



JUDICIAL BRANCH CERTIFICATION COMMISSION

COMPLAINT FORM

Submit Form To:

Judicial Branch Certification Commission
 Certification Division
 PO Box 12066, Austin, TX 78711
 (Office) 512-475-4368 (Fax) 512-463-1117

To file a complaint against a Certified Court Reporter, a Court Reporting Firm, a Certified Guardian, a Certified Process Server or a Licensed Court Interpreter, you must complete this form. The Complainant's identity is not confidential. A copy of the complaint and any related documentation may be forwarded to the Respondent, including your name and contact information. The documents and information provided may be released to the public.

| COMPLAINANT'S INFORMATION: You, as the complaining party | | | | | |
|---|-------------------------|---|---|---|-------|
| Name: | | Lorrie A. Schnoor | | | |
| Mailing Address: | | 2330 Vernell Way | | | |
| City: | Round Rock | State: | TX | Zip Code: | 78664 |
| Daytime Phone: | (512) 914-2638 | Alternate Phone: | | Fax: | |
| Email: | laschnoor@prodigy.net | | | | |
| RESPONDENT'S INFORMATION: The person or firm you are complaining about | | | | | |
| Name: | | Trey Perez | | | |
| Company or Firm: | | Austin Legal Video, LLC d/b/a Deposition Video Services | | | |
| Mailing Address: | | 1601 Sahara Avenue | | | |
| City: | Austin | State: | TX | Zip Code: | 78745 |
| Phone: | (512) 750-2167 | Fax: | | | |
| Email: | pasqualperez@yahoo.com. | | | | |
| License, Certification, or Registration Number: | | | | | |
| Please select the Respondent's certification, registration or license type: | | | | | |
| <input type="checkbox"/> Court Reporter | | <input type="checkbox"/> Court Reporting Firm | | <input type="checkbox"/> Certified Guardian | |
| <input type="checkbox"/> Certified Process Server | | | <input type="checkbox"/> Licensed Court Interpreter | | |

Judicial Branch Certification Commission
 PO Box 12066, Austin, TX 78711
 (Office) 512-475-4368 (Fax) 512-463-1117
 (Website) www.txcourts.gov/jbcc (Email) jbcc@txcourts.gov

Please describe your complaint in detail. *Include names, dates, locations, and the facts surrounding your allegations. Attach any supporting documentation to this complaint.* Additional pages may be used if needed. Please number any additional pages.

Trey Perez, owner of Austin Legal Video Services, LLC, d/b/a Deposition Video Services, is a notary public taking depositions by videotape only per his own admission from his Facebook page on February 3, 2020: Author Austin Legal Video, LLC dba/Deposition Video Services - "I'll just employ a court reporter to certify the depositions after the fact. I know that has to be ok because CR firms always used to have us do video only depositions when a reporter could not be found. Unless your going to suggest that somehow when we follow the same procedure that cr firms do ours is not legit but the cr firms is?" ** Please see attached screenshots of Facebook posts.

Attached is a video of Mr. Perez entitled "Having Trouble Finding a Court Reporter" found on Google stating that he can provide rough draft, next-day transcripts of depositions. The transcript from that video states:

[The video opens with newscast clips from the Permian Basin and Austin]

TREY PEREZ: "Hi there. My name is Trey Perez. I'm here to talk about the widespread shortage of court reporters. It's not only happening in Texas but across the country. We understand how difficult this can make your job. However, thanks to technology, there is a 21st century solution. We're not trying to replace court reporters, but in their absence, we can offer a rough draft, next-day transcript of the deposition. So if you're in a bind and can't find a court reporter, contact us for details. Thank you."

My complaint is that Mr. Perez is violating the following statutes:

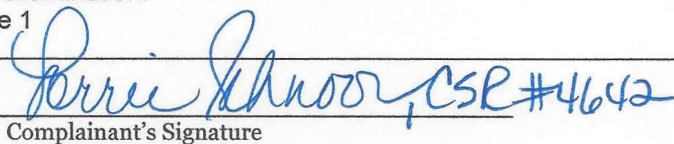
1) Govt Code 154.101 Certification of Reporters, (f) Except as provided by Section 154.112 and by Section 20.001, Civil Practice and Remedies Code, all depositions conducted in this state must be recorded by a certified shorthand reporter. **Mr. Perez is not a certified shorthand reporter.

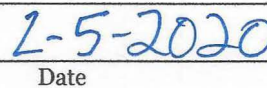
2) Govt Code 154.106 Firm Registration (a) ... or offer services as a court reporting firm, unless the firm and its affiliate offices are registered with the commission on a form prescribed by the commission as required by this subchapter. Govt Code 52.001 (6) defines a court reporting firm as an entity wholly or partly in the business of providing court reporting or other related services in this state. See also JBCC Rule 6.2 Certification or Registration (b) A court reporting firm and its affiliate offices must register with the Commission. Unless a firm and its affiliate offices are registered with the Commission, the firm must not: (2) offer services as a court reporting firm or shorthand reporting firm. **By offering to provide rough draft, next day transcripts of depositions, Mr. Perez is offering services as a firm. Govt Code 154.113 (a-1) authorizes criminal penalties for these violations, with each day of violation constituting a separate offense.

3) Govt Code 154.114 Exemptions. This chapter does not apply to: (1) a party to the litigation involved; (2) the attorney of the party; or (3) a full-time employee of a party or a party's attorney. **Mr. Perez is a third-party videographer, thereby violating this statute.

4) The Civil Practice and Remedies Code, Section 20.001, Persons Who May Take a Deposition, states (a) A deposition on written questions of a witness who is alleged to reside or to be in this state may be taken by: (3) a notary public. **Notaries are only authorized to take depositions on written questions, not depositions upon oral examination.

Page 1


Complainant's Signature


Date

Please describe your complaint in detail. *Include names, dates, locations, and the facts surrounding your allegations. Attach any supporting documentation to this complaint.* Additional pages may be used if needed. Please number any additional pages.

Govt Code 154.112 Employment of Noncertified Shorthand Reporters, only allows for "noncertified shorthand reporters" to be used if a certified shorthand reporter is not available. **Mr. Perez is not a noncertified shorthand reporter, thereby violating this statute.

While Mr. Perez is not a regulated person, my basis for filing a complaint falls under Govt Code Sec. 153.0001. FILING COMPLAINT. (a) To file a complaint with the commission against a regulated person or another person alleged to have unlawfully engaged in conduct regulated under this subchapter, a person must: (1) have personal knowledge of the alleged violation; (2) complete a complaint form provided by the commission; (3) sign the completed complaint form; and (4) attach any pertinent documentary evidence to the complaint form.

JBCC Rule 1.2 Definitions (m) Respondent means any person, regardless of whether the person is certified, registered, or licensed, who is charged with violating a law that establishes a regulatory program administered by the Commission, a rule adopted by the Commission, or an order issued by the Commission or the Director.

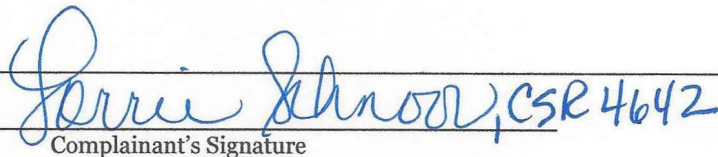
Supporting documentation includes all of the statutes that I have cited, along with the following AG opinions:

AG opinion GA-0928 issued May 14, 2012, states: "The Texas Supreme Court has construed this language [Gov Code 154.114] to mean that litigants or lawyers may notice an oral deposition to be recorded non-stenographically and have their secretary record the proceeding by audiotape or videotape."

"Construing Rule 199.1 in light of Government Code sections 52.021 [154.101] and 52.033 [154.114], the individuals authorized to make a non-stenographic recording are (1) a party to the litigation; (2) the attorney of the party; or (3) a full-time employee of a party or a party's attorney." **Govt Code 52.021 is now 154.101; Gov Code 52.033 is now 154.114.

Letter Opinion No. 93-110 addresses depositions upon oral examination using a tape recorder. The opinion committee states, in summary, "A person who records a deposition upon oral examination using a tape recorder as the primary or only method does not engage in "shorthand reporting" in violation of section 52.021 (b) or use a "shorthand reporting method" for which he or she is not certified. The recording of such a deposition using a tape recorder as the primary or only method, however, would run afoul of section 52.021(f), which provides that all such depositions must be recorded by a certified shorthand reporter, unless its exceptions apply." [Section 52.021(f) is now Section 154.101(f)]

Page 2

 Terrie Johnson, CSR 4642

Complainant's Signature

2-5-2020

Date

Please describe your complaint in detail. *Include names, dates, locations, and the facts surrounding your allegations. Attach any supporting documentation to this complaint.* Additional pages may be used if needed. Please number any additional pages.

The JBCC has been given the authority by the legislature to act on the allegations in this complaint based on the following sections of the Government Code and JBCC Rules:

Govt Code Section 154.101 (g) the commission may enforce this section by seeking an injunction or by filing a complaint against a person who is not certified by the supreme court. The commission may seek the injunction in the district court of the county in which that person resides or in Travis County. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The commission shall be represented by the attorney general, the county or district attorney of this state, or counsel designated and empowered by the commission.

JBCC Rule 2.0, Powers, Duties, and Responsibilities.

2.1 Powers and Duties of the Commission

(a) The Commission shall:

(1) administer and enforce the Act, these rules, and the standards or codes of ethics applicable to each profession regulated by the Commission;

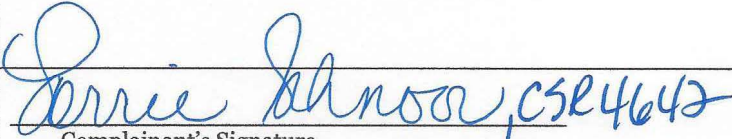
JBCC Rule 2.3 Powers and Duties of the Administrative Director (a) The Administrative Director must administer and enforce the Commission's programs and policies as provided by the Act and other applicable law, including, but not limited to: (4) issuing cease and desist orders as provided by Section 153.003 of the Govt Code

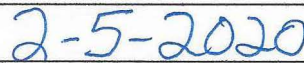
JBCC Rule 5.0 Commission Enforcement

5.3 Cease and Desist Orders (a) The Director may issue a temporary cease and desist order if the Director determines that the action is necessary to prevent a violation of: (1) the Act; (2) a law establishing a regulatory program administered by the Commission; or (3) a rule adopted under the Act or order issued by the Commission or the Director. (b) a cease and desist order may require a person to cease and desist from committing a violation listed under (a) or from engaging in any practice regulated by the Commission to prevent the violation.

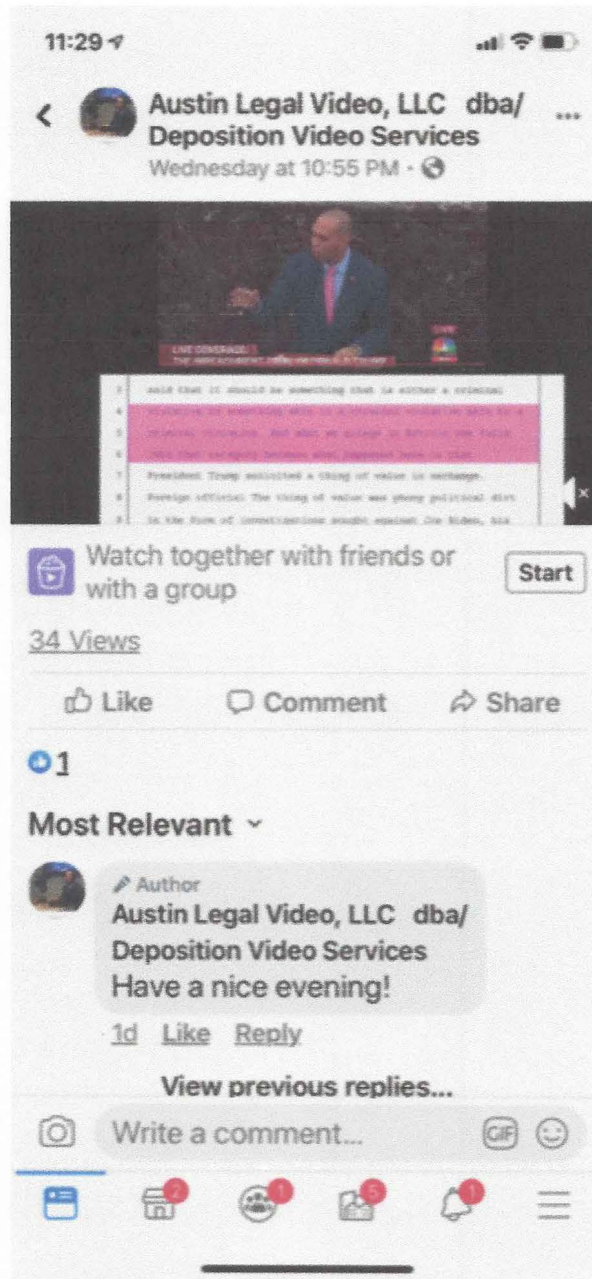
JBCC Rule 5.5 Injunction (a) The Commission may apply to a district court in any county for an injunction to restrain a violation of the Act or a rule adopted under the Act.

Page 3


Complainant's Signature


Date


Posted Jan 29 @
10:55 p.m.
on Facebook




11:30



<  **Austin Legal Video, LLC dba/
Deposition Video Services** ...
Wednesday at 10:55 PM · 🌐

 Author
**Austin Legal Video, LLC dba/
Deposition Video Services**
Jo Ann Byles Holmgren I will have a demo posted tomorrow on how to edit the rough draft and how to use our vocabulary function tool to create cleaner rough drafts.

1d Like Reply


 **Jo Ann Byles Holmgren**
Austin Legal Video, LLC dba/Deposition Video Services - Yet again, it doesn't matter what you do. YOU ARE NOT CERTIFIED IN TEXAS! I'm sure you won't get this, but individuals that report legal proceedings are certified for a reason. When you pass a state test, get fingerprinted by the FBI database, are an acceptable method to report

 Write a comment...  





11:30





<  **Austin Legal Video, LLC dba/
Deposition Video Services** ...
Wednesday at 10:55 PM · 🌐

 Author
**Austin Legal Video, LLC dba/
Deposition Video Services**
Jo Ann Byles Holmgren our
video is the record as well.
19h Like Reply

 **Jo Ann Byles Holmgren**
**Austin Legal Video, LLC
dba/Deposition Video
Services** - no, sir, it's not. It's a
video of the proceedings, but
it is not the official record. You
would have to be certified to
produce an official record.
Lawyers can't even include
video costs in taxable costs to
the Court.
17h Like Reply


 Author
**Austin Legal Video, LLC dba/
Deposition Video Services**
I'll just employ a court reporter


 Write a comment...  




11:30



<  **Austin Legal Video, LLC dba/ Deposition Video Services** ...
Wednesday at 10:55 PM · 🌐

 **Author**
Austin Legal Video, LLC dba/ Deposition Video Services
I'll just employ a court reporter to certify the depositions after the fact. I know that has to be ok because CR firms always used to have us do video only depositions when a reporter could not be found. Unless your going to suggest that somehow when we follow the same procedure that cr firms do ours is not legit but the cr firms is?

16h Like Reply

 **Jo Ann Byles Holmgren**
Austin Legal Video, LLC dba/Deposition Video Services - Well, now, so you have personal knowledge of it? Hmmmm. Please share.


 Write a comment...  




11:30






<  **Austin Legal Video, LLC dba/ Deposition Video Services** ...
Wednesday at 10:55 PM · 🌐





 Author
Austin Legal Video, LLC dba/ Deposition Video Services
Every cr firm who is now blackballing us has at one point asked us to shoot a video only deposition but all of a sudden when we develop a product that helps the process it's not allowed . They can't have it both ways. The cr firms are the ones reporters should be upset with..if you think your getting a 70 30 split your wrong. Most reporters don't even know what the firm is billing the attorneys . Were a very small video firm who came up with a great product because of the shortage . we were proactive and... See More

15h [Like](#) [Reply](#)


 **Jo Ann Byles Holmgren**
First of all the small firm

 Write a comment...  



11:35  google.com   

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 Austin Legal Video, LLC
on Google

Having Trouble Finding a last minute Reporter? Call us at 512-750-2167 Austin Legal Video can provide you with a videographer who is a notary to swear in the witness, videotape the proceedings and provide you a certified transcript.

1 day ago

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 Austin Legal Video, LLC
Jul 25, 2019



Having Trouble Finding a Court Reporter?
Contact us to find out if we can offer a solution for
your specific needs.

[↩](#)

 Austin Legal Video, LLC
Jan 5, 2019



Austin Legal Video, LLC



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2012

The Honorable Ben Woodward
Chair, Court Reporters Certification Board
205 West Fourteenth Street, Suite 101
Austin, Texas 78701

Opinion No. GA-0928

Re: Whether and to what extent depositions can
be recorded solely by non-stenographic means
(RQ-0993-GA)

Dear Judge Woodward:

You seek an opinion addressing whether “an oral deposition meant for use in litigation in the courts of this state [can] be recorded solely by non-stenographic means.”¹ Your question arises due to a perceived conflict between a rule of civil procedure adopted by the Texas Supreme Court and a provision of the Government Code. Request Letter at 1–2.

Texas Rule of Civil Procedure 199.1, adopted by the Texas Supreme Court in 1998, states, in relevant part:

(c) *Nonstenographic Recording.* Any party may cause a deposition upon oral examination to be recorded by other than stenographic means, including videotape recording. . . . At least five days prior to the deposition, the party must serve on the witness and all parties a notice . . . that the deposition will be recorded by other than stenographic means. This notice must state the method of nonstenographic recording to be used and *whether the deposition will also be recorded stenographically.*

TEX. R. CIV. P. 199.1(c) (emphasis added). Thus, the rule allows a party to record an oral deposition solely by non-stenographic means.

Subsection 52.021(f) of the Government Code generally requires that “all depositions conducted in this state must be recorded by a certified shorthand reporter.” TEX. GOV’T CODE ANN.

¹Letter from Honorable Ben Woodward, Chair, Court Reporters Certification Bd., to Honorable Greg Abbott, Tex. Att’y Gen. at 1 (Aug. 31, 2011), <http://www.texasattorneygeneral.gov/opin> (“Request Letter”).

§ 52.021(f) (West 2005).² For purposes of chapter 52 of the Government Code, the Legislature defines a “shorthand reporter” as “a person who engages in shorthand reporting,” and it defines “shorthand reporting” as “the practice of shorthand reporting for use in litigation in the courts of this state by making a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.”³ *Id.* § 52.001(a)(4)–(5) (West Supp. 2011).

Important in analyzing subsection 52.021(f), however, is the exception found in section 52.033 of the Government Code:

This chapter does not apply to:

- (1) a party to the litigation involved;
- (2) the attorney of the party;
- (3) a full-time employee of a party or a party’s attorney.⁴

Id. § 52.033 (West 2005). The Texas Supreme Court has construed this language to mean that litigants or lawyers may notice an oral deposition to be recorded non-stenographically and have their secretary record the proceeding by audiotape or videotape. *See Burr v. Shannon*, 593 S.W.2d 677, 677–78 (Tex. 1980) (orig. proceeding) (addressing the predecessor statute to section 52.033).

When construing rules and statutes, “they must be interpreted so as to harmonize and give effect, if possible, to all of their parts.” *Owens-Illinois Inc. v. Chatham*, 899 S.W.2d 722, 732 (Tex. App.—Houston [14 Dist.] 1995, writ dismissed). Construing Rule 199.1 in light of Government Code sections 52.021 and 52.033, the individuals authorized to make a non-stenographic recording are (1) a party to the litigation; (2) the attorney of the party; or (3) a full-time employee of a party or a party’s attorney.⁵ TEX. GOV’T CODE ANN. § 52.033 (West 2005); TEX. R. CIV. P. 199.1; *see also* TEX. R. CIV. P. 203.6(a) (“A nonstenographic recording . . . may be used to the same extent as a

²Section 52.021(f) lists two exceptions to this general rule: (1) section 52.031 of the Government Code, which allows a noncertified shorthand reporter to be employed under certain circumstances when a certified shorthand reporter is unavailable; and (2) section 20.001 of the Civil Practices and Remedies Code, which allows depositions on written questions and depositions of witnesses outside the state to be taken by various individuals other than certified shorthand reporters. TEX. GOV’T CODE ANN. §§ 52.021(f), 52.031 (West 2005); TEX. CIV. PRAC. & REM. CODE ANN. § 20.001 (West 2008).

³We find no statutory definition for “stenography.” However, the common meaning of “stenography” is “the action or process of writing in shorthand or taking dictation.” NEW OXFORD AMERICAN DICTIONARY 1669 (2001).

⁴Both sections 52.021 and 52.033 are found in chapter 52, subchapter C of the Texas Government Code. *See* TEX. GOV’T CODE ANN. §§ 52.021, 52.033 (West 2005).

⁵We note that in circumstances where a stenographic recording is already being made, individuals beyond these three categories may also make a non-stenographic recording.

The Honorable Ben Woodward - Page 3 (GA-0928)

deposition taken by stenographic means.”). These individuals may record a deposition solely by non-stenographic means without violating Government Code section 52.021(f).

Because we do not find a conflict between Rule of Civil Procedure 199.1 and Government Code section 52.021(f), we do not address your concerns about whether the Texas Supreme Court followed the procedure in Texas Government Code section 22.004 to repeal a statute or whether the requirement in section 52.021(f) is procedural or substantive. *See* Request Letter at 4.⁶


⁶You note two prior attorney general opinions that similarly addressed non-stenographic recordings. Request Letter at 2–3; Tex. Att’y Gen. Op. Nos. DM-339 (1995) at 4 (concluding that former Rule 202(e) is void to the extent that it permits parties to dispense with a stenographic transcription), DM-308 (1994) at 2 (concluding that former Rule 166c is invalid to the extent that it permits parties to stipulate that a deposition may be taken by a person other than a certified shorthand reporter). Those opinions addressed different rules of procedure that have since been repealed, and neither opinion addressed the interaction of Government Code sections 52.021(f) and 52.033.

The Honorable Ben Woodward - Page 4 (GA-0928)

S U M M A R Y

Construing Rule of Civil Procedure 199.1 in harmony with Government Code sections 52.021 and 52.033, a party to litigation, the attorney of the party, or a full-time employee of a party or a party's attorney may record a deposition solely by non-stenographic means without violating Government Code section 52.021(f).

Very truly yours,


GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JAMES D. BLACKLOCK
Deputy Attorney General for Legal Counsel

JASON BOATRIGHT
Chair, Opinion Committee

Virginia K. Hoelscher
Assistant Attorney General, Opinion Committee

December 7, 1993

Honorable Merrill L. Hartman
Chair
Court Reporters Certification Board
P.O. Box 13131
Austin, Texas 78711-3131

Letter Opinion No. 93-110

Re: Whether newly added subsections
(e) and (f) of section 52.021 of the
Government Code conflict and related
questions (ID# 22365)

Dear Judge Hartman:

On behalf of the Court Reporters Certification Board (the "board"), you ask several questions about section 52.021 of the Government Code as recently amended by House Bill 2073, Acts 1993, 73d Leg., ch. 1037, § 2 (eff. Sept. 1, 1993). Chapter 52 of the Government Code governs the certification of shorthand reporters. It defines the terms "shorthand reporter" and "court reporter" to mean "a person who engages in shorthand reporting." Gov't Code § 52.001(4), as amended by Acts 1993, 73d Leg., ch. 1037, § 1. It defines the terms "shorthand reporting" and "court reporting" as follows:

the practice of shorthand reporting for use in
litigation in the courts of this state by making a
verbatim record of an oral court proceeding,
deposition, or proceeding before a grand jury, referee

or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.

Gov't Code § 52.001(5), as amended by Acts 1993, 73d Leg., ch. 1037, § 1.

Subsection (b) of section 52.021 provides that a person may not engage in shorthand reporting in this state unless the person is certified as a shorthand reporter by the supreme court. Gov't Code § 52.021(b). Subsection (c) of section 52.021 provides that a certification issued under chapter 52 of the Government Code must be for one or more methods of shorthand reporting, namely written shorthand, machine shorthand, oral stenography, or "any other method of shorthand reporting authorized by the supreme court." Gov't Code § 52.021(c).

The legislature recently amended section 52.021 by adding the following subsections:

(e) A person may not assume or use the title or designation "court recorder," "court reporter," or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand reporter, unless the person is certified as a shorthand reporter by the supreme court. Nothing in this subsection shall be construed to either sanction or prohibit the use of electronic court recording equipment operated by a noncertified court reporter pursuant and according to rules adopted or approved by the supreme court.

(f) Except as provided by Section 52.031 and by

Section 20.001, Civil Practice and Remedies Code, all depositions conducted in this state must be recorded by a certified shorthand reporter.

(g) The board may enforce this section by seeking an injunction or by filing a complaint against a person who is not certified by the supreme court in the district court of the county in which that person resides. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The board shall be represented by the attorney general and/or the county or district attorney of this state, or counsel designated and empowered by the board.

Acts 1993, 73d Leg., ch. 1037, § 2. Section 20.001 of the Civil Practice and Remedies Code, referred to in subsection (f), provides for the taking of depositions upon written questions by certain persons. See Civ. Prac. Rem. Code § 20.001(a), as amended by Acts 1993, 73d Leg., ch. 1037, § 4. Section 52.031(b) of the Government Code provides for the reporting of a deposition upon oral examination by a noncertified shorthand reporter if a certified shorthand reporter is not available. Except as provided by section 52.031, a person who engages in shorthand reporting in violation of section 52.021 commits an offense punishable as a Class A misdemeanor. Gov't Code § 52.032(a), as amended by Acts 1993, 73d Leg., ch. 1037, § 3.

First, you ask whether newly enacted subsections (e) and (f) of section 52.021 of the Government Code conflict. We do not believe that they do. We understand that the Supreme Court of Texas has approved local rules promulgated by courts of various counties which permit electronic recording of court proceedings. See Gov't Code § 74.024(a) (authorizing the supreme court to "adopt rules of administration setting

policies and guidelines necessary or desirable for the operation and management of the court system and the efficient administration of justice"); TEX. R. CIV. P. 3a (any proposed local rule shall not become effective until it is approved by the supreme court). The intent of the last sentence of subsection (e) appears to be to ensure that the prohibition in the first sentence of the subsection has no effect on those local rules. Subsection (f), on the other hand, requires that all depositions conducted in the state must be recorded by a certified shorthand reporter, with certain exceptions not relevant here. It is clear from the amendments to section 20.001(a) of the Civil Practice and Remedies Code which were also enacted in House Bill 2073, that subsection (f) refers to depositions upon oral examination as opposed to depositions upon written questions. [footnote 1] Given that the two provisions deal with entirely different contexts, court proceedings in the case of the last sentence of subsection (e) and depositions upon oral examination in the case of subsection (f), we do not believe that they conflict. [footnote 2]

Next you ask whether a certified shorthand reporter who records a deposition using a tape recorder as the primary or only method is in violation of chapter 52 of the Government Code. We assume you are referring to a deposition upon oral examination. Subsection (b) of section 52.021 provides that a person may not engage in shorthand reporting in this state unless the person is certified as a shorthand reporter by the supreme court. Furthermore, a certified shorthand reporter may be disciplined for "engaging in the practice of shorthand reporting using a method for which the reporter is not certified." Gov't Code § 52.029(a)(7). You appear to be concerned that a certified shorthand reporter who records such a deposition using a tape recorder would run afoul of these provisions.

Your concern assumes that using a tape recorder to record such a

deposition constitutes "shorthand reporting." The definition of "shorthand reporting," however, refers to making a verbatim record "using written symbols in shorthand, machine shorthand, or oral stenography." Id. § 52.001(5). It does not refer to making a verbatim record with a tape recorder or any other electronic recording equipment. Id. Nor has the Texas Supreme Court adopted rules authorizing electronic recording as a shorthand reporting method. See Texas Supreme Court Standards and Rules for Certification of Certified Shorthand Reporters pt. I(C) (unpublished, on file with the Court Reporters Certification Board). Given the limited scope of the definition of the term "shorthand reporting," we do not believe that a person who uses a tape recorder to record such a deposition engages in "shorthand reporting" in violation of section 52.021(b) or uses a "shorthand reporting" method for which he or she is not certified. On the other hand, we believe that a person who records such a deposition using a tape recorder as the primary or only method does not act as a certified shorthand reporter. Therefore, the recording of a deposition upon oral examination using a tape recorder as the primary or only method would run afoul of section 52.021(f), which provides that all such depositions conducted in this state must be recorded by a certified shorthand reporter, unless its exceptions apply. [footnote 3]

Finally, you ask "may a professional association file a complaint against a [certified shorthand reporter] on behalf of its membership? May an individual wishing to remain anonymous file a complaint with the Board against a Texas [certified shorthand reporter]?" The first query does not specify whether you are interested in complaints filed in district court to enforce section 52.021, or complaints filed with the board to initiate disciplinary proceedings. Newly added subsection (g) of section 52.021 provides that "[t]he board may enforce this section by seeking an injunction or by filing a complaint against a person who is not certified by the supreme court in the district court of the county in which that person resides." Acts 1993, 73d Leg., ch. 1037, § 2

(emphasis added). This provision does not authorize any person, or any entity other than the board, to file a complaint against a certified shorthand reporter in district court.

Section 52.027 sets forth the method for filing a complaint against a certified shorthand reporter with the board to initiate disciplinary proceedings. It provides as follows:

(a) To file a complaint against a certified shorthand reporter, a person must:

- (1) complete a complaint form provided by the board;
- (2) sign the completed form under oath; and
- (3) attach any pertinent documentary evidence to the form.

(b) On receipt of a properly executed complaint, the board shall furnish a copy of the complaint and any attachments to the certified shorthand reporter who is the subject of the complaint.

Gov't Code § 52.027 (emphasis added). The Code Construction Act defines the term "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Id. § 311.005(2). Therefore, we believe that section 52.027 authorizes a professional association to file a complaint, provided that an authorized agent completes the complaint form and signs it under oath on behalf of the professional association. Because it requires that a

complaint must be signed and provides that the subject of the complaint is entitled to a copy, section 52.027 clearly does not permit a complaint to be filed anonymously.

S U M M A R Y

Subsections (e) and (f) of section 52.021 of the Government Code, as amended by House Bill 2037, Acts 1993, 73d Leg., ch. 1037, § 2, do not conflict.

A person who records a deposition upon oral examination using a tape recorder as the primary or only method does not engage in "shorthand reporting" in violation of section 52.021(b) or use a "shorthand reporting method" for which he or she is not certified. The recording of such a deposition using a tape recorder as the primary or only method, however, would run afoul of section 52.021(f), which provides that all such depositions must be recorded by a certified shorthand reporter, unless its exceptions apply.

Subsection (g) of section 52.021, as amended by House Bill 2073, does not authorize any person, or any entity other than the Court Reporters Certification Board, to file a complaint against a certified shorthand reporter in district court. Section 52.027 of the Government Code does not authorize the filing of a complaint with the board by an anonymous individual; it does authorize the filing of a complaint by a professional association, provided that an authorized agent completes the complaint form and signs it under oath on behalf of the professional association.

Yours very truly,

Mary R. Crouter
Assistant Attorney General
Opinion Committee

FOOTNOTES

[1] The 73d Legislature amended section 20.001(a) of the Civil Practice and Remedies Code to include the following italicized language: "A deposition on written questions of a witness who is alleged to reside or to be in this state may be taken by" See Acts 1993, 73d Leg., ch. 1037, § 4.

[2] To the extent any local rule approved by the supreme court permits the taking of a deposition by anyone other than a certified shorthand reporter, we believe the prohibition set forth in subsection (f) would prevail. Cf. Gov't Code § 74.024(d) (stating that any administrative rules adopted by the supreme court remain in effect unless and until disapproved by the legislature).

You have not asked about, and we do not consider, the relationship between section 52.021(f) and rule 202 of the Texas Rules of Civil Procedure, which appears to authorize a court to order the recording of a deposition upon oral examination by videotaping and other non-stenographic methods.

[3] We note that you ask us to consider this issue in light of subsection (d) of section 52.021, which provides that a person

certified under chapter 52 before September 1, 1983, may retain a general certification authorizing him or her to use any authorized method of shorthand reporting on the condition that he or she keep the certification in continuous effect. Given our conclusion that a certified shorthand reporter who uses a tape recorder as the primary or only method does not engage in shorthand reporting, we do not believe it is necessary for us to consider this provision.