DEPOSITION REPORTERS ASSOCIATION OF CALIFORNIA, INC.

# FAQ RE AB 1197 (BONILLA)

## What is the motivation for the bill?

Certain practices engaged in by nonlicensee corporate providers – practices labeled as "unsavory" by one California legislative committee – have gotten the attention of attorneys and legislative staff. Unless we do something to address these practices by nonlicensee-owned corporations, the Legislature will respond in a way that hurts not just them, but us licensed freelancers too.

Chief among these practices that has caught the attention of attorneys and legislative staff is cost shifting, the practice of charging higher-than-normal rates for copies to compensate for the low contract rates they're giving their clients on the O&1.

The nonlicensee-owned corporations are cost shifting so flamboyantly that attorneys and legislative staff are audibly grumbling about it.

Here is why: A noticing attorney can shop for the best price and service for the 0+1. That attorney can take it or leave it. But the copy-ordering attorneys can't shop around for their copies. If they want a copy, there is only one place the attorney can get it, from the reporting entity chosen by the noticing attorney.

Cost shifting hurts any party defending a depo, whether a plaintiff, defendant or codefendant.

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Just as in the *Serrano* case in which holding the copy hostage for payment enraged judges and resulted in the decision which held that courts are allowed, under narrow circumstances, to control product charges, the nonlicensee-owned agencies' cost shifting will soon result in some reaction from the Legislature or the courts or both.

The only question is: Will cost shifting be addressed via some approach like DRA's bill or, as is the case in other states, via price caps and rate regulation?

This is not a theoretical problem. As the Assembly Judiciary Committee analysis of AB 1197 observes:

> "Due to the widespread use of these exclusive contracts and the subsequent problems these relationship present to the legal profession, many states have stepped in to regulate these practices. Currently, 17 states have prohibited or limited these relationships."

**What does AB 1197 do?**

In sharp contrast to price caps or regulation, this bill takes what the Assembly Judiciary Committee said was a "modest and reasonable step in regulating these contractual relationships by requiring disclosure" of the existence (not the contents) of contractual relationships in the notice of deposition.

The idea is to promote the parties and their counsel to monitor their invoices to let them determine whether there is a problem rather than assuming it is always a problem by regulating the price of certified copies.

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In this way, the bill takes its lead from how questions of fairness or impartiality are handled with other judicial officers: Disclose to the parties, and let them figure it out.

For example, California Code of Judicial Ethics Canon 1E provides that "[a] judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification."

Likewise, California Rule of Court 3.855(b)(1) regarding mediators provides: "A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties."

And finally, by way of an additional example, California Code of Civil Procedure 170.1(a)(9) requires the disclosure of campaign contributions made to the judge by parties or counsel: "The judge shall disclose any contribution from a party or lawyer in a matter that is before the court…"

**What does the bill say?**

As it will be amended, the bill will read close to this:

*(a) A party desiring to take the oral deposition of any person shall give notice in writing. The deposition notice shall state all of the following:*
*(8) (A) A statement disclosing the existence of a contract, if any, between the noticing party or a third party who is financing all or part of the action and either:*
*(i) the deposition officer; or*

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*(ii) the entity providing the services of the deposition officer requiring that party to use the officer or entity for any service beyond the noticed deposition.*
*(B) Or a statement disclosing that the party noticing the deposition or a third party who is financing all or part of the action directed his or her attorney preparing the notice to use a particular officer or entity to provide services for the deposition, if applicable.*
*(C) (i) If a party discloses a contractual relationship or directive pursuant to this paragraph, any other party may as provided under current law object in writing at least three calendar days before the deposition date to the use of that officer or entity.*
*(ii) A party shall personally serve an objection made pursuant to this paragraph in accordance with Section 1011.*

**Can the legal interpretation of "party" include the law firm itself representing the person or entity involved in the lawsuit?**

No, for two reasons: One, "party" means party, not the attorney. Two, to underscore this difference between "party" and "attorney," the bill contains a distinct approach to when a party instructs the attorney representing them to hire a particular firm (this is in subsection (B)), further underscoring that they are not one and the same, because we are writing about them and treating them differently.

It has long been DRA's and NCRA's policy of differentiating between contracts with parties (not officers of the court) and those with attorneys who have ethical duties as officers of the court. Consider this from NCRA, with emphasis supplied:

> Once a party-in-interest…is allowed to manipulate the business transaction to their exclusive benefit and/or exerts control over the work produced by the court reporter, the reporter and/or the reporting firm's impartiality can be called into question….

> Not just actual neutrality but the perception of neutrality is equally important to consumers of court reporting services when taking a broad look at the court reporting profession.
>
> Given the public's belief in and dependence on the court reporter's integrity and impartiality, it is all the more egregious when the consumers of court reporting services are unwittingly subjected to these exclusive contractual arrangements between a party-in-interest and the court reporter or reporting firm. Often these litigants are unaware of the contract's existence, the terms involved, the benefits that one party may be receiving, and how their interests will be affected as a result. The litigant who is not a party to the contract is nonetheless bound by an agreement entered into by their opponent in the proceeding. …

**Is it DRA's mission to stop my ability to have law firm management require their staff to book my agency?**

No. The bill does not require this and, in fact, is careful not to touch it. First, the bill is about contracts between parties and court reporting agencies, not between law firms and court reporting agencies. Second, CCP 2025.220 is written with the "party" being the subject in the sentences. Thus, when the bill provides "*the party noticing the deposition directed his or her attorney to use a particular officer or entity,*" it is careful not to reach the situation where a law firm is choosing the agency.

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**Is it DRA's mission to stop companies or individuals from instructing their attorneys to book a particular agency?**

Of course not. Freelancers are unafraid to compete on the basis of quality and price.

But if contracts between parties to litigation and nonlicensee-owned firms deploying the services of impartial judicial officers result in costs being secretly shifted to other parties to, in effect, reimburse the corporate provider for charging another party less, and in such amounts as to be noticeable by the other parties, then we at DRA think treating parties so differently is a problem.

In sum, we are supposed to be impartial. This is the right thing to do. It is also the smart thing to do because, if we don't do something, we are going to end up with some pretty invasive alternatives.

**Is it DRA's opinion that a "contractual relationship" under the bill would encompass a law firm, company, or individual agreeing orally or in writing to be invoiced at a specific rate for a specified number of depositions?**

Between a court reporting agency and a law firm? No. Between an individual who is an attorney and a court reporting agency? No. Between a company or individual if they ***are a party or third party***, with no ethical duties to the process or the court like an attorney has? Yes. And this has forever been DRA's and NCRA's position; namely, that contracts between parties to a lawsuit that, unlike attorneys, have no ethical duties to the court and a court reporting agency raise potential problems.

Why? Not only the aforementioned risk to impartiality. The other reason is that the party is not the actual user of the transcript. So relationships between parties to litigation, who don't use the

product they are paying for, and court reporting agencies distorts the market away from rewarding quality and price (CR firms' strengths) in favor of just price.

For a bigger-picture view, consider DRA Diplomat Toni Pulone's excellent observations:

> "While our bill was primarily intended to allow some light to be shed on the unfair pricing arrangements of the large contracting agencies, it could also be that special pricing arrangements between any one of us and one of our clients would also be disclosed per the language in our bill. This might not be an appealing thought, I recognize. **But if I, for instance, were to offer a client a significant discount on their O&1s, either on one case or all of their cases, in the hopes of charging the copies at much higher rates than usual for our area, then it's only fair that any attorney should have the chance to ask in advance what services he/she may be able to expect from me and at what rates. If I were contacted after a depo notice disclosed this special arrangement between my client and me, I should have to answer to any opposing counsel what he/she could expect in terms of service and pricing, and then counsel should have the opportunity to object to my reporting the depo if they felt the need to protect themselves and their client. And the knowledge that that could be the downside of my discounted offer to my client might discourage me from offering any discount that would have to be supplemented by unusually high copy prices."**

**Is my agreement to show up for one depo a "contract"?**

No. The bill specifies that it isn't.

**How is it enforced?**

Current law already sets out the requirements for objecting to a notice of deposition. There is very little chance of widespread objections. Attorneys run large risks in objecting frivolously. To do so is costly (requiring personal service on all parties, for example), the results have to be blessed by a judge at some point, and the process risks tit-for-tat discovery responses.

Objections under current law must be made fully three days before the scheduled deposition, ensuring that if there is an objection, it won't be made after the reporter and attorneys show up.

There are few formal objections filed now to deposition notices. What will happen under this bill is that the attorneys will confer and work it out. The strategy of the bill is thus that attorneys will be educated about these contracts, tie them to these odd charges they are getting, and push back to the benefit of the profession and CSR firms and reporters.

**What is likely to happen if AB 1197 does not pass?**

California attorneys have been concerned for some time over the growing problem of cost shifting on deposition copies, and this problem has been on the radar of legislative staff in Sacramento, who want to see something done and soon. If we can't point to a successful bill like AB 1197 that offers some relief to this problem for attorneys, some other solution will be sought, and that's likely to be legislation introduced that will put a cap on copy-page rates, something none of us, freelance reporter and firmowner alike, wants to see. Such legislation would no doubt have the support of

all attorney groups, a budget-weary legislature and the governor. That's why it's absolutely critical for us all to do whatever we can to support our bill now and get it passed, so that we can forestall any such move to place an unpleasant rate cap on our depo copies, a rate that would probably be set below what any of us are currently charging.

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