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DISTRICT ATTORNEY

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RQ-0153-KP

March 8, 2017

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
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Pursuant to Texas Government Code Section 402.042, I hereby request a Texas Attorney General's Opinion concerning the following question:

Is the District Attorney's Office required to pay the court reporter for the copy of the record to be filed with the District Clerk's Office pursuant to Texas Rule of Appellate Procedure 34.6(h) when a non-indigent appellant has been required to pay for his copy of the record in question?

Respectfully submitted,

/s/ *Mark A. Gonzalez*

Mark A. Gonzalez

BRIEF IN SUPPORT OF REQUEST

The Texas Rules of Appellate Procedure clearly require a court reporter to prepare and file a copy of the reporter's record with the trial court clerk, as follows:

(h) *Additional Copies of Reporter's Record in Criminal Cases.* In a criminal case in which a party requests a reporter's record, the court reporter must prepare a duplicate of the reporter's record and file it with the trial court clerk. In a case where the death penalty was assessed, the court reporter must prepare two duplicates of the reporter's record.

Tex. R. App. P. 34.6. However, there is no specific provision for payment to the court reporter for the cost of preparing the copy filed with the trial court clerk.

The Texas Government Code specifically provides for the purchase of a transcript from the court reporter, and that "the person requesting the transcript is entitled to the original and one copy of the transcript." Tex. Gov't Code § 52.047(c). Yet, the Government Code, as well, is silent concerning the taxing of the cost of the additional copy filed with the trial court clerk.

A number of court reporters have taken the position that, when a non-indigent criminal defendant takes an appeal from his conviction, the additional copy of the reporter's record filed with the trial court clerk should be paid for by the District Attorney's Office, as that office is the only party which benefits from the availability of this copy for checkout from the clerk. In addition, they

point to ethical considerations about providing a paid copy to the defendant and effectively a free copy for the use of the District Attorney's Office.

Specifically, the Texas Court Reporters Code of Professional Conduct contains subheadings dealing with *Honesty, Integrity and Fair Dealing*, which prohibit a court reporter from "giving, directly or indirectly, any incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies, or any other persons or entities associated with the litigation," and *Fees*, which require a court reporter to "charge all parties to an action the same price for a copy of a transcript or reporter's record or for like services performed in an action."

Do these ethical considerations allow the court reporter to charge the District Attorney's Office a fee before preparing and filing a copy of the reporter's record with the trial court clerk as required by Tex. R. App. P. 34.6(h)?