreme Court held that court reporters who take depositions are "ministerial officers of the court" meaning officers charged with non-discretionary, *inherently judicial* duties. They are extensions of the judge conducting a legal proceeding. This is why they are empowered to swear-in witnesses and this is why the Code of Civil Procedure strictly regulates what they do.

When lawyers book depositions with reporters, they almost never use a P.O. box or mail drop for their address. For two reasons a reporter would be very unlikely to do business with a lawyer that did provide such an address at the outset. First, such an address would be a warning sign to the reporter that the lawyer may have difficulty paying. Second, the deposition officer – the custodian of the record – would be understandably nervous about delivering an official transcript to such an address. Most reporters rightly insist on sending an official transcript via UPS or Fed Ex -- some method where a person can sign and verify it has been delivered.

Infrequently, but frequently enough to be a stubborn problem, a lawyer with a solid address at the time deposition services are ordered will, while the invoice is pending, or during informal efforts to collect (letters and calls), close offices, move, and instead use a mail drop or P.O. box. (A lawyer who has not paid their deposition officer likely has other financial problems as well.)

Because the Bar permits attorneys to disclose only a P.O. box or other mail drop as their address on its website, and because certain collection-related legal documents cannot be effectuated through the mail,

licensed reporters who have a valid and final court judgment against an attorney pursuant to the law enacted in AB 1211 are too often frustrated in effectuating the judgment made possible by AB 1211. Using expensive process servers, deposition reporters too often must expend considerable sums chasing down these few attorneys adept at avoiding service to collect on small claims judgments (under \$7,500).

Essentially, the rules of service of process for collection-related documents combined with the Bar permitting attorneys to disclose P.O. boxes and similar addresses, unwittingly reward a small fraction of stubborn attorney bad actors in their effort to avoid having to pay lawful judgments to officers of the court. The inability to collect on the judgments obtained because of AB 1211 hurts officers of the court because they are either unable to collect or because it is too expensive to collect and this, by extension, harms those lawyers who in fact pay their bills.

Moreover, as officers of the court themselves, attorneys have unique responsibilities when it comes to obeying the law and being accountable to other officers of the court. The law therefore ought not make it easy for lawyers -- those schooled in the law -- to evade legal service of process.

In sum, just as there was ample reason to ensure that a small number of attorneys were not able to point to a stranger when it came to being responsible for paying for a product the attorney ordered and used for a legal proceeding (AB 1211), so too is there reason to ensure that attorneys cannot evade the consequences of that very same law by evading service of process of after there is an adjudicated final judgment.

AB 2372 (Hill), as proposed to be amended above, would simply impose upon attorney officers of the court the requirement to provide another officer of the court an address that can be used to effectuate lawful service of process in those few circumstances where there is (i) a lawful, final, but unpaid debt for deposition services; (ii) the debtor attorney still refuses to pay; and (iii) the same attorney does not disclose an address that can be used to effectuate collection-related documents.

As always, we appreciate working with your staff and we respectfully ask for your support for AB 2372 (Hill) as it will be amended by the author.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Howard", written in a cursive style.

Ed Howard  
Howard Advocacy, Inc. for the  
Deposition Reporters Association of California

cc: Hon. Members of the Assembly Judiciary Committee