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November 16, 2007

Denise Phipps, Chairwoman
State of Nevada Certified Court Reporters Board
500 North Rainbow Boulevard, Suite 300
Las Vegas, NV 89107

Via Email

Re: US Nuclear Regulatory Commission (NRC) Written Request

Dear Denise:

At the last regularly scheduled meeting of the NVCCR Board, I was requested to respond to an oral request for an opinion received from Anthony Eitrem, the Senior Administrative Judge preceding over the licensing of hearings for the Department of Energy in Las Vegas, Nevada. In response to my request for my written statement of facts on November 8, 2007, I received a written response providing a statement of facts upon which to evaluate the request. *See* Exhibit 1.

FACTS

The relevant facts set forth in the response, which is for your consideration, are as follows:

1. An out-of-state court reporting firm is desirous of contracting (subcontract) with a Nevada certified court reporter to report administrative hearings that will occur in Nevada. The administrative hearings will most likely continue for years.
2. It is not stated whether the out-of-state court reporting firm, that wishes to subcontract with the Nevada State court reporter for his services, is a licensed court reporter in the State of Maryland.

ISSUE

Whether a Nevada State certified court reporter can provide services to the US Nuclear Regulatory Commission as a subcontractor to an out-of-state (Maryland) court reporting firm?

ANALYSIS

The primary statute at issue in addressing this request is NRS 656.185. NRS 656.185 provides as follows:

Court reporting firm: License required; application.

1. It is unlawful for any person to conduct business as a court reporting firm or to advertise or put out any sign or card or other device which may indicate to members of the public that he is entitled to conduct such a business without first obtaining a license from the Board.

2. Each applicant for a license as a court reporting firm must file an application with the Executive Secretary of the Board on a form prescribed by the Board.

3. The application must:

- (a) Include the federal identification number of the applicant;
- (b) Include the name of the person who will be appointed as the designated representative of the court reporting firm and such other identifying information about that person as required by the Board;
- (c) Be accompanied by the required fee; and
- (d) Include all information required to complete the application.

4. To obtain a license pursuant to this section, an applicant need not hold a certificate of registration as a certified court reporter.

Based upon the plain language of NRS 656.185, it is "unlawful" for any business to conduct itself as a court reporting firm in the State of Nevada "without first obtaining a license from the Board." The out-of-state court reporting firm is not a licensed court reporting firm with the NVCCR Board. Accordingly, reading this statute alone, it would prohibit the Maryland court reporting firm from engaging in the business of operating a court reporting firm as defined in NRS 656.030(4). NRS 656.030(4) describes the business of operating a court reporting firm as providing or arranging for the services of a court reporter or provides referral services for court reporters for compensation. The facts described in the response clearly indicate that the Maryland court reporting firm contemplates engaging in the business of operating a court reporting firm as set forth in NRS 656.030(4).

In addition, NRS 656.250(7) similarly prohibits the licensed court reporter from professionally associating himself with any firm which is in any manner contrary to the provisions of Chapter 656 of the NRS. Therefore, a licensed court reporter cannot associate

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himself with a court reporting firm until such time as that court reporting firm has satisfied the licensing requirements set forth in NRS 656.185, NRS 656.186 and the regulations promulgated thereto.

However, a further review of statutes applicable to the NVCCR Board is appropriate and warranted in these circumstances.

NRS 656.186 provides:

Court reporting firm: Appointment of designated representative.

1. Each court reporting firm shall appoint one person affiliated with the court reporting firm to act as the designated representative for the firm. The person so appointed must:

(a) Hold a certificate; or

(b) Pass an examination administered by the Board pursuant to subsection 2.

2. The Board shall administer an examination to determine whether a designated representative of a court reporting firm understands:

(a) The ethics and professionalism required for the practice of court reporting; and

(b) The obligations owed by a court reporter to the parties in any reported proceedings and the obligations created by the provisions of this chapter and any regulation adopted thereto.

3. The Board may adopt regulations to carry out the provisions of this section and to establish additional subject areas to be included in the examination administered by the Board pursuant to this section.

As stated in NRS 656.185, court reporting firms who seek to be licensed in the State of Nevada must appoint a designated representative. NRS 656.030(4) defines the term "court reporting firm." NRS 656.030(4) provides:

Definitions. As used in this chapter, unless the context otherwise requires:

4. "Court reporting firm" means a person who, for compensation, provides or arranges for the services of a court reporter or provides referral services for court reporters.

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Based on the facts provided by the individual requesting the opinion as stated above, the Maryland court reporting firm constitutes a court reporting firm within the scope of NRS 656.030(4). NRS 656.030(5) defines the term "designated representative of a court reporting firm" and NRS 656.186 sets forth the requirements for a court reporting firm to satisfy in licensing a person as a "designated representative." NRS 656.186(3) provides discretionary authority to the NVCCR Board to promulgate regulations to implement the requirements of NRS 656.186. Even though significant regulations have recently been promulgated by the Board in furtherance of the discretionary provisions set forth in NRS 656.186(3), these new regulations do not, in any manner, address the facts presented in the recent written request.

NRS 656.340 provides as follows:

Unlawful to practice without license or approval of Board.

1. Except as otherwise provided in subsection 2, it is unlawful for any person to practice court reporting or advertise or put out any sign or card or other device which might indicate to the public that he is entitled to practice as a court reporter without a certificate of registration as a certified court reporter issued by the Board.

2. Any person may, with the approval of the Board, practice court reporting on a temporary basis when there is an acknowledged unavailability of a certified court reporter. A person requesting the approval of the Board to practice court reporting on a temporary basis shall submit to the Board:

(a) Documentation or other proof that the person has at least one continuous year of experience working full-time in the practice of court reporting; and

(b) A copy of:

(1) The certification as a registered professional reporter issued to the person by the National Court Reporters Association;

(2) The certification as a registered merit reporter issued to the person by the National Court Reporters Association; or

(3) A valid certificate or license to practice court reporting issued to the person by another state.

The term "practice of court reporting" is found in NRS 656.030(8). NRS 656.030(8) provides:

Definitions. As used in this chapter, unless the context otherwise requires:

8. "Practice of court reporting" means reporting by the use of

voice writing or any system of manual or mechanical shorthand writing:

- (a) Grand jury proceedings;
- (b) Court proceedings;
- (c) Pretrial examinations, depositions, motions and related proceedings of like character; or
- (d) Proceedings of an administrative agency if the final decision of the agency with reference thereto is subject to judicial review.

The plain language of NRS 656.030(8) does not specify as to whether the activities referenced therein apply solely to a licensed court reporter or to a licensed court reporter performing these acts on behalf of a court reporting firm. At the November 2, 2007 regularly scheduled meeting at the NVCCR Board, the Board unanimously approved to initiate the regulatory process to provide licensees with guidance on the administration by the Board of NRS 656.340. The Board acknowledged at that time that the express language of NRS 656.340 needed further clarification. Therefore, no regulatory guidance is available to assist me in advising the Board.

It is my opinion that the plain language of NRS 656.030(8) in defining the term "practice of court reporting" is equally applicable to licensed court reporters and court reporting firms solely within the scope of NRS 656.340. There are instances in the existing promulgated administrative codes applicable to the NVCCR Board where the Board has limited the term "practice of court reporting" to be only applicable to licensed court reporters. In the context of NRS 656.340, the Board has not chosen to limit the definition of practice of court reporting in that manner. Moreover, given the facts of this request, the court reporter who is to be the subcontractor of the Maryland court reporting firm is a Nevada licensed court reporter and subject to the jurisdiction of the NVCCR Board.

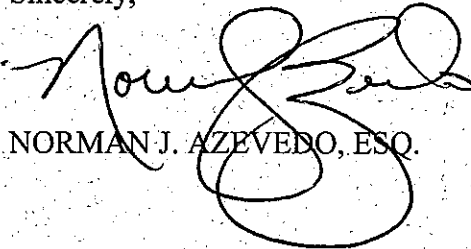
NRS 656.340(2) provides the Board with the authority to permit any person with the temporary ability to practice court reporting in the State of Nevada. This exception to the licensing requirements absent regulatory guidance to the contrary, is applicable to both court reporting firms and licensed court reporters. As both court reporting firms and license court reporting firms engage in the "practice of court reporting" as contemplated in NRS 656.030(3). Therefore, both the license court reporters and the court reporting firms can request the ability to practice court reporting on a temporary basis within the scope of NRS 656.340.

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CONCLUSION & RECOMMENDATION

The express language of NRS 656.185 makes it unlawful for any court reporting firm to conduct business as described in NRS 656.030(4) in the State of Nevada without first being licensed by the Board. NRS 656.340 provides the Board with the authority to allow the Nevada based court reporter the ability to subcontract with the Maryland court reporting firm provided that the Maryland court reporting firm seeks authority from the Board pursuant to NRS 656.340 to conduct business within the State of Nevada on a temporary basis. Given the representations in the factual description provided to this office, it appears this administrative proceeding may go on for years. If that understanding is correct, the Board may grant temporary status to the Maryland court reporting firm subject to the court reporting firm satisfying the requirements in NRS 656.185, NRS 656.186 and the recent regulations promulgated in furtherance of these statutory obligations. Since the first administrative hearing in the NRC matter is set for December 5, 2007, the Board may wish to consider having a special meeting prior to the December 5, 2007 date to address this scenario as a Board. I hope this information is helpful to you. If you have any questions please do not hesitate to give me a call.

Sincerely,



NORMAN J. AZEVEDO, ESQ.

NJA/jm

cc: Debbie Uehara, Executive Secretary (via email)

EXHIBIT 1

Rhonda Azevedo

From: Anthony Eitreim [ACE1@nrc.gov]
Sent: Thursday, November 08, 2007 12:20 PM
To: Rhonda Azevedo
Cc: Uehara Debbie
Subject: Re: Request to the Nevada Certified Court Reporters Board

Mr. Azevedo:

Thank you for your reply and attention. Here are the facts.

The Atomic Safety and Licensing Board Panel (ASLBP) is the independent adjudicatory arm of the U.S. Nuclear Regulatory Commission (NRC). We are a panel of administrative judges that serve as the trial court for the Commission. Our basic function is to decide disputed matters relating to the licensing of nuclear materials and facilities and enforcement actions arising out of the agency's regulatory oversight of licensees.

As you are no doubt aware, the U.S. Department of Energy (DOE) is seeking a license to construct and operated a geologic repository for the storage of high level nuclear waste at Yucca Mountain Nevada. DOE must get a license from the NRC to construct the repository and then another license to operate it. The State of Nevada and many other local governmental entities, Indian Tribes, interest groups and individuals are going to oppose DOE's application for these licenses. The administrative trial of all these issues will be handled by the ASLBP, in Las Vegas, in a large courtroom that has be built just for this proceeding. It is expected to be the most complex, expensive and lengthy administrative law dispute in history.

Although DOE has not yet filed its license application, there are pre-application proceedings before an ASLBP Licensing Board ongoing since 2004. These pre-application proceedings are increasing in activity and oral argument on an important motion filed by the State of Nevada has been scheduled to be heard in our Las Vegas courtroom on December 5, 2007. Our courtroom is equipped with every conceivable "electronic courtroom" feature, including live, closed-captioned court reporting displayed in real-time on video monitors located throughout the hearing room.

The ASLBP conducts hearings and related proceedings on a regular basis throughout the United States. We have a contract for real-time, closed caption court reporting services with a Maryland based court reporting firm named Caption Reporters, Inc. When we need this type of court reporting service in a remote location, Caption Reporters, Inc. locates a local, qualified, certified court reporter and subcontracts his or her services on behalf of the NRC/ASLBP. Caption Reporters, Inc. has located a qualified, Nevada certified closed caption court reporter that it wishes to retain by subcontract to provide these services to our pre-hearing oral argument in Las Vegas on December 5th. This local Nevada certified court reporter is concerned that she may violate Nevada statutes and regulations if she subcontracts with Closed Caption Reporters, Inc., because it is not a Nevada State Certified Court reporting firm as defined in NRS 656.185. As this situation will undoubtedly recur hundreds of times during the next five to ten years, we need to get an authoritative answer concerning how Nevada's court reporter regulations apply to these facts.

Thus, the Question Is: can the local, Nevada State Certified court reporter provide his or her services to the NRC/ASLBP, as a subcontractor to Caption Reporters, Inc., if Caption Reporters, Inc. is not a Nevada State Certified Court Reporting firm as described in NRS 656.185?

Please feel free to call or e-mail me to discuss questions or obtain further information.

Your attention to this matter is greatly appreciated.

Sincerely,

11/8/2007