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MEMORANDUM

TO: Debbie Uehara, Executive Secretary, NVCCR

FROM: Norman J. Azevedo, Esq.

DATE: November 2, 2007

RE: [REDACTED]

Deb:

INTRODUCTION

I have reviewed the [REDACTED] and the response filed by the Attorneys representing [REDACTED]. In addition, the files does not have much evidence to substantiate the allegations of [REDACTED] alleged misconduct. Based upon my review, I would offer the following for the NVCCR Board's consideration.

FACTS

On June 6, 2007, a compliant was received by the Board alleging that [REDACTED] had previously offered its "luxury condo" for use by clients of attorneys who had retained [REDACTED] as a court reporter in the respective litigation. Specifically, the complainants alleged that [REDACTED] had violated NAC 656.310. The complaint alleged that [REDACTED] had made this offer but did not allege that any clients actually used the "luxury condo."

On June 14, 2007, the Board transmitted a complaint to [REDACTED] the representative to [REDACTED]. In the June 14, 2007 transmission, the Board made the following findings "[w]e find [REDACTED] in direct violation of this regulation."

In response, the attorneys representing [REDACTED] responded as follows:

Although [REDACTED] did host a wine and cheese event for five employees of [REDACTED] on June 6, 2006, the value of this event was well below the \$100.00 per person

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threshold allowed under NAC 656.310(5). In addition, at no time has the [REDACTED] condominium been used by any attorney, client, witness, insurance company or any other person associated with any litigation in which [REDACTED] provides service as a court reporter in Nevada. Furthermore, although [REDACTED] does own a condominium in San Francisco, it does not own a condominium in San Diego or Los Angeles and, at no time, has [REDACTED] offered any attorney, client, witness, insurance company or any other person associated with any litigation in which [REDACTED] provides service to a court reporter in Nevada use of the San Francisco condominium. Therefore, contrary to the "finding" that [REDACTED] is "in direct violation" of NAC 656.310(5), [REDACTED] has not violated this regulation.

ISSUES

1. Whether [REDACTED] conduct as alleged is violative of NAC 656.310(5).
2. Whether there is substantial evidence in the file to sustain a violation of NAC 656.310(5).

ANALYSIS

The following authorities are relevant to the disposition of the [REDACTED] complaint pending before the Board.

NAC 656.310(5) provides:

Conflicts of interest; limitations on giving. (NRS 656.130, 656.250)

5. Except as otherwise provided in this subsection, a court reporter or firm shall not give, directly or indirectly, a gift, incentive, reward or other thing of value to an attorney, client, witness, insurance company or any other person associated with any litigation in which the court reporter provides service as a court reporter. A court reporter may give items that do not exceed \$100 per year to such an attorney, client, witness, insurance company or person.

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NRS 233B.135 provides:

Judicial review: Manner of conducting; burden of proof; standard for review.

1. Judicial review of a final decision of an agency must be:
 - (a) Conducted by the court without a jury; and
 - (b) Confined to the record.

2. In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

3. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

4. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

NAC 656.440 provides:

Action following investigation of informal complaint; notice of hearing and formal complaint; answer by respondent; exchange of lists of witnesses and evidence; joining of complaints. (NRS 656.130)

1. When an investigation of an informal complaint is complete, the staff of the Board and any investigator employed by the staff shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal

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complaint. If the staff and the investigator determine that no allegation of a violation of a statute or regulation set forth in the informal complaint is sustainable, the staff shall provide a written notice of that determination to the respondent and the complainant. If the staff and the investigator determine that an allegation of a violation of a statute or regulation set forth in the informal complaint is sustainable, the Board or the legal counsel for the Board shall:

(a) Offer to:

(1) Engage in mediation;

(2) Enter into a settlement agreement;

(3) Stipulate to any fact or to the existence or extent of any liability; or

(4) Conduct any informal hearing; or

(b) Prepare a notice of hearing and a formal complaint.

First, as a threshold matter, NAC 656.310(5) only prohibits court reporters from actually "giving" gifts that exceed \$100.00 per person per year. The complaint as alleged, does not suggest that [REDACTED] ever actually provided his "luxury condo" to any attorney, client, witness, insurance company or any other person. The complaint simply alleges that [REDACTED] offered his "luxury condo" and there is no allegation that any witness, attorney, etc. ever actually accepted the offer. NAC 656.310(5) does not make it a violation for a court reporter to offer gifts in excess of \$100.00 per year. Accordingly, even if we could accept the allegation as unrefuted, which it is not, the complained of conduct does not rise to a violation of the standards of professional conduct for court reporters.

Secondarily, [REDACTED] disputes the allegation in every instance with the exception of the wine and cheese party which they allege is less than \$100.00 per person as set forth in NRS 233B.135. All decisions of the Board must be based on substantial evidence and no substantial evidence in this case to support any violation of the standards of professional conduct, since the complaint of conduct is neither a violation of the standards of professional conduct for court reporters in the State and is directly refuted by [REDACTED] representations.

RECOMMENDATION

Based on the foregoing facts and analysis set forth above, it is my recommendation that the Board through its secretary, dismiss the complaint pending against [REDACTED] and vacate its finding in its June 14, 2007 correspondence to [REDACTED]. The information transmitted to [REDACTED] should indicate that after an investigation and consultation with legal counsel, it was determined that no violation of the professional standards occurred applicable to court reporters in the State of Nevada, namely NAC 656.310(5).