



**COURT REPORTERS BOARD  
OF CALIFORNIA**

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**MEETING OF THE COURT REPORTERS BOARD**

**Friday, March 14, 2014  
11:00 a.m.**

**Westin LAX  
5400 West Century Boulevard  
Grand Ballroom D  
Los Angeles, CA 90045**

**AGENDA**

**Board Members: Toni O'Neill, Chair; Davina Hurt, Vice Chair; Rosalie Kramm; Elizabeth Lasensky; and John Liu**

**CALL TO ORDER –Toni O'Neill, Chair**

**ROLL CALL AND ESTABLISHMENT OF A QUORUM**

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  - A. CRB Budget Report
  - B. Transcript Reimbursement Fund
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- IV. ENFORCEMENT REPORT ..... 28
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  - A. Professional Oath
  - B. Task Forces
    - 1. Electronic Record/Signatures
    - 2. Best Practice Pointers
    - 3. Exhibit Handling at Depositions
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VI.	<u>REPORT ON LEGISLATION (Possible Action)</u> .....	34
	SB 123 (Corbett), SB 176 (Galgiani), SB 315 (Lieu), SB 417 (Berryhill), AB 186 (Maienschein), AB 291 (Nestande), AB 365 (Mullin), AB 376 (Donnelly), AB 655 (Quirk-Silva), AB 679 (Fox), AB 788 (Wagner), AB 866 (Linder), AB 868 (Ammianao), AB 894 (Mansoor), AB 1017 (Gomez). And other bills later discovered which are relevant to the Board's mission	
VII.	<u>SCOPE OF PRACTICE REGULATION (Possible Action)</u> .....	49
	Discussion and possible action to adopt or to amend proposed text at California Code of Regulations, Title 16, Section 2403	
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	Personnel Matters, Disciplinary Matters, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and 11126(e)(2)(C)]	
	• Moose v. US Legal, Case No. 1-14-CV-258886 (Possible Action)	
XIII.	<u>ADJOURNMENT</u>	

Action may be taken on any item on the agenda. All times are approximate and subject to change. The meeting may be canceled or the ending time shortened without notice. For further information or verification of the meeting, call Paula Bruning at (877) 327-5272, email to [paula.bruning@dca.ca.gov](mailto:paula.bruning@dca.ca.gov), write to Court Reporters Board, 2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833, or access the Board's web site at [www.courtreportersboard.ca.gov](http://www.courtreportersboard.ca.gov).

The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting may make a request by contacting Paula Bruning at (877) 327-5272 or emailing [paula.bruning@dca.ca.gov](mailto:paula.bruning@dca.ca.gov) or sending a written request to 2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation. Requests for further information should be directed to Yvonne Fenner at the same address and telephone number. If any member of the public wants to receive a copy of the supporting documents for the items on the agenda, please contact the Board within 10 days of the meeting. Otherwise, the documents, if any, will be available at the meeting.

The public can participate in the discussion of any item on this agenda. While not required, to more accurately memorialize public comments, staff requests that public commenters state their names and the name of the organization they represent, if any. Please respect time limits. Be aware, the Board CANNOT discuss any item not listed on this page.

**AGENDA ITEM I – Introduction of New Board Member**

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Agenda Description: New Board Member.  
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Brief Summary:

**John K. Liu**, a member of the California Bar since 1997, was appointed by the Governor to the Court Reporters Board on October 25, 2013, to a term expiring on June 1, 2016. He practices corporate and securities law in the Silicon Valley and specializes in the representation of venture capital investors, startup companies, and other venture-backed clients in the technology area. Mr. Liu has been counsel to the corporate department at Lowenstein Sandler LLP since 2012. He was of counsel in the corporate/startup group at Fenwick & West LLP from 2008 to 2012 and managing partner of the boutique corporate and securities law firm, Charter Law Group LLP, from 2002 to 2008. Mr. Liu earned his Juris Doctor degree from the University of California at Davis School of Law, bachelor degrees in English and in Electrical Engineering from Stanford University, and a Master of Science degree in Engineering Economic Systems, also from Stanford University. In his early career, he served as a judicial extern for the Honorable Ming Chen of the United States District Court for the Northern District of California.

Before embarking on his legal career, Mr. Liu developed and customized software systems for the financial services and technology sectors. He is passionate about education and working with technology companies, and volunteers his time as a venture mentor at U.C. Berkeley's startup accelerator SkyDeck and as a mentor at the Santa Clara University School of Law Entrepreneurs' Law Clinic. He also serves as a board member of Five Branches University, California Graduate School of Traditional Chinese Medicine. Mr. Liu is a Democrat.

Mr. Liu was appointed by the Governor to the Court Reporters Board as a public member on October 25, 2013, to a term running through June 1, 2016.

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Report Originator: Yvonne Fenner, 2/20/2014  
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Recommended Board Action: Informational.

COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM II – Minutes of November 19, 2013 Meeting**

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Agenda Description: Review and approval of minutes.

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Brief Summary:

Minutes from November 19, 2013 meeting in Sacramento

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Support Document:

Attachment – Draft minutes.

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Fiscal Impact: None

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Report Originator: Paula Bruning, 2/20/2014

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Recommended Board Action: Approve minutes.



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**Attachment  
Agenda Item II**

**DRAFT**

### **COURT REPORTERS BOARD OF CALIFORNIA MINUTES OF OPEN SESSION NOVEMBER 19, 2013**

#### CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 2:15 p.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, 1<sup>st</sup> Floor Hearing Room, Sacramento, California.

#### ROLL CALL

Board Members Present: Toni O'Neill, Licensee Member, Chair  
Davina Hurt, Public Member  
Rosalie Kramm, Licensee Member  
Elizabeth Lasensky, Public Member

Board Members Absent: John K. Liu, Public Member

Staff Members Present: Yvonne K. Fenner, Executive Officer  
Angelique Scott, Staff Counsel  
Connie Conkle, Enforcement Analyst  
Paula Bruning, Executive Analyst  
Melissa Davis, TRF Coordinator

A quorum was established, and the meeting continued.

#### I. INTRODUCTION OF NEW BOARD MEMBERS, ROSALIE KRAMM and JOHN LIU

Ms. O'Neill introduced Rosalie Kramm, the Board's newest licensee member, and highlighted her background. Ms. Kramm is a deposition agency owner and reporter and is active with professional associations. She brings a stellar reputation, professionalism and wealth of knowledge to the Board. Ms. Kramm's term runs through June 1, 2017.

Ms. O'Neill provided background information about John Liu, the Board's new public member appointee. Mr. Liu, an attorney since 1997, practices corporate and securities law. Mr. Liu was unable to attend this meeting due to prior commitments. Mr. Liu's term runs through June 1, 2016.

Ms. O'Neill invited the public to view additional biographical information regarding both new members on the Board's Web site. She expressed her excitement about working with these impressive new appointees.

## II. MINUTES OF THE MARCH 29, 2013 MEETING

Ms. Lasensky requested the addition of the word "be" following the word "would" on the fourth line of the fourth paragraph from the bottom of page eight of the minutes.

Ms. Lasensky moved to approve the minutes as amended. Second by Ms. Hurt. **MOTION CARRIED.**

## III. REPORT OF THE EXECUTIVE OFFICER

### A. CRB Budget Report

Ms. Fenner referred to the Budget Report on page 16 of the Board agenda packet, which reflects that the budget had a small surplus at the end of the 2012/13 fiscal year.

Ms. Hurt inquired as to why line items such as "Exam Site Rental" and "Communication" were so much more than originally budgeted. Ms. Fenner explained that the "Budget Stone" column is used by the budget analysts and is meaningless for the purposes of the Board. She apologized for not removing from display that column.

Ms. Fenner expanded her explanation of "Exam Site Rental" on the current fiscal year budget, reflected on page 17 of the Board agenda packet. Last fiscal year, the Board spent \$14,367 on that item; however, \$36,500 is budgeted for this fiscal year. Typically there are three dictation examinations each fiscal year, but there were only two offered in the 2012/13 fiscal year as a result of the way the dates fell. This year, there are three examinations scheduled. Also, the budget analysts encumber the full amount of the contracts; however, there are clauses built into the contracts that reduce the price of the examination site based on how many sleeping rooms are booked under the group. As a result, the actual expenditures end up being less.

Ms. Fenner also pointed out that the costs for the "Attorney General" line item are very high due to the number of cases being sent over by enforcement. She indicated that staff is working with the Budget Office to explore all cost savings measures and options available to get the budget back into alignment.

Ms. Fenner referred to the "Months in Reserve" on the overall fund condition reflected on page 18 of the Board agenda packet. She then commented on the TRF fund condition on page 19 of the Board agenda packet, pointing out that it does not vary much from year to year.

### B. Transcript Reimbursement Fund

Ms. Fenner introduced Melissa Davis, a half-time staff services analyst hired to administer the Pro Per Program of the Transcript Reimbursement Fund (TRF).

Ms. Bruning reported that approximately \$5,000 was remaining of the \$30,000 allocated for 2013 calendar year for the Pro Per Program. At the time of the meeting, there were 107 applications pending review dating back to November 2012, totaling more than \$44,000.

Ms. Bruning commented on the January 1, 2013, repeal of Business and Professions Code sections 8030.4, 8030.6, and 8030.8, the law that governs the TRF. Senate Bill (SB) 823 replaced the repealed language effective October 1, 2013. At the time of the meeting, 234 Pro Bono Program requests were pending, totaling \$168,088. With the addition of Ms. Davis to the Pro Per Program, Ms. Bruning stated that she will be able to concentrate more fully on reducing the backlog created by the inadvertent repeal.

C. Exam

Ms. Fenner reported that 132 candidates attended the November 15, 2013, dictation examination in Sacramento. She also referred the Board to the historical information regarding each of the three examinations on pages 20 through 22 of the Board agenda packet.

D. School Updates

Ms. Fenner reported that court reporting programs are facing many challenges as a result of federal regulatory changes and the negative publicity backlash caused by the privatization of courts across the state. Ms. Fenner has offered to assist the schools in any way she can.

E. CRB Today Newsletter, Fall 2013

Ms. Fenner referred to the latest edition of the CRB Today newsletter, which was made available at the meeting. She expressed her appreciation to Ms. Bruning and the Board's editor, Laurel Goddard, for spending a lot of time and effort on the publication. She mentioned that the Board had already received a lot of positive feedback on the edition.

F. BreEZe

Ms. Fenner stated that the first group of boards and bureaus scheduled to go live with the BreEZe project was successful. The Board is included in group three, which does not have a firm release date.

IV. ENFORCEMENT REPORT

Ms. Fenner referred to the statistics in the Board agenda packet. She indicated that the total number of cases referred to the Attorney General (AG) for the entire 2012/13 fiscal year totaled 11. However, 5 cases have already been referred to the AG in the first quarter of the 2013/14 fiscal year. To have 14 cases pending with the AG is extraordinary for this Board.

The Board commonly issues citations to licensees for delinquent transcripts and failure to produce transcripts. If the licensee doesn't comply with the citation issued, the case is referred to the AG. The Board also refers cases to the AG when an applicant or licensee does not disclose on the application that he or she has been convicted.

Ms. O'Neill added that Ms. Conkle works with many parties to resolve issues before they escalate. She indicated that compared to other years in her time at the Board, these

statistics appear really unusual. She asked Ms. Fenner if there is a need to request additional funding for the AG line time.

Ms. Fenner responded that research of historical trends is being conducted with the AG. If the trends point toward a permanent increase in cases, she will work with the Budget Office on what the next step will be.

Ms. Kramm inquired if there is data to determine if the delinquent or unproduced transcripts are coming from court or freelance. Ms. Fenner indicated that the information is not formally tracked. Ms. Conkle reported that she has seen more from court lately. Ms. Kramm asked if this appeared to a ramification of freelance reporters appearing as pro tem reporters. Ms. O'Neill responded that the effects of privatization have not been felt in this respect since they have not gone to the appeal level yet. Ms. Fenner stated that she would put a tracking measure in place.

Ms. Lasensky inquired if additional money for outreach could be allocated along with enforcement to educate licensees to avoid the problems so they don't reach the AG level. Ms. Fenner responded that staff is doing as much as possible through the newsletter. She added that the Governor's order does not allow for outreach expenditures.

Ms. O'Neill commented that the District Court of Appeals exhausts many avenues before issuing an order to show cause for transcripts not filed. If an order is issued, a copy automatically goes the Board. On the freelance side, parties may be more reluctant to file a complaint.

## V. STRATEGIC PLAN UPDATE

Ms. Fenner referred to pages 32 and 33 of the Board agenda packet which included the 2012 – 2014 Action Plan Timeline. She asked the members to let her know if they wanted anything moved up in respect to target date since this plan is due to expire at the end of 2014. She mentioned that a lot of regulations packages have been processed during this plan timeline, so fewer items were completed than desired. Ms. Fenner then began discussing the three strategic plan objectives before the Board for consideration as follows:

### A. Disciplinary Guidelines

Ms. Fenner referred to page 30 of the Board agenda packet for a brief summary of the disciplinary guidelines. She reported that the last guidelines were adopted by the Board in 1989, and there are significant changes in the 15-page document.

Ms. O'Neill called for questions or comments by the Board and public. Hearing none, she requested a motion.

Ms. Hurt moved to approve the amended Disciplinary Guidelines. Second by Ms. Kramm. **MOTION CARRIED.**

### B. Professional Oath

Ms. Fenner reported that the idea of a professional oath came from a prior strategic plan, with the thought of reinforcing the professionalism of the industry through a

voluntary oath. Through some research, Ms. Fenner found two professional oaths: Attorney's Oath and Hippocratic Oath (modern version). Both oaths are included on page 49 of the Board agenda packet. Ms. Fenner presented the Board with two proposed CSR oaths to consider on page 50.

Ms. Hurt preferred version one, but also offered information from the Veterinarian Oath, which includes language about being conscientious, and using dignity, and professional standards.

Ms. O'Neill preferred the timelessness of version one. Ms. Lasensky offered that most oaths are general instead of specific, which is why she suggested that version one be used.

Ms. Lasensky moved to adopt Proposed Court Reporter's Oath version one with additional wording including "with dignity, conscientiously, and keeping with the professional standards of court reporting". Second by Ms. Kramm. **MOTION CARRIED.**

Ms. O'Neill directed Ms. Fenner to prepare a final version of the oath for Board review.

#### C. Electronic Signatures

Ms. Fenner reported that the issue of electronic signatures had come before the Board a few times in the past. Staff believes appointment of a task force is the best way to gain industry input from working reporters.

Ms. O'Neill agreed the Board should form a task force to develop best practices. Ms. Kramm also concurred that it would be beneficial. Ms. O'Neill appointed herself to chair the task force.

Ms. Kramm moved to establish an Electronic Record/Signature Task Force. Second by Ms. Lasensky. **MOTION CARRIED.**

Ms. Hurt requested the Board provide feedback on other Action Plan items they would to move forward with, such as best practices pointers or educating consumers on updated standards. Ms. O'Neill agreed that accomplishing action items is important, but also pointed out the budget constraints staff is dealing with.

Ms. Bruning shared that DCA uses Twitter and Facebook to send out updates for the boards, such as our newsletter.

Ms. Hurt believes the best practice pointers to licensees and consumers is an ongoing activity that should not be dropped and would like to assist in furthering that goal. Ms. Kramm indicated that she finds the FAQs in the newsletter and on the Web site to be extremely helpful. She encouraged the state associations to help educate the licensee base.

Ms. Fenner suggested the Board appoint a task force to take on best practice pointers. Ms. O'Neill called for a motion.

Ms. Hurt moved to establish a task force to develop content for Best Practice Pointers for consumers and licensees. Second by Ms. Lasensky. **MOTION CARRIED.**

Ms. Hurt volunteered to chair the task force, therefore, she was appointed as such by Ms. O'Neill.

Ms. Sandy Vanderpol requested the Board become more relevant to consumers by developing an education component for consumers and litigants. Ms. O'Neill directed staff to explore a task force for educating consumers.

#### VI. REPORT ON LEGISLATION

Ms. Fenner drew the attention of the Board to the summary of current legislation that may affect the court reporting industry or the Board starting on page 51 of the Board agenda packet. She indicated that those marked by two asterisks were directly related to the Board. Ms. Fenner highlighted SB 823, the bill that reinstated the TRF. Two letters of support regarding the bill were included in the agenda packet. She added that the letter of opposition regarding AB 251 was also included in the packet.

#### VII. UPDATE ON GIFT GIVING REGULATIONS California Code of Regulations, Title 16, Section 2475 (a)(8)

Ms. Fenner reported that the Office of Administrative Law approved the regulation packet; therefore, it will become effective January 1, 2014. Information regarding the revised regulation is available on the Board's Web site.

The Board moved to Agenda Item XII, Certificate of Appreciation for Dianne Dobbs. The Board then took a break at 3:10 p.m. to review information provided by the Deposition Reporters Association (DRA) in reference to Agenda Item VIII, returning to open session at 3:33 p.m.

#### VIII. SCOPE OF PRACTICE REGULATION

Ms. O'Neill called the meeting back to order.

Ms. Fenner provided a brief summary of the history of this proposed regulatory change. She stated that the Board approved text for the scope of practice language at its meeting on March 29, 2013. Staff provided the amendments requested during the public comment period, which are in summary starting on page 60 of the Board agenda packet, as well as the full written comments starting on page 65. Ms. Fenner referred to the comments submitted by DRA on the date of the Board meeting (see Attachment 1) and inquired if the Board wanted to respond.

Ms. O'Neill called for public comment.

Mr. Howard, on behalf of DRA, welcomed the new Board members and Ms. Davis. He thanked staff for the work on the regulations, although he does not agree with the rejection and acceptance of some of the suggestions offered during the rulemaking process.

Mr. Howard indicated that he had proposed the addition of a subsection (c) of section 2403, however, staff had rejected that. The addition would capture within the scope of practice the court reporting work of licensees in quasi-judicial proceedings such as those against licensees. He believes quasi-judicial proceedings qualify as oral court proceedings or court-ordered hearings and would like the Board to embrace these proceedings within the scope of practice.

Mr. Howard then focused his comments to subsection (b)(3). He disagrees with staff on the characterization of the listed services as additional services instead of the mandatory obligation. He quoted from page 4 of his November 19, 2013, letter stating, "What the law requires of a licensee is ipso facto within the scope of the licensee's practice. Therefore, the scope of practice regulations should not omit this mandatory duty, as if it was not within a licensee's scope."

Mr. Howard added that the California Code of Civil Procedures (CCP) 2025.510(a) contains the noticing requirements. He paraphrased his proposed modified language as follows:

(b)(3) Notifying all parties attending the deposition of request made by other parties for copies the provision of instant visual display (or realtime), rough drafts, partial transcripts, or expedited transcripts and offering or providing to all parties any deposition product or service, including but not limited to, any transcription or any product derived from that transcription where such a product or service would be governed by California Code of Civil Procedure section 2025.510(d).

Ms. Pulone added that the proposed modification of subsection (b)(3) is in conflict with the existing language in CCP 2025.510(d) in that there is no requirement at this point for the deposition officer to notify all parties attending the deposition of what copies are ordered by which parties. It is, however, required of the deposition officer to notify all parties if and when a rough draft or an expedite is requested. She believes the modified proposed language would sum up the code.

Mr. Howard pointed out that the proposed language to subsection (b)(10) may imply that a reporter's responsibilities end at providing a nonparty a copy of a transcript upon payment. If the Board intends to embrace the requirements in current law about when and what the procedures are for notifying the parties when a nonparty asks for a copy, he suggested that the Board include the other obligations of CCP 2025.570.

Ms. Kramm stated that deposition officers are often asked not to tell the other parties that they are providing instant visual display. Mr. Howard indicated that including the language regarding the provision of instant visual display (realtime) would afford the reporter the ability to be able to point counsel to the regulatory requirement to notify all parties.

Ms. Hurt inquired with DRA if their modification of the proposed language in subsection (b)(3) is an exhaustive list of the possibilities. Ms. Pulone responded that it is a fairly exhaustive list of means or forms of transcript delivery. Ms. Hurt stated that she gets worrisome when lists are created of scopes of practice versus having the flexibility of general definitions.

Ms. Lasensky asked what would happen if something is not included on the list. Ms. Pulone responded that the list was all-inclusive of the types of delivery, including electronic, therefore, she did not foresee anything needing to be added in the future.

Mr. Howard indicated that the first line of the scope of practice states, "The accurate transcription thereof includes, but is not limited to:". He indicated this preserves the Board's ability to fill in the interstices here with interpretations or additional grounds for discipline. He added that although the "not limited to" language is there, if a list is going to be included, it should be all-inclusive.

Ms. Kramm inquired with DRA how they envision the reporter notifying the participants in a deposition that there is visual display and instantaneous realtime. Ms. Pulone stated that the reporter would either notify the parties in advance or bring the necessary equipment and offer it to any other parties interested in receiving that product. Mr. Howard added that any issue related to discipline would go back to CCP 2025.510(d), which does not specifically say what type of notice is required. It simply says the deposition officer shall immediately notify all other parties attending the deposition of the request.

Ms. Cannariato, on behalf of the California Court Reporters Association (CCRA), thanked the Board and staff for making themselves available to answer questions. She referred to page 60 of the Board agenda packet, specifically items 1 and 3, which include CCRA's proposed amendments to the regulation. She requested the Board reconsider adding in the rejected modifications. She believes the consumer would benefit from knowing that there is a distinction between who is actually performing the services.

Ms. Cannariato further suggested that the word "reporter" in subsection (b)(10) is vague and could be interpreted as the firm who many times performs the duty of providing copies.

Ms. Hurt noted that subsections (b)(5) through (b)(9) are actions that could be completed by the firm instead of the court reporter. She requested clarification on how consumers would be made aware of who was completing each portion of the transcript.

Ms. Cannariato provided an example using the written notice to deponents to sign the deposition transcript (b)(5). She stated that in her 25 years of court reporting, she has never sent out these letters herself. She stated that she assumes the firm is doing it correctly and in the statutory period, and the consumer is dealing directly with the firm, not the reporter. She added that some firms will reformat transcripts without the reporter's knowledge. These duties are delegated in exchange for less pay. She suggested putting language in the regulation that the court reporter is responsible for delegating that duty in a clear way. This would enable the reporter to protect themselves by demonstrating to the Board that he or she had provided clear instructions and, therefore, relieving themselves of the responsibility of the firm not following the instructions.

Ms. Vanderpol expressed concern with the potential effects the regulation could have on the way she has practiced for 38 years. She believes there should be an option to have an agency relationship with firms that she trusts and is loyal to. She also indicated that introducing quasi-judicial proceedings into the regulation may create confusion since California reporters do not currently have to be licensed to report many of those proceedings. She stated that listing the duties of products and services may not be the

best idea since she can think of many more that were not listed in the proposed modified text.

Ms. Vanderpol added that other states, such as Texas and Arizona, have boards that are very proactive in going after their licensees. She is concerned that these changes will prove detrimental without the language that CCRA has suggested.

Ms. Fenner indicated that the Board has one year to complete the regulatory process. The Board can defer a decision until the next meeting; however, that does not allow much time for the public comment period and finalize the package. The Board may also approve the language they believe to be the best available at this time, which will go out to a 15-day public comment period. Each comment is addressed and the language is brought back to the Board.

Ms. Scott added that comments and staff recommendations are provided to the Board. The Board may adopt the proposed amended language, and then the language goes to public comment again.

Mr. Howard requested clarification regarding the proposed amended language provided by staff to the Board at this meeting. He asked if there will be a 15-day comment period because the language was changed from the initial comment period. Ms. Scott responded that it would because it was altered. In addition, comments provided at this meeting were received after the initial comment period so they would actually go to the next comment period. She also confirmed that only the changes since the last comment period should be commented on at the next comment period. However, the Board may consider information brought to them on the initial language, but they are not required to.

The Board members agreed it was advantageous to keep the ball moving with the regulatory process and accept further comment to consider at the next meeting.

Ms. Hurt moved to approve the proposed modified text for a 15-day comment period and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. Second by Ms. Lasensky. **MOTION CARRIED.**

IX. DRA RULEMAKING PETITION RELATED TO CLOCK HOURS FOR STUDENTS, TITLE 16, SECTION 2411

Ms. Bruning distributed copies of letters from Sage College and South Coast College (see Attachments 2 and 3) in response to the letter submitted to the Board by Sandy K. Finch of Golden State College of Court Reporting. The Sage College and South Coast College letters were e-mailed to the Board the day before the meeting, and the Golden State College letter was included in the Board agenda packet starting on page 86.

Ms. Fenner indicated that the Board has 30 days to respond to the petition as presented by DRA.

Mr. Howard, on behalf of DRA, stated that before the Board is DRA's petition to address a particular problem when it comes to ensuring that court reporting students can obtain financial aid. The Government Code requires that proposed regulatory language be included in the petition presented to the Board. That regulatory language is not the end of the discussion, but the very beginning of the discussion that is allowed to take place once the Board grants a petition. The Board has enormous legal flexibility during the rulemaking process to change its mind about both the breadth and the merits of any regulation that is before it. The Board not only has the discretion under law to change the regulation quite dramatically as they move through the process, they are also free at the end of the process to not adopt them. DRA is very conscious of colleagues and friends in the community of schools and is in no way attempting to provide an advantage or disadvantage to one kind of school or another. DRA accepted the request for help from the two colleges out of a concern for the ability of court reporting students to obtain federal student assistance. Mr. Howard stated that court reporting is a gateway profession for people who may not come from wealth or means to be able to get a professional license and climb up the ladder. He respectfully urged the Board to grant the petition knowing that this is simply a beginning point for discussion about how the Board can make sure that every student that wants to go to any court reporting school is not excluded from the profession.

Ms. Finch, CSR and owner of Golden State College of Court Reporting, commented that the kind words expressed about the schools by Ms. Fenner is heartwarming. She indicated that she is delighted that South Coast and Sage have initiated the discussion because the schools do need help from the Board. She then provided background information to aid the Board's understanding of the problem.

Ms. Finch stated that the Department of Education (DOE) passed a law effective July 2011, which can be found in the Federal Student Aid (FSA) Handbook (June 2013). Program eligibility is clearly stated, "There are three types of eligible programs at a proprietary institution or a post-secondary vocational institution. All of these programs must have a specified number of weeks of instruction and must provide training that prepares for gainful employment in a recognized occupation. The program provides at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction, offered during a minimum of 15 weeks of instruction. The program may admit as regular students persons who have not completed the equivalent of an associate degree." She went on to add, "Note that all degree and non-degree programs at a proprietary institution are subject to the rules for a gainful employment program."

The law goes on to describe domestic proprietary institutions and domestic post-secondary vocational institutions as undergraduate and graduate degree programs or certificate programs. Ms. Finch indicated that all the schools are included in this description, except for domestic non-profit institutions. The whole issue is about how to get students financial aid so they can go to school. Effective July 2011, credit hours and repeatability were changed so the FSA and DOE could target the trillion dollar problem that they call financial aid debt. She stated that it has been really difficult for Golden State and the public schools; however, each must divide and conquer changing credit hours to clock hours. It can be called credit but it has to be converted to clock to meet the state regulatory requirements.

Ms. Finch added that each student is given a length of time. At Golden State, the academic year is considered 900 hours, and students have 38 weeks. The students have to reach a successful completion of 900 clock hours before the nine and half months

finishes. They also have to complete their speed levels and academics within a certain amount of time. Many do not have problems with this until they reach higher speed levels, and then they need more time in those speeds. Unfortunately, DOE requires that the school run the time against the clock hours. If the student doesn't pass a speed level and they haven't met the clock hour requirement for financial aid, they may have to borrow money to pay tuition because they will not receive FSA disbursement. This makes sense to FSA because the student is not going to get into a huge financial debt if they cannot complete a program.

Ms. Finch concluded by stating that the battle is not with the Board. She appreciates the language proposed by Ms. Fenner, however, does not see it changing anything with DOE. She stated that the letter issued by ACICS follows right along with the DOE and they will require institutions offering vocation training programs to apply new formulas in converting clock hours to credit hours equivalents in undergraduate programs. She indicated that she would be happy to meet with representatives of all the court reporting programs, along with a representative from FSA, such as Julie Arthur who is incredibly knowledgeable about court reporting schools.

Ms. Hurt asked Mr. Howard if DRA had spoken to the DOE and if DOE had suggested to them that they start with the Board for going to the next level with them. He responded that he had not spoken with DOE. He indicated that DRA ran the proposed language by counsel from one of the two schools that is very knowledgeable about federal student aid. That counsel stated that it would be helpful because the language reflected in the FSA Handbook, quoted on page 2 of the petition, would require something in black and white that is official, like a statute or a regulation, that the degree-granting schools can point to that allows them to change credit hours to clock hours. Mr. Howard expressed hopes that the conversation continues. He continued by committing to the Board that he and DRA would talk with DOE to gain as much clarity as possible about what the Board could do to be the most helpful legally and to actually be helpful to students.

Ms. O'Neill inquired if the first step is to have a vote on whether or not the Board accepts the petition or not. Ms. Scott indicated that the Board had the option to accept, deny, accept in part, or deny in part. She added that the Board should consider that regulatory changes must have a necessity to effectuate the Board's goal. The staff will have to prove to OAL that it is necessary when putting forth a regulatory package. Ms. O'Neill asked Ms. Scott if, from a legal standpoint, there is a necessity. Ms. Scott responded that her review of the statute and the petition did not reveal a necessity for the Board to put language in regulation that allows schools and/or programs to be able to convert hours. B&P Code section 8027(b) states in part, "The record shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports."

Ms. Kramm inquired if the petition gives some schools power or reason to go to DOE to argue that court reporting is different and, therefore, they need more time to get through certain classes. She asked if this is an advisory petition for the DOE or if the Board even has a right to change what affects who gets public aid and who does not. Mr. Howard responded that California law cannot change federal law. He indicated that the federal law requirement looks to state law to determine whether or not students are eligible for federal

student aid. In this case, California's statutes mentions clock hours exclusively, and the degree-granting institutions do not track in clock hours, they track in credits. The petition is a means for the degree-granting schools to say there is a space for them under California law to be eligible for FSA.

Ms. Fenner clarified that the Board has to look at whether or not the regulation is necessary for the Board to carry out its legislative mandate, not whether the regulation is necessary for the students. Mr. Howard commented that the Board's legislative mandate is quite broad and goes beyond public protection. He asserted that if a foundation were made that the regulation is important for the fostering of the profession and ensuring that students are not burdened by their choice of attending a degree-granting institution, that it would easily satisfy the necessity test.

Ms. Lasensky asked if there were other avenues for the schools to pursue to gain resolution. Ms. Fenner suggested that instead of starting the regulatory clock, staff meet with schools and DOE to ensure the language would help everyone. Ms. O'Neill gained clarification that the Board would first have to deny the petition before directing staff to hold stakeholder meetings.

Mr. Howard indicated that this is a real problem occurring now. If the Board rejects the petition and waits until its next meeting, there would be time lost to address the problem of access to the profession. He suggested that the Board start the regulatory clock and conduct meetings and research simultaneously.

Ms. Hurt asked if the Board can accept the petition but deny the language and then come back to it at the next meeting with a clearer understanding. Ms. Fenner responded that the Board cannot start a regulatory package without language; therefore, some language would have to be approved.

Ms. Finch commented that counting coursework in credits is a thing of the past. Schools can count the coursework in credit hours, but effective July 1, 2011, they must be converted to clock hours when the program is set out by the state. To be eligible for funding under FSA, virtually all programs, degree and non-degree, offered by proprietary institutions must be to prepare students for gainful employment in a recognized occupation. All the schools have been thrown into the same even playing field, and that is difficult for schools who have been counting hours in credits for so long.

Mr. Howard believes DRA presented a way for the Board to be able to improve the situation by regulation. If the regulation process does not improve the problem, there may be a need for a statutory change.

Ms. Finch added that through discussions with Julie Arthur of FSA, she learned that they look at the number of required clock hours set forth by the State, and then they apply that number of hours to their maximums. If the Board changed the number of required hours, the FSA would allow more time. It would be imperative for the Board to include the number of required hours and language such as "but can be completed sooner."

Ms. Lasensky inquired who accredits the schools. Ms. Fenner responded that the Board grants recognition to the schools; however, there is an approval level above the Board. Schools must be approved by the Bureau for Private Postsecondary Education (BPPE) or

the Western Association of Schools and Colleges. Ms. Lasensky asked how the schools' accreditation is affected by the change to the credit hours. Ms. Finch responded that the private schools are approved by ACICS, who abides by the DOE mandate.

Mr. Howard believes the latter part of staff's proposed language would invoke the methodology of the accrediting entities. He said he confirmed there are formulas to convert credit hours to clock hours.

Ms. O'Neill expressed her hesitance to take on the regulatory process if it was likely to be rejected by OAL. She asked if the petition is approved, can the regulation be abandoned if research reveals that it is moot. Ms. Fenner responded that it can be abandoned, but there will be a lot of staff time involved. Staff wants to support the schools, but also has to keep the necessity requirement in mind. She indicated that the Board can still task staff with holding stakeholder meetings, researching the matter, and drafting language.

Mr. Howard indicated that DRA would be pleased with a commitment from the Board to address the issue, but continued to urge the Board to approve the petition to start the regulatory process.

Ms. Hurt asked Mr. Howard if he still believes that the Board's current regulations unwittingly make it harder for student to attend schools as indicated in the DRA petition. Mr. Howard stated that the absence of there being a regulation is unintentionally hurting the students.

Ms. Finch added that this is a federal law; therefore, there are schools in other states going through this same issue. She would hope for some general education on the topic from FSA so that everyone could be on the same page.

Christine Lally, Deputy Director of Board and Bureau Relations at the Department of Consumer Affairs, inquired if any schools brought their concerns to BPPE for assistance. Ms. Finch responded that BPPE's governance is a separate matter, and they refer schools back to DOE's requirements. Mr. Howard stated that the problem is in the Board's code, not BPPE's code.

Ms. Scott reiterated that B&P Code 8027 will still require the schools to maintain records in clock hours. The Board desiring to assist the students in that option is a reason staff attempted to compose alternative regulation language; however, there is still concern whether it is going to fit the necessity requirement. She indicated the petition needs to set out clearly why it is necessary before staff moves forward. Mr. Howard stated that if the petition in its current form is not persuasive to this Board, then he would withdraw the petition and submit a new one at the next Board meeting. He requested that the Board appoint a task force to address the issue between meetings.

Ms. Lasensky asked if the Board can direct staff to put together stakeholder meetings before the next Board meeting. Mr. Howard said that it is common to do so. Ms. Kramm inquired if it would be appropriate to ask the schools to suggest language and to work with DCA.

Ms. O'Neill stated that the Board needed to make a decision about the petition and called for a motion to adopt or deny.

Ms. Lasensky moved to adopt the DRA rulemaking petition related to clock hours for students, Title 16 of California Code of Regulations, section 2411, and to approve the modified text for a 45-day comment period and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. Second by Ms. Hurt.

Ms. Fenner clarified that approving the petition would be requesting staff to move forward with a regulatory package now. Ms. Scott reiterated that the Board had to respond to the petition within 30 days and could, therefore, adopt, deny, adopt in part or deny in part.

Ms. Hurt withdrew her second to the motion.

Mr. Howard withdrew the petition from DRA so that the Board did not have to take a vote and thanked everyone for the discussion.

Ms. Lasensky withdrew her motion.

Ms. O'Neill requested that stakeholders conduct more research and present a package to the Board at another meeting. Mr. Howard requested the Board put this matter on the agenda for the next Board meeting. Ms. O'Neill agreed.

#### X. REQUEST FOR BEST PRACTICES

Ms. Fenner stated that the Office of Professional Examination Services, the sister agency within DCA that assists in examination development, has requested best practices for use in tying test questions to a resource that makes it legally defensible. Specifically, the only thing in statute regarding exhibits states that the reporter must put in a parenthetical when an exhibit is marked. There are no documents for handling exhibits; it is by practice only. This would be similar to the Best Practices for Backup Audio Media.

Ms. O'Neill called for questions and comments. She stated that best methodology would be to establish a task force to generate best practices for interpreted depositions and another task force to generate best practices for exhibit handling during depositions.

Ms. Kramm moved that that the chair create a task force for interpreted depositions. Second by Ms. Lasensky. **MOTION CARRIED.**

Ms. Kramm moved that that the chair create a task force for exhibit handling at depositions. Second by Ms. Lasensky. **MOTION CARRIED.**

Ms. O'Neill requested volunteers for chairing the task forces. Ms. Kramm volunteered to chair both task forces. Ms. O'Neill appointed Ms. Kramm to chair both.

#### XI. RESOLUTION FOR GREG FINCH

Ms. O'Neill referred to the resolution for Mr. Finch as presented on page 91 of the Board agenda packet and read it into the record. Unfortunately, Mr. Finch was unable to attend the Board meeting to receive the plaque.

Ms. Lasensky moved to adopt the resolution on behalf of Greg Finch. Second by Ms. Hurt.

Ms. Fenner added that from staff's point of view, Greg was the ideal Board member. He came to the Board with no hidden agenda, merely a concern for the importance of holding people accountable for what they say via an independent neutral court reporter. He came on during very turbulent times when there were plans to dissolve the Board itself as well as great upheaval in the court reporting industry. Through it all, he became the face of the Board to the Legislature as well as to the Governor's Office. Wherever the Board needed to be heard, without making a huge production of anything, he simply moved forward with integrity, always doing what was right and not what was easy. The Board was extremely lucky to have such a well-spoken, passionate spokesperson. Ms. Fenner indicated that she truly misses his quiet humor and unfailing professionalism.

Ms. Lasensky expressed her appreciation for Greg's time on the Board, adding that he always gave a legal point of view. It helped her focus and deal with the real issues.

Ms. O'Neill echoed Ms. Fenner and Ms. Lasensky. In working with Greg, Ms. O'Neill believes she became a better Board person. She values the six years she had to work with him.

**MOTION CARRIED.**

**XII. CERTIFICATE OF APPRECIATION FOR DIANNE DOBBS**

Ms. O'Neill recognized Dianne Dobbs for her years of service as staff counsel for the Board. She stated that her knowledge, along with her ability to be gracious, informative, and diplomatic were so appreciated. Ms. O'Neill presented Ms. Dobbs with the Certificate of Appreciation.

Ms. Fenner added that having such a hard-working individual assisting the Board has been truly amazing. Ms. Dobbs spent countless hours helping the Board through uncharted waters. In addition to her professionalism, she has a lovely sense of humor and warm, giving spirit.

Ms. Dobbs expressed her sorrow to no longer be working directly with the Board.

Mr. Howard stated that his interactions with Ms. Dobbs have always been top of the shelf. He added that she is a phenomenal attorney and great person.

**XIII. ELECTION OF OFFICERS**

Ms. O'Neill called for election of officers. Ms. Lasensky inquired if Ms. O'Neill would be interested in continuing as Chair for another term. Ms. O'Neill agreed she would be willing to do so.

Ms. Lasensky nominated Ms. O'Neill as Chair. Second by Ms. Kramm. **MOTION CARRIED.**

Ms. O'Neill nominated Ms. Hurt as Vice-Chair. Second by Ms. Kramm. **MOTION CARRIED.**

XIV. FUTURE MEETING DATES

Ms. Fenner inquired with the Board if they would prefer to hold the next meeting on a Thursday or Friday at the next dictation examination in Los Angeles in March.

Ms. Hurt preferred to hold the meeting after the examination so that students could attend if they desired to do so. Ms. O'Neill indicated that the students tend to not attend Board meetings because they are preoccupied with the exam. The schools, however, attend the meeting when held in conjunction with the examination.

Ms. O'Neill suggested that staff poll the Board via email.

XV. PUBLIC COMMENT

No comments were offered.

The Board took a break at 5:53 p.m. and returned to open session at 6:04 p.m.

XVI. CLOSED SESSION

The Board convened in to Closed Session pursuant to Government Code sections 11126(a) and 11126(e)(2)(C) at 6:04 p.m.

Upon returning to Open Session at 6:22 p.m., Ms. O'Neill indicated that there was nothing to report from Closed Session.

XVII. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 6:22 p.m.

\_\_\_\_\_  
TONI O'NEILL, Board Chair

\_\_\_\_\_  
DATE

\_\_\_\_\_  
YVONNE K. FENNER, Executive Officer

\_\_\_\_\_  
DATE

**AGENDA ITEM III – Report of the Executive Officer**

=====  
Agenda Description: Report on:

- A. CRB Budget Report
- B. Transcript Reimbursement Fund
- C. Exam
- D. School Updates
- E. BreEZe
- F. State Bar Invitation to Consumer Protection Agencies

=====  
Support Documents:

- Attachment 1, Item A – Budget Report, Fiscal Month 7 Projection (2013/14)
- Attachment 2, Item A – Fund Condition Analysis for Fund 0771, CRB
- Attachment 3, Item B – Fund Condition Analysis for Fund 0410, TRF
- Attachment 4, Item C – Historical Examination Pass Rates

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Fiscal Impact: None.

=====  
Report Originator: Yvonne Fenner, 2/20/2014

=====  
Recommended Board Action: (Informational)

3/3/2014

**COURT REPORTERS OF CALIFORNIA - 0771**  
**BUDGET REPORT**  
**FY 2013-14 EXPENDITURE PROJECTION**  
**Jan-2013**

OBJECT DESCRIPTION	FY 2012-13			FY 2013-14		
	ACTUAL	PRIOR YEAR	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	EXPENDITURES	SPENT	TO YEAR END	BALANCE
	(MONTH 13)	(MONTH 7)	(MONTH 7)			
<b>PERSONNEL SERVICES</b>						
Salary & Wages (Staff)	190,985	110,918	127,050	55%	225,620	3,489
Statutory Exempt (EO)	77,956	45,474	49,105	58%	84,180	0
Temp Help Reg (Seasonals)	1,342	278	833		1,000	10,000
Temp Help (Exam Proctors)					0	0
Board Member Per Diem	1,700	900	1,000	14%	2,200	5,110
Overtime	6,293	3,054	5,959	99%	9,000	(3,000)
Staff Benefits	140,651	80,841	94,730	68%	162,000	(22,235)
<b>TOTALS, PERSONNEL SVC</b>	<b>418,927</b>	<b>241,465</b>	<b>278,677</b>	<b>58%</b>	<b>484,000</b>	<b>(6,636)</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>						
General Expense	5	3,454	2,395	100%	4,500	(2,110)
Fingerprint Reports	294	49	294	3%	700	8,749
Minor Equipment					3,000	5,000
Printing (General)	4,157	1,593	1,020	111%	4,000	(3,084)
Printing (Sharp Electronics REQ0078-07)		300			500	(500)
Communication	6,312	2,854	2,198	189%	3,800	(2,640)
Postage (General)	9,959	5,440	6,390	118%	10,954	(5,438)
Insurance					0	0
Travel In State	14,562	10,365	13,509		24,000	2,850
Travel, Out-of-State					0	0
Training				0%	0	2,517
Facilities Operations (rent only)	34,558	40,716	42,804		42,804	(14,059)
Facilities Operations (lease surcharge & other)		251	422		723	(723)
Utilities					0	0
C & P Services - Interdept.				0%	0	1,883
C & P Services - External (General)	649	645	14,000	52%	0	27,042
<b>DEPARTMENTAL SERVICES:</b>						
Departmental Pro Rata	45,302	42,772	68,225	75%	90,966	0
Admin/Exec	30,664	29,735	34,650	75%	46,200	0
Interagency Services				0%	83	0
C & P Services (OPES IACs #77178-79)		30,946	33,900		0	0
DOI-ProRata Internal	1,607	1,205	1,106	75%	1,474	0
Public Affairs Office	1,999	1,709	1,555	75%	2,073	0
CCED	2,425	2,064	1,334	75%	1,778	0
<b>INTERAGENCY SERVICES:</b>						
Consolidated Data Center (TEALE)	56	39	26	1%	100	3,151
DP Maintenance & Supply			280	18%	480	1,098
Central Admin Svc-ProRata	28,888	14,444	14,410	50%	28,819	0
<b>EXAM EXPENSES:</b>						
Exam Supplies				0%	0	751
Exam Freight					0	0
Exam Site Rental	14,367	25,076	44,648	581%	26,000	(18,320)
C/P Svcs-External (PSI Servcs LLC)	12,860		14,160		18,000	(18,000)
C/P Svcs-External Expert Examiners	18,920	29,417	12,728	42%	22,000	8,479
C/P Svcs-External Subject Matter					0	0
Legal fees (excluding AG)					0	0
Attorney General	49,930	27,413	37,065	79%	47,172	0
Office Admin. Hearings	6,138	5,266	8,468	54%	15,000	573
Court Reporters	810	310			0	0
Evidence/Witness Fees	11,229	7,050	5,688		10,000	15,793
DOI - Investigations					0	0
Major Equipment					0	8,000
Special Items of Expense					0	0
Other Items of Expense				0%	0	1,125
Tort Payments	876	876			0	0
<b>TOTALS, OE&amp;E</b>	<b>286,567</b>	<b>283,989</b>	<b>361,275</b>	<b>85%</b>	<b>405,127</b>	<b>22,136</b>
<b>TOTAL EXPENSE</b>	<b>715,494</b>	<b>525,454</b>	<b>639,952</b>	<b>143%</b>	<b>889,127</b>	<b>15,500</b>
Sched. Reimb. - External/Private						0
Sched. Reimb. - Fingerprints	(1,215)	(147)	(333)		(3,000)	(14,000)
Sched. Reimb. - Other		(490)	(1,905)			(1,000)
Unsched. Reimb. - Other	(1,945)	(1,375)				0
<b>NET APPROPRIATION</b>	<b>-712,334</b>	<b>-523,442</b>	<b>-637,714</b>	<b>72%</b>	<b>886,127</b>	<b>500</b>
<b>SURPLUS/(DEFICIT):</b>						<b>0.1%</b>

**0771 - Court Reporters Board**  
**Analysis of Fund Condition**

3/4/14

(Dollars in Thousands)

	<b>ACTUAL</b>	<b>CY</b>	<b>BY</b>
	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
<b>BEGINNING BALANCE</b>	\$ 1,344	\$ 1,370	\$ 1,359
Prior Year Adjustment	\$ 2	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 1,346</u>	<u>\$ 1,370</u>	<u>\$ 1,359</u>
 <b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 27	\$ 19	\$ 19
125700 Other regulatory licenses and permits	\$ 43	\$ 36	\$ 39
125800 Renewal fees	\$ 899	\$ 1,103	\$ 1,103
125900 Delinquent fees	\$ 18	\$ 18	\$ 18
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 5	\$ 4	\$ 5
150500 Interest Income From Interfund Loans	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 992</u>	<u>\$ 1,180</u>	<u>\$ 1,184</u>
 Transfers to Other Funds			
T00410 TRF per B&P Code Section 8030.2	\$ -250	\$ -300	\$ -300
Totals, Revenues and Transfers	<u>\$ 742</u>	<u>\$ 880</u>	<u>\$ 884</u>
 Totals, Resources	<u>\$ 2,088</u>	<u>\$ 2,250</u>	<u>\$ 2,243</u>
 <b>EXPENDITURES</b>			
Disbursements:			
0840 State Controller (State Operations)	\$ 1	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 713	\$ 887	\$ 888
8880 Financial Information System for California (State Operations)	\$ 4	\$ 4	\$ 1
Total Disbursements	<u>\$ 718</u>	<u>\$ 891</u>	<u>\$ 889</u>
 <b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 1,370	\$ 1,359	\$ 1,354
 <b>Months in Reserve</b>	18.5	18.3	17.9

a. CY 2013-14 revenue is based on FM 07 projections.

**0410 - Transcript Reimbursement Fund**  
**Analysis of Fund Condition**

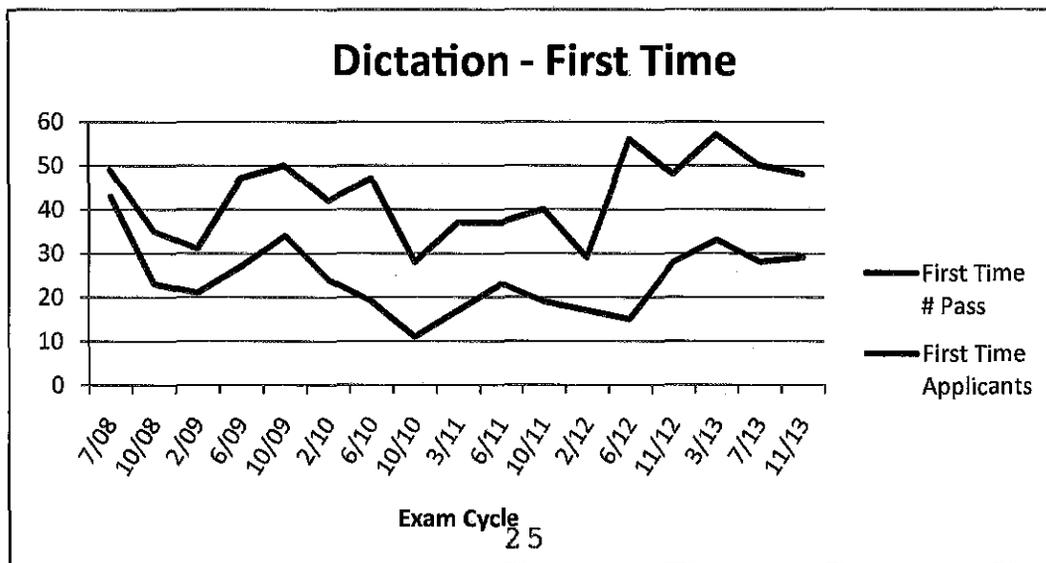
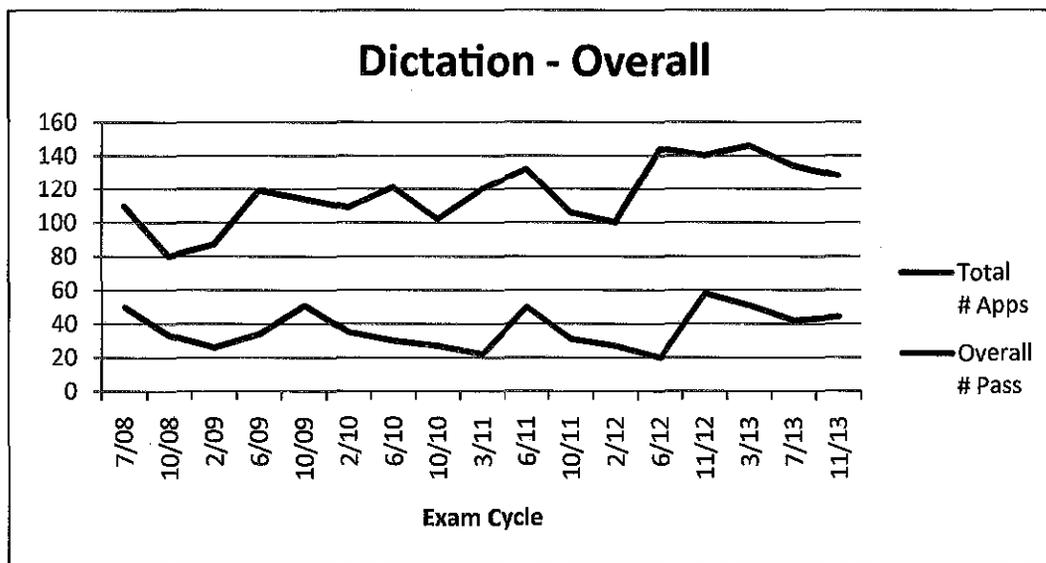
12/4/2013

(Dollars in Thousands)

	<b>ACTUAL</b>	<b>CY</b>	<b>BY</b>
	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
<b>BEGINNING BALANCE</b>	\$ 283	\$ 319	\$ 306
Prior Year Adjustment	\$ -2	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 281</u>	<u>\$ 319</u>	<u>\$ 306</u>
 <b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ -	\$ -	\$ -
125700 Other regulatory licenses and permits	\$ -	\$ -	\$ -
125800 Renewal fees	\$ -	\$ -	\$ -
125900 Delinquent fees	\$ -	\$ -	\$ -
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 1	\$ 1	\$ 1
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 1</u>	<u>\$ 1</u>	<u>\$ 1</u>
Transfers from Other Funds			
F00771 Court Reporters Fund per B&P Code Section 8030.2	\$ 250	\$ 300	\$ 300
Totals, Revenues and Transfers	<u>\$ 251</u>	<u>\$ 301</u>	<u>\$ 301</u>
Totals, Resources	<u>\$ 532</u>	<u>\$ 620</u>	<u>\$ 607</u>
 <b>EXPENDITURES</b>			
Disbursements:			
0840 State Controller (State Operations)	\$ 1	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 210	\$ 313	\$ 315
8880 Financial Information System for California (State Operations)	\$ 2	\$ 1	\$ -
Total Disbursements	<u>\$ 213</u>	<u>\$ 314</u>	<u>\$ 315</u>
 <b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 319	\$ 306	\$ 292
 <b>Months in Reserve</b>	12.2	11.7	10.9

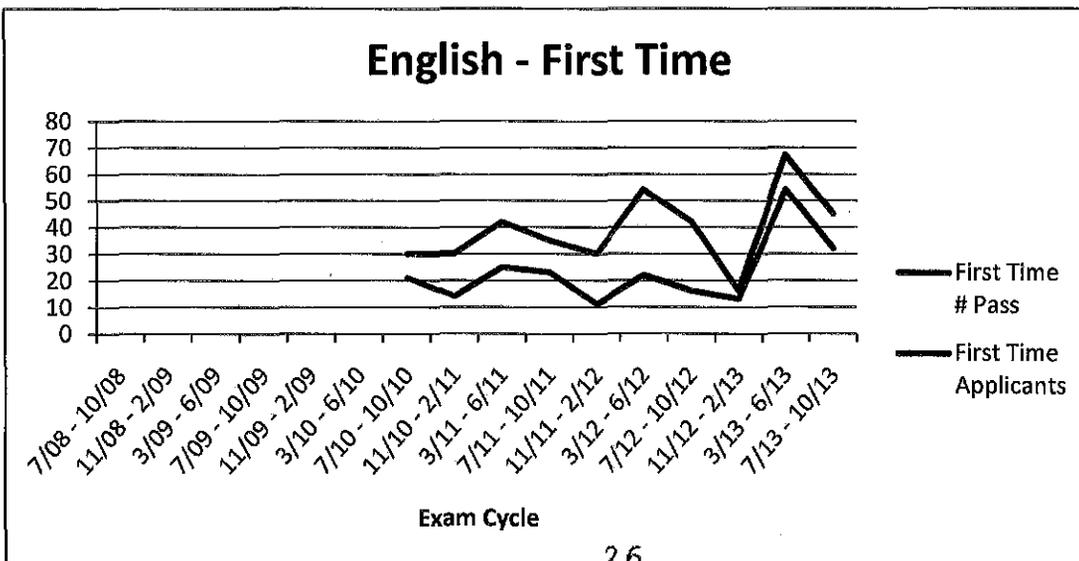
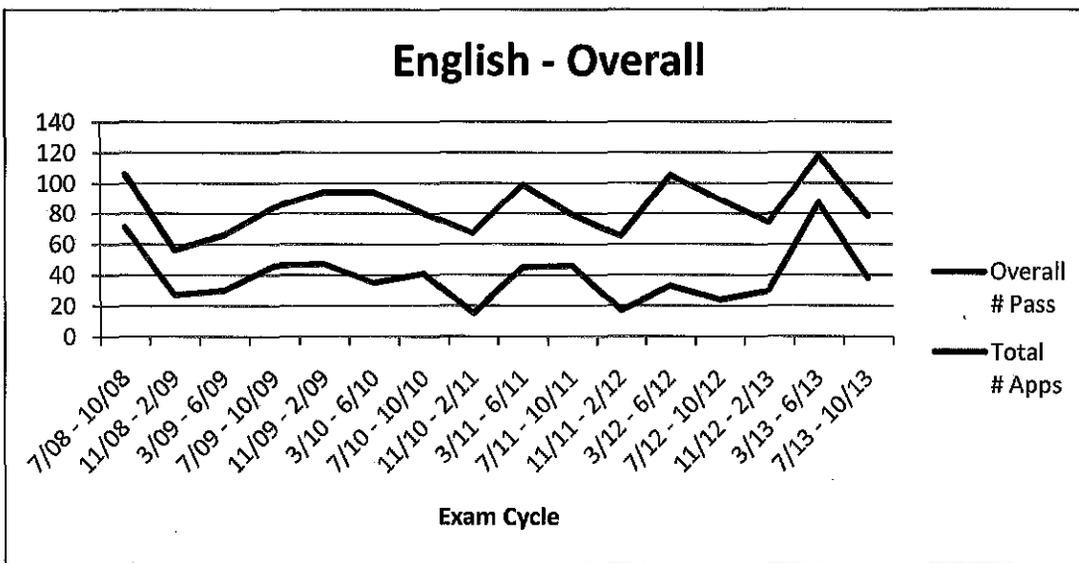
## Dictation Exam

Exam Cycle	Total # Apps	Overall # Pass	Overall % Pass	First Time Applicants	First Time # Pass	First Time % Pass
Jul 2008	110	50	45.45%	49	43	87.76%
Oct 2008	80	33	41.25%	35	23	65.71%
Feb 2009	87	26	29.89%	31	21	67.74%
Jun 2009	119	34	28.57%	47	27	57.45%
Oct 2009	114	51	44.74%	50	34	68.00%
Feb 2010	109	35	32.11%	42	24	57.14%
Jun 2010	121	30	24.79%	47	19	40.43%
Oct 2010	102	27	26.47%	28	11	39.29%
Mar 2011	120	22	18.33%	37	17	45.95%
Jun 2011	132	50	37.88%	37	23	62.16%
Oct 2011	106	31	29.25%	40	19	47.50%
Feb 2012	100	27	27.00%	29	17	58.62%
Jun 2012	144	20	13.89%	56	15	26.79%
Nov 2012	140	58	41.43%	48	28	58.33%
Mar 2013	146	51	34.90%	57	33	57.90%
Jul 2013	134	42	31.30%	50	28	56.00%
Nov 2013	128	44	34.40%	48	29	60.40%



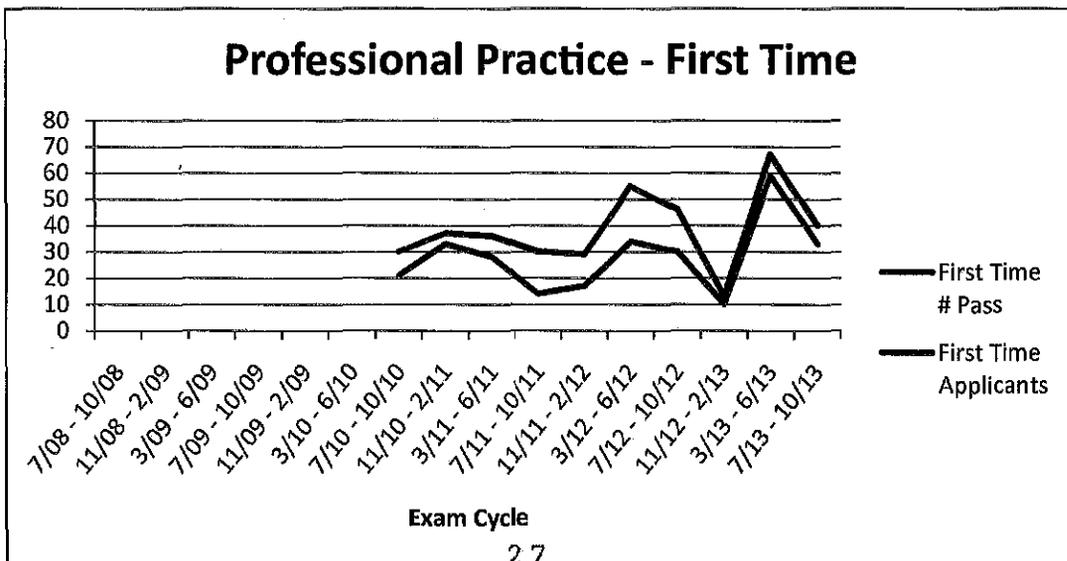
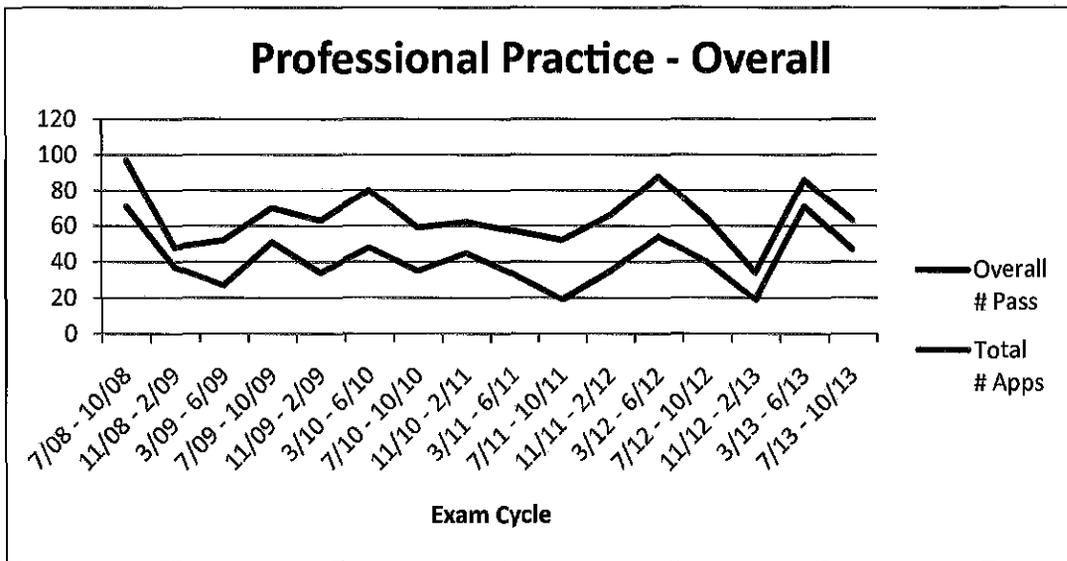
## English Exam

Exam Cycle	Total # Apps	Overall # Pass	Overall % Pass	First Time Applicants	First Time # Pass	First Time % Pass
Jul 2008 - Oct 2008	106	71	65.7%			
Nov 2008 - Feb 2009	56	27	48.2%			
Mar 2009 - Jun 2009	66	30	45.5%			
Jul 2009 - Oct 2009	84	46	54.8%			
Nov 2009 - Feb 2010	94	47	50.0%			
Mar 2010 - Jun 2010	94	35	37.2%			
Jul 2010 - Oct 2010	80	41	51.3%	30	21	70.0%
Nov 2010 - Feb 2011	67	15	22.4%	30	14	46.7%
Mar 2011 - Jun 2011	99	45	45.5%	42	25	59.5%
Jul 2011 - Oct 2011	79	46	58.2%	35	23	65.7%
Nov 2011 - Feb 2012	65	17	26.2%	30	11	36.7%
Mar 2012 - Jun 2012	105	33	31.4%	54	22	40.7%
Jul 2012 - Oct 2012	89	24	27.0%	42	16	38.1%
Nov 2012 - Feb 2013	74	30	40.5%	16	13	81.3%
Mar 2013 - Jun 2013	118	87	73.7%	67	54	80.6%
Jul 2013 - Oct 2013	78	38	48.7%	45	32	71.1%



## Professional Practice Exam

Exam Cycle	Total # Apps	Overall # Pass	Overall % Pass	First Time Applicants	First Time # Pass	First Time % Pass
Jul 2008 - Oct 2008	97	71	73.2%			
Nov 2008 - Feb 2009	48	37	77.1%			
Mar 2009 - Jun 2009	52	27	51.9%			
Jul 2009 - Oct 2009	70	51	72.9%			
Nov 2009 - Feb 2010	63	34	54.0%			
Mar 2010 - Jun 2010	80	48	60.0%			
Jul 2010 - Oct 2010	59	35	59.3%	30	21	70.0%
Nov 2010 - Feb 2011	62	45	72.6%	37	33	89.2%
Mar 2011 - Jun 2011	57	33	57.9%	36	28	77.8%
Jul 2011 - Oct 2011	52	19	36.5%	30	14	46.7%
Nov 2011 - Feb 2012	66	35	53.0%	29	17	58.6%
Mar 2012 - Jun 2012	88	54	61.4%	55	34	61.8%
Jul 2012 - Oct 2012	64	40	62.5%	46	30	65.2%
Nov 2012 - Feb 2013	34	19	55.9%	13	10	76.9%
Mar 2013 - Jun 2013	86	71	82.6%	67	59	88.1%
Jul 2013 - Oct 2013	63	47	74.6%	40	33	82.5%



COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM IV – Enforcement Report**

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Agenda Description: Update of Enforcement Activity.  
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Brief Summary:

Enforcement Reports – Monthly reports indicating complaint, investigation and enforcement action statistics.

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Support Document:

Attachment – FY 2013/14 Enforcement Report

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Fiscal Impact: None  
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Report Originator: Connie Conkle, 2/20/2014  
=====

Recommended Board Action: Informational.

## Consumer Protection Enforcement Initiative Fiscal Year 2013-2014 Enforcement Report July 2013 - February 2014

### Complaint Intake

Complaints	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Received	14	4	10	9	3	5	10	5					60
Closed without Assignment for Investigation	0	0	0	0	0	0	0	0					0
Assigned for Investigation	14	4	10	9	3	5	10	5					60
Average Days to Close or Assign for Investigation	1	1	1	1	1	1	1	1					1
Pending	0	0	0	0	0	0	0	0	0	0	0	0	0*

Convictions/Arrests Reports	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Received	0	1	1	0	0	1	0	0					3
Closed	0	2	0	0	0	0	0	0					2
Average Days to Close	0	157	0	0	0	0	0	0					157
Pending	1	0	1	1	1	2	2	2					1*

### Investigation

Desk Investigation	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Initial Assignment for Desk Investigation	14	4	10	9	3	5	10	5					60
Closed	10	13	5	10	4	5	12	5					64
Average Days to Close	35	47	61	97	53	80	103	41					65
Pending	25	16	21	20	19	19	17	17					19*

Field Investigation (Sworn)	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Assignment for Sworn Field Investigation	0	0	0	0	0	0	0	0					0
Closed	0	0	0	0	0	0	0	0					0
Average Days to Close	0	0	0	0	0	0	0	0					0
Pending	0	0	0	0	0	0	0	0					0

All Investigation	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Closed	10	13	5	10	4	5	12	5					64
Average Days to Close	35	47	61	97	53	80	103	41					65
Pending	25	16	21	20	19	19	17	17					19*

\*Average number of cases pending per month

### Enforcement Actions

AG Cases	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
AG Cases Initiated	0	5	0	0	0	0	0	1					6
AG Cases Pending	13	12	17	17	16	12	12	10					14 *

SOIs/Accusations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
SOIs Filed	0	0	1	0	0	0	0	0					1
SOIs Withdrawn	0	0	0	0	0	0	0	0					0
SOIs Dismissed	0	0	0	0	0	0	0	0					0
SOIs Declined	0	0	0	0	0	0	0	0					0
Average Days to Complete SOIs	0	0	38	0	0	0	0	0					38
Accusations Filed	1	0	3	1	4	1	0	0					10
Accusations Withdrawn	0	0	0	0	1	0	0	0					1
Accusations Dismissed	0	0	0	0	0	0	0	0					0
Accusations Declined	0	0	0	0	0	0	0	0					0
Average Days to Complete Accusations	225	0	159	52	251	118	0	0					161

Decisions/Stipulations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Proposed/Default Decisions	0	0	0	0	1	0	2	0					3
Stipulations	1	0	0	0	3	0	0	0					4

Disciplinary Orders	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	0	1	0	0	0	4	0	2					7
Average Days to Complete	0	1028	0	0	0	678	0	192					633
Interim Suspension Orders	0	0	0	0	0	0	0	0					0

Citations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Final Citations	3	2	1	1	0	0	2	3					12
Average Days to Complete	26	48	27	12	0	0	65	60					40

\*Average number of cases pending per month

**AGENDA ITEM V – Strategic Plan Update**

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Agenda Description: Status updates on the Board’s Strategic Plan objectives

- A. Professional Oath
- B. Task Forces
  - 1. Electronic Record/Signatures
  - 2. Best Practice Pointers
  - 3. Exhibit Handling
  - 4. Interpreted Depositions

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Brief Summary:

A. Professional Oath – Possible Action

At the November 19, 2013 meeting, the Board requested staff modify the language for the professional oath developed as part of the 2012-2014 strategic plan. The following is presented for Board adoption:

*Being admitted to the profession of court reporting, I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California and that I will faithfully discharge the duties of a court reporter, acting always as a neutral third party to protect the accuracy of the record of the proceeding I report. I will practice my profession conscientiously, with dignity, and in keeping with the professional standards of court reporting.*

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Support Document:

Attachment – Action Plan Timeline

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 2/27/2014

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Recommended Board Action: Staff recommends the Board adopt language for a voluntary professional CSR oath.

**Court Reporters Board of California**  
2012-2014 Action Plan Timeline

<b>Action Items</b>	<b>Target Date</b>	<b>Status</b>
<b>Appoint a technology task force, with consideration for travel restrictions, or through teleconferencing.</b>	Apr-2012	Initiated 4/27/12 Brd Mtg
<b>Submit Budget Change Proposal.</b>		Ongoing
<b>Create Board Task Force to explore continuing competency and find pathways for delivering information to the administration.</b>	Apr-2012	Initiated 4/27/12 Brd Mtg
<b>Research economic impact and job trends for newsletter article.</b>		Completed
<b>Establish a method to capture phone complaints in a call log.</b>	Jun-2013	
<b>Research pledges from other professional licensing groups.</b>	Jun-2013	Presented final March 2014
<b>Develop content for the Best Practices Pointers.</b>	Sep-2013	Task Force appointed 11-13
<b>Contact the Outreach Unit Manager (John Brooks) to research which services they provide.</b>	Oct-2013	
<b>Deliver Best Practices Pointers to the Publications &amp; Design team.</b>	Oct-2013	
<b>Discuss Facebook and Twitter options with OPA.</b>	Oct-2013	
<b>Post Best Practices Pointers the Web-site and send inserts with renewal notices.</b>	Nov-2013	
<b>Categorize complaint types through excel sheets, until BreZE is released.</b>	Dec-2013	
<b>Establish an electronic records task force and identify legality of electronic signatures.</b>	Jun-2013	11/2013 meeting
<b>Work with OPA to create web-based vignettes to be posted to the Board's Web site</b>	Jul-2013	March 2014
<b>Review and update current disciplinary standards.</b>	Aug-2013	11/20/13 meeting
<b>Receive Board approval on new disciplinary standards.</b>	Oct-2013	11/20/13 meeting
<b>Educate consumers on the updated standards through the association meetings, newsletters, web site vignettes, etc.</b>	Dec-2013	Ongoing
<b>Educate licensees regarding changes which will occur to the guidelines, newsletter, web vignettes, industry associations, etc.</b>	Dec-2013	Ongoing

**Court Reporters Board of California**  
2012-2014 Action Plan Timeline

<b>Action Items (cont.)</b>	<b>Target Date</b>	<b>Status</b>
<b>Develop a task force to establish partnerships and create materials for best practices.</b>		Complete
<b>Develop staff task force to work with industry associations in regards to continuing education.</b>	Jun-2014	
<b>Develop standards for the integrity of an electronic record, including privacy issues.</b>	Jun-2014	Task Force appointed 11/2013
<b>Work with SOLID to discuss developing webinars for attorneys and litigants.</b>	Jun-2014	
<b>Develop an online test regarding CRB statutes and regulations.</b>	Dec-2014	
<b>Examine the feasibility of National Court Reporters Association (NCRA) credits for webinars.</b>	Dec-2014	
<b>Submit rulemaking calendar.</b>		Complete
<b>Continue conducting information sessions in conjunction with industry events when travel restrictions allow.</b>		Ongoing
<b>Develop a strategy as needed for supporting oversight regulation of court reporting firms as approved by the Board in 2008.</b>		Ongoing
<b>Develop reports as needed.</b>		Ongoing
<b>Go through rulemaking process to change enforcement regulations as needed.</b>		Ongoing
<b>Monitor claims for trends for Transcript Reimbursement Fund.</b>		Ongoing
<b>Network with schools when travel restrictions allow.</b>		Ongoing
<b>Review and monitor the action item list at every board meeting.</b>		Ongoing
<b>Continue to meet with BreZE team personnel in preparation for release in Fall 2013.</b>		Ongoing
<b>Append FAQ information from the newsletter onto end of the web FAQ's.</b>		Semi-Annually

**AGENDA ITEM VI – Report on Legislation**

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Agenda Description:

Briefing on current legislation related to the court reporting industry and/or the Court Reporters Board with discussion and possible action.

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Brief Summary:

**SB 123 (Corbett) – Environmental and Land-Use Court. (Senate Appropriations) (Died)**

**SB 176 (Galgiani) – Administrative procedures. (Assembly Appropriations)**

Existing law governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. This bill would, in order to increase public participation and improve the quality of regulations, require state agencies, boards, and commissions to publish a notice prior to any meeting date or report, provided the meeting or report is seeking public input, as described.

**SB 315 (Lieu) – Civil actions: telephonic appearances. (Assembly Judiciary)**

Existing law provides that courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases to improve access to the courts and reduce litigation costs. This bill would make a non-substantive change to that provision.

**AB 186 (Maienschein) – Professions and vocations: military spouses: temporary licenses. (Senate Business, Professions and Economic Development)**

Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. This bill would authorize a board within the department to issue a provisional license to an applicant who qualifies for an expedited license pursuant to the above-described provision. The bill would require the provisional license to expire after 18 months.

**AB 291 (Nestande) – California Sunset Review Commission. (Assembly Accountability and Administrative Review) (Died)**

**\*\*AB 365 (Mullin) – Court reporting. (Senate Judiciary)**

Existing law provides that the report of the official court reporter or official court reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceeding. The bill would make clarifying changes to those provisions.

**AB 376 (Donnelly) – Regulations: notice. Assembly Accountability and Administrative Review) (Died)**

**\*\*AB 655 (Quirk-Silva) – Court reporters: salary fund. (Senate Appropriations)**

Existing law requires the charge of an official court reporter fee, in addition to any other fee required in civil actions or cases, for the services of an official court reporter on the first and each succeeding judicial day those services are provided, as specified. Fees collected pursuant to this provision may be used only to pay for services of an official court reporter in civil proceedings. This bill would authorize each trial court to establish a Reporters' Salary Fund for the payment of the salaries and benefits of official reporters, as specified. This bill contains other existing laws.

**\*\*AB 679 (Fox) – Fees: official court reporters. (Assembly Judiciary) (Died)**

**\*\*AB 788 (Wagner) – Court transcripts. (Senate Judiciary)**

Existing law requires that transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper be compensated at the same rate set for paper transcripts, except as specified. Existing law establishes certain fees for second copies of transcripts, as specified, including transcripts in computer-readable format. This bill would limit the reproduction provisions described above to computer-readable transcripts. This bill contains other existing laws.

**AB 866 (Linder) – Regulations. (Assembly Accountability and Administrative Review) (Died)**

**AB 894 (Mansoor) – Consumer affairs. \*\*\*Spot bill (Assembly – pending referral) (Died)**

**AB 1017 (Gomez) – Incoming telephone calls: messages. (Assembly Business, Professions and Consumer Protection) (Died)**

**\*\*AB 2006 (Wagner) – Depositions: video recordings. (Assembly – Pending referral)**

Existing law prescribes the procedure for taking oral depositions inside the state, including the procedure for recording a deposition by means of audio or video technology. At the trial or any hearing in an action, existing law authorizes the use of a deposition against a party for specified purposes. This bill would define "use of a deposition" to mean the use of a transcript or a video recording of the deposition testimony.

**\*\*AB 2487 (Wagner) – Witness testimony: copies of transcripts. (Assembly – Pending referral)**

Existing law requires the testimony of each witness in cases of homicide to be reduced to writing, as specified. In cases other than homicide cases, existing law requires the testimony of each witness be reduced to writing, as specified, at the request of either the defendant or the prosecution. Existing law authorizes the magistrate before whom the examination of a witness is had to order that the testimony and proceedings be taken down in shorthand, and to appoint a

shorthand reporter for that purpose. Existing law requires that deposition or witness testimony to be authenticated, as specified. Under existing law, when a defendant is charged with a felony, the reporter is required to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified. If the defendant is charged with a crime other than a felony, existing law requires the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, at the request of either the defendant or the prosecution. This bill would instead require the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, when a defendant is charged with homicide. In all other cases, the bill would require the reporter to transcribe his or her shorthand notes at the request of the defendant or the prosecution, within 10 days following that request, making originals and copies available, as specified.

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Support Documents:

- Attachment 1 – AB 365
- Attachment 2 – AB 2006
- Attachment 3 – AB 2487

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Report Originator: Yvonne Fenner, 2/20/2014  
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*California*  
LEGISLATIVE INFORMATION

**AB-365 Court reporting.** (2013-2014)

AMENDED IN ASSEMBLY APRIL 03, 2013

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

**ASSEMBLY BILL**

**No. 365**

**Introduced by Assembly Member Mullin**

**February 14, 2013**

An act to amend ~~Sections~~ *Section 273 of*, and ~~2025.510 of~~ *to add Section 275 to*, the Code of Civil Procedure, and to amend ~~Section 69957 of the Government Code,~~ relating to court reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 365, as amended, Mullin. Court reporting.

Existing law provides that the report of the official court reporter or official court reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceeding.

~~This bill would require that the report be transcribed and certified by a certified shorthand reporter, as defined, in order to qualify as prima facie evidence of that testimony and proceeding.~~

*The bill would make clarifying changes to those provisions.*

~~Existing law requires that, unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. If testimony at the deposition is recorded both stenographically, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.~~

~~This bill would clarify that the testimony recorded stenographically at the deposition is recorded by a certified shorthand reporter, as defined.~~

~~Existing law authorizes a court to order the use of electronic recording of an action or proceeding where an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court in a limited civil case, a misdemeanor case, or an infraction case, as prescribed. A transcript derived from an electronic recording is authorized to be utilized whenever a transcript of court proceedings is required.~~

~~This bill would require that the electronic recording be transcribed by a certified shorthand reporter, as defined, in order to be utilized whenever a transcript of court proceedings is required.~~

Vote: majority Appropriation: no Fiscal Committee: ~~yes~~no Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 273 of the Code of Civil Procedure, as amended by Section 1 of Chapter 87 of the Statutes of 2009, is amended to read:

**273.** (a) ~~The~~ *Notwithstanding any other provision of law, the report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified by a certified shorthand reporter, as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceedings.*

(b) The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when prepared as a rough draft transcript, shall not be certified and cannot be used, cited, distributed, or transcribed as the official certified transcript of the proceedings. A rough draft transcript shall not be cited or used in any way or at any time to rebut or contradict the official certified transcript of the proceedings as provided by the official reporter or official reporter pro tempore. The production of a rough draft transcript shall not be required.

(c) The instant visual display of the testimony or proceedings, or both, shall not be certified and cannot be used, cited, distributed, or transcribed as the official

certified transcript of the proceedings. The instant visual display of the testimony or proceedings, or both, shall not be cited or used in any way or at any time to rebut or contradict the official certified transcript of the proceedings as provided by the official reporter or official reporter pro tempore.

~~(d) For purposes of this section, "certified shorthand reporter" has the same meaning as Section 8018 of the Business and Professions Code.~~

~~(e)~~

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**SEC. 2.** Section 273 of the Code of Civil Procedure, as added by Section 2 of Chapter 87 of the Statutes of 2009, is amended to read:

**273.** (a) ~~The~~ *Notwithstanding any other provision of law, the report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified by a certified shorthand reporter, as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceedings.*

(b) The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when prepared as a rough draft transcript, shall not be certified and cannot be used, cited, distributed, or transcribed as the official certified transcript of the proceedings. A rough draft transcript shall not be cited or used in any way or at any time to rebut or contradict the official certified transcript of the proceedings as provided by the official reporter or official reporter pro tempore. The production of a rough draft transcript shall not be required.

~~(c) For purposes of this section, "certified shorthand reporter" has the same meaning as Section 8018 of the Business and Professions Code.~~

~~(d)~~

(c) This section shall become operative on January 1, 2017.

**SEC. 3.** Section 275 is added to the Code of Civil Procedure, to read:

**275.** For the purposes of this chapter, an official reporter or an official reporter pro tempore shall be appointed as provided by Section 69942 of the Government Code.

~~SEC. 3. Section 2025.510 of the Code of Civil Procedure is amended to read:~~

~~2025.510. (a) Unless the parties agree otherwise, the testimony at any deposition~~

~~recorded by stenographic means shall be transcribed.~~

~~(b) The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party.~~

~~(c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the deponent, at the expense of that party or deponent, may obtain a copy of the transcript.~~

~~(d) If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time.~~

~~(e) Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified.~~

~~(f) At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio or video technology shall promptly do both of the following:~~

~~(1) Permit that other party to hear the audio recording or to view the video recording.~~

~~(2) Furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.~~

~~(g) If the testimony at the deposition is recorded both stenographically by a certified shorthand reporter, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.~~

~~(h)(1) The requesting attorney or party appearing in propria persona shall timely pay the deposition officer or the entity providing the services of the deposition officer for the transcription or copy of the transcription described in subdivision (b) or (c), and any other deposition products or services that are requested either orally or in writing.~~

~~(2) This subdivision shall apply unless responsibility for the payment is otherwise provided by law or unless the deposition officer or entity is notified in writing at the time the services or products are requested that the party or another identified person will be responsible for payment.~~

~~(3) This subdivision does not prohibit or supersede an agreement between an attorney and a party allocating responsibility for the payment of deposition costs to the party.~~

~~(4) The requesting attorney or party appearing in propria persona, upon the written request of a deposition officer who has obtained a final judgment for payment of services provided pursuant to this subdivision, shall provide to the deposition officer an address that can be used to effectuate service for the purpose of Section 708.110 in the manner specified in Section 415.10.~~

~~(i) For purposes of this section, "deposition product or service" means any product or service provided in connection with a deposition that qualifies as shorthand reporting, as described in Section 8017 of the Business and Professions Code, and any product or service derived from that shorthand reporting.~~

~~(j) For purposes of this section, "certified shorthand reporter" has the same meaning as Section 8018 of the Business and Professions Code.~~

~~SEC. 4. Section 69957 of the Government Code is amended to read:~~

~~69957.(a) If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic recording transcribed by a certified shorthand reporter may be utilized whenever a transcript of court proceedings is required. Transcripts derived from electronic recordings shall include a designation of "inaudible" or "unintelligible" for those portions of the recording that contain no audible sound or are not discernible. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use and shall only be purchased for use as provided by this section. A court shall not expend funds for or use electronic recording technology or equipment to make an unofficial record of an action or proceeding, including for purposes of judicial notetaking, or to make the official record of an action or proceeding in circumstances not authorized by this section.~~

~~(b) Notwithstanding subdivision (a), a court may use electronic recording equipment for the internal personnel purpose of monitoring the performance of subordinate judicial officers, as defined in Section 71601 of the Government~~

~~Code, hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance shall not be used for any other purpose and shall not be made publicly available. Any recording made pursuant to this subdivision shall be destroyed two years after the date of the proceeding unless a personnel matter is pending relating to performance of the subordinate judicial officer, hearing officer, or temporary judge.~~

~~(c)Prior to purchasing or leasing any electronic recording technology or equipment, a court shall obtain advance approval from the Judicial Council, which may grant that approval only if the use of the technology or equipment will be consistent with this section.~~

~~(d)For purposes of this section, "certified shorthand reporter" has the same meaning as Section 8018 of the Business and Professions Code.~~



*California*  
LEGISLATIVE INFORMATION

**AB-2487 Witness testimony: copies of transcripts.** (2013-2014)

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2487**

**Introduced by Assembly Member Wagner**

**February 21, 2014**

An act to amend Section 869 of the Penal Code, relating to witness testimony.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2487, as introduced, Wagner. Witness testimony: copies of transcripts.

Existing law requires the testimony of each witness in cases of homicide to be reduced to writing, as specified. In cases other than homicide cases, existing law requires the testimony of each witness be reduced to writing, as specified, at the request of either the defendant or the prosecution. Existing law authorizes the magistrate before whom the examination of a witness is had to order that the testimony and proceedings be taken down in shorthand, and to appoint a shorthand reporter for that purpose. Existing law requires that deposition or witness testimony to be authenticated, as specified.

Under existing law, when a defendant is charged with a felony, the reporter is required to transcribe his or her shorthand notes within 10 days following the

close of examination, making originals and copies available, as specified. If the defendant is charged with a crime other than a felony, existing law requires the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, at the request of either the defendant or the prosecution.

This bill would instead require the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, when a defendant is charged with homicide. In all other cases, the bill would require the reporter to transcribe his or her shorthand notes at the request of the defendant or the prosecution, within 10 days following that request, making originals and copies available, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS  
FOLLOWS:

**SECTION 1.** Section 869 of the Penal Code is amended to read:

**869.** The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations ~~herein mentioned~~ *specified in this section*, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it,

except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

~~(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.~~

*(e) (1) If the defendant is charged with homicide, the reporter shall transcribe his or her shorthand notes within 10 days following the close of examination, making an original, one copy, and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. Before receiving any compensation as a reporter, the reporter shall file his or her affidavit setting forth that the transcript has been delivered within the time required by this paragraph. The reporter's compensation for services rendered by him or her as the reporter in any court of this state shall be reduced by one-half if the reporter does not comply with provisions of this paragraph as to the time of filing the transcript.*

*(2) If the defendant is charged with a crime other than homicide, and either the defendant or the prosecution requests, the reporter shall transcribe his or her shorthand notes within 10 days following the request, making an original, one copy, and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. Before receiving any compensation as a reporter, the reporter shall file his or her affidavit setting forth that the transcript has been delivered within the time required by this paragraph. The reporter's compensation for services rendered by him or her as the reporter in any court of this state shall be reduced by one-half if the reporter does not comply with provisions of this paragraph as to the time of filing the transcript.*

(f) In every case in which a transcript is delivered as provided in this section, the

clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.



*California*  
LEGISLATIVE INFORMATION

**AB-2006 Depositions: video recordings.** (2013-2014)

**SECTION 1.** Section 2025.620 of the Code of Civil Procedure is amended to read:

**2025.620.** At the trial or any other hearing in the action, any part or all of a deposition may be used against ~~any a~~ party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under Section 2025.410, so far as admissible under the rules of evidence applied as ~~though if~~ the deponent were then present and testifying as a witness, ~~in accordance with the following provisions:~~ *as follows:*

(a) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(b) An adverse party may use for any ~~purpose,~~ *purpose* a deposition of a party to the ~~action,~~ *action* or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under Section 2025.230 of a party. It is not ground for objection to the use of a deposition of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(c) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(1) The deponent resides more than 150 miles from the place of the trial or other hearing.

(2) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is any of the following:

(A) Exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant.

(B) Disqualified from testifying.

(C) Dead or unable to attend or testify because of existing physical or mental illness or infirmity.

(D) Absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process.

(E) Absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(3) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(d) ~~Any~~ *Notwithstanding subdivision (b), any* party may use a video recording of the deposition testimony of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under Section 2025.220 reserved the right to use the ~~deposition~~ *video recording* at trial, and if that party has complied with subdivision (m) of Section 2025.340.

(e) *As used in this section, to "use a deposition" means to use a transcript or a video recording of the deposition testimony.*

~~(e)~~ (f) Subject to the requirements of this chapter, a party may offer in evidence all or any part of a ~~deposition, and if~~ *deposition*. If the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

~~(f)~~ (g) Substitution of parties does not affect the right to use depositions previously taken.

~~(g)~~ (h) ~~When~~ *If* an action has been brought in any court of the United States or of any ~~state,~~ *state* and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

**AGENDA ITEM VII – Scope of Practice Regulation – California Code of Regulations (CCR) Title 16, section 2403**

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Agenda Description: Possible Action  
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Brief Summary:

At the November 19, 2013 meeting, the Board approved the modified text of CCR Title 16, section 2403. The language was published for a 15-day comment period. Additional comments were received and are set out in the attached Final Statement of Reasons. The Board has until July 26, 2014, to submit the completed regulatory package to the Office of Administrative Law.

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**Proposed Text:**

Scope of Practice

The accurate transcription thereof includes, but is not limited to:

(a) In superior court

- (1) Taking down in shorthand all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, sentences, arguments of the attorneys to the jury and statements and remarks made and oral instructions given by the judge or other judicial official.
- (2) Writing the transcript out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine.
- (3) Certifying that the transcripts were correctly reported and transcribed.
- (4) Filing the transcripts with the clerk of the court when directed by the court.
- (5) Making and preparing original transcription on paper.
- (6) Delivering a copy of the original transcript in a computer-readable form in standard ASCII code, unless otherwise agreed by the reporter and the court, party, or other person requesting the transcript.
- (7) Labeling disks of transcripts with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk and with each disk containing the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof and sequentially numbered within the series of disks.
- (8) Retention of original stenographic notes for the statutorily-required period, or delivery thereof to the court when required by local rule.

(b) For a deposition

- (1) Administering the oath or affirmation to the deponent.
- (2) Making a full or partial copy of transcription available.
- (3) Notifying all parties who attended a deposition of requests made by other parties for either an original or copy of the transcript, or any portion thereof.
- (4) Record testimony by stenographic means and retain stenographic notes of depositions for statutorily mandated period of time.
- (5) Sending written notice to deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting and signing.
- (6) Indicating on the original of the transcript if the deponent has not already done so at the office of the shorthand reporter, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve the transcript.
- (7) Sending written notification to the parties attending the deposition of any changes which the deponent timely made in person.
- (8) Certifying on the transcript that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.
- (9) Securely sealing the transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition.
- (10) If the reporter still has a copy, making a transcript of deposition testimony available to any party requesting a copy, on payment of a reasonable charge.

(Authority cited BPC sections 8007, 8017; Reference BPC sections 8007, 8017, CCP sections 269, 271, 2025.330, 2025.510, 2025.520, 2025.540, 2025.550 and Government Code section 69955)

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Support Documents:

Attachment 1 – Final Statement of Reasons

Attachment 2 – Written comments received from 15-day comment period

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Report Originator: Yvonne Fenner, 3/3/2014  
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Recommended Board Action:

Staff recommends the Board move to approve the proposed modified text and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

**COURT REPORTERS BOARD OF CALIFORNIA**  
**FINAL STATEMENT OF REASONS**

**Hearing Date:** September 16, 2013

**Subject Matter of Proposed Regulations:** Scope of Practice

**Sections Affected:** 16 CCR § 2403

**Updated Information**

The Initial Statement of Reasons is included in this rulemaking file. The information contained therein is complete, and no changes have been made.

**Local Mandate**

A mandate is not imposed on local agencies or school districts.

**Small Business Impact**

This action will not have an adverse economic impact on businesses. The regulation change is technical in nature, intended only to clarify the definition of the scope of practice of court reporting.

**Consideration of Alternatives**

No reasonable alternative was presented nor was any identified by the Board that would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The only alternative would be to leave the regulation as it exists. This is not an effective solution because the amendment has been proposed to clarify the original text, for the public, licensees and court reporting firms alike, as to what constitutes court reporting services so that the Board can act for enforcement purposes should a violation of law occur.

**Objections or Recommendations/Responses**

**Comments received during the 45-day notice period:**

Four comments were received during the 45-day notice. At the public hearing on September 16, 2013, two oral comments were received. The two oral commenters followed up their oral comments with written comments. Two additional written comments were also received. Following is a summary of all of the comments:

Comment No. 1: The California Court Reporters Association (CCRA) submitted written comments as well as oral comments at the public hearing. Their complete written comments are included but are summed up as follows:

1. Amend (a) to read: In superior court, including services performed by an entity rendering court reporting services on behalf of and authorized by the licensee

Response (rejected): This language adds no clarification and is not needed. Additionally, use of the term "including" is not recommended for regulatory language.

2. Addition of new subdivision under (a): (8) Retention of original stenographic notes for the statutorily-required period, or delivery thereof to the court when required by local rule.

Response (accepted): This addition was adopted by the Board as it adds consistency with the freelance duties. The basis for this addition is Government Code section 69955(e).

3. Amend (b) to read: For a deposition, including services performed by an entity rendering court reporting services on behalf of and authorized by the licensee

Response (rejected): This language adds no clarification and is not needed. Additionally, use of the term "including" is not recommended for regulatory language.

4. Deletion of (b) (10): ~~Making audio or video recording of a deposition testimony available to any person requesting a copy on payment of a reasonable charge.~~

Response (accepted in part): Rather than be deleted, the language was modified to be consistent with California Code of Civil Procedure 2025.570: "Making transcription of deposition testimony available to any person requesting a copy, on payment of a reasonable charge.

Comment No. 2: The Deposition Reporters Association (DRA) submitted written comments as well as oral comments at the public hearing. Their complete written comments are included but are summed up as follows:

1. Addition of new subdivision: (c) The practice of shorthand reporting includes, but is not limited to, the making of verbatim record of any quasi-adjudicatory proceeding under the Administrative Procedures Act.

Response (rejected): There is no authority to add this subdivision. Additionally, use of the term "including" is not recommended for regulatory language.

2. Correct typo in 2403(a)(6) to read ASCII code

Response (accepted): Correction of this typographical error was made.

3. Amend (b)(3) to read: Notifying all parties attending the deposition of requests made by other parties for ~~copies~~ the provision of instant visual display (or realtime hookup), rough drafts, partial transcripts or expedited transcripts, and offering or providing to all parties any deposition product or service, including but not limited to, any transcription or any product derived from that transcription.

Response (rejected in part; accepted in part): There is no authority for adding the proposed language for this subdivision. The scope of practice identifies duties, not additional services. The requirement to notify parties of requests of this type is already contained within the Professional Standards of Practice. The term "copies" was modified to read "for either an original or copy of the transcript, or any portion thereof."

4. Amend (b)(5) to read: Sending written notice to deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting and signing, unless previously waived.

Response (accepted): The proposed amendment was adopted by the Board.

5. Amend (b)(10) to read: Making audio or video recording of a deposition testimony made by, or at the direction of, any party available to any ~~person~~ party requesting a copy on payment of a reasonable charge.

Response (accepted in part): The language was modified to be consistent with California Code of Civil Procedure 2025.570: "Making transcription of deposition testimony available to any person requesting a copy, on payment of a reasonable charge.

Comment No. 3: Irene L. Abbey, CSR 2686, submitted written comments which are included but are summed up as follows:

1. Amend (b)(3) to read: Notifying all parties attending deposition of requests made by other parties for copies or rough drafts.

Response (rejected): There is no authority for adding the proposed language for this subdivision. The scope of practice identifies duties, not additional services. The requirement to notify parties of requests of this type is already contained within the Professional Standards of Practice.

2. Amend (b)(6) to read: Indicating on the original of the transcript, if the deponent has not already done so at the office of the shorthand reporter, any action taken

by the deponent and indicate on the original of the transcript the deponent's approval of, or failure or refusal to approve, the transcript, unless previously waived.

Response (rejected): There is no need for this language because it's a given and adds no clarification.

3. Amend (b)(7) to read: Sending written notification to the parties attending the deposition of any changes which the deponent timely made in person, unless previously waived.

Response (rejected): There is no need for this language because it's a given and adds no clarification.

4. Amend (b)(9) to read: Securely sealing the transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of the (here insert name of deponent)" and promptly transmitting it to the attorney for the party who noticed the deposition, unless previously waived.

Response (rejected): There is no need for this language because it's a given and adds no clarification.

5. Addition of new subsection under (b): (11) Marking exhibits for identification as offered during the deposition and taking possession of said exhibits for the purposes of attaching them to the transcript unless otherwise stipulated by the parties in attendance.

Response: While the Board agreed that this would be a good addition to the scope of practice, there is no statute that this language would clarify; therefore the Board would have no authority to enact it.

Comment No. 4: Richard L. Manford, Attorney at Law, submitted written comments which are included. Mr. Manford advocates for re-working the regulations in order to impose responsibility and liability on a court reporting firm or entity, on the one hand, or on the CSR, on the other, depending on which of them actually agrees and/or undertakes to perform those activities.

Response: The Board respectfully disagrees with Mr. Manford's position. Without the clarification set out in the proposed regulations, the Board has to hold the licensee responsible for all these acts, whether or not they were actually performed by a court reporting firm.

At the November 19, 2013 meeting, the Board voted to adopt modified language, and the language of the proposed regulation was published for a 15-day additional comment period.

**Comments received during the 15-day notice period:**

Comment No. 1: The Deposition Reporters Association (DRA) provided additional oral testimony at the November 19, 2013 Board meeting, following up with written comments which are included but are summed up as follows:

1. DRA requested the Board reconsider the rejection of addition subsection (c) "The practice of shorthand reporting includes, but is not limited to, the making of a verbatim record of any quasi-adjudicatory proceeding under the Administrative Procedures Act."

Response (rejected): There is no statutory basis for the Board to include quasi-adjudicatory proceedings as many of these proceedings do not require the use of a licensed shorthand reporter.

2. DRA requested (b)(3) be changed from "Notifying all parties who attend a deposition of requests made by other parties for either an original or copy of the transcript, or any portion thereof" to "Notifying all parties attending the deposition of requests made by other parties for the provision of rough drafts, partial transcripts, or expedited transcripts."

Response (rejected): The three instances being offered in the amendment are already included under the broader language of the proposed language and is unnecessarily limiting.

3. DRA requested the Board re-consider the proposed language in (b)(10) with regard to "person."

Response (accepted): (b)(10) will read: If the reporter still has a copy, making a transcript of a deposition testimony available to any person party requesting a copy, on payment of a reasonable charge.

Comment No. 2: The California Court Reporters Association (CCRA) provided additional oral testimony at the November 19, 2013 Board meeting. They requested that the Board reconsider the rejection of CCRA's proposed language "including services performed by an entity rendering court reporting services on behalf of and authorized by the licensee," in items 1 and 3.

Response (rejected): CCRA offered no new information which would cause a revision to the original response, which is that this language adds no clarification and is not needed. Additionally, use of the term "including" is not recommended for regulatory language.

Comment No. 3: Sandy Vanderpol, licensee, provided oral testimony at the November 19, 2013 Board meeting. She expressed four points:

1. There should be an option to have an agency relationship with firms that she trusts and is loyal to.

Response (rejected): The proposed regulatory language does not prohibit such a relationship.

2. Introducing quasi-judicial proceedings into the regulation may create confusion since California reporters do not currently have to be licensed to report many of those proceedings.

Response (accepted): This comment was in response to public comment and not in response to proposed amended text. There is no statutory basis for the Board to include quasi-adjudicatory proceedings as many of these proceedings do not require the use of a licensee.

3. Listing the duties of products and services may not be the best idea because it is not all-inclusive.

Response (rejected): The proposed text is not a list of duties but conduct or acts which constitutes transcription, therefore it is not intended to be an exhaustive list of a shorthand reporter's duties. The acts listed in the proposed text are summarized from various applicable rules, laws and regulations pertaining to shorthand reporters and their responsibilities.

The omission of the language being requested by CCRA ("including services performed by an entity rendering court reporting services on behalf of and authorized by the licensee," in items 1 and 3) will prove detrimental to licensees.

Response (rejected): The offered language provides no clarification.

Comment No. 4: Maura Baldocchi, licensee, submitted written comments during the 15-day notice period. Ms. Baldocchi offered an additional alternative under "Statement of Reasons" to include a more general reference to compliance with all laws, Rules of Court and orders of the Court. If the proposed specificity is necessary, she requests listing a statutory/rule citation from which the reg is derived in order to give context and clarify how the reg is to be applied.

Response (rejected): The specificity is the very reason for the proposed regulatory language, without which the scope of practice would be so broad as to offer no additional clarification of the statute. The Board will prepare a version of the regulation with the underlying citations for use in educating the licensee population, should the regulation pass, as it may prove useful for the licensees.

Comment No. 5: Ms. Baldocchi also disagreed with the proposed text as written in subsections (a)(6) and (a)(7), stating that those two subsections seem to be requiring that original transcript must be delivered in computer-readable form and that it would require reporters to use disks, both which are not her understanding of the law.

Response (rejected): The way the proposed regulation reads, if a court reporter chooses to do what is set out in subsections (a)(6) or (a)(7), it falls under the scope of practice of court reporting, but does not in and of itself establish a requirement for provision of those services.

Comment No. 6: Richard L. Manford, Attorney at Law, submitted written comments which are included, but are summarized as follows:

Mr. Manford asserts that a CSR hired by a reporting firm as an independent contractor for court or deposition work potentially exposes that CSR to disciplinary action for activities over which that CSR, as an imposed condition of employment, forfeits control thereof to the hiring firm. He maintains that the regulation be re-worked to impose responsibility and liability on the reporting firm or entity, on the one hand, or on the CSR, on the other, depending on which of them actually agrees and/or undertakes to perform those activities. He suggests the Board's intent and purpose be stated in an added first paragraph in the regulation.

Response (rejected): There is no need to set out responsibility or liability between the CSR and the court reporting firm. If a court reporting corporation is performing any of the tasks set out in the scope of practice, it must follow the same laws as a licensee and so clearly must be held responsible for a violation. The CSR and the reporting firm may agree to the assignment of the various duties, and the regulation does not seek to restrict that relationship in any way. As far as setting out the intent and purpose of the Board, this is not appropriate for a regulation itself but may be found in the accompanying regulatory package.



DEPOSITION  
REPORTERS ASSOCIATION  
OF CALIFORNIA, INC.

December 28, 2013

Ms. Paula Bruning  
Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230  
Sacramento, CA 95833

Re: **Second Comments Related To Proposed Regulations: Scope of Practice**

Dear Ms. Bruning:

The Deposition Reporters Association of California ("DRA") respectfully submits these comments in support of the Board's proposal to amend Title 16, Division 24 of the California Code of Regulations, with section 2403 ("section 2403"). As well, DRA submits the following suggested changes to the regulations, some of which are required to ensure that the regulations reflect current law.

**DRA's Overall Response To The Revised, Proposed Regulations**

**1. Why the scope of practice regulations are important.**

At the most general level, the beginning point of a discussion about the scope of practice of shorthand reporters is why their transcripts enjoy the legal dignity they do.

It is not intuitive that transcripts of what individuals say in depositions or prior court hearings would be admissible in court. Typically, writings reflecting out-of-court statements made by witnesses would be insufficiently reliable to be admitted as evidence and would be deemed to be inadmissible hearsay.

But, depositions (for example) are not out-of-court statements because depositions are not out-of-court proceedings. What makes what is said in a deposition a statement in a judicial proceeding is that they are reported not by an interested party or even a lay neutral one but by licensed court reporters who are "ministerial officers of the court" meaning officers charged with non-discretionary, *inherently judicial* duties. *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4<sup>th</sup> 1018, 1021.

This is why the many court rules and statutes governing the licensure of certified reporters exist -- to ensure the inherent reliability of what would otherwise be inadmissible hearsay.

Thus, California Code of Civil Procedure ("CCP") section 273 provides that official court transcripts done by official reporters are those that qualify as *prima facie* evidence not just of what occurred at a proceeding but evidence "of the testimony and the proceeding" itself.

273(a) The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is *prima facie* evidence of that testimony and proceedings.

Said another way, transcripts that *are not* prepared in a fashion consistent with CCP section 273 (not prepared by official reporters or official reporters pro tempore) *are not prima facie* evidence of the “testimony and proceeding.” *See also*, CCP section 2025.620 (use of depositions at trial).

And, this is why the regulation of shorthand reporting is critical to the functioning of California’s judicial system. Depositions and other licensee-generated transcripts are a way for the court to weigh testimony without having to consume hearing time in an actual courtroom.

## 2. The Board’s role in regulations in clarifying the scope of practice

The Board in some instances appears reluctant to address in regulation matters that are not already expressly defined in statute.<sup>1</sup> This reluctance is not only misplaced as a matter of law, it is unwise.

The Government Code and case authority clarify and reinforce that the Board in promulgating regulations is not restrained to repeating the text of statutes. Indeed, such regulations risk being redundant. Rather, the Legislature has embraced a definition of “regulation,” and thus a role for the Board, that seeks to invoke the Board’s expertise in addressing the gaps or ambiguities in state statutes. Addressing these gaps and ambiguities through the lens of the Board’s expertise is in point of fact the reason for issuing regulations, which is why courts defer to a regulator’s interpretations of statutes: (“A rule requiring the Secretary to construe his own regulations narrowly would make little sense, since he is free to write the regulations as broadly as he wishes, subject only to the limits imposed by the statute.” *Auer v. Robbins* (1997) 519 U.S. 452, 457–58, 462 (citations omitted)<sup>2</sup>

For this reason, the Legislature defines “regulation” as

[E]very rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Government Code section 11342.600 (emphasis supplied) *See also*, *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

Currently, Business & Professions Code (with emphasis added) broadly defines the scope of practice of a shorthand reporter as follows:

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<sup>1</sup> Alternatively, and as will be discussed below, the new draft inexplicably refuses to reflect statutes in some important areas.

<sup>2</sup> “Here . . . the underlying regulation does little more than restate the terms of the statute itself . . . The Government does not suggest that its interpretation turns on any difference between the statutory and regulatory language. . . . The regulation uses the terms ‘legitimate medical purpose’ and ‘the course of professional practice,’ but this just repeats two statutory phrases and attempts to summarize the others. It gives little or no instruction on a central issue in this case: Who decides whether a particular activity is in ‘the course of professional practice’ or done for a ‘legitimate medical purpose’? Since the regulation gives no indication how to decide this issue, the Attorney General’s effort to decide it now cannot be considered an interpretation of the regulation. Simply put, the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language[.]” *Gonzales v. Oregon* (2006) 546 U.S. 243, 257, 268–69, 274 (citations omitted)

8017. The practice of shorthand reporting is defined as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. Nothing in this section shall require the use of a certified shorthand reporter when not otherwise required by law.

Thus, where the Legislature has not otherwise directed a contrary policy, the Board should strive to use the regulations to fill in gaps in current law, especially if technical or technological changes in the practice are not reflected in statute.

Against this summary backdrop, DRA would like to turn to staff's responses to DRA's comments regarding proposed regulation 2403(b).

#### Comment 1

DRA recommended the following language in its previous comments and the new draft does not reflect this language. DRA renews its request that the regulations embrace the following:

(c) The practice of shorthand reporting includes, but is not limited to, the making of a verbatim record of any quasi-adjudicatory proceeding under the Administrative Procedures Act.

Currently, administrative hearings are often transcribed and, indeed, the Office of Administrative Hearings through a competitive bidding process awards contracts to court reporting firms for this purpose. (<http://www.dgs.ca.gov/oah/GeneralJurisdiction/CourtReporter.aspx>)

A licensed court reporter transcribing a quasi-judicial disciplinary hearing (for example) before an administrative law judge is indisputably "making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record". The only question is whether the Board has the discretion to interpret "any oral court proceeding" or "court ordered hearing" as including quasi-judicial proceedings.

DRA believes the Board clearly has this discretion and would be wise to use it in this fashion.

First, quasi-adjudicatory proceedings are similar to judicial proceedings. *Strumsky v. San Diego County Employees Retirement Assn.*, (1974) 11 Cal. 3d 28, 35, fn. 2 ("[g]enerally speaking, ... an adjudicatory act involves the actual application of ... a rule to a specific set of existing facts"); *Wilson v. Hidden Valley Mun. Water Dist.* (1967) 256 Cal. App. 2d 271, 279-280 ("quasi-judicial ... action ... 'determines what the law is, and what the rights of parties are, with reference to transactions already had'")

Second, California's courts recognize that the "right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection." (*Yakov v. Board of Medical Examiners* (1968) 68 Cal. 2d 67, 75.) A major portion of that protection stems from the federal Due Process and Equal Protection clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments, and it extends to almost any time a government agency seeks to deny someone a government-entitlement. In the sense that the quasi-judicial proceedings under the Administrative Procedures Act are the means by which court-imposed Due Process rights are protected, they can be said to be both an "oral court proceeding" and "court ordered."

Indeed, challenges to quasi-adjudicatory decisions are under a distinct statute -- CCP section 1094.5. That statute, in turn (in subdivision (a)), applies only to writs that challenge "the result of a proceeding in which by law a hearing is required to be given [and] evidence is required to be taken" The same statute

also specifically mentions transcripts and does so in a way that underscores that sometimes the need for transcripts is critical: "where the transcript is necessary to a proper review of the administrative proceedings"[.]

Third, administrative agencies are given significant leeway in interpreting phrases like the ones in Business & Professions Code section 8017. In *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, to take just one famous example, the California Supreme Court upheld an extremely complex rate setting regime based in part upon the Insurance Commissioner's authority to interpret Insurance Code section 1861.05, which provided that no rate "shall be approved or remain in effect that is excessive[.]"

Fourth, when a licensee of this Board before an Administrative Law Judge "mak[es], by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record" of such a proceeding, it is challenging to imagine that the licensee doing the transcribing is not engaged in the practice of shorthand reporting such that, were the reporter to act incompetently or unethically, the Board would not in the interests of consumers want to consider acting on the reporter's license – something the Board cannot do if transcribing quasi-judicial proceedings is not within the scope of practice of the profession this Board regulates.

#### Comment 2

DRA renews its request that the following language be added to the regulations:

(b)(3) Notifying all parties attending the deposition of requests made by other parties for the provision of rough drafts, partial transcripts, or expedited transcripts.<sup>3</sup>

Staff has suggested rejecting DRA's suggestion to add other transcript-related services to the notice provision of (b)(3) as being without legal authority because the scope of practice regulations are supposed to "identif[y] duties, not additional services." The staff also comments that this requirement is in the Professional Standards of Practice and so does not need to be reflected within these regulations laying out a reporter's scope of practice.

DRA respectfully disagrees.

First, the regulation is about "[n]otifying" about services, *not providing* those services, and the statute relied upon by DRA for its suggestion about notice going to all the parties is likewise about *notice of services being provided, not* the provision of the services themselves.

CCP section 2025.510(d) currently and broadly requires *notification* by reporters when "any portion" of a transcript has been requested by and will be provided to one party before another. That statute (with emphasis supplied) provides:

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<sup>3</sup> In its prior testimony, DRA suggested that this language be added: "instant visual display (or realtime hookup)". However, upon further reflection in light of the aim of this code section, DRA withdraws this suggestion. As noted in the text, the statute being interpreted via regulation by the Board is aimed entirely at post-deposition products being delivered to one party more quickly than for another. Realtime and instant visual display is provided during the deposition, not afterward, and in most instances reporters are not informed of who will and who will not be attending the deposition such that the reporter as a practical matter cannot before-the-deposition provide effective notice that realtime will be offered. Furthermore, realtime could, unlike the other services or products listed which are all facets of delivering the copy or transcript itself, be considered an "additional service," as realtime is not per se a part of the official transcript, or required of a CSR, whereas making the transcript or copy available is so required.

(d) If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time.

Thus, DRA suggested and staff suggests rejecting the following language that is about when notice must be given to all the parties when one party orders a product or service that might give it an advantage:

(b)(3) Notifying all parties attending the deposition of requests made by other parties for ~~copies,~~ the provision of rough drafts, partial transcripts, or expedited transcripts and offering or providing to all parties any deposition product or service, including but not limited to, any transcription or any product derived from that transcription.

Again, like the statute, observe that the proposed regulatory language is about *notice* when one side asks for something that may give the side an advantage over the other side when it comes to obtaining a product more quickly. Expedited transcripts or expedited copies are those that will be available before the transcript would normally be available, and a reporter *under current law is therefore obligated to notify all the parties if an expedite of these products is ordered*; hence, DRA's suggestion reflecting the reporter's obligation *to notify* the parties is a mandatory legal "duty" properly invoked in these scope of practice regulations, and is not notice of an "additional service."

The reference in DRA's suggestion to notice of "partial" transcripts being ordered *is verbatim from statute* and should not be omitted.

A rough draft is a form of transcript that is "available... prior to the time the original or copy would be available" and can be made available to one party before another, giving one side an advantage over another, and, for that reason, notice to the parties when this is ordered reflects a reporter's current mandatory statutory "duty"—it is *not part of a catalogue of additional services*.

Indeed, if a reporter failed to provide notice of a rough draft (for example) being ordered, the Board would likely entertain a complaint against the reporter. For this reason, by omitting references to the notice requirement related to these products and services, the draft scope of practice regulations are inconsistent with binding statute *and likely even the Board's own view of current law of what might subject a reporter to discipline*.

In sum, the draft regulations in these aspects fail to reflect arguably the most important facet of a reporter's license — impartiality in what the reporter provides to litigants; namely, not giving one side in litigation an advantage over another. This is indisputably one of the most important features of a reporter's scope — akin to a lawyer's duty of zealous advocacy for a client — and the regulations are currently deficient in this regard by failing to reflect those products and services for which notice to all parties is under current law required.

Second, this notice requirement properly resides within regulations explaining a reporter's scope of practice. State law specifically commands that a shorthand reporter provide this notice. What the law requires of a licensee is *ipso facto* within the scope of the licensee's practice. Therefore, the scope of practice regulations should not omit this mandatory duty, as if it was not within a licensee's scope.

Third, the reference to "copies" must be stricken, as DRA proposes, because it is contrary both to law and common sense. For excellent reason, the CCP contains no requirement for the deposition officer to notify a party when another party orders a copy by a standard delivery time. The code already ensures impartiality by requiring that copies be *made available* at the same time as the O&1. Based on CCP 2025.510(c), any party or deponent, at their expense, is already entitled to obtain a copy when they want, and that availability begins at the same time for all, preserving impartiality without the reporter having to notify the other parties when one side decides, for its own idiosyncratic litigation reasons, that it actually wants a copy.

Again, the reason the code imposes a notice requirement on a reporter is when there is a timing advantage for one party in obtaining a deposition-derived product or service faster than the other parties. Here, because the code already ensures that copies are made available to all equally at the same time, and lawyers are presumed to know the law (and in reality do), the only reason one side would suffer a timing disadvantage over another is if they elect for their own reasons not to obtain a copy as soon as it is available.

Bluntly put -- that is not the reporter's problem and it should not be the reporter's obligation to remind lawyers via a Board-imposed notice requirement that appears nowhere in statute of what current law already clearly allows the parties and their counsel to do.

Likewise, the Board's proposed language requiring a reporter to notify all parties of *transcript orders* by other parties is contrary to existing Code, and therefore the regulation is at worst unlawful and at best unreasonably and needlessly burdensome on reporters. The Legislature believes that impartiality is amply preserved without the reporter having to interject herself into the tactical decision-making of what could be a huge, multi-party case by alerting all the parties when one orders a product that the other could likewise legally order at any time.

Once more, a reporter reading these regulations will as a result get an erroneous view of what their legal obligations are, and this -- needless to say -- should be avoided.

Fourth, another way the regulation at worst contradicts statute or at best is confusing is that there is no need for the reporter to notify any party in attendance about a request "for an original," because CCP section 2025.510(a) already requires that the original transcript be prepared unless the parties agree otherwise. And if they agree otherwise, by definition they are notified of that they have agreed to. ("(a) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means **shall be transcribed**"—emphasis added). For this reason, it respectfully makes no sense in regulation to require the reporter to notify anyone of that which the law requires by default; namely, that the deposition "shall be transcribed." Nor does it make sense for a reporter to notify parties of their own agreements.

If what staff believes is objectionably overbroad is the final reference to any deposition product or service, including but not limited to, any transcription or any product derived from that transcription, then that phrase can be modified as follows:

(b)(3) Notifying all parties attending the deposition of requests made by other parties for copies, rough drafts, partial transcripts, or expedited transcripts and offering or providing to all parties any deposition product or service, including but not limited to, any transcription or any product derived from that transcription where such a product or service would be governed by California Code of Civil Procedure section 2025.510(d).

### Comment number 3

DRA respectfully requests that the Board re-consider its proposed language to (b)(10). As the language reads now, it **misleadingly implies that the reporter's obligations end at providing "a person" a copy upon payment of a reasonable charge.** However, CCP section 2025.570(b) imposes many additional obligations upon the reporter when copies by nonparties -- the "persons" referenced in the current draft regulations -- are requested.<sup>4</sup>

If by using the word "persons" the regulation is intending to embrace section 2025.570 governing nonparties, then all the concomitant obligations specific to nonparties should for completeness and clarity be included. If, however, staff is intending to invoke section 2025.560 governing "parties", then "person" should be changed to "party" because, otherwise, the reference to "person" alone is inconsistent with current law. Either way, the regulation could be disapproved as unlawful or unlawfully unclear unless this is remedied.

Indeed, unless this ambiguity is corrected, licensees attempting to comply with this regulation will get an incorrect understanding of their current obligations, and the regulation itself could cause a licensee to act in a fashion contrary to the requirements of 2025.570 and in so doing could be subject to discipline.

### Conclusion

DRA thanks the Board and its excellent staff for the opportunity to address these important issues and again congratulates the Board for seeking to promulgate these regulations.

Sincerely,

*Ed Howard*

Howard Advocacy, Inc.  
on behalf of DRA

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<sup>4</sup> "(b) If a copy is requested from the deposition officer, the deposition officer shall mail a notice to all parties attending the deposition and to the deponent at the deponent's last known address advising them of all of the following:

- (1) The copy is being sought.
  - (2) The name of the person requesting the copy.
  - (3) The right to seek a protective order under Section 2025.420.
- (c) If a protective order is not served on the deposition officer within 30 days of the mailing of the notice, the deposition officer shall make the copy available to the person requesting the copy."

**Bruning, Paula@DCA**

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**From:** Maura Baldocchi  
**Sent:** Thursday, December 12, 2013 2:53 PM  
**To:** Bruning, Paula@DCA  
**Subject:** proposed regulations

Paula, I've been an official reporter for over 30 years and I support your effort to attain jurisdiction over "freelanced" court work. I've reviewed the proposed language/rationale statement. I have some general observations/suggestions about the proposals for 2043(a) which I hope will lend success to your effort.

Speaking to other alternatives considered under "Statement of Reasons":

I suggest a third alternative: a more general reference to compliance with all laws, Rules of Court (RC) and orders of the Court.

Officials and officials pro tem are bound by RC, local rules and a myriad of other court policies and procedures, including a code of ethics, which are constantly being updated and/or changed by processes which operate completely independent of the CRB. This also includes MOU contracts.

This general approach allows for more flexibility and less need to update regs which may quickly fall out of synch with what the courts are asking of officials and official pro tems. - and that unnecessarily jeopardizes the licensee, who may have to choose between the regs and the court and risk losing license and job.

If the specificity you propose is necessary, then, listing a statutory/rule citation from which the reg is derived, contiguous to the reg, may help give context and clarify how the reg is to be applied. The Judicial Council uses this technique very effectively.

Two examples of problems I notice:

1- It seems as if proposed reg (a)(6) requires an original transcript to be delivered in computer-readable form, "unless" xxxx.. that's not my understanding of the law.

2- Also, proposed reg (a)(7) seems to be requiring reporters to use disks, which is not my understanding of the law.

These are my observations. I wish you success.

MauraBaldocchiCSR5207

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BY HAND DELIVERY

30 December 2013

Ms. Paula Bruning, Executive Analyst  
Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230  
Sacramento CA 95833-2944

Re: Proposed Adoption of 16 Cal. Code Regulations, Section 2403

Dear Ms. Bruning:

This correspondence is in response to the Board's 06 December notification extending to 30 December the period for submission of comments regarding changes to the subject regulation following the Board's regulatory hearing on 16 September. The notice requests that comments be limited to modifications to the text of the proposed regulation. For the reasons expressed below, I believe that relevant omissions from the text are also fair game for comment.

In anticipation of that hearing, I hand-delivered my 11 September five-page letter addressing the specifics of the proposed regulation. That letter included the first two paragraphs immediately below (but here without their indicated footnotes) and concluded with the third:

"To impose court requirements (4), (5), and (6), and deposition requirements (2), (3), (5), (6), (7), (8), (9) and (10) on a CSR hired by a reporting firm as an independent contractor for court or deposition work potentially exposes that CSR to disciplinary action for activities over which that CSR, as an imposed condition of employment, forfeits control thereof to the hiring firm."

"Proposed Section 2403 would expose a CSR's license to administrative discipline and potential criminal liability for activities that a reporting firm demands, as a non-negotiable condition of the CSR's retention as an independent contractor, that the firm undertake and perform to the exclusion,

DEC 30 2013

of the CSR. Thus, the proposed regulation represents the doctrine of vicarious liability in reverse, i.e., the independent contractor (“employee”) would become liable for defalcations committed solely by the hiring reporting firm (“employer”).”

“As to superior court activities 4, 5, and 6, and deposition activities 2, 3, 5, 6, 7, 9, and 10, proposed regulation 2403 should be re-worked to impose responsibility and liability on the reporting firm or entity, on the one hand, or on the CSR, on the other, depending on which of them actually agrees and/or undertakes to perform those activities.”

Notwithstanding that the Board has jurisdiction over every domestic reporting entity/firm providing court reporting services in CA, the language on the face of the regulation ignores the above realities by retaining its regulatory allocation of 100% of the subject responsibilities to independent contractor CSRs while assigning none to the court/deposition reporting entities and firms who actually control and perform those activities.

Proposed regulation 2403 cannot be rationalized by the Board’s statement that “. . . the clarifying language will lessen confusion in the industry as to who is being held accountable for *their actions when engaging in court reporting services.*” (Italics added.) Does the Board consider implicit in the regulation that individual CSR owners/shareholders of reporting firms will be similarly held accountable? If so, such accountability is nowhere to be clearly found in the regulatory language or in the Board’s various published policy and justification statements concerning same. And, if so, the proposed “clarifying language” actually adds to the “confusion in the industry” that the regulation purports to reduce.

On the other hand, on page 10 of the Fall 2013 issue of CRB TODAY, the following regarding proposed regulation 2403 appeared in an update window:

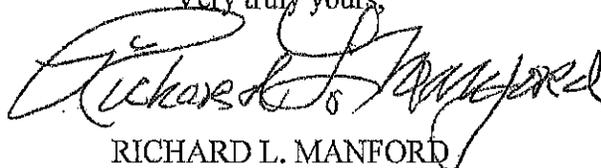
“As the statute reads now, the individual licensee is solely responsible for every aspect of reporting the record, producing and distributing a transcript, and many other accompanying duties that court reporting firms often take on. By clarifying what is involved in the transcription process, *the Board hopes to make corporations aware of what licensing duties they are taking on, at which point they are required to follow all of the same rules and regulations of a licensee.*” (Italics added.)

Ms. Paula Bruning, Executive Analyst  
Court Reporters Board of California  
30 December 2013  
Page 03

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Now, the foregoing is consistent with what the regulatory language should make clear. Perhaps, the Board's intent and purpose could concisely be stated in an added first paragraph in the regulation because the first rule of statutory construction calls for an examination of a statute's language itself. If the language is clear, then there is no need for interpretation, and outside materials and sources will not be considered for an explanation of intent behind the statute. The current regulatory language does not clearly reflect its intent and purpose as stated in CRB TODAY. They need to be expressed in the regulation itself.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard L. Manford". The signature is written in dark ink and is positioned above the printed name.

RICHARD L. MANFORD  
Attorney at Law

COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM VIII – Curriculum Hours Increase**

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Agenda Description: Possible Action

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Brief Summary:

Because of the changes that became effective July 1, 2011, in the Code of Federal Regulations, a lack of financial aid for repeatability has become an issue with the court reporting schools. Demonstrating satisfactory achievement on a rigid time frame can be almost impossible, depending on the individual student. Many students are finding it increasingly difficult to fund their schooling based on the rigid timeline to complete the court reporting program. Consequently, without financial aid being processed, it has become increasingly difficult for schools to fund and pay expenses and overhead.

Golden State College of Court Reporting & Captioning has submitted the attached proposal for an increase in the number of machine shorthand hours required in Title 16, section 2411 from 2300 to 4100.

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Support Document:

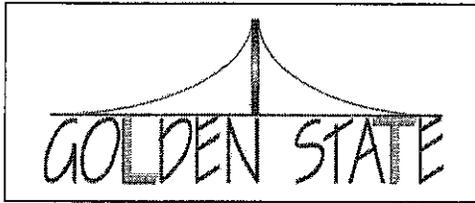
Attachment – March 1, 2014 Proposal from Golden State

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Report Originator: Yvonne Fenner, 3/3/2014

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Recommended Board Action: Staff recommends the Board hear from other schools as to the potential impact of accepting the proposal. If the Board agrees with the proposed solution, the Board should move to instruct staff to start the regulatory process to change 16 CCR section 2411(a) from 2300 to 4100 and delegate to the executive officer the authority to adopt the proposed regulatory language if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.



Golden State College of Court Reporting & Captioning  
7901 Stoneridge Drive, Suite 105  
Pleasanton, CA 94588-3677  
(925) 223-6604

March 1, 2014

Dear Members of the Board,

**Proposal to Increase Clock Hours**

CA Code of Regulations, Title 16, Division 24, Article 2, Section 2411  
(a) Machine Shorthand and transcription.....2300

**Proposal**

Golden State College of Court Reporting (GSC) respectfully requests that the current number of clock hours (2300) stated in the above-mentioned code section be increased to 4100 clock hours.

This proposal does not affect any language in the current code, nor does it change anything about the academic hours of 660. This proposal only addresses the number of machine shorthand hours. No other language needs to be changed or adjusted as part of this proposal.

**Purpose for the Change**

Our objective, as always, is licensure of our students by the state of California as Certified Shorthand Reporters. These additional clock hours will enhance the opportunity for students to acquire the necessary speed building skills within a realistic timeframe to reach their ultimate goal.

**July 1, 2011 - Programs Leading to Gainful Employment (GE)**

On July 1, 2011, Federal Student Aid (FSA) guidelines came into effect requiring institutions offering vocational training to apply new formulas in converting clock hours to credit-hour equivalencies.

Language from the FSA Handbook June 2013 (Chapter 2) reads as follows:

"Virtually all programs - degree and non-degree - offered by proprietary institutions of higher education must prepare students for 'gainful employment in a recognized occupation.'

Collectively we refer to these programs - all non-degree educational programs offered by public and nonprofit institutions and virtually all academic programs offered by proprietary institutions - as gainful employment programs, (or 'GE' programs).

"When a school must use clock hours for FSA purposes: A GE program must be considered clock-hour for FSA purposes if

- there is a requirement to measure student progress in clock hours when
  - 1) receiving federal or state approval or licensure to offer the program; or
  - 2) completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue."

For purposes of processing a student's financial aid, the student receives funding ONE TIME for each hour of progress. **Progress.** Aid is not distributed by "butts in the chair" hours; aid is distributed by measured progress. On July 1, 2011, repeatability of classes/speeds became a huge issue for court reporting schools. **If a student does not progress within a certain amount of time and at an unforgiving pace, then the student cannot receive aid.** This has obviously created a tremendous need.

**The Need**

The average student cannot complete a court reporting program within 2 to 2.5 years. While some students do finish quickly, the life of an average adult student is complicated with family and work obligations while they attend school.

GSC averaged the length of enrollment for students who graduated and became eligible to take the CSR exam. The average length of enrollment of successful students over a ten-year period was 3.8 years.

Here's what is happening to our students:

Court reporting school is difficult enough on its own without the added stress put on students by the knowledge that if they don't pass a certain test within the next week or two, they will not qualify for financial aid. We give Progress Warnings and the actual date that they will lose eligibility so they are not blindsided, and it is terrible stress. As a school, we try everything. The student tries so hard.

They have to drop the program for the sole reason that they cannot get further financial aid, and they don't have the private funds to carry on. It is wrong that students leave crying because they want to finish after they have only been here a couple of years, they are at 160-180wpm, and if they had a little more time, they could finish! What is unforgiveable and keeps me up at night is that they leave with financial aid debt that they won't be able to pay off without completing the program. It's horrible. It's bad for the student, it's bad for the school, and it's bad for the reputation of court reporting schools.

If we do not correct this clock-hour situation, the only students that will be able to complete a court-reporting program will be those who come from affluent backgrounds who can pay cash.

In order to make court reporting available to members of every economic background, we must provide an appropriate financial aid framework that will make education available for all. We want to see court reporting jobs available to everyone. This career can change lives. We've seen it happen. It's why we do what we do! Otherwise, why bother? Rich people are already rich.

**Example:**

As part of the machine shorthand courses at our school, we would like to add 1800 hours as follows:

<u>Class</u>	<u>Current Hours</u>	<u>Proposed Hours</u>	=	<u>Weeks/Mos.</u>
Theory	750	864		36 / 9
Bridging	20	120		5 / 1.25
80 wpm	70	144		6 / 1.5
100 wpm	90	288		12 / 3
120 wpm	180	308		13 / 3.25
140 wpm	240	480		20 / 5
160 wpm	300	528		22 / 5.5
180 wpm	450	600		25 / 6.25
200 wpm	200	768		32 / 8
<b>TOTAL MACHINE SHORTHAND HOURS:</b>	2,300 = 2 yrs.	<b>4,100</b>	=	3.5 yrs.
<b>ACADEMICS</b>	<u>660</u>	<u>660</u>		
<b>PROGRAM TOTAL CLOCK HOURS:</b>	2,960 = 2.5 yrs.	<b>4,760</b>	=	4.1 yrs

**Final Note:**

When GSC was founded by Kelly Emerick and me in 2003, we started from scratch and built the format, the curriculum, the methodology from the ground up. We did not look to other schools at that time or how they were providing their programs. We are long-time court reporters, and we had our own philosophy and hopes for our future students. Blessed by years in the profession, we considered creating a school as a kind of next-step mission to give back after successful years in court reporting.

We knew that as a new school, GSC was years away from accreditation and Title IV. We willingly took on the challenge, and have learned a lot along the way. Honestly, we were naive and could never have foreseen the future, even with the ominous warning from Ned Branch in early 2003, "I cannot in good conscience encourage you to proceed." I thought he was just trying to hog all the fun for himself!

Where we did look, however, was to you.

Members of the Board, we started this school by looking to the California Code of Regulations and saw that the prescribed course of study was laid out beautifully in Title 16, Section 2411 at 2960 clock hours. We followed that exactly. We assumed 2960 clock hours was a legitimate number. It's not. Not now.

We need your help. We opened this school to see lives turn around and change. We want to see people enjoy the rewards of hard work. With simple correction of hours to reflect reality, Golden State will be able to help students finance their education and achieve their professional goals.

I will be in attendance at the March 14th meeting in Los Angeles and will be available to answer any questions or address any comments about this proposal. I'm sure most schools will be in attendance, as well, and I look forward to their input.

Thank you for your consideration and ongoing efforts.

Sandy K. Finch, CSR #3883, CEO/Director  
Golden State College of Court Reporting & Captioning  
*Keep Calm and Steno On*

COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM IX – Resolution for Reagan Evans**

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Support Document:

Attachment – Resolution

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Fiscal Impact:       None

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Report Originator: Yvonne Fenner, 2/20/2014

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Recommended Board Action: Approve.

Department of Consumer Affairs  
**Court Reporters Board  
of California**

**Resolution**

*WHEREAS, Reagan Evans has faithfully and devotedly served as a Board member of the Court Reporters Board from April 30, 2010, through June 1, 2013; and*

*WHEREAS, she was appointed as Chair of the Continuing Competency Task Force; and*

*WHEREAS, she was integral in developing the Board's 2012 – 2014 Strategic Plan and provided direction on reaching its goals, and she contributed to the scope of practice and gift giving regulatory revisions; and*

*WHEREAS, Reagan Evans has more than 25 years of professional experience as a Certified Shorthand Reporter, having served the community as a deposition reporting agency owner and as an official reporter pro tempore in Riverside County; and*

*WHEREAS, she has been involved with industry associations as a member of the National Court Reporters Association, Deposition Reporters Association, and California Court Reporters Association, having served in leadership and advisory roles; and*

*WHEREAS, throughout her years of service, at all times Reagan Evans gave fully of herself and her ideas and acted forthrightly and conscientiously, always with the public interest and welfare in mind;*

*NOW, THEREFORE, BE IT RESOLVED, that the members of the Court Reporters Board express heartfelt appreciation to Reagan Evans for the outstanding contribution she made during her years of service on the Court Reporters Board and to the consumers of California.*

*Presented this 14 day of March 2014.*

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*Toni O'Neill, Board Chair*

COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM X – Future Meeting Dates**

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Agenda Description: Proposed Meeting Dates.

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Support Documents:

Attachment 1 – 2014 Board Calendar

Attachment 2 – Strategic Plan Development Roadmap

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Current scheduled activities:

Examination Workshops:

April 25 – 26, 2014 – Sacramento

CSR Dictation Exam:

July 25, 2014 – Los Angeles

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Recommended Board Action: Information exchange.

**A YEAR-AT-A-GLANCE CALENDAR 2014  
COURT REPORTERS BOARD OF CALIFORNIA**

**JANUARY 2014**

S	M	T	W	Th	F	S
				2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

**FEBRUARY 2014**

S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

**MARCH 2014**

S	M	T	W	Th	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

**APRIL 2014**

S	M	T	W	Th	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

**MAY 2014**

S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

**JUNE 2014**

S	M	T	W	Th	F	S
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

**JULY 2014**

S	M	T	W	Th	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**AUGUST 2014**

S	M	T	W	Th	F	S
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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

**SEPTEMBER 2014**

S	M	T	W	Th	F	S
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

**OCTOBER 2014**

S	M	T	W	Th	F	S
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5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

**NOVEMBER 2014**

S	M	T	W	Th	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

**DECEMBER 2014**

S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

ACTIVITY	
	BD - Board Meeting or Activity
	Exam - Dictation Exam
	Workshop - Exam Workshop
	TF - Task Force Meeting
	Shaded Dates - Board Office Is Closed

CITY	
LA-LOS ANGELES	SAC-SACRAMENTO
SD-SAN DIEGO	SF-SAN FRANCISCO
GENERAL LOCATION	
NC-NORTHERN CALIFORNIA	
SC-SOUTHERN CALIFORNIA	

# COURT REPORTERS BOARD STRATEGIC PLAN DEVELOPMENT ROADMAP

10 weeks

6 weeks

77



COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM XI – Public Comment**

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Public members are encouraged to provide their name and organization (if any). The Board cannot discuss any item not listed on this agenda, but can consider items presented for future board agendas.

COURT REPORTERS BOARD MEETING – MARCH 14, 2014

**AGENDA ITEM XII – Closed Session**

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Agenda Description:

Personnel Matters, Disciplinary Matters and Pending Litigation (As Needed)  
[Pursuant to Government Code, sections 11126(a), and 11126(e)(2)(C)]

- Moose vs. US Legal Moose v. US Legal, Case No. 1-14-CV-258886  
(Possible Action)

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Fiscal Impact:       None

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Report Originator: Yvonne Fenner, 3/3/2014