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Texas Court Reporters Association

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Steven C. Hollon, President
Conference of State Court Administrators
c/o Supreme Court of Ohio
65 South Front Street
Columbus, OH 43215-3431

Dear Mr. Hollon:

The Texas Court Reporters Association has reviewed the White Paper entitled *Digital Recording: Changing Times for Making the Record*. While we understand and respect that a state court administrator's job is difficult, it is apparent that court administrators still do not understand or appreciate the role of the court reporter in the judicial process. After careful review and scrutiny of COSCA's White Paper, it is apparent that once again, court administrators are weighing in on the issue of replacing certified court reporters without the input from any of the judges, appellate justices, litigators, parties, or court reporters who are directly affected by the reform that is suggested.

- This oversight will cause serious problems for the entire system and will ultimately result in unnecessary expense for taxpayers and will degrade the legal system.

The White Paper states that: "Court administrators need the latitude to allocate courtroom resources and realign staff, including personal appointee court reporters, to better fit the new technology, improve productivity, meet the needs of the courts as a whole, and provide an appropriate level of service."

- This could be construed as a violation of the Separation of Powers clause of not only the United States Constitution, but also the Texas Constitution.

Courts; i.e., judges, are elected by the people for the people. They are charged with the duty and responsibility of not only preserving the judicial branch of the government, but also preserving for the people their security and freedom. Our Texas Supreme Court has stated that: "Even in the absence of a statutory provision, a court has the inherent power to compel the expenditure of those public funds which are reasonably necessary for the court to efficiently fulfill its constitutional function."

- In essence, this means it is up to the judges to be the decision-makers on the hiring of court personnel and which method of preserving the record they want to utilize, not the court administrators.

The White Paper further states that there is a shortage of court reporters. In Texas, court reporters are certified by the Supreme Court of Texas. Currently there are approximately 2,650 court reporters in this state, and 65 to 100 new ones are certified each year.

The pure and simple fact is that certified court reporters are guardians of the record and are the only ones who can provide realtime, or an instant voice-to-text translation of the proceedings. Not only does the realtime allow the judges to review and make rulings *sua sponte*, it also satisfies the requirements of the Americans with Disabilities Act and levels the playing field for the deaf and hard-of-hearing litigants and/or jurors in the courtroom.

- Digital recording is not capable of realtime and is completely inferior to this proven, successful, beneficial and resourceful tool.

Throughout this White Paper, it is implied that the implementation of audio/video recording will create potential cost savings, but cost savings to whom? In some states the court reporter currently bears the costs associated with providing all of their equipment and software necessary to perform their duties and responsibilities for work in the courtroom and transcript production.

- If states were to do as COSCA recommends, the costs are shifted to the taxpayers.

Realistically this is not a one-time cost because the court systems have to pay for the initial installation of a digital system, and they also have to hire and train additional personnel, such as court monitors and transcriptionists. Monitors will be needed to ensure that the equipment is working properly, and transcriptionists will need to be hired and trained in legal, medical, and technical terminology in order to make an attempt to produce the transcripts from the digital recording, which is very time-consuming.

Those costs vary; some charge by the page, some charge by the word, some by the line. In essence, the taxpayers are incurring the expense of paying for additional personnel to do what one certified court reporter is able to accomplish.

Further, just as computer software and hardware must constantly be updated, all the microphone and recording systems would have to be upgraded regularly – something the companies selling digital recording equipment are probably hesitant to discuss.

- Digital recording will place a continuous, unneeded burden on the courts' budgets and on taxpayers.

There are many occasions when hearings are not held in the courtroom. There might be a hearing in the judge's chambers or sometimes an attorney will request that the jury leave the courtroom to view evidence in the field. Sometimes there is simply a power failure. Is it being suggested that court procedures stop until the problem is fixed? Is that judicial efficiency for the courts or the taxpayers? What would be the resulting expense to the taxpayers, the litigants, or the attorneys?

Court reporters are sworn officers of the court and are held to the same judicial Canons of Ethics as judges. They are in the courtroom on a daily basis and know that the integrity of the record cannot be jeopardized by equipment malfunctions, unexpected interruptions or acoustical problems. Also, court reporters are held accountable for the transcripts that are produced.

Digital recording systems, on the other hand, are susceptible to malfunctions and many other problems that could result in a major miscarriage of justice.

- The ramifications of a failed digital recording system can affect a person's civil liberty, contribute to court congestion, and increase the costs associated with litigation, including increasing requisite taxpayer dollars to try, appeal, and retry a case.

The White Paper also discusses ownership of the record. Court reporters have never owned the record. The court reporter is paid for the production of transcripts because the court reporter provides the equipment at their own expense, and transcript production is usually done after hours, at home, and on weekends. If production isn't done properly and timely, the court reporter may be assessed a fine, sent to jail, and/or lose their license.

- What other court employee can be sent to jail for not completing a job accurately or timely?

Electronically recording court proceedings has been tried in other states. Hundreds of thousands of dollars of taxpayers' money has been wasted on the installation and maintenance of the equipment. Additional personnel had to be hired and trained to produce a record from the digital recording. The entire process was costly and time-consuming.

And what has resulted from this expense of time and money? Many of those states have reverted back to the use of trained, certified court reporters. An appellate court in Florida has publicly stated that:

- "There appears to be a marked decline in the quality of transcripts since the trial courts began increasing their reliance upon electronic recording and minimizing the use of trained professional court reporters."

We understand that some states are struggling financially and that there are budget constraints to be considered. However, what this White Paper attempts to do is mandate nationwide what personnel the judges should hire and what technology should be implemented.

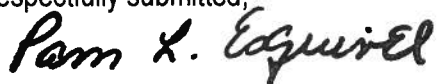
One size does not fit all, especially here in Texas. The process of utilizing digital recording as the official record will not strengthen the court system. Instead, it will place the court system and its future in peril.

The Texas Court Reporter's Association (TCRA) requests that prior to any further publication being issued concerning a unilateral replacement of court reporters in the judicial system, that input be obtained from those who are actually involved in the profession and from those who will be affected the most by those changes.

We are categorically against digital recording. It will degrade our legal system, cause unneeded costs for taxpayers, and deny justice for our citizens.

TCRA and reporters will stand fast for the preservation of the legal system as it stands, as will judges and lawyers who have fought for litigants' rights in the past. Supporting the integrity of the judicial system and accountability for the making of the record is professionally and monetarily beneficial for the taxpayers.

Respectfully submitted,



Pam Esquivel
President – Texas Court Reporters Association

cc: Carl Reynolds, Office of Court Administration