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RE: Kern County Bar Association's Court Reporter Referral Service Proposal

Dear Ms. Holder and Ms. Wilson:

Thank you for soliciting comments on the Kern County Bar Association's ("Bar") Court Reporter Referral Service ("proposal"). While the Deposition Reporters Association of California ("DRA")[1] would welcome a true referral service that served as an on-line resource for County attorneys to find and contact County court reporters and firms, for the reasons discussed below, DRA must respectfully oppose the proposal before the Bar. Notwithstanding being called a referral service, the proposal actually contemplates the Bar ambitiously injecting itself into the County's private court reporting marketplace to become a corporation rendering licensed court reporting services to County attorneys.

As detailed below, the proposal as currently contemplated would be extremely cost-ineffective, time-consuming, mission-distracting, and possibly expose the Bar to significant legal and reputational liability. All this when there is no evidence that Bar members in the County are currently unable to obtain qualified, affordable, and reliable reporting services from existing firms, including respected firms long-relied upon by Bar members.

[1] http://www.caldra.org/, http://www.facebook.com/caldra

DEPOSITION REPORTERS ASSOCIATION OF CALIFORNIA

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

DRA was founded in 1995 by freelance deposition reporters and firm owners 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 NCRA 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, and New Mexico. DRA is a leading voice in Sacramento on legislative and regulatory matters affecting the profession and participates as *amicus curie* in litigation matters related to the profession, most recently in the superior court action described, *infra*.

BACKGROUND

Court reporters are highly trained professionals.

The term "court reporter" broadly refers to two kinds of licensed professional: those licensees who are full-time employees of county courts and work in courtrooms, reporting and transcribing official proceedings (called "officials"), and those licensees who are hired by attorneys to report and transcribe depositions and other out-of-court proceedings (called "freelancers").

A court reporter's license, like a license to practice law, is a general license. That is, it legally permits (not necessarily qualifies) a reporter immediately to work in any setting for which a licensed reporter is required, whether it be a complex medical malpractice deposition replete with scientific medical jargon and yelling lawyers, or a discovery motion in a simple breach of contract trial.

The importance of this licensed profession to the reasoned and credible administration of justice is hard to overstate. This was judicially confirmed in 2011 in *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4th 1018, 1021 where 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. This is why freelancers who report and transcribe depositions are empowered to swear in witnesses, and this is why the Code of Civil Procedure strictly regulates what they do: court reporters are extensions of the judge, often working in a private setting.

Indeed, the California Legislature's Joint Committee on Boards, Commissions, & Consumer Protection correctly underscored the importance of this frequently taken-for-granted profession in 2005 when it wrote:

> An accurate written record of who said what in court is essential if the outcome of a judicial proceeding is to be accepted by the litigants and the public as non-arbitrary, fair, and credible.
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> In criminal cases, for example, courts of appeal rely exclusively upon [] written briefs and a written transcript to adjudicate the lawfulness of what occurred at trial. A conviction – and thus in some instances the life or death of an accused – can stand or fall based entirely upon what a witness said, what a lawyer said, what a juror said, or what a judge said, as solely reflected in the written transcript.
>
> In civil cases, millions of dollars, life-long careers, and the fate of whole business[] enterprises can hinge on what was said or what was not said in a deposition or at trial.
>
> Moreover, the testimony in civil and criminal cases is often thick with technical jargon. A medical malpractice case where specialist experts from both sides contradict one another can involve complex technical medical terminology; criminal cases can involve scientific language related to DNA identification; anti-trust cases can involve diction from economic theory, and so on. No matter how obscure or technical, such jargon must to-the-word accurately be reflected in the written transcript.
>
> Court reporters are highly trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation-related proceedings such as depositions.

Court reporters are, like physicians, engineers, and accountants, licensed by and subject to discipline by a regulatory board in the Department of Consumer Affairs. The Court Reporters Board has the power not just to discipline individual licensees but, as discussed below, also corporate entities that provide or arrange for court reporting services. Befitting the enormously difficult and exacting nature of the profession, passage rates for the court reporter's licensing exam are usually below those of the Bar Exam.

Just as is the case with CPAs, lawyers, engineers, and other licensed professions, court reporters are not fungible.

A common misperception is that court reporters simply and passively take dictation; that they are fungible. As any experienced litigator will tell you, and as a glance at the many and complex Code of Civil Procedure and Government Code sections dealing with court reporting confirms, that is very wrong. As officers of the court who administer oaths, as the custodians of the record during and after a deposition (when corrections are made by the witness) or hearing, court reporters are required to ensure that the transcript is accurate, and that often means intervening in the proceeding to ensure that the words witnesses speak can accurately be heard, understood, and reported. This must all be done under sometimes extraordinarily stressful circumstances, with emotional witnesses and sometimes furious attorneys jockeying for any advantage.

Moreover, court reporters don't just show up unprepared. Call, for example, a freelance deposition reporter on the weekend prior to a patent or trademark-related deposition and you will discover it is

commonplace for them to be busy reading the underlying patents or pleadings to familiarize themselves with the jargon and what the jargon means, or creating a custom dictionary of key terms, all to better ensure the accuracy of transcribed testimony. This mastery of context is how the best reporters will know whether one technical chemical compound (for example) is uttered over its similar sounding cousin.

And, this is the reason why lawyers sometimes receive good, accurate transcripts that also flow and are easily readable and why they sometimes do not receive good transcripts. Just as no two lawyers will write a brief in the same way, no two licensed reporters will organize (for example) a passionate colloquy between counsel the same way. The preparation; the management of the proceeding to ensure an accurate record, the decisions as to how the transcript will be organized; these factors all require professional judgment, preparation, experience, and intelligence, and the product lawyers obtain will vary – sometimes significantly -- depending on the reporter hired.

Knowing this, firm owners view it as their core function to match their reporters to jobs based upon which reporter will do the best job for their client. Firm owners thus assign reporters based upon the substantive complexity of the case; the proclivities of the attorneys; the demands of the case in terms of managing the proceeding; the overall strengths or weaknesses of the reporter (both personal and professional); workload and work habits and reliable personal availability.

Firm owners likewise supervise and mentor their reporters, answering questions and providing guidance about law and practice before, during, and after proceedings.

In sum, what court reporter firm owners in part do shares similarities with what law firm team leaders or managing partners do, when it comes to mentoring and making staffing decisions about their more junior attorneys.

THE KERN COUNTY BAR ASSOCIATION PROPOSAL

Notwithstanding its name, the proposal does far more than simply establish a referral website where California licensees in a fair and open market can make their availability, qualifications, and services known to potential clients. Such a referral bulletin board would be a welcome convenience for the members of the Kern County Bar, laudably foster competition, and be a valuable proposal.

Instead, the proposal being weighed by the Bar seeks deeply to enmesh the Bar in the provision of services provided by another group of California licensees, by, at minimum:

- setting or at least approving and therefore setting rates for licensed services, including per diems and reimbursable costs;

- fee-splitting between two licensed professions, with one California licensee (reporter) being required to split their fee with another licensee (organization of licensed lawyers) as a mandatory pre-condition to obtaining access to work in courtrooms, based on the amount of work the reporter earns from the Bar.[2]

[2] Proposal, p. 2: KCBA would earn a referral fee, which will be a percentage of the fees paid for the court reporter services purchased through the service."

- taking responsibility for placing the right reporter for the right case[3], managing the reporters' schedules and availability based on the length and complexity of (say) a trial, dealing with attorney complaints and requests about the reporter the Bar has assigned, and somehow guaranteeing a rotating "fairness" between licensed reporters when it comes to the earnings the court reporters obtain through the Bar[4];

- taking upon itself the task of deciding -- based on subjective criteria[5] -- which licensees will and will not be eligible to work through the Bar, notwithstanding that a reporter's license already legally allows them to practice without limitation;

- determining how and when and under what non-arbitrary criteria to "limit the number of [otherwise qualified] reporters included in the reporter pool if there is high demand for inclusion in the pool.";

- taking upon itself the task of collecting fees from attorneys and passing them on to reporters[6], thus assuming the responsibility of not only collecting accurate "pre-paid" amounts from lawyers, but also addressing front-end complaints from attorneys about the pre-paid amounts paid to the Bar and complaints from the reporter about the amount the Bar disbursed to the reporter, i.e., whether the percentage taken by the Bar as an alleged "administrative fee" is the accurate percentage, given that it is to be calculated based on the size of the job;

- dealing with and communicating accurately and in a timely fashion with counsel and reporters[7] when it comes to which reporter is assigned for what matter, including communications about last minute requests, changes, and cancellations if a matter is taken off calendar and continued, where tardy communication could cause lawyers or reporters to incur unnecessary expenses, even malpractice.

- and, dealing with questions and complaints about the Bar's accounting and bookkeeping about reporter pay and fees charged.[8]

An examination of these tasks leads to one *observation* and one *conclusion*. The *observation* is: these tasks are what court reporting firms do every day and have done successfully and faithfully for Bar

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[3] Proposal, p. 1: "Once a reporter is scheduled for a particular day in a particular courtroom, then all further hearings for that same courtroom and date scheduled through the KCBA service would be handled by that same reporter."

[4] Proposal, p. 1: "All reporters in the pool will be chosen for scheduled appearances on a rotating basis, so that each pool reporter is given, to the extent practically possible, a fair and equal share of the work scheduled through the service."

[5] Proposal, p. 1: "All court reporter agencies and court reporters who demonstrate their compliance with court policies will be eligible for inclusion in the pool of reporters referred by the KCBA service. The KCBA may be required to limit the number of reporters included in the reporter pool if there is high demand for inclusion in the pool."

[6] Proposal, p. 2: "The services are pre-paid through the website and payment is passed through to the court reporter or reporting agency to which the case is assigned, less the administrative fee."

[7] Proposal, p. 2: "Upon scheduling through the website, the system will email confirmation and a receipt to the procuring party (be it attorney or unrepresented party), and the service provider."

[8] Proposal, p. 2: "Periodic reports will be generated and sent via email to each user and service provider that has been active in the reporting period."

members since time out of mind. What the Bar is describing in its proposal is a court reporting firm's very business model.

By possibly arrogating itself these tasks, the *conclusion* is: the Bar is weighing whether to establish one big mega-court reporting firm that would compete directly with court reporting firms throughout the County and soon, by apparent design, at least in part replace the firms that are every day doing the things that the Bar seeks to do, and the Bar would do it for a fee that purports to be "administrative," while setting rates, and promoting itself through kiosks in courtrooms[9] and Bar membership materials that are promotional opportunities unavailable to Kern County competitors.

In contrast, there is no shortage of private, established court reporting firms with infrastructures and relationships already in place to deal with all of these matters – every single one. What the Bar is proposing to do is what court reporting firms do and have for years and years done successfully for Kern County attorneys. And, the County currently has an ample supply of reporters and firms to meet the needs of the County's attorneys when it comes to addressing the needs of litigants in the County.

Regrettably, and with extreme reluctance, in light of the ambition of the proposal and in the absence of any known evidence that attorneys and litigants currently have un-met reporting needs, it is hard to avoid the conclusion that this proposal is a way for the Bar to insert itself into the private market as a competing provider of licensed court reporting services so as to earn a fee.

THE PROPOSAL IS GROSSLY UNFAIR TO THE COUNTY'S PRIVATE COURT REPORTING FIRMS

The Bar is not just any private actor acting in a marketplace. Both *per se* and compared to its reporter-owned competitors in the County, the Bar's new reporting firm would enjoy a favored and near-monopoly position when it comes to access to court reporter's clients– lawyers in Kern County – and the courts.

Indeed, the proposal's suggestion that the Bar establish kiosks for its services in courthouses amply illustrates the Bar's favored market position – it is impossible to imagine one private County court reporting firm securing such a desirable and lucrative kiosk placement.

To illustrate the unfairness, imagine if all the trade groups representing all the licensed professions residing in the County (CPAs, physicians, court reporters, physical therapists, engineers) got together and by way of agreement between them decided to establish for the hiring of professional negligence defense lawyers the same kind of organization being contemplated by the Bar, here.

This new mega-organization would not simply be a referral program – a passive list of lawyers who are available to defend professional negligence cases. Like the Bar proposes here, the new entity would take it upon itself to screen and pre-select individual lawyers – not law firms -- based on some subjective qualification above licensure; approve the legal rates charged; assign lawyers to particular clients; take care of ensuring the lawyers earn a fair amount of business between them; collect the legal fees, and disburse the fees to the lawyers. In exchange for access to this pool of clients, the

[9] Proposal, p. 2: "A Kiosk on the ground floor of both 1215 and 1415 Truxtun court houses for those who come to court unprepared[.]"

organization would itself earn a fee, calculated as a percentage of the fee obtained by the lawyer who was referred the client.

Now, imagine that this organization would do this under the umbrella and under the name of the government-sanctioned licensing authority akin to the brand of the Bar; say, hypothetically, a local office of the California Department of Consumer Affairs. It would thus be able to call itself "the Kern County California Department of Consumer Affairs Lawyer Placement Service."

Finally, imagine that the organization would at some point arbitrarily cap the number of lawyers that could be referred business.

This is close to what the Bar's proposal contemplates and the unfairness and market-disrupting impact of this hypothetical organization to the County's licensed lawyers and their firms, who are right now are adequately providing legal defense services, should be massively obvious. Not only will the hypothetical, Department-branded organization be assuming many of the duties of what law firms do. As with the Bar's contemplated reporting firm, the hypothetical organization would be favored with a market-advantaging, Good Housekeeping Seal from the government licensing agency – an advantage by definition unavailable to any competitor.

Lawyers – reporting firm clients – will inevitably be drawn to a court reporting service offered by an organization of their own at the literal and fatal expense of long-established firms and reporters throughout the County.

Bluntly put: the Bar's proposal qualifies as an extinction-level event for the County's current reporting firms, at least when it comes to both precedent and a current line of business.

THE PROPOSAL COULD SUBJECT THE BAR TO THE JURISDICTION AND DISCIPLINARY AUTHORITY OF THE COURT REPORTERS BOARD AND WILL EXPOSE THE BAR TO CIVIL LIABILITIES, BOTH LARGE AND SMALL.

Aside from being simply unfair, the discussion above should foreshadow the number of areas of potential liability for the Bar if it decides to operate a fee-generating business in the Kern County court reporting marketplace.

Unlike other County Bar Association websites,[10] the Bar's website does not reveal its legal status but it is likely organized under section 501(c)(6) of the Federal Internal Revenue Code. It thus may be sued on the same terms as any other private organization. *Lebbos v. State Bar* (1985) 165 Cal.App.3d 656, 664 (county bar association defendant not "clothed with the authority of state law").

Indeed, when county bar associations initiate programs, they have been sued. (*Roberts v. Los Angeles County Bar Ass'n* (2003) 105 Ca;.App.4th 604 – suit by aggrieved judicial candidate rated "not qualified"). And, absent some specific statutory exemption for the local bar, such suits may go forward. *Olney v. Sacramento County Bar Ass'n* (1989) 212 Cal.App.3d 807 – suit against local bar association arbitration program fails due to statutory exemption for local bars).

[10] See, e.g., https://www.acbanet.org/UserFiles/files/ACBA%20Bylaws%2012_4_12.pdf. The paucity of information on the Bar's website raises questions about the ability of the Bar to be able to implement the technology-heavy elements of the proposal.

Just some back-of-the-envelope areas of possible sources of liability include:

Administrative discipline by the Court Reporters Board of California

Just as the Medical Board licenses and regulates physicians and the Board of Accountancy licenses and regulates CPAs, the Court Reporters Board ("Board") in the Department of Consumer Affairs regulates the court reporting profession. (See Bus. & Prof. Code §§ 8000-8047.) In California, corporations rendering services for which a license is required are only permitted to do so pursuant to the Moscone-Knox Professional Corporation Act ("Act"), Corp. Code § 13400 et seq. (*Ibid.*) ("Act")

A recent superior court case initiated by the Board against a non-licensee owned court reporting corporation established that firms operated by non-licensees can in fact be "professional corporations" under the Act, subject to the jurisdiction of the Board, its regulations, and the laws it enforces, depending on how intimately the corporation is involved in placing reporters and interfacing with lawyer-clients. Notably, the corporation in court argued that it was simply a referral service but the court, looking at the extent and nature of the corporation's operations related to court reporters, held:

> The Court finds…that Defendant, based on the evidence produced at trial, renders professional services, namely shorthand reporting services, within the meaning of Corporations Code section 13401.
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> *Court Reporters Board of California v. US Legal Support*, Santa Clara Superior Court Case No.: 1-11-CV-197817, Final Statement of Decision, at p. 5, n. 2[11]

Corporations Code section 13410(a) provides that "professional corporations" have to abide by the same Board authority as individual licensees. That statute provides:

> (a) A professional corporation … qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged…

[11] "As the competence and integrity of corporations cannot be tested by a licensing exam, the "traditional rule" is that services provided by licensees cannot lawfully be rendered through a corporation. However, this blanket prohibition has been qualified by statute. (9 Witkin, Summary of Cal. Law, (10th ed. 2005), Corporations, § 26, pp. 804-05.) The Moscone-Knox Act governs the corporate practice of no less than licensed seventeen (17) licensed professions ranging from physicians to architects to engineers to accountants. (Corp. Code § 13401.) "Before the enactment of the Moscone-Knox [Act] in 1968, practitioners of certain professions were not permitted to incorporate…the prevailing case law being that a corporation, as an artificial entity, could not 'practice' that profession. Today, with the passage of the [Act], a corporation may be formed for the purposes of qualifying as a professional corporation and rendering professional services." 15A Cal.Jur.3d, Corporations, sec. 540. *See also*, Witkin, *Summary of California Law*, (2005) Tenth Edition, sec. 26, pp. 804-05.

Given that the proposal is largely indistinguishable from what a court reporting firm does, the Bar – an incorporated association of lawyers -- could under the proposal potentially and awkwardly be subject to citations, fines, and injunction by the Board.

Moreover, if an attorney complained to the Board about one of the reporters working through the Bar, the reporter might (as is commonplace) point in part to instructions she received or practices implemented by the firm – here the Bar -- that placed the reporter at the job, entangling the Bar in Board matters, as well.

Business torts by disfavored licensees

Those reporters and firms who lose business because they are left out of the Bar's program, either due to an arbitrary cut-off as foreshadowed in the proposal or because of a dispute about the legality and reasonableness of the criteria for admittance, may have claims against the Bar. Claims of unfairness and favoritism must be expected and such grievances are exactly the kind that frequently graduate to litigation, especially when lost revenues are implicated.

Business torts by favored licensees who do not get enough or enough of the right kind of work

Similarly, those reporters who do not get their promised "fair and equal share" of work through the Bar or are led by the Bar reasonably to believe that they would be obtaining more work than they obtained[12] may likewise have claims against the Bar, stemming from what representations it makes benchmarked against how it actually operates in assigning cases to the reporters.

Likewise, it is inevitable that disputes will arise as to how much the Bar should be skimming as an "administrative fee."

Business torts by attorneys or their clients

If the Bar assumes responsibility for assigning reporters, then the Bar could be held legally accountable if lawyers or their clients are harmed owing to a Bar-assigned reporter doing inferior work (dispositive words missing, for example), doing untimely work, failing to appear at all or on time, failing to abide by transcript formats, or failing to provide promised transcripts at all, causing lawyers and clients to incur costs as a result.

This is not a remote problem but in fact a likely one. Take just the issue of a reporter of a certain quality showing up for a scheduled hearing. Reporters are independent contractors incentivized to prioritize the highest paying and/or most conveniently located jobs. Lawyers' schedules change frequently and frequently with little warning. The scheduling of these two kinds of licensees is for both these reasons famously challenging. Every reporting firm owner understands this, even if the Bar's proposal apparently does not. Every private firm daily grapples with this often exhausting problem and every firm spends significant sums and time compensating for it, to ensure their clients'

[12] Proposal, p. 1: "All reporters in the pool will be chosen for scheduled appearances on a rotating basis, so that each pool reporter is given, to the extent practically possible, a fair and equal share of the work scheduled through the service."

are satisfied. Under the proposal, the Bar will have to assume these costs, headaches, and liabilities, as well.

Beyond raw availability of reporters, good reporting firms, like the ones faithfully serving Bar members for years in Bakersfield and the wider County, know their reporters and know all the local freelancers and what they're qualified to report. This knowledge and familiarity with the reporters allows them to assign the appropriate reporter for the requirements of the particular assignment. They also know their clients' cases, from years of experience know which attorneys need particularly "fast" reporters, reporters who can handle difficult or argumentative situations, highly technical subject matters -- medical, dental, patent, biotech, engineering -- and they place the right reporter for the assignment.

The Bar will have none of this experience or expertise. The Bar will very likely make poor assignments due to their lack of knowledge of the attorneys' needs and the reporters' skill levels. Indeed, one way to understand the proposal's suggestion that reporters will be scheduled on a "rotating basis" to ensure "a fair and equal share of the work"(Proposal, p.1) is that assignments of reporters will be randomized. This could be disastrous for the lawyer-client and ultimately for the reputation and bank account of the Bar.

All of this goes to the heart of why the proposal is foundationally flawed: operating a court reporting firm is not easy because court reporters are not fungible commodities, with one being as suitable for a job as another. And, as any experienced litigator will attest, if a reporter fails to provide service acceptable in the eyes of a lawyer, the lawyer complains to the firm – the entity that assigned the reporter to the case -- not the reporter.

Finally, the unique status of the Bar as an organization pledged to advance the interests of its Kern County lawyer members raises special problems and liabilities, both in the legal and lay sense of the word. Has the Bar considered that they could very likely be accused of bias, favoritism, by lawyers who do not practice in Kern County? This is something that a good reporting agency perennially has to be aware of avoiding -- any actual or perceived bias or favoritism toward a local attorney or a repeat client, which could be complained of by a non-local or first-time client.

If the Bar starts out giving some, even small advantage, financial and perhaps otherwise, to their Bar members and not to opposing counsel from other counties, how very easy would it be for an out-of-town attorney to make a claim of bias, with complicating results either for the litigation or for the Bar.

Liability for claims of overcharging

Under *Serrano*, *supra*, courts are empowered to hear and adjudicate challenges to some court reporter pricing. The Bar would have to or may be forced to defend its approved rates in court.

Liability for predatory charging

Business & Professions Code section 17044 outlaws loss-leading pricing. If the Bar charges rates that are too low, liability here could be an issue. Moreover, if rates are too low the Bar will not be able to retain or long keep the best reporters. This will also exacerbate last-minute rescheduling problems.

Anti-trust

Given the Bar's reach when it comes to court reporting clients and rates, it is uniquely at-risk of anti-trust liability.

Unfair competition

Similarly, the Bar as a private corporation could be liable for acting unfairly and unlawfully under Business & Professions Code section 17200, *et seq*.. Each of the business torts mentioned above as to who is left off the Bar's favored list, who does and does not get the choicest and most lucrative assignments, and issues related to the accounting for and disbursement of post-"administrative fee" splits could be framed as UCL claims. So can anti-competitive injury.

Non-profit status

Given the current state of the record, the Bar places its non-profit status at some possible risk by injecting itself – for a fee—into a private, for-profit business without any solid evidence that it needs to do so to fill a void that is hurting its members. As the IRS explains, 501(c)(6) corporations are not supposed to do the kinds of things for the kinds of reasons reflected (or not reflected) in the proposal:

> 5. Its activities must be directed to the improvement of business conditions of one or more lines of business… as distinguished from the performance of particular services for individual persons;
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> 6. Its primary activity does not consist of performing particular services for individual persons; and
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> 7. Its purpose must not be to engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining.

http://www.irs.gov/pub/irs-tege/eotopick03.pdf, at p. K-4 *See also*, *ibid*, p. K-32: "Reg. 1.501(c)(6)-1 provides that an organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit is not a business league."

CONCLUSION

DRA again expresses its gratitude to the Bar for allowing it to comment at length on the proposal.

In conclusion, and with respect:

- The proposal is not a mere referral service. The Bar would under the proposal be rendering court reporting services.
- There is no apparent evidence that the Bar must become a renderer of court reporting services to serve its members.
- There is no evidence that the Bar or anyone associated with it has ever (i) worked in a court reporting firm; (ii) is aware of how challenging administering such a firm can be; (iii) how

challenging reporting or being a reporter can be; or (iv) how challenging daily dealing with lawyers, their needs, their demands, their schedules, and the needs, demands, and schedules of reporters, can be.

- There is no evidence that the Bar has the expertise to evaluate, procure, house, or fix problems with the novel and expensive technology that will be required to implement its proposal.
- There is no evidence that the Bar or anyone associated with it is experienced to determine which reporters are worthy of being referred business and which are not.
- There is no evidence that the Bar has any real appreciation or has done any real research on what it takes day-in, day-out to run a court reporting business – the costs, the hours, the liabilities.

Against all of this, the Bar's proposal exposes the Bar to significant costs, legal liability, harm to its reputation, and to an entangling drain and diversion of time, money, and institutional emphasis away from the Bar's core mission.

Instead of pursuing the proposal, the Bar should first try to work with existing and respected reporting firms and licensees in the County – firms long-relied upon and respected by Bar members – to address problems with service or availability, if any. Unless the proposal is one that is aimed simply at earning fees for the Bar, it is otherwise and simply inexplicable that Bar members would not first establish a task force or some other expert group consisting of firms, reporters, and Bar leaders to address any issues members may have prior to the Bar deciding to compete with them. Working collaboratively with sister licensees and sister officers of the court who actually know how to run court reporting firms offers a far greater, less expensive, less risky course to address any problems the Bar's members may be having than the proposal. Prudence persuades that such a course should at first be tried before limited Bar resources are devoted to the Bar intervening in the marketplace as a business competitor in another licensed profession.

If the proposal were a business plan presented to venture capital analysts, it would fail. For the same reason, the proposal should be rejected by the Bar as simply unneeded, uncooked, untested, and unwise.

Respectfully submitted:

Vicki Saber

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President, DRA

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