



DEPARTMENT OF JUSTICE
Antitrust Division

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Jeffrey P. Altman, Esquire
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1575 Eye Street N.W.
Washington, D.C. 20005

Dear Mr. Altman:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to the National Court Reporters Association's ("NCRA") proposal to add provisions to its Code of Professional Ethics that would require a member, when making the official court record, to inform all of the parties to the litigation if it has a contractual relationship with one of the parties.

NCRA is a 33,000 member professional association dedicated to representing and promoting the interests of verbatim shorthand reporters. It believes that parties to a judicial action have the right to an impartial and independent court reporter, who has no bias, financial or otherwise, in the outcome of the court proceedings being reported. NCRA suggests that its views are supported by Rule 28(c) of the Federal Rules of Civil Procedure, which provides:

"Disqualification for Interest: No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action."

The NCRA is concerned that companies that are frequent users of court reporting services are entering into long-term contractual relationships with court reporters that in some cases may undermine the actual or perceived impartiality of the court reporter. In some cases, the court reporter agrees to provide litigation support services in addition to "standard" court reporting services. In others, copies of the transcript may be delivered to the contracting party or its representative before it has been reviewed for accuracy by counsel for all parties.

We understand that the NCRA does not seek to discourage or prohibit long-term contractual arrangements or fee discount agreements for court reporting services. It does, however, believe that the public interest in impartial court reporting services would be advanced if safeguards were imposed to assure the maintenance and appearance of impartiality. To that end, it proposes to develop a "Contracting Policy" that it would adopt as part of its Code of Professional Ethics. The NCRA notes, however, that suspension from the NCRA for violation of the Contracting Policy would not prevent a member from continuing to act as a court reporter, since NCRA membership is not a legal prerequisite for performing court reporter services.

Professional Codes of Ethics serve many salutary purposes. If, however, ethical codes have the purpose or effect of restraining price or quality competition, limiting output, or discouraging innovation, the promulgation and enforcement of such codes can raise significant antitrust risks. To avoid raising antitrust concerns, amendments to NCRA'S Code of Ethics should observe the following guidelines:

1. They should not have the purpose or the effect of discouraging court reporters from entering into long term contracts, contracts with volume discounts or other fee discount provisions, or contracts with any other innovative terms, or otherwise discouraging competition among court reporters.
2. Any change to NCRA's Code of Ethics should be accompanied by an affirmative statement to NCRA's membership that the changes are not intended, and NCRA does not intend generally, to prohibit or discourage long term contracts, volume discounts, fee discounts or other innovative contract terms, or otherwise discourage competition among court reporters. Each court reporter should determine independently what services it will offer and what prices it will charge.
3. A court reporter's disclosure of contractual relationships should be made to the parties to the case and their representatives so that the parties may exercise their rights under FRCP 28 (c),²⁹ and 32(d)(2), and not to other court reporters (either directly or through NCRA).
4. Any such disclosure should involve the minimum facts necessary to enable the parties to exercise their rights under the Federal Rules.

To the extent that the NCRA's proposed amendments to its Code of Ethics follows these guidelines, and does not otherwise raise the antitrust concerns, the Department, based on the information and assurances that you have provided to us, would have no current intention to challenge the proposed conduct.

This letter expresses the Department's current enforcement intention. In accordance with its normal practices the department reserves the right to bring any enforcement action in the

future if the actual operation of any aspect of the contemplated changes in the NCRA's Code of Ethics proves to be anti competitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. S 50.6.- Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph IO(c) of the Business Review Procedure.

Sincerely,

Anne K. Bingaman
Assistant Attorney General