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May 31, 2009

Administrative Office Of Pennsylvania Courts
C/o Honorable Robert A. Freedberg, Chair
Advisory Committee On Court Reporting And Transcripts
Supreme Court Of Pennsylvania
1515 Market Street, Suite 1414
Philadelphia, PA 19102

Re: Pa. R.J.A. Proposed Amendments

Dear Judge Freedberg:

I represent the Pennsylvania Court Reporters Association (PCRA).
On behalf of PCRA, please accept these comments in connection with the
promulgation of revisions to Chapter 5000 of the Rules of Judicial
Administration (RJA) by the Administrative Office of Pennsylvania Courts
(AOPC).

1. The proposed amendments do little to help judicial districts
improve the *management* of the court reporting function. The quality of the
responses to the Committee Survey loudly demonstrates the need for
improved management. AOPC leadership on this issue is the most

important thing AOPC can do to improve the court reporting function in Pennsylvania.

2. The proposed amendments relinquish important financial controls to counties by abandoning the uniform county rate schedules contained in the existing RJA. This change will decrease AOPC's capacity to ensure uniform quality in judicial administration across the state. This is unwise and likely to be abused by financially distressed counties.

3. The proposed amendments will decrease reporter private remuneration, negatively affecting some 500 official reporters and their families. This decrease in remuneration will have a destabilizing effect. That effect will be greatest in the judicial districts which are most at risk such as Philadelphia and very rural districts.

4. The amendments may also violate or undermine collective bargaining agreements across the state because these agreements are predicated on page rates other than those in the proposed amendments.

To avoid these outcomes, AOPC should take three steps. First, delay the promulgation of the proposed amendments.

Second, bring official court reporters into the decision making process so that their knowledge and experience becomes an integral part of the

decision-making process, rather than merely seeking *ad hoc* comments from this important group of court employees *after* proposed amendments have been drafted.

Third, improve efforts to collect rate-setting data to ensure that proposed amendments do not destabilize the court system and do not breach collective bargaining agreements that rely on page rates.

In the hierarchy of the Unified Judicial System (UJS), court reporters work on the ground. Each day, and many nights, they struggle in the face of untrained and under-resourced management, frozen county budgets, personnel cuts, docket surges and a myriad of other factors that affect transcript production.

In the U.S. Military, the term "Ground Truth" is used to describe the *reality* of a situation as opposed to the *characterization* or *concept* of the situation developed by analyst types in the rear (often with a heavy reliance on high-altitude aerial surveillance).

The disjunction between the *characterization* or *concept* used to make a plan, and the *reality*, as experienced by the people on the ground, i.e., the Ground Truth, is an apt metaphor for the disjunction between what the

Committee sees from the Survey, and what official court reporters actually experience on a day-to-day basis.

The Committee Survey that guided important provisions of the proposed amendments provides only a rough approximation of the Ground Truth. It is only a starting point -- a sparsely pixelated, high altitude bitmap, missing many important details.

Promulgating a top-down plan for statewide uniformity, without a Ground Truth understanding of court reporting operations carries significant risk of systemic disruption. These comments are intended to raise awareness of that risk, and prompt changes in the methodology by which AOPC plans changes affecting the making and safe keeping of the record.

It bears repeating that what PCRA is seeking are systemic changes in the methods that AOPC uses to plan systemic change.

These methods must produce consistent leadership over time in the area of management. AOPC must learn from districts that manage the court reporting function well, improve on what these districts have developed, and then use that knowledge to lead changes in poor performing districts. By promulgating proposed amendments without a deep understanding of the

differences between districts that perform well and districts that do not perform well, AOPC has put the cart before the horse.

I. Executive Summary

Current remuneration of official reporters is inadequate to meet current and projected personnel demands in the Unified Judicial System (UJS) in the near future. Committee Survey data shows that *at least* 6% of official reporter positions remain unfilled (10% in Philadelphia). However, because of problems in the Committee Survey design, the number may actually be as high as 14%, or even 20%.

U.S. Department of Labor statistics show that official reporters in Pennsylvania earn about 29% less than the national average for county-employed court reporters and Pennsylvania has a higher cost of living than most other states. Nationally, the U.S. Department of Labor projects demand for court reporters to remain high as the need increases in competing industries such as closed captioning for the deaf.

Against this backdrop, the private-party page rates in Proposed Rule 4007 are significantly less than current private-party rates. Committee Survey data shows that the private-party page rates in Proposed Rule 4007 are only about 65% of the current statewide average private-party rates.

The private-party rates in Proposed Rule 4007 are 40% less than 2008 statewide rates promulgated by Georgia, a state whose geography,

demography, urbanization, income and court system are strikingly similar to our own.

The proposed private-party page rates will destabilize judicial districts that are already struggling and likely violate existing collective bargaining agreements by imposing page rates that are lower than the rates specified in the agreements or upon which the agreements were predicated.

The totality of the circumstances suggests that the proposed private-party page rates carry significant risk of disruption. Committee Survey data shows that transcript fees amount to about 21% of an average official reporter's compensation. PCRA informal survey data shows that this average is 33% in Philadelphia. The implementation of the proposed private-party page rates would impose a pay cut of about 7% on the average official reporter and their family (about 13% in Philadelphia).

Before setting statewide rates, AOPC must acquire a quantitative and operational understanding of the court reporter function across judicial districts. To do this, AOPC must broaden the membership on the Committee to include official reporters from small, medium and large judicial districts. Currently, it appears that there may be no official reporters on the Committee at all. If so, this is a serious weakness.

AOPC must develop quantitative rate-setting tools and impose standardized data collection and reporting requirements (based on these tools) on each judicial district. Importantly, rate-setting tools must include cross-check capability to ensure the integrity of the data.

AOPC must provide supervision, training and follow-up to ensure that judicial districts are complying with data collection and reporting requirements. After working out initial data collection issues, AOPC should collect a full year of data and re-analyze it before promulgating private-party page rates.

The failure to accurately determine existing rates before promulgating a statewide page rate risks undermining the stability of the system by which judicial records are created and preserved. The administrative simplicity of setting statewide page rates by decree is outweighed by the risks posed by a rate that may not be adequate to maintain the stability of the court reporting system.

II. The Need For Accurate And Complete Private-Party Rate Data

The Committee Survey data has some serious shortcomings:

1. The Survey failed to directly ask judicial districts to provide the private-party page rate for copies. However, 18 judicial districts gratuitously provided data on "non-indigent copies" in answer to the "other charges" Question. See Committee Survey Responses to Question 33.¹ But the data is incomplete with 44 of 62 counties providing no data. Id.

After making a minor correction to the Philadelphia private-party copy rate (discussed in more detail below), the statewide average copy rate (based on the 18 judicial districts that provided data) appears to be \$1.99 per copy. If this average approximates the true statewide average, it becomes easy to see how the proposal to eliminate copy sales can have a profound effect on official court reporter earnings.

2. The Survey failed to break down the pages produced in each judicial district into analytically useful categories such as "county paid

¹ The Survey questions, in part, have a confusing dual numbering system. For example, a single question might be numbered both "26." and also "15." To make things a bit more complex, the numbering is not consistent between and among responses. This means that the same question on different responses might be assigned different numbers. Nevertheless, an examination of all responses reveals a predominant numbering pair for most questions. I will use this pair of numbers to refer to some questions. Of course where a question and response have only one number assigned, I will use that number.

originals," "county-paid copies," "private-party paid originals," and "private-party paid copies." See Committee Survey Question 3./2.

The Survey design leaves no way to derive the ratio of original transcript pages produced to the copy transcript pages produced.

The ratio of originals to copies is necessary in order to factor the different contributions of each type to the financial stability of the system. For example, even if we know that original transcript pages are priced at \$2.50, and copies are priced as \$0.50, then it is still necessary to know how many of each type of page are produced in order to accurately determine the financial impact of proposed changes that have a differential impact on originals and copies (i.e., where copies are "free").

3. The Survey design does not permit an accurate count of unfilled official reporter positions. Subpart two of Survey Question 2./1. indicates that 30 official reporter positions are "vacant." However, subpart four of Survey Question 2./1. indicates that judicial districts are using about 69 *per diem* reporters. The Survey design does not permit a determination of the extent to which *per diem* contract reporters were used to fill "vacant" official reporter positions.

For example, it may be that the use of *per diem* reporters must be added to "vacant" official reporter positions to obtain a true measure of unfilled official reporter positions. Determining the true number of unfilled official reporter positions is crucial to rate-setting policy. Therefore, this is a major limitation because it makes it difficult to determine the true number of unfilled official reporter positions.

4. Some key Survey responses are wrong or missing. For example, Survey data indicates that the private-party original rate for Philadelphia is \$2.50 per-page. However, the Philadelphia fee schedule indicates that the rate is \$3.00 per-page. See Philadelphia Rate Schedule attached as Exhibit 1. To ensure accuracy, the Committee should simply compile data based on uniform rate schedules, which, according to the Survey, are in force in 57 of 61 judicial districts (Allegheny County apparently was not asked this Survey Question).

Much data is missing. For example, Allegheny County did not respond to numerous questions, including Survey Questions 3., 32., and 33. (all key questions for setting private-party page rates). This missing data is significant because Allegheny County employs about 8% of the official court reporters in the state, and because private-party page rates in

Allegheny County would be expected to be higher than the statewide average. Therefore, omissions could be expected to skew the data downward.

Survey Question 41./27. asks whether each judicial district has a uniform fee schedule. Only five judicial districts indicated that they did not have a uniform fee schedule. Collecting the fee schedules and analyzing them is the best way to begin to gather data on transcript fees.

5. The quality of the Committee Survey results is degraded by confusing and inconsistent terminology.

For example, it appears that the subparts of Survey Question 3./2. either ask for the amount of money spent in the judicial district on private-party and county-paid transcripts, or ask for the amount of pages of private-party and county-paid transcript produced. Survey respondents appeared confused. Some answered the questions in dollars and some answered in number of pages.

In another example, Survey Question 33. uses the term "non-indigent copies," presumably to mean copies paid for by private litigants, while Question 3./2. uses the term "party-paid" transcripts (presumably also paid for by private litigants).

Unfortunately, weaknesses in the Committee Survey design and execution, coupled with other issues arising in some judicial districts, compromise the integrity of the data and limit the conclusions that can be validly extrapolated from the Committee Survey responses.

Inclusion of official reporters on the Committee will help ensure that future data collection efforts benefit from a ground-level view of court reporting operations in the common pleas system. AOPC must understand Ground Truth before moving forward.

III. Challenges: Designating An Appropriate Private Page Rate

A. Collective Bargaining Issues

Approximately 32% of all official reporters in the Commonwealth are subject to collective bargaining agreements. The bargaining agents for the Unified Judicial System are the county commissioners in each county. 16 P.S. § 1620. In Bradley v. Pennsylvania Labor Relations Board, 479 Pa. 440, 447-448; 388 A.2d 736, 739-740 (1978), the Supreme Court held that court reporters may collectively bargain *financial terms of employment* under provisions of the Public Employee Relations Act, so long as judges retain the authority to hire, fire and supervise (emphasis added). Therefore, with respect to court reporters, there is a clear legal distinction between *financial terms of employment* which are the *exclusive province of the counties* and hiring, firing and supervision which are the exclusive province of the judiciary under Article V § 10(a) of the Pennsylvania Constitution.

Collective bargaining agreements rely on page rate standards set under the existing Chapter 5000 of the RJA. Because most judicial districts have elected to set their own private-party page rates under the Chapter 5000 Rules, AOPC may be breaching the terms of collective bargaining agreements to the extent that the page rates in Proposed Rule 4008 are *less*

than the rates currently in use in most districts under the Chapter 5000

Rules.

B. Overtime Issue

Court reporting work is unusual in that it requires transcript production "off the clock."² In the mid-1990s, the federal Fair Labor Standards Act was amended to carve court reporting out of the "time and a half over forty" requirement of the Act under certain circumstances. See 29 U.S.C. § 207(o)(6)(A). The *quid pro quo* for this exception was to allow court reporters to charge for transcript preparation.

A rational rate-setting system must take the absence of overtime into account by adjusting page rates upward to account for the loss of overtime pay. Because the Committee Survey fails to capture off-the-clock transcript preparation hours, it is difficult to ascertain how this factor should be quantified. Nevertheless, it is an important factor that should be considered.

C. Amortization Issue

Traditionally, court reporters charged a per-page fee for preparing an original transcript. This original transcript and one copy were provided to

² The special nature of the court reporter is expressly recognized in Rule 5000.13(a), which notes that "[t]he . . . notes, tapes, or other media . . . shall be public property, subject, however, to the vested property interest of the reporter described in these rules."

the appellant/requesting party in order that the original could be lodged with the court and the copy retained for the requesting party's records. A separate per-page fee for preparing a copy of the original was usually charged when the appellee/responding party requested a copy after learning of the appeal or motion.

Accordingly, the total cost of preparing a transcript is amortized between originals and copies. Therefore, fees for preparing both originals and copies must be considered when designating an appropriate page rate.

Proposed Rule 4008 undermines the traditional system by requiring the appellant/moving party to pay 100% of the cost of creating the record while the appellee/respondent pays nothing. See Proposed Rule 4008(D)(1). For purposes of this analysis, this allocation is problematic because it deprives official court reporters of copy income that they rely on and because it may breach collective bargaining agreements.

To avoid these negative outcomes, any rational rate-setting system in which copies are free must assign a value to the production of the original that fully accounts for transcript production costs that were previously amortized by the sale of copies.

More and better data is necessary to do this. If AOPC has determined that copies should be free, it should collect additional data and calculate: 1) the average page rate for private-party copies, 2) the average number of private-party copies prepared, 3) the ratio of private-party originals produced to private-party copies produced, 4) multiply the ratio by the two averages to calculate the two products, and 5) add the two products to calculate the amortized rate.

AOPC must consider the total cost of transcript production, notwithstanding the fact that the total has, historically, been amortized between originals and copies.

IV. Methodology: Designating An Appropriate Private Page Rate

A. Building A "Neutral" Page Rate

For purposes of rate-setting, a "neutral" rate is a rate equal to the rate(s) currently charged under the existing RJA. However, rather than being simply designated, what is needed is a methodology for building the rate, *and for making future adjustments to the rate*. In other words, to develop a rate-setting methodology.

The first step in building a neutral page rate is to analyze the rates that are currently charged. While the Committee Survey begins to provide some data upon which tentative conclusions may be made, it is not a comprehensive remuneration survey and so fails to answer fundamental questions.

1. Determine Original Transcript Rates. The average of all data reported by Committee Survey respondents to Question 32. ("Non-indigent Original") is \$2.13 per-page. After removing the "zero" responses of a number of counties, the average of all data reported to Question 33. ("What additional fees are charged" under "Non Indigent"), is \$1.99 per copy.

It should be recognized that the average of \$1.99 per copy suffers from two problems. First, there are some extreme outliers in the data. For

example, one judicial district noted that they apparently charge \$5.00 per copy. This is doubtful but indicates a need for better metrics, training and follow-up to ensure accurate survey results.

The second problem is that there are a number of "zero" responses where county fee schedules actually indicate that there is a charge for copies. This confusion likely stems from the fact that there is an almost uniform statewide practice of providing one free copy to the requesting party (along with the original with the requesting party files with the court). Again, there is a need for more accurate data.

As noted earlier, the Committee Survey provides no way to deduce the ratio of originals produced and sold to copies produced and sold (ignoring the free copy). This ratio is crucial to determining the economic effect of "free copy" policy. In most cases, the ratio will obviously be 1:1 because there will be one plaintiff and one defendant. But in many cases, there are more than two parties. This will drive-up the copy side of the ratio.

PCRA estimates that the statewide ratio is approximately 1 original produced and sold for each 1.15 copies produced and sold (again ignoring the free copy to the requesting party).

Using the PCRA estimated ratio of 1:1.15 copy pages produced and paid, for each original page produced and paid, the total production fee for one original page and 1:1.15 copy pages would be \$4.42 ((\$2.13 for the original and one copy) + ((\$1.99 for each additional copy) x (1.15 which is the estimated number of additional copies ordered for each original)).

B. The Georgia Example

Consider the example of Georgia. The July 1, 2008 Court Reporters' Fee Schedule promulgated by the Judicial Council of Georgia notes in ¶ 2A.(1) that the per-page rate for originals is \$3.78, and two copies shall be provided at no charge. See Georgia Court Reporters' Fee Schedule attached as Exhibit 5.

One reason that this rate looks to be built up in the manner suggested above is that the Georgia number is not a round number. In any event, the Georgia rate is about \$1.50 per-page more than the rate designated in Proposed Rule 4008 which, like the Georgia rule, also imposes a "free copies" requirement.

According to the U.S. Census Bureau, Georgia and Pennsylvania are quite similar in many respects. For example:

	Pennsylvania	Georgia
Population	12 million	10 million
Land Area	45,000 sq. miles	60,000 sq. miles
Median Household Income	\$49,000.00	\$49,000.00
Mean Travel Time To Work	25 minutes	28 minutes

U.S. Census Bureau: <http://quickfacts.census.gov/qfd/states/13000.html>.

Mean Travel Time To Work is a good approximation of urbanization which correlates with cost of living. Considering geographic, demographic and other similarities, the Georgia rate should be persuasive evidence that the rates set forth in Proposed Rule 4007 are not adequate.

C. Neutral Page Rate -- Adjustments

Once a neutral page rate is determined, the rate should be adjusted to take into account other relevant factors, including:

1. Official reporter salaries
2. Labor market conditions
3. County classifications
4. Transcript complexity

1. Salaries. The Committee Survey reveals that the average salary for an official court reporter is approximately \$37,386.00. See Committee

Survey Questions 16./23. and 23./13. According to the U.S. Bureau of Labor Statistics, the national mean annual wage for a county-level official court reporter is currently \$52,950.00. The difference between the U.S. mean of \$52,950.00 (local government OES designation) and the Commonwealth's average of \$37,386.00 is \$15,564.00. See B.L.S. Report attached as Exhibit 3.

However, Committee Survey data on transcript fees helps to close the gap. Consider that the Commonwealth has a total of 498 full time official reporters (an average of 8.3 per judicial district). See Committee Survey Question 2. 1.

The Committee Survey indicates that judicial districts spend an average of \$12,576.00 on county-paid transcript preparation fees. See Committee Survey Question 43./28a. Each judicial district generates, on average, private-party transcript preparation fees of \$9,306.00.³ See Committee Survey Question 44./28b.

If we add the amounts from both Survey Question 43./28a. (\$12,576.00) and Survey Question 44./28b. (\$9,306.00) and divide the sum by the average number of reporters in each judicial district (8.3), we can

³ However, only 29 judicial districts responded with data to this question. The absence of more than half of the data raises serious questions about the average obtained from the Survey.

obtain the total average dollar amount of transcript preparation fees paid to court reporters throughout the state. That sum is \$2,635.00.

When we add the transcript fee income (\$2,635.00) to the salary income (\$37,386.00), the sum is \$40,021.00. This amount is \$12,929.00 *less* than the \$52,950.00 U.S. average as determined by the Bureau of Labor Statistics. See Exhibit 2. Expressed as a percentage, Pennsylvania official reporters earn, on average, 29% less than the U.S. average of county-employed reporters. Considering that Pennsylvania has a higher cost of living than 27 of the 50 states, the difference is very significant.⁴

2. Labor Market Conditions. The Committee Survey data indicates that there are 498 full-time official reporters employed in Pennsylvania. See Committee Survey Question 2. The Survey data also indicates that 30 full-time positions remained "vacant" (6% of positions). Id. Finally, the Survey indicates that judicial districts are using about 69 *per diem* reporters (14% of positions). Id.

However, the Survey questions do not permit a determination of the extent to which contract reporters were used to fill "vacant" official reporter positions. This is a major limitation because it makes it difficult to

⁴ See http://ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm.

determine the true number of "vacant," i.e., unfilled official reporter positions which need to be filled.

It may be that the use of *per diem* reporters is a truer measure of the need to fill official reporter positions, i.e. the *per diem* reporters are filling the "vacant" official reporter positions. In that event, the true number of unfilled positions would be about 14% (69/498).

Alternatively, it may be that the "vacant" official reporter positions exist in addition to the unfilled positions that are currently "filled" by *per diem* reporters. In that event, the true number of "vacant" positions for which there is a need to hire an official reporter would be 20% ((30 + 69)/498).

In any event, the number of "vacant" or unfilled official positions is somewhere between 6% and 20%.

3. County Classification. There are vast differences in the nature of cases brought in specific judicial districts throughout the state. For example, most mass tort cases are heard in Philadelphia. Certain judicial districts bear a disproportionate share of medical malpractice litigation.⁵

⁵ As discussed in more detail below, there are significant differences in the types of transcripts produced. Reporters concentrating on medial malpractice, trademark and other complex transcripts should be compensated differently from those producing run of the mill litigation transcripts.

There are also significant differences in the costs of living among judicial districts. For example, in Philadelphia, the requirement that official reporters live in the city is one of a number of factors that drive up their cost of living compared with their suburban and rural colleagues.

A rational page rate system must take account of these differences in case complexity and cost of living. PCRA suggests superimposing any rate system on the county classification system to account for differences in complexity and cost of living.

Using this method, statewide rates would be adjusted to take account of county classifications (rates being higher in more urban counties, and perhaps also in very rural counties).⁶ This method would combine an increased measure of uniformity and central AOPC control with increased fairness with respect to variations in the cost of living. Committee Survey data shows that between 6% and 20% of official reporter positions remain unfilled. The overwhelming majority of these unfilled positions are in Philadelphia and very rural counties. Adjusting statewide rates based on county classification would permit a flexible response to this labor issue and improve the situation in counties struggling to recruit official court reporters.

⁶ One issue that would arise in such a system would be how to treat home rule counties.

4. Transcript Complexity. There is a great deal more effort needed to prepare a transcript in a medical malpractice case than in a slip and fall case. Anecdotal evidence suggests that certain judicial districts entertain many more medical malpractice, intellectual property, toxic tort and other complex cases than other judicial districts. Anecdotal evidence also suggests that certain reporters specialize in producing transcripts for these types of cases. A failure to reward these specialized reporters would be likely to reduce the number of such reporters available.

A rational rate setting system must account for variations in complexity and provide a means by which rates may be adjusted to take account of these differences. For example, the incorporation of a judicial bypass procedure for complex cases would build necessary flexibility into the rate setting system by allowing judges to adjust page rates in complex cases.

V. Accounting Issues

The Rule 4009 Comment notes that "the transcript fees . . . are the property of the county -- not a pass through to the reporter." Rule 4007 Comment notes that the "particular methods . . . for receiving and accounting for fees . . . is left to the discretion of the [President Judge]. . . ."

The payment of fees to the county, as opposed to the reporter, represents a departure from the "vested interest" recognized in Rule 5000.13(a). This has serious consequences for AOPC's ability to maintain uniformity in the statewide administration of justice.

Each county budget contains a section detailing the budget for the court of common pleas. The common pleas budget represents a cost to the county.

Most common pleas court budgets also contain a line-item for fees. These fees represent an income item. See Excerpts from 2009 Budget for Lebanon County, attached as Exhibit 4.

To the extent that court revenue offsets court expenses, the proposal to interpose the county finance function between official court reporters and private-party litigants involves a risk of re-allocation of the income item represented by transcript fees. In other words, designating private-party

court reporting fees as county income, invites the county commissioners and/or executives to offset the additional revenue from transcripts with a decrease in county financial support to the court of common pleas. Given the difficult economic times, it is hard not to foresee this outcome.

AOPC should ensure control over judicial administration by incorporating county rate schedules into the proposed amendments.

VI. Rate Setting Policy Concerns

The proposed amendments provide, in Rule 4000.1, that it is the policy of the Unified Judicial System (UJS) to ensure that "transcripts are . . . *affordable to all litigants.*" Of course, the only transcripts that are truly affordable to *all* litigants are free. Nevertheless, the proposed amendments do not provide for free transcripts.

This policy opens Pandora's Box and should be stricken -- if for no other reason than the fact that the page rates proposed in the amendments are not "affordable to all litigants." The policy statement is likely to be used to attack *any transcript fees* that future judicial determinations might try to impose, as well as to provide policy support to attacks on adverse *in forma pauperis* (IFP) determinations in common pleas courts.

AOPC and the Committee must ask whether transcript costs are a *bona fide* barrier to court access, and if so, what data supports that conclusion.

Because IFP status has been the traditional guarantee of access to the court for those unable to pay, transcript fees cannot be a constitutional barrier. In fact, Committee Survey data indicates that *all* counties underwrite the cost of transcripts for IFP status litigants.

It is unnecessary and unwise to create a policy standard of "affordable to all litigants." In any event, before creating a fee structure designed to ensure constitutionally adequate access to the courts, AOPC would need data on both existing fees, and data indicating the level of fees at which transcripts would be "affordable to all litigants."

If the Committee is in agreement that transcript fees do not presently comprise a constitutional barrier to court access, but the Committee nevertheless believes that it is advisable to regulate transcript fees, several important questions need to be asked and answered:

1. What is the optimal rate for transcript fees and what data is available to make that determination?
2. Should rate-setting policy subsidize private litigation by keeping transcript fees arbitrarily low, and what goals would be served by doing so?
3. Do transcript fees form an economic incentive for timely completion of transcripts and if so, what will be the effect of changing those rates?

While there is no question that the Court is free to require that "transcripts are affordable to all litigants," the methods by which the Court may achieve that goal may not encroach upon the "salary and compensation" provisions of the County Code.

VII. Disciplinary Rate Setting

According to the Committee Survey, timeliness of transcript production is generally not an issue. In response to question 48./31. there were almost no responses indicating a problem in this area.

However, the disciplinary measures contained in the 21-day turnaround in Proposed Rules 4011 and 4012 are destabilizing and should be stricken from the rule.

Consider the case of Philadelphia. Currently, Philadelphia has 10% of its official reporter positions unfilled, a hiring freeze and an austerity measure that prevents the utilization of *per diem* reporters. Under these conditions it is absurd to propose the types of financial penalties contained in Rules 4011 and 4012. The situation in Philadelphia is similar to many rural judicial districts where administrators have been unable to recruit and retain an official reporter.

The fact is that many of the conditions that control the timeliness of transcript production are outside of the control of official reporters. The current system works so well because it couples a direct financial incentive with the production of transcripts via the "vested interest" standard.

The Proposed Rules have decoupled transcript production from the direct financial incentive that has driven productivity in the past. Without a major infusion of man-hours and new county spending, the proposed amendments are going to bog down the judicial system and transcript production. Punitive measures will not be sufficient to make up this lost productivity and are likely to become, themselves, a source of lost productivity by drawing management and reporters into conflict.

Anecdotal evidence suggests that poor human resource management is the dominant factor affecting transcript production. AOPC must demonstrate a commitment to developing "best practices" as well as benchmarks, policies and procedures to assist judicial districts in improving the human resources management of official court reporters. A standing committee on court reporting is necessary to do this. AOPC should recruit a top performing court reporting supervisor to head up this important effort -- not penalize reporters with arbitrary deadlines that are punitive, demoralizing and at odds with long-recognized motivational human resource principles.

VIII. County Rates

A. Legal Background

The Supreme Court of Pennsylvania has the power to prescribe general rules governing practice and procedure throughout the judicial branch. Erie County Juvenile Probation Department v. Pennsylvania Human Relations Commission, 546 Pa. 4, 6; 682 A.2d 1246, 1247 (1996), citing Article V § 10(a) of the Pennsylvania Constitution.

However, section 1620 of the County Code provides that "salaries and compensation of all . . . employees who are paid from the county treasury shall be fixed by the salary board . . . 16 P.S. § 1620. Section 1620 also contains a requirement that the "county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas . . ." before the Pennsylvania Labor Relations Board. The Court has held that the provisions of section 1620 apply to all judicial districts in Pennsylvania. Ellenbogen.

B. Analysis

Because the AOPC (the Supreme Court) controls the terms and conditions under which court employees work, but *counties* control employee remuneration, AOPC is without an important tool that can be used

to ensure uniform standards of judicial administration -- pay. In other words, AOPC may not unilaterally determine, for example, that the salary paid to official court reporters in Philadelphia is inadequate to attract numbers of official reporters sufficient for smooth operation of that judicial district and therefore raise the starting salary.

AOPC attempted, under the existing RJA, to stipulate that an adequate number of reporters must be retained in each judicial district. See RJA 5000.4(a). But that is about as much as AOPC can do.

Until now however, AOPC has controlled transcript rates which are used to pay official court reporters under the "vested interest" standard of the existing RJA. See RJA 5000.13(a). Transcript fees fall into a grey area between court fees (subject to AOPC control) and remuneration (subject to county control), because they are both.

AOPC must realize that its historical regulation in this area is now a tool for ensuring statewide uniformity in the administration of justice by stipulating the minimum rate for county paid transcripts -- this tool is important. Given the fiscal situation in Philadelphia, it is not hard to imagine how the flexibility of the proposed amendments could be used to the detriment of the judicial system.

For example, what if a two-tiered rate structure develops in Philadelphia -- a lower rate for county transcripts, and a higher rate for private transcripts. What will happen to the average quality of each group of transcripts? If those relying on county-paid transcript get a lower quality transcript, will that affect the quality of justice? The answer is "Yes."

Nevertheless, the Proposed Amendments appear to surrender this important tool and to put the president judges in the uncomfortable position of having to hammer out agreements with county commissioners on a district-by-district basis.

This policy represents a failure of leadership. AOPC must protect its ability to set minimum rates for county transcripts as means to ensure quality and uniformity. Further, AOPC must not pass difficult political decisions to president judges by leaving them responsible for reaching agreements with cash strapped county governments.

IX. Conclusion

AOPC needs to change the composition of this Committee to get a better view of what is happening on the ground. Official reporters and their supervisors are needed on the Committee.

Beyond reforming the Committee, AOPC must implement a step-by-step reform process. First, develop quantitative tools than can be used to set appropriate rates. Second, impose reporting requirements on the judicial districts so that real-time data is collected. Third, provide training, supervision and follow up to ensure the accuracy of the data that is collected. Fourth, after gathering a sufficient amount of data, go back to the drawing board and perform rate-setting calculations.

Finally, it has been about 25 years since these rules were last revised. The long span of time creates the need for more radical (and therefore risky) changes than would be necessary if the rule were iteratively reviewed every few years. AOPC needs to have a standing committee charged with supervising the making of records in the judicial districts and, as part of its

responsibilities, periodically setting and updating transcript rates on a continuous basis.

Respectfully,

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