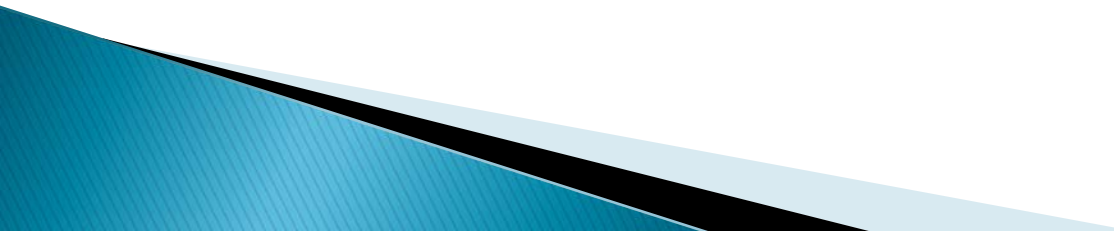


ETHICS FIRST

What it Means to You, Your Agency and Law Firms



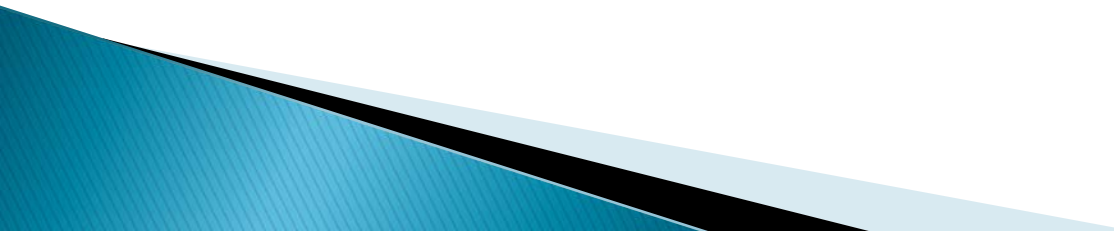
Presenters

- ▶ Early Langley, BA, RMR, CA CSR 3537, President-Elect CCRA, Member of the NCRA Ethics First Task Force, Chair of the Deposition Advisory Committee
 - ▶ Sandy Bunch VanderPol, FAPR, RMR, CRR, CA CSR #3032, Past President CCRA, Past co-Chair and current member of the NCRA Ethics First Task Force
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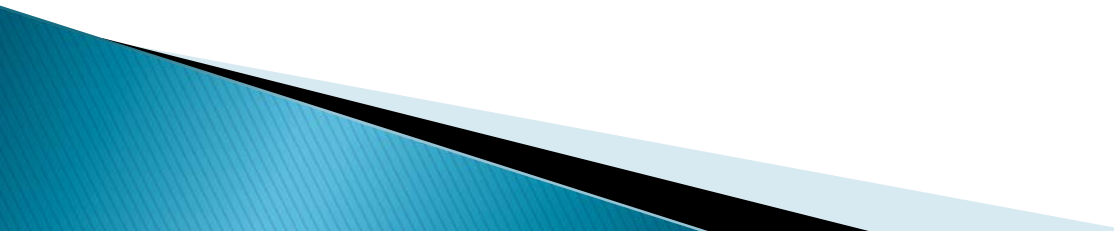
Focus of Presenters:

- ▶ How California has fought unethical gift giving and where we are now (Early)
- ▶ How NCRA's Ethics First Program has come to be where it is and the resources it offers (Sandy)

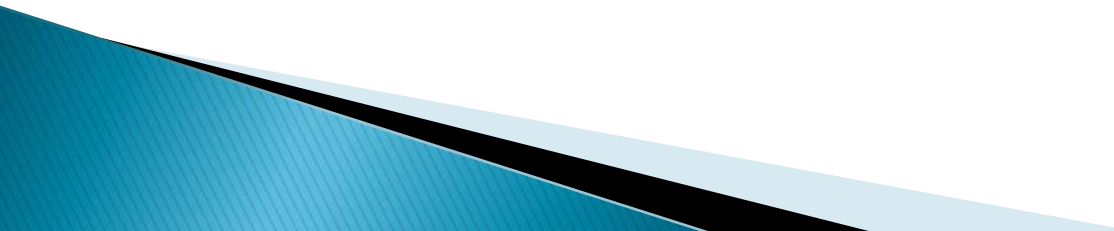
CALIFORNIA CODE OF REGULATIONS

- ▶ What are the statutes governing gift giving in California?
 - ▶ **§ 2475. Professional Standards of Practice.**
(8) Other than the receipt of compensation for reporting services, neither directly or indirectly give nor receive any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported.
- 

§ 2475. Professional Standards of Practice (cont'd)

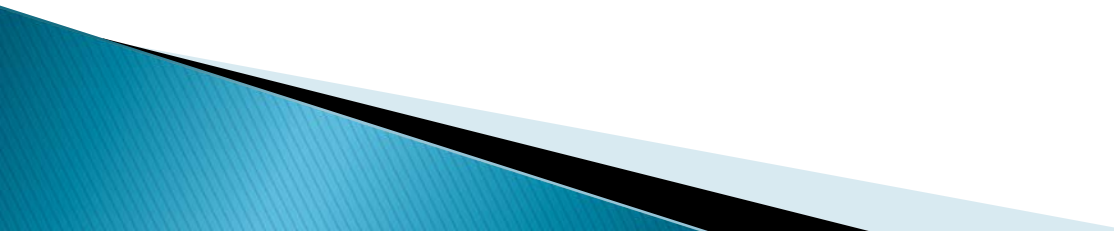
- ▶ Exceptions to the foregoing restriction shall be as follows:
 - ▶ (A) giving or receiving items that do not exceed \$100 (in the aggregate for any combination of items given and/or received) per above-described person or entity per calendar year;
- 

§ 2475. Professional Standards of Practice (cont'd)

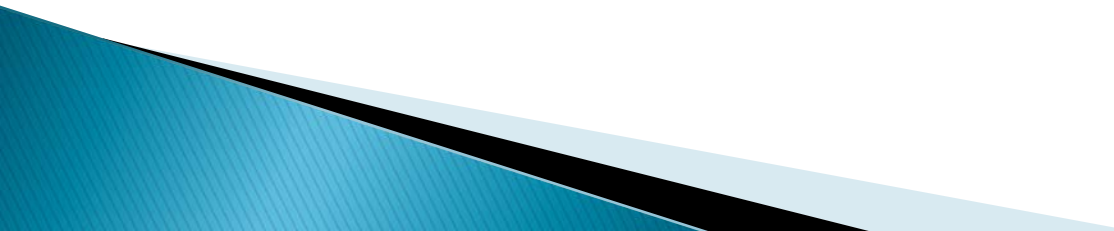
- ▶ (B) Such persons or entities shall include, but not limited to, attorneys, employees of attorneys, clients, witnesses, insurers, underwriters, or any agents or representatives thereof.
- 

Code of Civil Procedure

Section 8046

- ▶ **Governing shorthand reporting corporations:**
 - ▶ A shorthand reporting corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.
- 

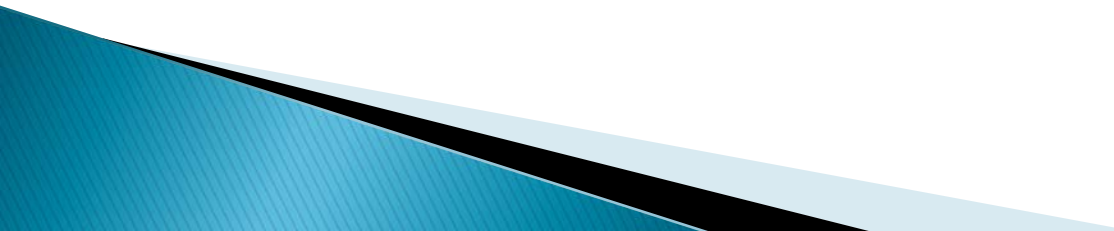
The history of the problem

- ▶ A conglomerate of business people – could be lawyers -- buy up court reporting firms from different states. Their principal place of business is outside of California. They're not California Certified Shorthand Reporters. So, to grab as much business as they can, they set up elaborate gift-giving schemes designed to lure employees of law firms to book business.
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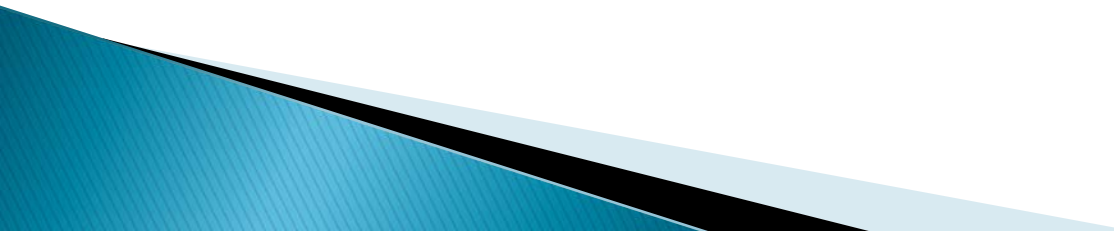
CCRA's Effort to Pass Legislation

- ▶ In 2008, CCRA and DRA jointly sponsored AB 1461 (Ruskin)
 - AB 1461 (Ruskin) sought to clarify the gift and document formatting laws to apply them to all entities providing shorthand courtroom and deposition reporting services, regardless of the entity's business structure. AB 1461 would have created a level playing field for this industry, and assure that consumers of these services and consumers affected by legal proceedings have fair and ethical industry competition.
- ▶ It was vetoed by Gov. Schwarzenegger for fiscal reasons. Why? It failed due to the efforts of conglomerate-owned, non-CSR firms' efforts to block it.

Why AB 1461 failed

- ▶ In opposing AB 1461, they simply stated that violations of the new law would necessitate the Court Reporters Board of California, the governing and enforcing entity over reporters, hiring extra staff to investigate and impose fines, which would have a fiscal impact to the state; hence, the bill suffered a defeat. The state's budget crisis worked to the advantage of these entities engaged in the business of providing or arranging for shorthand reporting services.
- 

CCRA's Efforts to Educate

- ▶ In 2009, CCRA adopted NCRA's opinion on gift giving, and has supported NCRA's efforts to promote NCRA's Ethics First program.
 - ▶ In September of 2010, Early Langley, on behalf of CCRA, published "Dollars for Depos: A Risky Business" which explored the ethical and tax implications of gift giving in depositions.
- 

CCRA's role (cont'd)

- ▶ CCRA partnered with DRA to obtain a legal opinion from Hanson Bridgett warning law firms and court reporting firms that the way they book depositions may spell trouble with the IRS.
 - The opinion coincided with the citation of US Legal, nationwide court reporting firm, for violating California Court Reporter Board statutes.

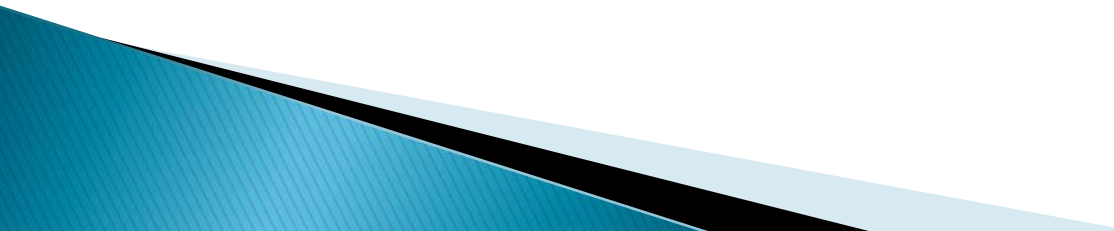
OK Gifts v. Incentive Gifts

- ▶ A gift that's given with nothing expected in return under \$100 in the aggregate, per entity per year. OKAY.
 - What's an example of a gift that follows the code?
- ▶ But suppose this happens: You get a call from your favorite client, the one that gives you the best business. "We just got offered an incentive program from Big Dollars Depos that promises a trip to Cabo if we book 20 depos this year." NOT OKAY.
 - What would you say to your client?

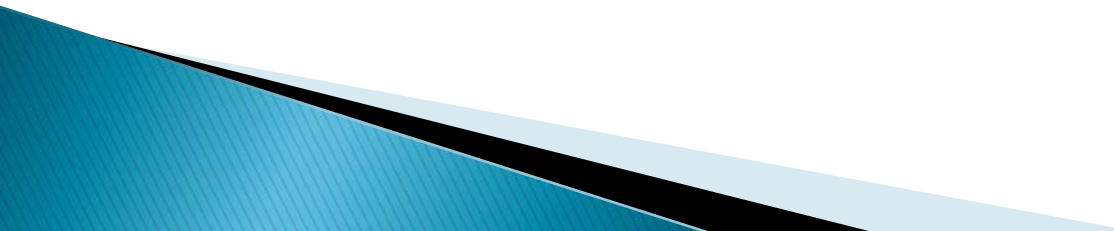
Incentive gift giving not okay

- ▶ The gifts given in the past have included:
 - iPads
 - iPods
 - Gift certificates exceeding the permissible amount per year
 - A point system towards a vacation.
 - Dom Perignon

What's the big deal?

- ▶ It's nothing new. Airlines do it, retail stores do it, hotels and restaurants lure customers with incentive gifts all the time.
 - ▶ Here's the other problem: The law firm employee is accustomed to it. Maybe they consider it to be one of the perks on the job. Maybe their bosses know about it and think it's acceptable because they aren't going to give them a raise.
- 

This is the big deal:

- ▶ The big deal is that a CSR is a neutral officer of the court and is statutorily prohibited under the Codes of Professional Conduct from giving gifts to clients or potential clients in excess of \$100 in the aggregate per person or entity per year.
 - ▶ The big deal is that you would be shocked if a judge accepted gifts, kickbacks, or rebates to influence his or her decision.
 - ▶ The biggest deal is that a corporation is bound by the same rules that apply to a CSR under Section 8046 of the Business and Professions Code.
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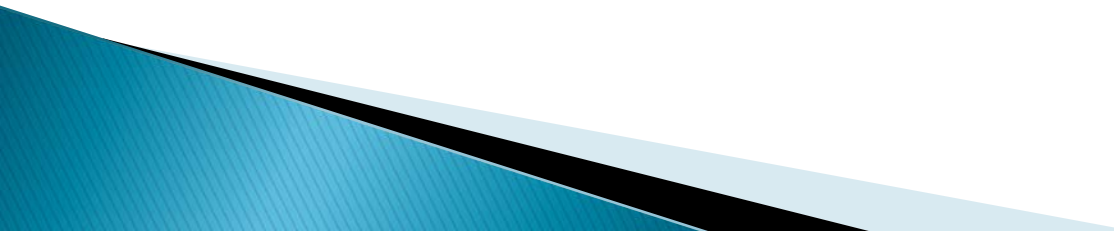
Consequences

- ▶ 1. CRB Cites US Legal
- ▶ 2. Dispute over ownership of vacation incentive award (from Dollars for Depos: A Risky Business)
- ▶ 3. Cost dispute post-trial. Skit to illustrate played by Lesia Mervin, Gary Cramer, and a volunteer bailiff (from Dollars for Depos: A Risky Business)
- ▶ 4. The Link between the IRS and CA Law
 - Tax and legal implications from Hanson Bridgett

CRB Cites US Legal

- ▶ On October 26, 2010, the CRB cited US Legal Support, Inc., “for violation of Business & Professions (B&P) Code Section 8046, in conjunction with California Code of Regulations (CCR), Title 16, Section 2475, in that Respondent failed to comply with the Professional Standards of Practice in that Respondent has offered incentives or gifts for depositions over the regulated amount of \$100 per calendar year.”

Dispute over ownership of vacation incentive award:

- ▶ Suppose a dispute arises between two legal assistants over who gets the free Caribbean vacation offered by a court reporting firm. One of them scheduled enough depositions to qualify for the vacation but takes a leave of absence. The substitute assistant continues to accumulate the points and takes the tickets. Who is the rightful owner of the free vacation? Legal assistant 1, legal assistant 2, the lawyer who conducted the depositions, the client, or the insurance company, who ultimately paid the court reporting fees in the first place?
- 

Cost Dispute Post-Trial

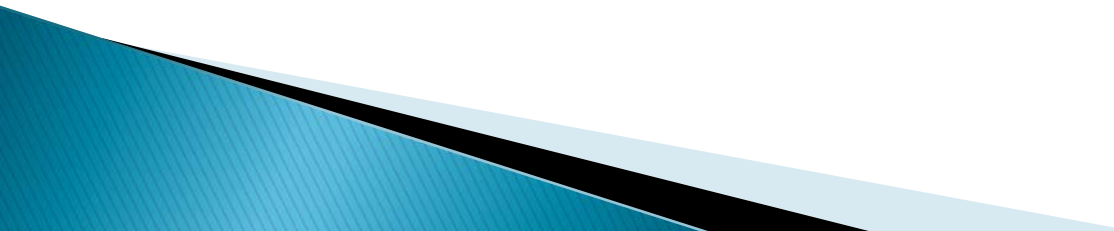
- ▶ This has occurred in Florida to a lawyer: He/she may get caught in the middle of a cost dispute when one side finds out that their client is footing the bill for the gifts, such as iPads, or vacations received by the other, and what they recover in expenses may be reduced for the amount of gift received.
 - Cost Dispute Skit

Tax and Legal Implications

The Background (Hanson Bridgett)

- ▶ CCRA and DRA obtained a legal opinion on the tax implications of incentive gift giving from Hanson Bridgett law firm. On February 11, 2011, their opinion was released.
 - IRS tax consequences to recipients:
 - History of gift giving practice caught the eye of the IRS in 2006 at the Academy Awards shows.
 - IRS's 2006 News Release 128 determined that recipients of gift bags must report the fair market value of the bag and its contents as income

The IRS and the Law Firm and the Reporting Agency (HB)

- ▶ Hanson Bridgett memo compares incentives like prepaid gift cards to tips given to employees on the job and subject to reporting and withholding by their employer.
 - ▶ Reporting firms may be incorrectly treating the incentives they give to law firms as a deduction.
- 

1. The Link between CA law and the IRS (HB)

▶ CA Law:

- The California Court Reporters Board of California is charged with policing the deposition profession and may revoke or deny certification of a shorthand reporter for directly or indirectly giving any gift, incentive, reward or anything with a value exceeding \$100 in aggregate during a calendar year to any person or entity associated with a proceeding being reported.

2. The Link between CA law and the IRS (HB):

- ▶ CA law (cont'd):
 - In the eyes of the CRB, corporations engaged in the practice of court reporting are not exempt just because they are not licensed court reporters. They are subject to the same statutes and regulations governing licensees, and failure to adhere to these statutes constitutes a misdemeanor.

3. The Link between CA law and the IRS (HB):

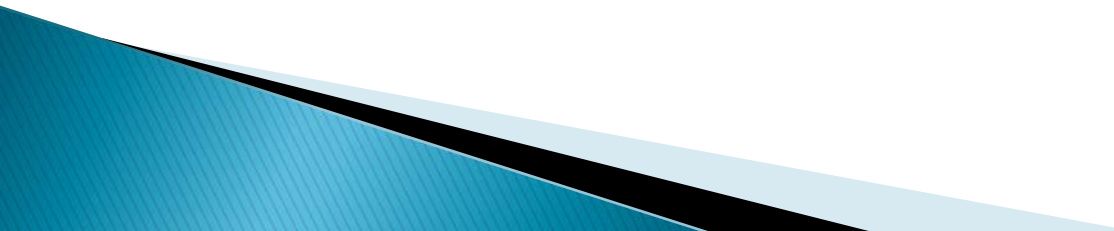
- ▶ The statute that the CRB relies upon is CA Code of Regulations Title 16, Section 2475 8 (b) Professional Standards of Practice (previously reviewed), and Business & Professions Code 8046.
 - 8046: A shorthand reporting corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.

-

4. The Link between CA law and the IRS (HB):

- ▶ The IRS link:
 - If a reporting corporation is found to have committed a misdemeanor that violates California Business & Professions Code 8046, the IRS may impose a penalty upon the reporting corporation under Internal Revenue Code Section 162(c) (2).

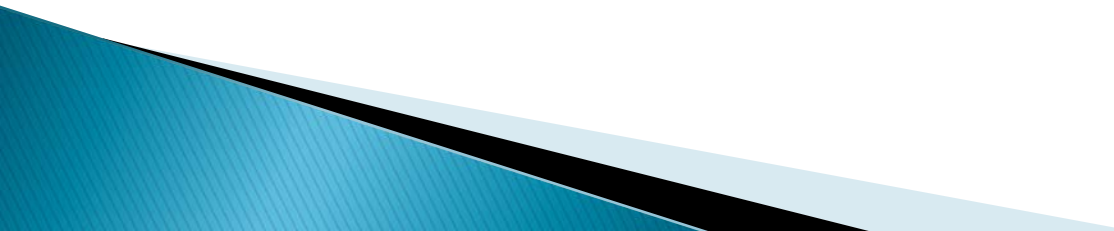
The Bottom Line

- ▶ In a letter written to this author, Attorney Jed Peace Friedland summarizes: “After reading your article, ‘*Dollars for Depos: A Risky Business*,’ which appeared in the San Francisco Daily Journal, I’d like to commend you. It mirrors my own sentiments. I’ve been on a rant about this subject in private discussions with numerous attorneys who consistently utilize poor quality court reporters either because they are blinded by a treasure trove of perceived ‘freebies’ or because someone harbors an undisclosed addiction to... the fleeting taste of Dom Perignon. If they check their transcripts and bills closely, they’ll certainly think again before offhandedly booking court reporting services for such self-serving reasons.”
- 

NCRA (Sandy)

- ▶ In this past year, under NCRA's President Melanie Sonntag, the Ethics First Committee of NCRA escalated its campaign to educate the entire nationwide legal community about the pitfalls of unethical gift giving, while at the same time recognizing those deposition agencies who embrace NCR's Code of Professional Ethics.
- ▶ Sandy VanderPol: "When selecting your deposition reporter, please consider using an "Ethics First" participating deposition firm which can be found at <http://ncraonline.org/ethicsfirst/ethicsfirstfirms/>"

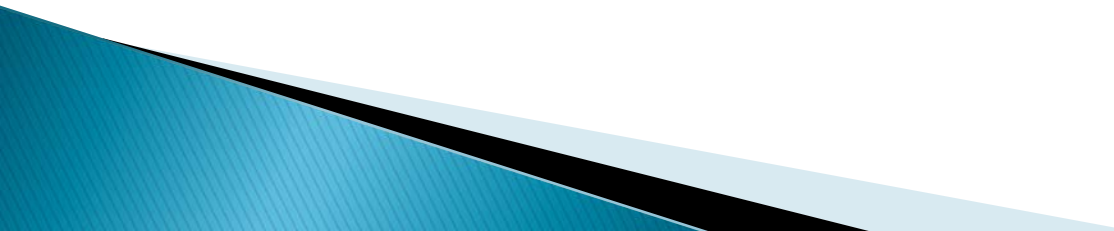
History...this is not a new issue.

- ▶ 1993 NCRA BOD passed Article 8 regarding gift-giving.
 - ▶ 1993 Bureau of Competition of the FTC investigated NCRA's Article 8 of COPE and concluded that it should not be construed too broadly or take other steps that may chill competition.
 - ▶ Article 8 prohibited direct or indirect gifts which could be construed to inhibit legitimate price competition.
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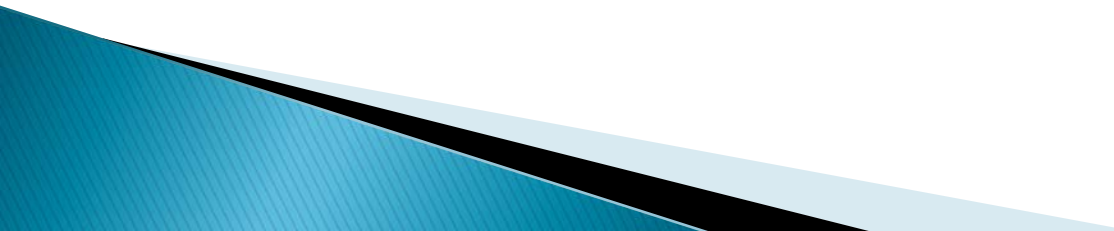
What is Ethics First

- ▶ NCRA's "Ethics First" program has been developed for a single reason: To recognize our members who have made a commitment to abide by and promote the rules of the Code of Professional Ethics (COPE), particularly with regard to gift-giving.

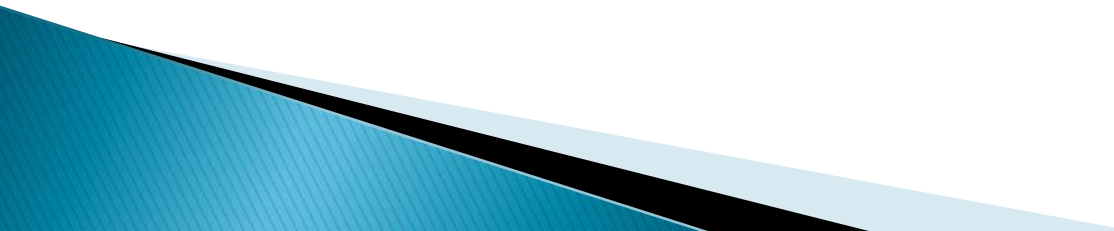
What Ethics First is Not...

- ▶ NCRA Ethics First will not impugn those who do not follow the COPE.
 - ▶ **Enforce any state's laws or rules.** That is up to the individual state. However, NCRA can and does advocate for new laws at the state and federal levels.
 - ▶ **Have a category of membership for firm owners.** If an individual member of NCRA is a firm owner and NCRA should find that the individual firm owner engaged in activity that violates the NCRA Code of Professional Ethics, NCRA could take disciplinary steps, including revocation of NCRA membership. It is important to realize, however, that this may do nothing to stop or alter behavior of the firm or firm owner.
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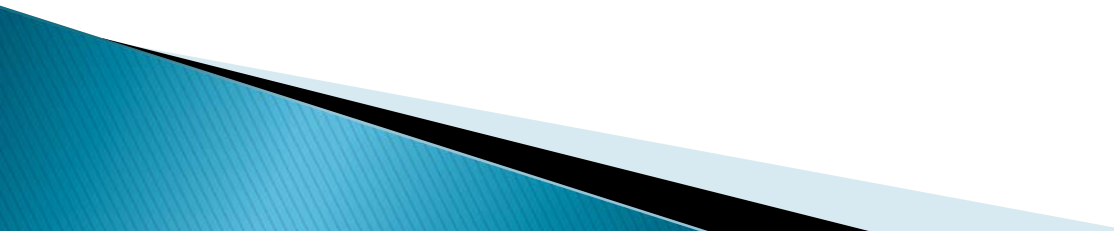
What Ethics First is Not...

- ▶ **Create ethical guidelines that supersede any state or local laws.**
 - ▶ **Have an investigatory arm.** NCRA's Committee on Professional Ethics studies facts as presented to it and reaches a conclusion. NCRA's Board of Directors acts as the final decision maker where complaints are decided. Neither the Committee nor the Board represents the complainant nor the party complained against.
- 


What Ethics First is Not...

- ▶ **Seek out potential ethics violations on its own initiative.** NCRA responds to complaints from the public or other NCRA members. Someone needs to make a specific allegation that an NCRA member has violated the Code of Professional Ethics, and present evidence in support of his/her allegation. Then the member who is the subject of the complaint has an opportunity to respond to the evidence, rebut the evidence presented and offer evidence supporting , his or her position. Only after both sides are given an opportunity to respond does NCRA reach a decision.
- 

What Ethics First is Not...

- ▶ **Impose monetary fines.**
 - ▶ **Create ethics guidelines which can in any way be construed as unreasonably restraining trade or otherwise violating the federal antitrust laws.**
- 


Ethics First Categories

- ▶ **Ethics First Participant**
 - ▶ The Ethics First Participant category includes only NCRA Members who “make the record.” To qualify to be classified as an Ethics First Participant, you must meet two qualifications:
 - ▶ You must be an NCRA Member eligible to use the NCRA member logo
 - ▶ You must “make the record”
 - ▶ This includes all NCRA members who are stenographic court reporters and Certified Legal Video Specialists (CLVS) who are members. This does not include non-member steno reporters, voice writers, DAR/ER monitors, or non-member CLVS.
- 

Participant Logo...



Ethics First Categories

- ▶ **Ethics First Supporter**
 - ▶ The Ethics First Supporter category is reserved for individuals and associations that support the tenets and precepts of Ethics First, but are not involved in the actual making of the record. This category represents a wide array of individuals and organizations including: state court reporting associations, state bar associations, CART providers, captioners, attorneys, law firms, judges, judicial associations, vendors, scopists, transcriptionists, etc. The key difference between the supporter category and the participant category is that supporters are not directly involved in “making the record.”
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Supporter Logo



Ethics First Categories

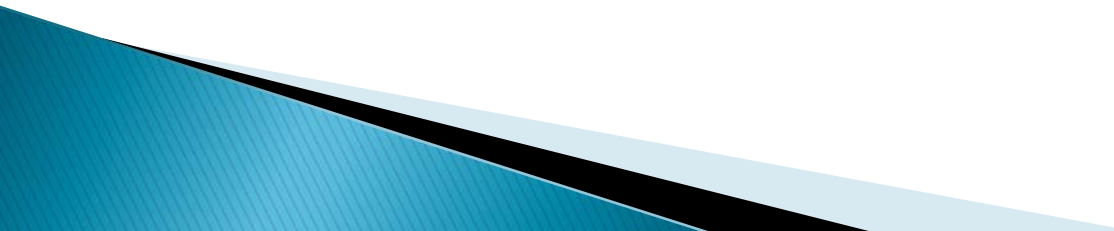
- ▶ **Ethics First Firm**
- ▶ A firm may sign up for Ethics First if they can abide by Rule #3 on NCRA's "Policy on Advertising/Representation of NCRA Membership," as adopted by the Board of Directors in March, 1999. Rule #3 reads, "Although Membership in NCRA is on an individual basis, the designation 'includes members of NCRA' may be used by a court reporting firm or entity in its advertisements, if a *majority* of the reporters employed by or independently contracted for by said firm or entity are members in good standing of NCRA." Only an individual who is legally able to sign on behalf of a firm will be able to register their firm as an "Ethics First Firm."

Firm Logo...

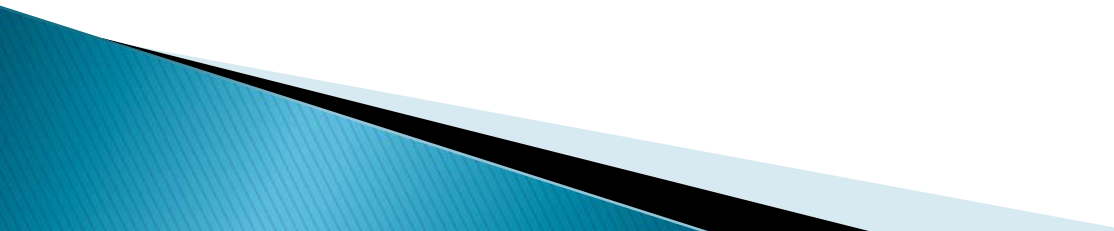


- ▶ Play Video – Target audience legal professionals

Incorporate Ethics First material into your marketing program

- ▶ Business cards
 - ▶ Stationery
 - ▶ Website
 - ▶ Laptop skins
 - ▶ Email signatures
 - ▶ E-delivery flash screens
 - ▶ Promotional materials: calendars, pens, Post-It notes
- 

Incorporate Ethics First material into your marketing program

- ▶ Social Media: Facebook, MySpace, Linked-In, etc.
 - ▶ Print Ads: Bar and other professional journal advertisements
 - ▶ Flyers and Brochures:
 - Pass out educational material at depositions with your business card
 - Insert educational material with your transcript delivery
- 

Sample Print Ads

Savings: Time and Money

- ♦ By requesting realtime, together with daily copy delivery, the transcript is ready by the end of the day.
- ♦ Save post-judgment interest and time waiting to file an appeal with instant access to your trial transcripts.
- ♦ Utilizing realtime court reporting can save time and frustration. Most disputed points either become insignificant or can be reconciled once seen in written form.
- ♦ Immediate access to the trial transcript provides a cost savings to the court, counsel, and the litigants. The litigator saves time reviewing the day's proceedings in preparation for the next day's proceedings. This equates to a cost savings to the client and a time savings for the court.
- ♦ When a readback is requested by the jury, court and counsel can use the realtime feed to find and agree on exactly which portion of the transcript should be read to the jury.
- ♦ Counsel, the judge, or the court clerk can use the realtime feed to be sure exhibits have been admitted before sending them to the jury room.



For a listing of professional services nationwide, visit psl.ncraonline.org

Reliability

- ♦ By using realtime, you can be assured that the proceedings are being recorded. With audio and video (digital reporting), a missing record is only detected after it's too late.
- ♦ Realtime reporters can simultaneously digitally record the proceedings. Digital recording devices cannot simultaneously provide a realtime feed.
- ♦ Court reporters ensure that privileged communications are not inadvertently captured on the record—not true with digital reporting that just keep recording everything.
- ♦ Court reporters monitor every word as they are spoken, ensuring that your records do not contain inaudible and indiscernible sections that cannot be transcribed. A recording device cannot perform this task.
- ♦ During recesses, counsel can provide reporters with the correct spellings of names marked in the realtime feed, which helps provide a better record of the proceedings.



Choose a court reporter that adheres to their Code of Professional Ethics. For more information, visit ncraonline.org/ethicsfirst



Unlock your potential with realtime

saveourcourtrecords.org

Incorporate Ethics First material into your marketing program

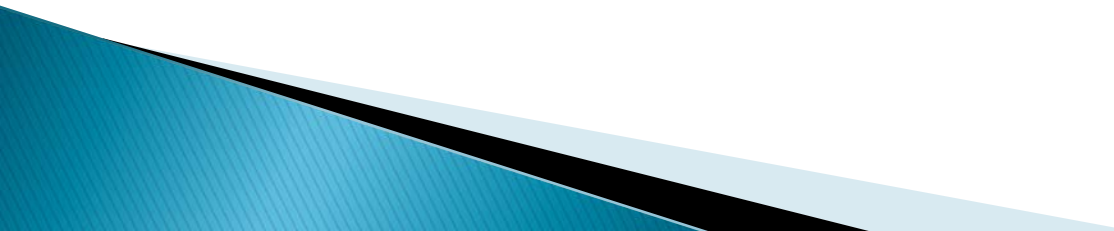
Use the multi-media approach. Effectively reach different audiences by varying your campaign.

Some will take the time to read all the articles; some will discard like junk mail.

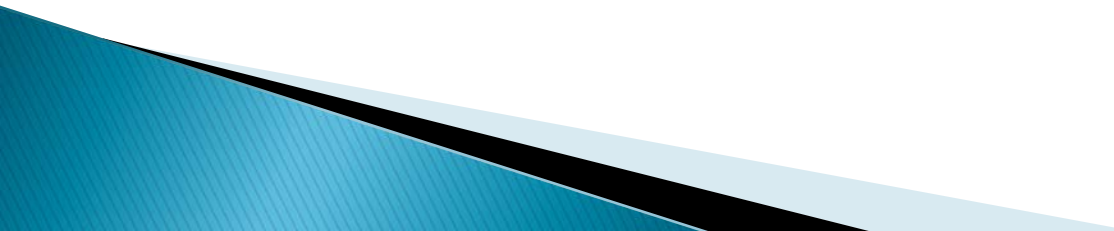
Video links compress all of the printed information into an easily digested, short presentation and can be easily forwarded to email contacts and posted on social media sites.



Presenting Seminars

- ▶ Prepare a short elevator speech for one-on-one opportunities
 - ▶ Bar associations, paralegal and legal secretary associations
 - ▶ Use the Ethics First campaign as a topic for seminars at law firms to market your business. Utilize the videos created by the Ethics First committee as a starting point to open your own dialogue with existing clients and NEW clients!
- 

In Summary, a quote (Early):

- ▶ Attorney Jed Peace Friedland: “After reading your article, ‘Dollars for Depos: A Risky Business’... I’d like to commend you. I’ve been on a rant about this subject in private discussions with numerous attorneys who consistently utilize poor quality court reporters either because they are blinded by a treasure trove of perceived “freebies” or because someone harbors an undisclosed addition to...the fleeting taste of Dom Perignon. If they check their transcripts and bills closely, they’ll certainly think again before offhandedly booking court reporting services for such self-serving reasons.”
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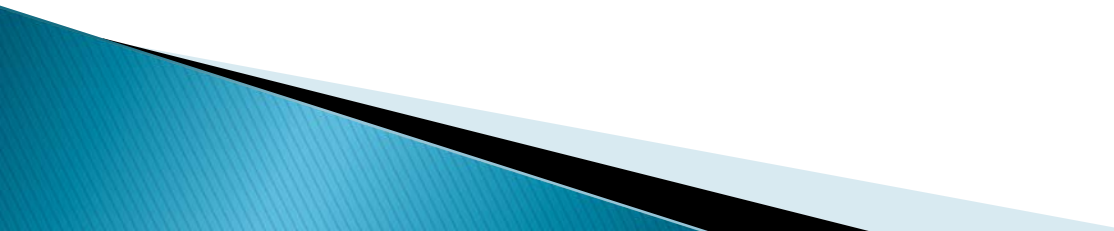
CCRA Resources

- ▶ The 2011 CCRA Freelance Compendium listing the statutes and regulations affecting the freelance field.
 - Keep a copy with you at all times. Refer to

Published Articles

- ▶ “Dollars for Depos: A Risky Business,” published in the *San Francisco Daily Journal*, September 16, 2010, and reprinted in the NCRA *JCR* with permission.
- ▶ “Dollars for Depos: Hanson Bridgett Legal Opinion Weighs in,” published in *Fresno County Bar Association Bulletin*, *San Luis Obispo County Bar Association Bulletin*, and awaiting publication in the *Plaintiff Magazine*.
- ▶ “Dollars for Depos: A National Campaign,” written for NCRA’s Ethics First.

Published articles

- ▶ ABA Article on Gifting (March 2010)
 - ▶ Look a Gifthorse in the Mouth by Lisa Migliore Black
 - ▶ Risk of Rewards by James DeCrescenzo – Published in the JCR (July 2008)
- 

NCRA Resources

- ▶ Go to <http://ncraonline.org/ethicsfirst/>
 - PowerPoints educating reporters, students and lawyers.
 - FAQs about the program
 - Sign-up process
 - List of individual and firm participants
 - Talking Points
 - Articles
 - AND MUCH MORE!