



**COURT REPORTERS BOARD  
OF CALIFORNIA**

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**MEETING OF THE COURT REPORTERS BOARD**

**Friday, October 30, 2015  
9:30 a.m. to conclusion**

**San Diego State Building  
1350 Front Street, Sixth Floor  
Eshleman Auditorium  
San Diego, CA 92101**

**AGENDA**

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

**CALL TO ORDER –Davina Hurt, Chair**

**ROLL CALL AND ESTABLISHMENT OF A QUORUM**

- I. APPROVAL OF JUNE 26, 2015 MEETING MINUTES..... 3
- II. DISCUSSION REGARDING SOUTHERN CALIFORNIA STIPULATION..... 17  
CCP 2025.550
- III. REPORT OF THE EXECUTIVE OFFICER..... 67
  - A. CRB Budget Report
  - B. Transcript Reimbursement Fund
  - C. Exam
  - D. Enforcement
  - E. School Updates
  - F. CRB Today Newsletter, Fall 2015
  - G. Education/Outreach
  - H. Staffing
  - I. BreEZe
- IV. STRATEGIC PLAN UPDATE (Possible Action)..... 82
  - A. Approval of Best Practice Pointers
  - B. Update on Action Plan Accomplishments
- V. LEGISLATION (Possible Action) ..... 93
  - A. Update on licensee fee cap increase
  - B. Status of bills relevant to the Board, including:  
AB 85 (Wilk), AB 259 (Dababneh), AB 507 (Olsen), AB 728 (Hadley), AB 749 (Bloom),  
AB 804 (Hernandez), AB 964 (Chau), AB 1197 (Bonilla), SB 270 (Mendoza), SB 467  
(Hill), SB 560 (Monning), SB 570 (Jackson), and other bills later discovered which are  
relevant to the Board's mission.

VI.	<u>STATUS OF SCOPE OF PRACTICE REGULATION</u> .....	99
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VIII.	<u>CLOSED SESSION</u> .....	106
	Personnel Matters, Disciplinary Matters, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and 11126(e)(2)(C)]	
<b>RETURN TO OPEN SESSION TO ANNOUNCE THE RESULTS OF CLOSED SESSION</b>		
IX.	<u>APPROVAL OF SUNSET REVIEW REPORT TO LEGISLATURE</u> .....	107
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**ADJOURNMENT**

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. Any item may be taken out of order in order to accommodate speaker(s) and/or to maintain quorum. For further information or verification of the meeting, call Paula Bruning at (877) 327-5272, email to 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).

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the CRB are open to the public. The CRB intends to webcast this meeting subject to availability of technical resources.

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 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. To better assist the Board in accurately transcribing the minutes of the meeting, members of the public who make a comment may be asked to disclose their name and association. However, disclosure of that information is not required by law and is purely voluntary. Non-disclosure of that information will not affect the public's ability to make comment(s) to the Board during the meeting. Please respect time limits. Be aware, the Board CANNOT discuss any item not listed on this agenda.

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM I – Approval of June 26, 2015 Meeting Minutes**

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Agenda Description: Review and approval of minutes

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Brief Summary:

Minutes from June 26, 2015 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, 10/8/2015

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Recommended Board Action: Approve minutes



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Attachment  
Agenda Item I

**COURT REPORTERS BOARD OF CALIFORNIA  
MINUTES OF OPEN SESSION  
JUNE 26, 2015**

**DRAFT**

CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 10:02 a.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, Hearing Room, Sacramento, California.

ROLL CALL

Board Members Present: Toni O'Neill, Licensee Member, Chair  
Davina Hurt, Public Member, Vice Chair  
Elizabeth Lasensky, Public Member  
John K. Liu, Public Member

Board Members Absent: Rosalie Kramm, Licensee Member

Staff Members Present: Yvonne K. Fenner, Executive Officer  
Fred Chan-You, Staff Counsel  
Dianne Dobbs, Staff Counsel  
Paula Bruning, Executive Analyst  
Melissa Davis, TRF Coordinator

A quorum was established, and the meeting continued.

I. MINUTES OF THE FEBRUARY 6, 2015 MEETING

Ms. Hurt requested replacement of the word "and" with "an" on the fourth line of the third paragraph from the bottom of page eight of the minutes.

Ms. Lasensky moved to approve the minutes as amended. Second by Ms. Hurt. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

II. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner referred to the expenditure projection report for fiscal month 13. She then directed the Board to the Fund Condition of the Board on page 17, pointing out that by fiscal year 2015-16, the Months in Reserve will be reduced to 6.7 months. This is

significant since the law dictates that once the operating expenses falls below six months, the TRF cannot be funded.

Ms. O'Neill inquired if the TRF continues up until the time the months fall below six months. Ms. Fenner confirmed that was correct. She indicated that there was not a transfer of funds to the TRF during the 2014-15 fiscal year since there was sufficient money in the fund to fund applications. Therefore, there is \$300,000 that may be allocated to fiscal year 2015-16.

Ms. Hurt later inquired about the decrease to the renewal fee line item. Ms. Fenner responded that there are fewer licensees. She suggested that the Board consider during their Sunset Review agenda item the amount of reporters who will be retiring in the next few years, which results in work force issues and budget issues for the Board.

#### B. Transcript Reimbursement Fund

Ms. Bruning reported that nearly \$211,500 had been paid out on the Pro Bono Program in fiscal year 2014-15, covering 336 invoices. She added that there were 24 pending applications, all of which have been reviewed and are awaiting additional information. She indicated that the program has averaged a little over \$200,000 for the past five fiscal years.

Ms. Hurt requested an explanation to the public of the two TRF programs. Ms. Bruning defined the two programs, the first being the Pro Bono Program which assists pro bono attorneys with up to \$300,000 per fiscal year for all cases. The second program, the Pro Per Program, assists indigent pro se litigants with up to \$1,500 per case, up to \$30,000 per calendar year for all cases. She then referred to Ms. Davis to report on the Pro Per Program.

Ms. Davis indicated the Board received 223 requests for reimbursement in 2014. Some applications have multiple dates and reporters, so the figure provided is based on the number of people staff needs to contact. There were 145 requests approved and 45 denied or returned as incomplete. Staff was able to allocate \$44,455 in 2014 since previously allocated funding was recovered from outdated approvals from 2011 to 2013. To date for 2015, 115 requests have been approved with an allocation of \$34,375, including additional release of previously allocated funding. Unfortunately, there are 75 requests totaling \$24,500 that will be held since the full allowance has already been allocated.

Ms. Davis further reported that she worked to reduce a backlog of 131 requests when she was hired in November 2013. For 2014, funds were fully allocated by April. As a result of the leftover applications, she was sending letters out for the 2015 funding by the second week of the year to let applicants know funding was exhausted. The program has become very well-known. Many complaints are received regarding the lack of funding availability for the Pro Per Program in comparison to the Pro Bono Program.

Ms. Hurt requested the Board consider increasing the Pro Per Program allowance for those litigants in the community who are acting as their own attorney. She indicated

that it would require a legislative change, which may be possible to do during the sunset review.

Mr. Liu inquired if the Board is obligated to prorate the amount required to be transferred to the TRF so as to maintain a minimum of six months in reserve. Ms. Fenner responded that in the past, the full \$300,000 was transferred at one time; however, recently the process has been to transfer \$100,000 at a time as needed. Mr. Chan-You read Business & Professions (B&P) Code 8030.2(a), wherein it reads, "The TRF shall be established by a transfer of funds from the Court Reporters' Fund in the amount of \$300,000 at the beginning of each fiscal year. Notwithstanding any other provision of this article, a transfer to the TRF in excess of the fund balance established at the beginning of each fiscal year shall not be made by the board if the transfer will result in the reduction of the balance of the Court Reporters' Fund to an amount less than six months' operating budget." Ms. Fenner reiterated that a lesser amount of \$100,000 is transferred as needed in order to maintain a healthy balance for the CRB budget.

Ms. Bruning mentioned that the pro per pilot project was initiated due to the amount of unused funds from the Pro Bono Program. There appears to be far more litigants representing themselves than litigants that have access to a pro bono attorney. Therefore, whatever limit is applied to the Pro Per Program is likely to be used in its entirety annually. Furthermore, many of the pro per applicants to the fund have been deemed vexatious and can use up the funds very quickly.

Mr. Liu added that litigants that benefit from the Pro Bono Program have been vetted by a third party; however, the Pro Per Program litigants are not subject to the same examination.

Ms. Bruning indicated that approximately 90 percent of the Pro Bono Program applications are accompanied by deposition invoices versus 90 percent of the Pro Per Program applications coming in with court hearing invoices. The invoices for the depositions average approximately \$680. Many court transcript invoices are much lower since there are statutory caps on the amount that can be charged per page.

Ms. Bruning added that the \$30,000 limit for the Pro Per Program was set in the original two-year pilot project. When the mandatory report was submitted to the Legislature pertaining to the results of the project, the threshold was not addressed, and the program was extended through the Board's sunset review process.

Ms. O'Neill inquired if the Pro Bono Program has maxed out or if it had been consistently \$200,000 or less. Ms. Bruning provided statistics for the last five fiscal years, which averaged \$211,000. She added that there was a dip in processing due to the inadvertent repeal of the TRF in 2013. It appears that some of the cases from that time period are just coming in now.

Ms. O'Neill asked if the \$30,000 for the Pro Per Program was independent of the \$300,000 for Pro Bono Program. Ms. Bruning indicated that the \$30,000 comes from the \$300,000.

Ms. Hurt inquired about the timeline for changes made through the sunset review process. Ms. Bruning responded that changes made to the law in sunset review would take effect January 1, 2017.

Ms. O'Neill suggested the Board postpone the discussion pertaining to adjusting the limits of the Pro Per Program to the discussion of the Sunset Review agenda time. The Board agreed.

C. Exam

Ms. Fenner reported that 121 candidates were scheduled to sit for the upcoming dictation examination scheduled for July 3, 2015, in Los Angeles. She stated that 32 of those candidates are taking the test for the first time. The amount is low for Los Angeles and more in line for what the Board sees in Sacramento.

D. School Updates

Ms. Fenner indicated that the Department of Education had proposed a rule that would do away with requiring the programs to measure in clock hours for their Title IV purposes. If the changes are enacted, they will take effect July 1, 2016. The proposed change would help the private schools that have had a problem with their credit hours versus clock hours issue with financial aid.

E. Education/Outreach

Ms. Fenner updated the Board on the State Bar and Bureau of Real Estate collaboration. The group originally met to pool resources to address fraud issues. She highlighted the directory that was developed by the Los Angeles County Department of Consumer Affairs which aids in referring consumers to the appropriate entity to find what they are seeking.

Ms. Fenner referred to the Spring 2015 version of the CRB Today newsletter. She indicated that the Board no longer has an outside editor and welcomed feedback. Ms. Hurt inquired about any challenges the absence of an editor may have brought about. Ms. Fenner responded that she hoped that staff has continued to keep the publication professional, although there is lack of training in that category. Ms. Hurt complimented the newsletter and its contents, having not noticed any change since the loss of the editor. Mr. Liu also liked the newsletter. Ms. O'Neill has received positive feedback from reporters in her court regarding the FAQs. She added that reporters are impacted by the information they read in the newsletter. It is a consumer protection component to keep the reporters educated with the statutes and regulations. Ms. Fenner stated that it feels good to be able to be proactive instead of reactive to problems, which in turns benefits the enforcement aspect of the Board's operations.

Ms. Freeman, Deposition Reporters Association (DRA), commented that the newsletter is very helpful for reporters these days because they work independently instead of in offices where they can ask questions. Ms. O'Neill added that she sees conversations on the Facebook groups that spur from the articles, which proves it is being read.

## F. Staffing

Ms. Fenner informed that Board that Ms. Davis' position is nearing the end of its two-year term as of June 30, 2015. Unfortunately, the Board was not able to obtain funding to make the position permanent; however, funding was available to keep the position an additional four months. Ms. Davis has been invaluable in researching unused TRF funding in the Pro Per Program. The Board thanked Ms. Davis for her work.

Ms. Hurt inquired who would absorb the duties after Ms. Davis' term ends. Ms. Fenner responded that there would be a reorganization of duties. Since Ms. Bruning is already processing TRF applications for the Pro Bono Program, it is likely that the Pro Per Program will also fall on her desk. However, that would overload her desk, so some of her tasks may be distributed. Ms. Lasensky asked if that would encompass the cross-training proposed in the strategic plan. Ms. Fenner confirmed that it would.

Ms. Hurt asked how many hours each week Ms. Davis spends on the Pro Per Program. Ms. Fenner responded that Ms. Davis works 20 hours a week. Ms. Bruning asked the Board to consider the staffing requirements when deciding whether or not to raise the limit for the Pro Per Program.

Ms. O'Neill questioned if funding could be allocated in the future for this position. Ms. Fenner indicated that the overall fund condition would not support the position at this time. However, if increased licensing fees were established, a Budget Change Proposal (BCP) could be prepared to gain the position.

## G. BreEZe

Ms. Fenner reported that the costs for BreEZe were reflected in the Fund Condition. She added that the contract has been renegotiated. The Department of Consumer Affairs (DCA) is planning to conduct a formal cost benefit analysis after release 2 is live to determine how best to proceed with the remaining boards and bureaus. DCA will then have to decide whether to hire a contractor, use in-house DCA staff or have a blend of both.

Ms. Hurt inquired where the budgeted \$60,000 was going since the Board is not close to participating. Ms. Fenner stated that the foundation work done by Accenture under the previous contract will presumably benefit the Board down the road. Cynthia Dines, DCA budget manager, indicated that the \$60,000 is for costs to support the project development, such as new staff hired by the Office of Information Services for two years, as well as mandatory oversight with other state agencies such as the Department of Technology. Additionally, there will be efforts to conduct the cost-benefit analysis, which will not start until 2016/17. DCA is preparing BCPs to fund some of those costs. Ms. Dines stated that the only boards and bureaus that have paid Accenture costs are those in release 1. She indicated that there was a current year reduction of about \$13,000 savings to the Board's fund, not the appropriation.

### III. ENFORCEMENT REPORT

Ms. Fenner indicated that the enforcement statistics on pages 20 and 21 in the Board agenda packet were prepared by the enforcement analyst, Connie Conkle. She offered to answer any questions.

Ms. Hurt inquired how many complaints had been received during the month of June. Ms. Fenner replied that the Board had received an unusually high number of 23 complaints. The two primary reasons for complaints are for transcripts turned in late or not at all and accuracy issues.

### IV. STRATEGIC PLAN UPDATE

#### A. Best Practice Pointers

Ms. Hurt reported that the task force had a very successful meeting in April where four practice pointers were developed. The meeting began with brainstorming ideas for known issues, some of which overlapped. She hopes that the next meeting slated for July 25, 2015, will round the total practice pointers up to 10. Ms. Fenner added that the meetings are open to the public and input at the meetings or via e-mail are welcome.

Ms. Fenner indicated that four practice pointers presented in the Board agenda packet are drafts. She stated that the pointers may be living documents with amendments being applied as technology changes and feedback is received. If the Board votes to adopt them, the staff will be tasked to disseminate them. She stated that they may be distributed in different ways. For example, Practice Pointer No. 3 is very short and may be inserted in the renewal notification packets. Some of the longer pointers may be sent to DCA for formatting and then placed on the Board's Web site. In addition, a video or webinar may be developed for longer pointers, such as Practice Pointer No. 1.

Ms. O'Neill suggested that pointers be sent via the e-mail notification list with a reference to the place practice pointers can be found on the Web site.

Ms. Lasensky commented that the pointers are concise and clearly written.

Ms. Lasensky moved to adopt Best Practice Pointer No. 1, How to Interrupt Proceedings, and delegate to the executive officer the authority to make non-substantive changes as needed. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Lasensky moved to adopt Best Practice Pointer No. 2, How to Go On and Off the Record, and delegate to the executive officer the authority to make non-substantive changes as needed. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Lasensky moved to adopt Best Practice Pointer No. 3, Videotaped Depositions, and delegate to the executive officer the authority to make non-substantive changes as needed. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments

were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Hurt moved to adopt Best Practice Pointer No. 4, Rough Draft Transcripts, and delegate to the executive officer the authority to make non-substantive changes as needed. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

#### B. Review of Action Plan

Ms. Fenner referred to the CRB Action Plan in the Board agenda packet. Staff and the SOLID facilitator developed the plan dissecting the Board's strategic plan. Additionally, an Action Plan Timeline was created to indicate the target date and status of each item, which can be seen on page 45 of the Board agenda packet. Ms. Fenner invited input from the Board on the prioritization of the plan.

Ms. Lasensky inquired about the expectations set in Goal 3.1.4. Ms. Fenner indicated that the plan refers to the Board as a body, not specifically the members. As such, the staff would be working with the schools and promoting the industry. The survey would be a measurement of the efforts put forth by the Board.

Ms. Hurt commented that she did not see room to shift the priorities considering the upcoming sunset review process. She stated that first several items up for completion are important and the list has been laid out appropriately. Ms. O'Neill agreed.

### V. REPORT ON LEGISLATION

#### A. Update on licensee fee cap increase

Ms. Fenner provided a brief summary of the efforts made toward obtaining the fee cap increase. She stated that DRA submitted the general language for a bill request to the Office of Legislative Counsel since the January 30, 2015 deadline occurred before the Board could meet. Upon review of the language, the Office of Legislative Counsel determined that the bill would be deemed a tax bill, which requires a two-thirds vote instead of a majority vote. The Board and DRA disagreed with that determination since the funding for the TRF is collected from court reporters and is ultimately paid back to court reporters for their work product.

Ed Howard, representing DRA, indicated that he pursued the matter with the Office of Legislative Counsel who insisted that the bill was a two-thirds bill notwithstanding that under case law the definition of a tax is when you take money from one group of people and you give it to a different group of people. He contended that the money is collected from one group of reporters and given to another group of reporters. Unfortunately, the Office of Legislative Counsel rejected his argument.

Mr. Howard stated that his conversations with other trade associations led him to believe the two-thirds vote has been inconsistently and controversially applied by the Office of Legislative Counsel. He received a commitment from Sarah Mason, consultant from the Senate Business, Professions & Economic Development

Committee, as well as others in the Judiciary Committee, to revisit the question with the Office of Legislative Counsel in a more conservative fashion. Mr. Howard stated that timing was a factor in obtaining support as the committee members and consultants are very busy at the beginning of the legislative session. He intends to gather forces and revisit the issue more definitely when the Legislature returns from their summer recess mid-July.

Ms. Hurt asked if there was anything the Board could do to help in that task. Mr. Howard replied that it would be helpful for the Board to write a letter to the chairs of the Business and Professions committees and Judiciary committees outlining the precarious nature of the TRF, highlighting the Board's efforts to proactively raise the licensing fee, which was set in 1951 when the Board was established.

Ms. Hurt moved that the Board direct staff to prepare a letter for the chair's signature directed to the chairs of the Senate and Assembly Business and Professions committees and Judiciary committees supporting a fee cap increase. Second by Ms. Lasensky. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Fenner thanked DRA for the time and effort that provided in assisting in this matter.

B. Discussion of legislation affecting the court reporting industry or the Court Reporters Board

Ms. Fenner offered to answer questions pertaining to any of the bills presented in the Board agenda packet before focusing on AB 749, AB 804, AB 1197 and SB 270.

Ms. Hurt asked if the Board would be able to fulfill the requirement listed in the proposed language of AB 351 (Jones –Sawyer). Ms. Fenner responded that the Board would have to review what the actual definition of the expenses. Some of the Board's expenses fall outside of the small business category, specifically the dictation exam site rental held at hotels. The majority of the Board's other expenses fall within the small business category, but exam site cost may offset the percentage. Ms. O'Neill pointed out that the bill is in suspense, which indicates it most likely will not be passed this year.

Ms. Hurt referenced SB 570 (Jackson) and inquired if the Board had ever experienced a breach in security. Ms. Fenner indicated that DCA had, but that the Court Reporters Board has not. She understood the language to require the Board to be responsible for the information contained physically in its office, such as the paper files kept on each licensee. The Board's other data is stored and controlled by DCA who would be responsible to comply with the proposed language.

AB 749

Ms. Fenner indicated that AB 749 (Bloom) was being held in suspense and therefore, did not see a reason for the Board to discuss it.

## AB 804

Ms. Fenner reported that AB 804 (Hernandez) pertained to continuing education for court reporters had recently been ordered to its third reading. She invited the sponsor, California Court Reporters Association (CCRA), to speak to the bill.

Brooke Ryan Henrikson, CCRA President-Elect, urged the Board's support of the bill. Morgan Carvajal of Hernandez Strategy Group representing CCRA requested the Board write a letter of support. Since similar bills had been vetoed in the past, meetings were held with DCA and staff from the Governor's to address any concerns in hopes of avoiding the same outcome. She stated that efforts were continuing toward that goal and the Board's support would be helpful. Ms. O'Neill indicated that she recently learned how impactful support letters are to Governor Brown's decisions when considering bills. Ms. Carvajal indicated that it would be appropriate to first send letters to the author's office, then to the Governor's office when it passes to his desk.

Ms. Hurt inquired if there was any opposition to the bill. Ms. Carvajal responded that there has been no opposition. She said that review is being conducted of a similar continuing education requirement held by Judicial Council of official court reporters to resolve any overlap of the requirements.

Mr. Liu moved to support AB 804 (Hernandez), Shorthand reporters: continuing education requirements, and direct staff to prepare the appropriate sequence of letters for the chair's signature. Second by Ms. Hurt. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Fenner indicated that when drafting the letter she would refer to the strategic plan session where the matter was discussed at length for language.

## AB 1197

Ms. Fenner related that AB 1197 (Bonilla) regarding deposition notices was sponsored by DRA.

Toni Pulone, DRA, indicated that a request for support was sent to the Board the prior day. She stated that the bill is attempting to resolve a long-standing problem by obligating the noticing attorney to notify all other parties in the notice that there may be a contractual relationship between one of the parties in litigation and the reporting firm. She expressed that she believed the language falls in line with the concerns of the Board with respect to fairness.

Ms. Hurt asked the sponsors to cite any opposition they have received to the bill. Mr. Howard responded that DRA had not yet received an official opposition letter, but learned that one is forthcoming. He stated that the author's office met with the lobbyist of the four firms indicated in the aforementioned letter. Mr. Howard added that if the Board was inclined to support the bill, all letters are due to the Senate Judiciary Committee by July 1, 2015.

Ms. O'Neill inquired as to the strikeouts included in the June 23, 2015, amendment. Mr. Howard responded that the bill was not originally well drafted. The original version that returned from the Office of Legislative Counsel contained new references to objections that did not fit the intent of the author. The objective was simply to default to the current law related to objections to deposition notices, et cetera. The deletions were a means of reducing confusion in that sense.

Ms. Lasensky moved to support AB 1197 (Bonilla), Deposition notices, and direct staff to prepare the appropriate sequence of letters for the chair's signature. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

### SB 270

Ms. Fenner indicated that SB 270 (Mendoza) regarding corporations was sponsored by CCRA.

Ms. Carvajal stated that the bill addresses whether or not out-of-state corporations who practice in California are within the jurisdiction of the Board. The bill gives clear authority to seek injunctive relief if there is a violation by one of these types of corporations.

Ms. Pulone expressed that DRA supports both AB 804 and AB 270.

Ms. O'Neill inquired about the strikeout of the last two paragraphs on page three of the June 23, 2015, amendment. Ms. Carvajal stated that it was a committee recommendation to strike those based on the complication of how to enforce the provisions of decertifying transcripts and who to charge for the misdemeanor of rendering court reporter services without a license.

Mr. Chan-You asked if the intent of the bill is to solely give the Board injunctive powers. Ms. Carvajal confirmed that it is to clarify the authority and establish fines.

Ms. Hurt stated that the Board already has the jurisdiction, but the bill makes it clear. Mr. Liu added that it summarizes the authority the Board already has to set the basis for the ability to have certain remedies available to the Board including the fines and equitable remedies. Ms. Hurt reiterated that the Board already has the jurisdiction, but giving support to the bill is emphasizing the jurisdiction.

Mr. Chan-You added that the bill does not give the Board authority to cite foreign corporations that may be in practicing in California without a license. It does clarify more what the Board can do in court but it does not address the problem of the US Legal case. Ms. Fenner clarified that the Board definitely has jurisdiction over corporations that are offering court reporting services in California with the one exception of foreign corporations.

Mr. Howard indicated that the Board did not request injunctive relief in the US Legal case, but asked for declaratory relief. Once the court determined that US Legal was a foreign corporation without authorization to be in California, the court deemed that the Board did not have authority to treat them like a licensee. The bill would allow the

Board to seek injunctive relief against a foreign corporation practicing in California instead of seeking an injunction by a writ of mandate under CCP 1085. Mr. Chan-You agreed with that analysis.

Ms. Dobbs clarified that the bill does not give the Board authority to cite foreign corporations.

Ms. Lasensky moved to support AB 270 (Mendoza), Court Reporters Board of California: civil actions: corporations, and direct staff to prepare the appropriate sequence of letters for the chair's signature. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. Carvajal stated that the bill is before two committees, and letters were needed by June 30, 2015.

## VI. SCOPE OF PRACTICE REGULATION

Ms. Fenner reported that the required regulatory hearing for the proposed language was held on June 18, 2015, for which no one attended. She will prepare the Final Statement of Reasons and send the regulatory package to the Office of Administrative Law (OAL).

Ms. Hurt inquired about the next step. Ms. Fenner indicated that OAL has 45 days to review the package for procedural accuracy.

## VII. SUNSET REVIEW

Ms. Fenner indicated that the Board received the questions from the Joint Sunset Review Committee, for which the response is due December 1, 2015. She indicated that staff would prepare responses for the statistical data, but the Board would need to provide input for the policy and direction inquiries. She inquired if the Board would like to meet as a whole over a couple of meetings to develop the responses or appoint a task force to work with staff to draft the responses for the whole Board's review at a Board meeting before the deadline.

Ms. Lasensky inquired how often the Board goes through the sunset review process. Ms. Fenner responded that it is approximately every four years, but the process and preparation time are lengthy, so they seem closer together.

Mr. Howard conveyed his prior experience as chief consultant for the Sunset Review Committee for five years when it was a standing committee. He encouraged the Board to be proactive instead of merely reactive to the questions. The committee may not know where the issues lie when developing the questions. Therefore, the Board should take the opportunity to address the concerns of the Board, as well as make a case for reforms to the laws.

Ms. Fenner expressed that staff received very supportive responses from the various committees when seeking the fee cap increase bill. The sunset review process is a perfect opportunity to seek the necessary changes for the current issues.

Ms. Hurt invited the associations to provide input for what they would like to see for the industry. Ms. O'Neill echoed that comment and added that the meetings would be held in open session.

Ms. Hurt indicated this would be her first experience in the sunset review process. She said the Board may benefit from a task force to weed through the information and bring back the issues to the Board. Ms. Lasensky inquired who would make up the task force. Ms. Fenner replied that one or two Board members would make up the task force, with invitations to the associations to send representatives to attend. She added that the task force would need to meet in early August to allow staff time to prepare the report and time for the Board to meet again to review the report. A cushion of time between meetings and the deadline for the report is necessary in case there are substantial changes needed for the Board's further review and approval.

Ms. O'Neill appointed Ms. Hurt as the chair of the Sunset Review Task Force. Ms. O'Neill will also be a member. Ms. Fenner will develop a mission and coordinate dates for the first meeting.

#### VIII. ELECTION OF OFFICERS

Ms. O'Neill called for election of officers.

Ms. Lasensky nominated Ms. Hurt as chair. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

Ms. O'Neill stated that Ms. Kramm indicated that she was willing to serve as vice chair.

Ms. Lasensky nominated Ms. Kramm as vice-chair. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. Ms. Kramm was absent. **MOTION CARRIED.**

#### IX. FUTURE MEETING DATES

Ms. Fenner indicated that she will work with the Sunset Review Task Force on setting their first meeting and would then poll the Board for the next meeting. She suggested that it may be in late September or early October.

#### X. PUBLIC COMMENT

No comments were offered.

The Board took a break at 11:59 a.m. and convened into closed session at 12:15 p.m.

#### XI. CLOSED SESSION

The Board convened in closed session pursuant to Government Code sections 11126(a) and 11126(e)(2)(C).

Upon returning to open session at 12:59 p.m., Ms. O'Neill indicated that there was nothing to report from closed session.

XII. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 12:59 p.m.

\_\_\_\_\_  
DAVINA HURT, Board Chair

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM II – Discussion Regarding Southern California Stipulation**

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Agenda Description: Possible Action

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Brief Summary: California Code of Civil Procedure (CCP) provides 30 days for a deponent to review his deposition transcript, after which time the deposition officer shall securely seal the transcript and transmit it to the noticing attorney who shall protect it from loss, destruction, or tampering. When depositions are handled “per Code,” the court reporter retains control over the original from production through sealing and delivery to noticing counsel and therefore can attest to its integrity.

In Southern California there is a longstanding stipulation universally used by the attorneys at a deposition whereby they stipulate to relieve the court reporter of his/her duties under the Code of Civil Procedure. Rather than follow the Code, the attorneys stipulate that the court reporter will send the original of the transcript to the witness or the witness’ attorney, who agrees to notify opposing counsel of any changes within 30 days. Further, the attorneys stipulate that a certified copy may be used as if it were the original if for any reason an original is unavailable. While no one knows exactly when it began being used, the so-called Southern California stipulation (So. Cal stip) has been in practice since at least 1976.

In August of 2015, the Board was contacted by Ms. Charlotte A. Mathias, CSR 9792, who requested to address the Board at its next meeting, asking that the Board enforce CCP 2025 and prohibit the use of the So. Cal stip statewide (see Attachment 1).

Ms. Mathias has expressed concern regarding the disposition and integrity of the original transcript under the So. Cal stip and has provided several exhibits for consideration (see Attachment 2).

Additionally, the Deposition Reporters Association (CalDRA) has requested clarification regarding licensee duties regarding the So. Cal stip (see Attachment 3). Specifically CalDRA would like to know if a licensee may be relieved of her obligations to comply with the Code of Civil Procedure (CCP) and whether the Board would take action against a licensee for failure to adhere to the CCP when attorneys use the So. Cal stip.

Also, the California Court Reporters Association (CCRA) has requested that the Board announce a position on the matter and publicize it in the next edition of *CRB Today* and via its general email list to all licensees.

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Support Documents:

- Attachment 1 – August 7, 2015 letter from Charlotte Mathias, CSR, to CRB
- Attachment 2 – List of Exhibits (as follows)
  - Exhibit A – Mission Statement of CRB
  - Exhibit B – Code of Civil Procedure sections 2025.550, 2016.030, 2019.010
  - Exhibit C – Bill Cosby and Michael Jackson
  - Exhibit D – HIPAA, CRB best practice of HIPAA

- Exhibit E – Lodging of rough drafts with court, court proceedings where original is opened by court
- Exhibit F – Definitions
- Exhibit G – *Caligrams* article re: Rick Black and CRB's position on stipulation
- Exhibit H – Letter from Honorable Paul M. Marigonda, Santa Cruz County Superior Court Judge
- Exhibit I – Letter from Bayside Reporting regarding condition of original transcript
- Exhibit J – E-mail from Hunton & Williams, LLP
- Exhibit K – Letter from Yvette Heinze, Montana CSR, RPR
- Exhibit L – Declaration of Francine R. Dais, CSR 8855
- Attachment 3 – October 14, 2015 letter from Rich Alossi, CalDRA President, to CRB, including attachments
- Attachment 4 – October 16, 2015 letter from Richard L. Manford, Esq., on behalf of CCRA, to CRB

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 Report Originator: Yvonne Fenner, 10/16/2015  
 =====

Recommended Board Action: The question of whether a licensee may be relieved of her duties under the CCP via stipulation of the attorneys would be a matter for a judge to consider. It is the view of staff that a legal opinion could be written both for and against the question, which would have to be ultimately decided in a court of law.

The Board cannot state definitively when it would take action against a licensee. Every complaint is evaluated individually, taking into account many factors, including the level of consumer harm. There are too many variables included for the Board to be able to make a statement regarding what circumstances may result in disciplinary action.

Should the Board find potential consumer harm with the practice of the So. Cal stipulation, staff recommends convening a town hall meeting to further explore the issue with all stakeholders.

**Charlotte A. Mathias, CSR 9792**

3820 North Country Drive  
Antelope, California 95843  
(916) 712-6231

August 7, 2015

Connie Conkle  
Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230  
Sacramento, CA 95833

VIA E-MAIL - [connie.conkle@dca.ca.gov](mailto:connie.conkle@dca.ca.gov)

Re: Request to Place Item on Agenda and to Address Board Regarding Enforcement of Code of Civil Procedure Section 2025 and Prohibition Statewide of the Southern California Stipulation

Dear Ms. Conkle:

Thank you for taking my calls in the past month regarding my wish to speak before the Court Reporters Board of California ("Board"). I am requesting the Board place this item on the agenda for September or October 2015.

I wish to address the issue of the Southern California stipulation that has long plagued our profession. I am requesting that the Board enforce Code of Civil Procedure Section 2025 and prohibit the use of the Southern California stipulation statewide.

During our conversation, we talked about legislation to remedy the Southern California stipulation. The Southern California stipulation is a violation of Code of Civil Procedure Section 2025.

Code of Civil Procedure Section 2025.550 states in part:

"(a) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that 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. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering." (Emphasis added.)

Connie Conkle  
Court Reporters Board of California  
August 7, 2015  
Page 2

Code of Civil Procedure Section 2025.520 states in part:

"(a) If the deposition testimony is stenographically recorded, the deposition officer **shall** send written notice to the 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 the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time." (Emphasis added.)

The definition of "shall" according to Merriam-Webster.com is as follows:

- "A. Will have to: must.
- "1. a. Used to express a command.
- "1 b. **Used in laws, regulations, or directives to express what is mandatory.**" (Emphasis added.)

This is actually an issue of enforcement by the Board, as the Board has jurisdiction over the actions of certified shorthand reporters in the state of California. The Southern California stipulation also places the integrity of the transcript in jeopardy in numerous ways that I will outline in my presentation. I will also address how the consumer is not being protected when the code is not followed.

I am requesting this item be placed on the agenda, and I would like to address the Board at said meeting in September or October 2015. Please let me know if you can accommodate my request. I am not sure how much time I will be allowed, but I will keep my remarks within the time allotted.

Very truly yours,



Charlotte A. Mathias, CSR 9792  
charlottemathias44@gmail.com

**LIST OF EXHIBITS**

- Exhibit A Mission Statement of CRB
- Exhibit B Code of Civil Procedure sections 2025.550, 2016.030, 2019.010.
- Exhibit C Bill Cosby and Michael Jackson.
- Exhibit D HIPAA, CRB best practices of HIPAA.
- Exhibit E Lodging of rough drafts with court, court proceedings where original is opened by court.
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- Exhibit G Caligrams article re: Rick Black and CRB's position on stipulation.
- Exhibit H Letter from Honorable Paul M. Marigonda, Santa Cruz County Superior Court Judge.
- Exhibit I Letter from Bayside Reporting regarding condition of original transcript.
- Exhibit J E-mail from Hunton & Williams, LLP.
- Exhibit K Letter from Yvette Heinze, Montana CSR, RPR.
- Exhibit L Declaration of Francine R. Dais, CSR 8855.

## EXHIBIT A

### **California Court Reporters Board Mission**

The mission of the Court Reporters Board is to protect the public health, safety and welfare by ensuring the **integrity of judicial records** through oversight of the court reporting profession. The CRB carries out this mission by testing, licensing and disciplining court reporters, and by recognizing the schools of court reporting that meet state curriculum standards.

(From <http://www.courtreportersboard.ca.gov/>, emphasis added.)

## **EXHIBIT B**

### **Code of Civil Procedure Section 2025.550**

(a) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer **shall** securely seal that 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. This attorney shall store it under conditions that will protect it against **loss, destruction, or tampering**. (Emphasis added.)

(b) The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

### **Code of Civil Procedure Section 2016.030**

Unless the court orders otherwise, the parties may by written stipulation **modify** the procedures provided by **this title** for any method of discovery permitted under Section **2019.010**. (Emphasis added.)

### **Code of Civil Procedure Section 2019.010**

Any party may obtain discovery by one or more of the following methods:

- (a) Oral and written depositions.
- (b) Interrogatories to a party.
- (c) Inspections of documents, things, and places.
- (d) Physical and mental examinations.
- (e) Requests for admissions.
- (f) Simultaneous exchanges of expert trial witness information.

**Federal Rules of Civil Procedure, Rule 30(f)(1)**

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) Certification and Delivery. The officer **must** certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. (Emphasis added.)

\*\*\*\*\*

Subdivision (f)(1). This subdivision is amended because Rule 5(d) has been amended to direct that discovery materials, including depositions, ordinarily should not be filed. The rule already has provisions directing that the lawyer who arranged for the transcript or recording preserve the deposition. Rule 5(d) provides that, once the deposition is used in the proceeding, the attorney must file it with the court.

"**Shall**" is replaced by "**must**" or "**may**" under the program to conform amended rules to current style conventions when there is no ambiguity. (Emphasis added.)

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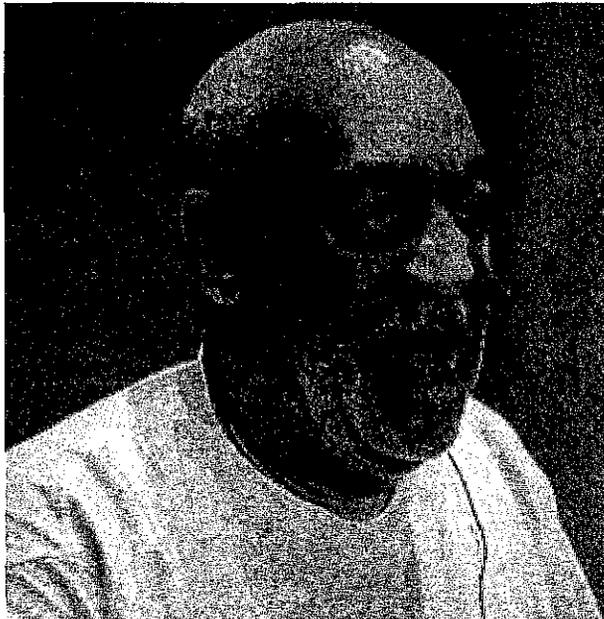
How the New York Times obtained Bill Cosby's deposition transc...

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ABA JOURNAL

EXHIBIT C

## TRIALS &amp; LITIGATION

**How the New York Times obtained Bill Cosby's deposition transcript without a court order or leak**By Debra Cassens Weiss  
Jul 20, 2015, 07:06 am CDT

*Bill Cosby performs at Thunder Valley Casino Resort in Lincoln, California, in September 2014. Image from Randy Miramontez / Shutterstock.com.*

It turns out that Bill Cosby's full deposition in a 2005 sex-abuse suit may have been publicly available all along.

The New York Times says it obtained the deposition transcript, which was never sealed, through a court reporting service. According to the newspaper's **story on the contents**, Cosby displayed "casual indifference" as he described his pursuit of at least five women with promises of mentoring and career advice.

"Even as Mr. Cosby denied he was a sexual predator who assaulted many women," the Times says, "he presented himself in the deposition as an unapologetic, cavalier playboy, someone who used a combination of fame, apparent concern and powerful sedatives in a calculated pursuit of young women—a profile at odds with the popular image he so long enjoyed, that of father figure and public moralist."

A confidentiality agreement barred the parties from releasing the document, but the deposition itself was never sealed, according to the Times.

The lawyer who represented Cosby in the suit, Cozen O'Connor vice chairman Patrick O'Connor, told the **Philadelphia Inquirer** he believes release of the transcript violated the terms of the settlement.

"How that deposition became public without being court-sanctioned is something we are going to pursue and deal with very vigorously," O'Connor told the Inquirer. "It's an outrage that the court processes weren't followed here."

Parts of the deposition—in which Cosby admitted securing Quaaludes with the intention of giving them to women with whom he hoped to have sex—were publicized when a **judge ordered the release** earlier this month of a legal memorandum in the suit by a Temple University employee.

Cosby denied giving Quaaludes to the plaintiff, and said those women who did get the drugs knew what they were taking. Asked if one of those women was able to consent to sex after she took the drugs, Cosby answered, "I don't know."

O'Connor was a Temple University board member when he defended Cosby, who was also a board member until last December. O'Connor is now chairman of that board. O'Connor defended the dual role in his interview with the Inquirer, saying he had a right to do his job as a lawyer and Cosby had a right to counsel.

**Subsequent article:**

**ABA Journal:** "Cosby lawyers blame his accuser for release of his deposition by court reporting service"

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Cosby lawyers blame his accuser for  
**release of his deposition by court reporting service**

POSTED JUL 22, 2015 08:43 AM CDT

BY DEBRA CASSENS WEISS

**Lawyers for Bill Cosby argued in a motion (PDF) on Tuesday that his accuser in a 2005 sex-abuse suit was trying to "smear" him and should have ensured that court reporters knew his deposition transcript was still confidential.**

The New York Times obtained the deposition transcript from a court reporting service and summarized the contents in a story that asserted the deposition was never sealed. But lawyers for Cosby say the court reporting service, Kaplan Leaman & Wolfe, should not have released the document under terms of the suit's settlement, report the Legal Intelligencer, the New York Times, the Guardian and Time magazine.

The filing by lawyers at Cozen O'Connor says Cosby's accuser in the suit, a Temple University employee, should be sanctioned partly for release of the deposition transcript to the media through her "**own hired court reporter ... without a word to the defendant.**" The motion does not include specifics on sanctions sought and says relief will be sought separately.

The woman's lawyer, Dolores Troiani, maintains she and her client had nothing to do with the release of the deposition.

The court reporting service said in a letter to the court that it believed U.S. District Judge Eduardo Robreno of Philadelphia had allowed release of the deposition when he ordered the release of a legal memorandum that included excerpts from the deposition. Robreno, ruling on a request by the Associated Press, said Cosby had narrowed the zone of privacy that protected him because of his posture as a public moralist.

According to the Times account of the deposition, Cosby denied assaulting women,

but did say he had secured Quaaludes with the intention of giving them to women with whom he hoped to have sex. Cosby denied giving Quaaludes to the plaintiff in the 2005 suit and said the women who did get the drugs knew what they were taking.

The filing on Tuesday by Cosby's lawyers said that, in the deposition, Cosby "admitted to nothing more than being one of the many people who introduced Quaaludes into their consensual sex life in the 1970s."

"There are countless tales of celebrities, music stars, and wealthy socialites in the 1970s willingly using Quaaludes for recreational purposes and during consensual sex," the motion said. Yet some of the media reports wrongly suggested Cosby had admitted to rape, according to Cosby's motion.

The filing by Cosby's lawyers opposed a motion by Cosby's accuser, filed after Robreno's decision, that sought to negate the confidentiality portions of the settlement agreement. Cosby's lawyers argue the plaintiff's motion itself violated terms of the agreement when she didn't follow an agreed-upon private dispute procedure.

The motion by Cosby's lawyers says the plaintiff is seeking partial cancellation of the settlement deal because "obviously, she wants to keep what she was paid." The motion states that Cosby relied on confidentiality provisions in entering the settlement, while the heart of the accuser's bargain was "the receipt of money, which she still has."

## **Health Care Information Privacy**

### *The HIPAA Regulations – What Has Changed and What You Need to Know*

*Note: Information provided to NCRA by Melodi Gates, Associate with Patton Boggs, LLC*

Privacy and data protection issues, and related laws and regulations, are an increasing concern for NCRA members, especially when working with clients in highly regulated fields like health care. If you provide court reporting, CART captioning, or other services for health care providers or health care plans (*i.e.*, public or private health insurance plans), then you, your clients, and your subcontractors may be impacted by recent changes in federal regulations. Specifically, these regulations govern how many health care industry entities must act to protect patient information. So, if you are employed by or under contract with such organizations, then the regulations may also apply to you, especially if you will be interacting directly with or managing information about individual patients. If you are not employed by or under contract with such health care entities, then you may find it helpful to be aware of the requirements, even though they are unlikely to apply to you. This handout will provide you with high-level information and guidance regarding those regulations and recent changes. It also addresses potential issues with agreements that you may be asked to sign and steps that you can take now to meet your clients' expectations, ensure regulatory compliance, and lower risk for you and your business.

For example, if a client engages you to take a deposition in a matter that involves patient care, health care records, or other details regarding the relationship between a health care provider and one or more specific patients, then these regulations likely apply to you and any of your subcontractors who may perform the services. Similarly, if a health care provider hires you to provide CART captioning services in support of individual patient interactions, or other situations that involve communicating information regarding a particular patient or patients, then these regulations generally apply.

The **Health Insurance Portability and Accountability Act (“HIPAA”)** was enacted by Congress in 1996 to standardize certain electronic transactions related to health care and make it easier for individuals to move between insurance plans. Several regulations intended to ensure the privacy and security of **protected health information (“PHI”)** were issued in the following years. PHI is broadly defined to include data that can be reasonably used to identify an individual and “relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.” (*See* “Resources” below and 45 CFR 164.103).

More recently, the **Health Information Technology for Economic and Clinical Health (“HITECH”) Act**, enacted in 2009, raised the bar for protecting such information, particularly in light of the financial incentives that it provides for certain healthcare providers to migrate to electronic records. In early 2013, the **U.S. Department of Health and Human Services, Office for Civil Rights (“HHS/OCR”)** – the federal agency that promulgates and enforces the HIPAA regulations – issued a series of updates to the HIPAA regulations, under the HITECH Act, effective as of September 23, 2013.

## HIPAA Roles & Relationships

The HIPAA regulations apply to health care providers, health plans (*i.e.*, public or private health insurance plans), and health care clearinghouses (*i.e.*, organizations that support specific types of electronic transactions). These three types of organizations are known as “**covered entities**,” under the regulations. The regulations also apply to service providers that create, receive, transmit, or maintain PHI on behalf of covered entities. Such service providers are called “**business associates**.” For example, court reporters or captioning service providers that work with health care providers and receive or interact with PHI would generally be considered business associates. The key consideration is whether the patient information is being used or disclosed by a covered entity, or a service provider who is acting on behalf of the covered entity. So, for example, a court reporter who is taking a deposition that includes questioning about the witness’ health or health-related issues would only be considered a business associate if hired by a health care provider (or another business associate, such as an attorney, acting on the provider’s behalf). The HIPAA regulations require that covered entities have a **business associate agreement (“BAA”)** in place with each of their business associates, and the BAA must include a number of specific provisions, discussed in more detail below. The recent changes to the HIPAA regulations significantly increased the obligations for business associates and their subcontractors.

## Recent Changes under the HITECH Act

HHS/OCR recently updated the HIPAA regulations to meet a number of new requirements put in place by the HITECH Act. Those changes were published in January 2013 and are effective as of September 23, 2013 (with an additional year available for covered entities to re-negotiate certain, existing BAAs). Most notable for NCRA members is that under the new regulations – sometimes referred to as the “HIPAA Omnibus Rule” – **business associates are now subject to direct regulatory enforcement**. Further, **business associates must now treat their subcontractors who create, receive, transmit, or maintain PHI in the same manner that covered entities treat their business associates** (*i.e.*, the business associate must execute a BAA with its subcontractors to flow down the obligations it has with the covered entity, and the regulations treat subcontractors in the same manner as business associates). Covered entities and business associates are responsible for their own workforces, including employees, volunteers, and others who are under their direct control. Typically, a business associate should treat its independent contractors as subcontractors for purposes of complying with the regulations. A covered entity or business associate may choose to impose specific requirements (*e.g.*, using a particular computer system or software) or provide training or other support to ensure that its business associates and subcontractors comply with the regulations. But ultimately, each business associate and subcontractor who signs a BAA is responsible for their own compliance with the regulations.

**In addition, the HITECH Act provides for stepped up enforcement and imposes notification requirements, in the event that PHI is breached.** Other notable areas of change in the regulations mainly impact covered entities and include restrictions on the use of genetic information; limits on marketing communications and the sale of PHI; the exclusion of data regarding those deceased for more than 50 years from the definition of PHI; support for simplified approaches to patient involvement in research studies; and relief for parents who wish

to permit covered entities to communicate with their children's schools regarding immunizations. Patient rights to receive electronic copies of their PHI and restrict access to certain data were also enhanced.

### The HIPAA Regulations

The HIPAA regulations are organized into four key rules that each address a related set of duties and obligations for covered entities, business associates, and subcontractors:

1. The **Security Rule** (*See* 45 CFR 164.3xx) establishes requirements for **safeguarding electronic PHI** and is the **main focus for business associates and subcontractors**. Covered entities, business associates, and subcontractors must designate a security official, perform a risk assessment, meet organizational requirements (*e.g.*, establish appropriate BAAs), and implement and maintain administrative, physical, and technical safeguards to protect PHI. **The Security Rule recognizes the need to support "flexibility of approach" for implementing security measures, based on the size, complexity, infrastructure, and capabilities of a particular covered entity, business associate, or subcontractor, as well as costs and the level of risk to PHI.** So, NCRA members may customize their Security Rule compliance program, as is appropriate for their business. (*See* 45 CFR 164.306(b)).

Examples of **administrative safeguards** include establishing security policies and procedures, risk analysis, risk management, reviewing information system activities, and establishing sanctions for those who violate security policies. Additional administrative safeguards include workforce training, managing access to PHI, and developing procedures to respond to security incidents and plans for contingencies such as system outages or other emergencies or disasters. **Physical safeguards** are simply measures to protect systems that store PHI from inappropriate access or use and include proper media disposal (*i.e.*, shredding or reliable data deletion/scrubbing). **Technical safeguards** encompass access controls, auditing capabilities, and other information technology measures such as data encryption that protect PHI and prevent unauthorized access or use.

2. The **Breach Notification Rule** (*See* 45 CFR 164.4xx) calls for covered entities to **notify affected individuals when PHI has been acquired, accessed, used, or disclosed in an unauthorized manner such that the privacy or security of the PHI is compromised**. The covered entity must provide information regarding breaches to the HHS Secretary on an annual basis, but in the event of a breach affecting 500 or more individuals, the covered entity must immediately notify the Secretary, and in many cases, the media. These large breaches are also listed on a HHS/OCR-maintained, publicly available website. While the regulations require the covered entity to notify affected individuals, business associates and subcontractors must notify their covered entities and business associates, respectively, according to the terms of their BAAs. **The new HIPAA regulations presume that an unauthorized use or disclosure of PHI is a breach, unless the covered entity, business associate, or subcontractor demonstrates that there is a low probability of compromise based on a formal risk assessment.** Certain situations are not considered breaches, such as unintentional, good faith access by a workforce member, inadvertent disclosure within a covered entity, business associate, or subcontractor organization, or disclosures where the

covered entity, business associate, or subcontractor has a good faith belief that the recipient would not have been able to retain the PHI.

3. The **Privacy Rule** (See 45 CFR 164.5xx) **limits the ways in which covered entities may use and disclose PHI, without patient authorization.** The Privacy Rule also requires that covered entities only disclose the “**minimum necessary**” amount of PHI to meet specific objectives, in most cases. So, for example, a covered entity should limit the amount of PHI it makes available to a business associate to only that required for the business associate to complete its tasks. Business associates should treat their subcontractors in the same manner. A business associate may perform a covered entity’s duties under the Privacy Rule, such as responding to patient requests for access to certain records that contain PHI or supporting other patient rights. The services provided by NCRA members are unlikely to include these activities, but in the event that you do perform such functions, you must comply with the same Privacy Rule requirements as the covered entity. **If you are to provide patients with a transcript or other data that includes PHI, on behalf of a covered entity, then your BAA with that client should specifically permit you to make such disclosures.**
4. The **Enforcement Rule** (See 45 CFR 160.3xx-5xx) specifies the processes and procedures that HHS/OCR uses to address potential violations of the HIPAA regulations. Civil money penalties, under the HITECH Act, may range from \$100 to \$50,000 per violation or a total of \$1.5M for identical violations during a calendar year, based on the level of culpability.

#### **The Business Associate Role – Why is My Client Asking Me to Sign a BAA? And, What Does It Mean For My Business?**

The recent changes to the HIPAA regulations have caused most covered entities to review their compliance programs. Moreover, business associates such as lawyers and other service providers are now required to execute a BAA with their subcontractors. These factors make it much more likely that you are now being presented with BAAs, perhaps even for the first time. Under the HIPAA regulations, BAAs must include ten specific provisions, even if those terms do not apply to the particular services you may be providing to a covered entity (as a business associate) or to a business associate (as a subcontractor). Thus, you should expect a BAA to:

1. Establish the ways that the business associate (or subcontractor) is permitted to use and disclose PHI.
2. Provide that the business associate (or subcontractor) may not use or disclose PHI in any other manner.
3. Require that the business associate (or subcontractor) implement safeguards, consistent with the Security Rule.
4. Require the business associate (or subcontractor) to report any unauthorized use or disclosure of PHI, including breaches.
5. Ensure that the business associate (or subcontractor) supports patient rights, including accounting of disclosures (with proper data collection) and PHI access and amendment, under the Privacy Rule.

6. Obligate the business associate (or subcontractor) to comply with the applicable requirements, if it is carrying out any of the covered entity's duties or obligations under the Privacy Rule.
7. Require that the business associate (or subcontractor) make its internal practices, books, and records regarding its PHI-related activities and compliance with the HIPAA regulations available to HHS, in the event of a request or investigation.
8. Call for the business associate (or subcontractor) to either destroy or return any PHI at the BAA's termination, or if destruction is not feasible, to continue to safeguard the PHI.
9. Require that the business associate (or subcontractor) ensure any of its subcontractors agree to the same restrictions and conditions regarding PHI (*i.e.*, execute a BAA that flows down substantially similar provisions).
10. Authorize termination of the BAA, if the business associate (or subcontractor) violates a material term.

In addition to these required provisions, covered entities will often impose additional requirements on their business associates, in an effort to lower their own risk. For example, a covered entity may call for notification of any unauthorized use of PHI or a data breach within a specific, brief period of time, such as five or fewer business days. Covered entities also commonly seek indemnification from their business associates for any costs associated with breaches or other unauthorized uses of PHI. For instance, a covered entity may ask you to agree that you will take responsibility for any fines, litigation costs, or other expenses (*e.g.*, notifying affected individuals), if you or your workforce causes a data breach. Business associates often look to flow similar provisions down to their subcontractors. Before agreeing to any BAA provisions that call for narrow timeframes or other limits, or that go beyond the ten required elements described above, you should carefully review and consider the obligations, potential risks, and your available resources. In such circumstances, you should also consider seeking specific legal advice.

**Keep in mind that as a business associate (or subcontractor), you must (1) comply with the HIPAA regulations; and (2) execute a BAA with any subcontractors who assist you in providing services that involve creating, receiving, transmitting, or maintaining PHI.** For instance, you should have a BAA in place with independent contractors you hire to provide applicable services to clients with whom you have a BAA. You should also execute a BAA with vendors, such as information technology service providers, if they have access to the PHI that you create, receive, transmit, or maintain. To meet their HIPAA obligations, health care providers typically have specific controls in place to store and share documents that contain PHI in a secure manner. You should inquire with any such clients regarding how they would like you to store and share their information (for example, unsecured e-mail is typically not an appropriate way to transmit PHI, unless a patient specifically requests you to do so, after being warned of the risk that such information may be available to third parties). If you use cloud services to create, receive, transmit, or maintain PHI, then you will need to execute a BAA with them. Increasingly, cloud storage services, and other information technology providers, recognize HIPAA's requirements and will be prepared to answer your questions and take appropriate actions. You are also responsible for maintaining reasonable oversight and governance for your subcontractors.

## Key Compliance Steps

Complying with the HIPAA regulations may seem daunting, but there are resources available to help you and some simple steps you can take now to get started:

- **Review BAAs.** Collect and maintain any BAAs that you have executed and periodically review them to ensure that you understand the requirements and maintain compliance.
- **Perform a risk analysis.** This includes documenting when and how you handle PHI, where it is stored, and how you protect it. Compare your safeguards to those required by the Security Rule and resolve any gaps that you identify.
- **Train your workforce.** Ensure that you and your employees understand your HIPAA obligations, and hold your subcontractors to the same standards.
- **Implement safeguards.** Recognize that the HIPAA regulations allow you to select an approach that is appropriate for the size and complexity of your business. For example, investigating the use of secure email, encryption for your mobile devices, proper access controls to limit who can access PHI, and cloud computing services that comply with HIPAA requirements are great places to start.
- **Manage your subcontractors.** Keep track of subcontractors who handle PHI and ensure that you have executed appropriate BAAs.
- **Develop a breach response plan.** Consider and document how you would handle a data breach that involves PHI *before it happens*. Who will you notify? How long do you have to respond? How will you mitigate risks? What other actions will you take to investigate and resolve the event?
- **Document your HIPAA compliance program.** Think like an auditor – what would you like to see to demonstrate your compliance program fitness? Put together a simple compliance notebook (online or on paper) that describes the steps you have taken and tracks your ongoing activities.
- **Seek advice specific to your business situation and needs.** Utilize available resources and seek specific legal advice when you have detailed questions or concerns.

Regulations pertinent to other industries, and some state laws, may also require that you implement certain privacy and data protection controls. For example, most states have a breach notification statute that applies in the event of unauthorized access or loss of certain personally identifiable information. Some states, like Massachusetts, also require that those who handle personally identifiable information have a written information security program (“WISP”) in place. You can simplify your compliance programs by creating a single set of safeguards and documentation that address these various requirements, since such laws and regulations generally recognize the use of best practices for data protection.

## Resources

- HHS/OCR provides a variety of resources for covered entities and business associates (including subcontractors) on their website at [www.hhs.gov/ocr](http://www.hhs.gov/ocr).
- The HITECH Act also called for HHS/OCR to implement a proactive HIPAA compliance auditing program. The initial audit protocols are available on the HHS/OCR website and provide a good checklist for performing your own self-assessment (*See*

<http://www.hhs.gov/ocr/privacy/hipaa/enforcement/audit/protocol.html>). If you have a smaller organization, then you may need to simplify or adapt the protocols to your needs.

- The actual HIPAA regulations are codified in the Code of Federal Regulations, Title 45, Parts 160, 162, and 164. A combined version of the regulation text is available for download at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/combined/index.html>.

# COURT REPORTERS BOARD OF CALIFORNIA

## Best Practices for Exhibit Handling for Depositions

### PHYSICALLY MARKING THE EXHIBIT

- The object is to make it easy for someone later on looking through the exhibits to find the identifying label.
- Procedure – Confirm the use of this procedure with counsel before proceeding begins.
  - The exhibit is provided to the court reporter from counsel.
  - The court reporter marks the exhibit.
  - The court reporter announces the number of the exhibit ("Exhibit 1 is marked for identification" or "This is being marked as Exhibit 1").
- Labels
  - The use of exhibit labels is recommended over ink exhibit stamps.
  - Plain white labels are preferred over colored labels for best photocopying results.
  - Information on the label should include:
    - › Exhibit number (numbers preferred over letters, but defer if there is attorney preference, numbers for plaintiffs/letters for defendants).
    - › Witness last name.
    - › Court reporter's license number.
    - › Date of proceeding.
  - Label placement:
    - › Labels should be placed in the lower right-hand corner of the exhibit, 1/16th of an inch from the bottom of the page
    - and 1/16th of an inch from the right side of the page, taking care that nothing on the page is obstructed by the label. Be mindful where the three-hole punch may appear on the page of an exhibit.
- › With oversized documents, keep consistency in mind when choosing the location for the label.
- › If there is no blank space available on an exhibit for placement of a label, place the label on the back of the exhibit in the center, 1/16th of an inch from the bottom edge.
- › For objects other than paper, offer to place the label where it can be easily seen, but confirm with counsel before affixing the label. For objects where affixing a label is impossible, affix the label to a string tag and tie it on the object. Small items may be placed in an envelope, and affix the exhibit label to the envelope top or bottom.
- › A photograph may be marked on the back or affixed to a blank 8-1/2x11 sheet of paper with labels attached on the paper to the side or the bottom of each photograph.

### TRACKING

- It is the responsibility of the court reporter to track exhibits and exhibit numbers.

### CUSTODY

- Original exhibits are to remain in the custody and control of the court reporter unless there

# BEST PRACTICES FOR EXHIBIT HANDLING FOR DEPOSITIONS

is a stipulation otherwise by counsel because the original exhibits (or what was marked at the deposition) must be attached to the original transcript.

- If an exhibit is to be retained by counsel or the witness providing it, a stipulation should be placed on the record and reflected in the Index of Exhibits.
- If counsel requests the court reporter retain custody of an unusual or bulky item, the court reporter should ask for a stipulation from all parties that there must be notification to all parties if any party is requesting to view the exhibit in the reporter's presence, who to return the item to once the case has concluded and how to return the item.

## USE OF PREVIOUSLY MARKED EXHIBITS

- If counsel shows the witness an exhibit that was previously marked at another deposition, the court reporter should clarify if the exhibit is being offered for the physical record of the present deposition or simply used for reference by the witness.

## ELECTRONIC EXHIBITS

- Some attorneys are starting to use electronic exhibits in cases where many deponents will be referencing the same documents, such as a medical chart. At the beginning of such cases, a stipulation needs to be entered between all parties regarding use of electronic exhibits and retention and handling of what is to be considered the original exhibit.

## OBJECTION TO EXHIBIT

- The court reporter is not the finder of fact and may not make a determination as to admissibility of an exhibit. If there is an objection to an exhibit being offered, the court reporter takes the exhibit and labels it. If the reporter does not receive within ten days from the date of the deposition a

protective order issued by the Court regarding the disposition of the exhibit, include the exhibit with the transcript as usual.

## CONFIDENTIAL EXHIBITS

- Parties need to stipulate at each deposition whether an exhibit is confidential and/or provide to the reporter a copy of any confidentiality agreement between parties with explicit instructions on how to handle a confidential exhibit.

## PARENTHETICALS

- Per California Code of Regulations Title 16, Division 24, Article 8, section 2473, parentheticals and exhibit markings of two lines or more shall contain no less than 35 characters per line.
- The language of the parenthetical should be kept as simple as possible. Example: (Exhibit 1 was marked for identification.)

## SUBSTITUTION OF DOCUMENTS

- If counsel wishes to substitute an exhibit for any reason, i.e., a clean copy of the exhibit or a duplicate was discovered and a new document is going in, whatever the situation is should be clearly stated in a stipulation, after which time the court reporter may do so.

## INDEX

- The exhibit index should simply be entitled Exhibit Index or Deposition Exhibit Index unless other exhibits were specifically marked, i.e., plaintiff's or defendant's exhibits.
- The index should identify each exhibit number with a brief description of the exhibit including the type of document, date, Bates range and the page at which it was marked.
- If the exhibit is retained by counsel or the witness, that information should be noted on the index.

# BEST PRACTICES FOR EXHIBIT HANDLING FOR DEPOSITIONS

- A separate index should be created for previously marked exhibits, including the exhibit number. No description is required. The page number at which it was first referenced may be included.
- In the case of confidential exhibits or any type of sealed exhibits, the full description of the document should be omitted from the open portion of the transcript. The full description should be included only in the confidential portion of the transcript. Confidential exhibits are included only with the confidential portion of the transcript. It is important to never e-mail exhibits containing confidential information, i.e., HIPAA information. A secure server or FTP repository should be set up to share exhibits containing confidential information.
- If a court reporting firm is utilized, the court reporter should send the original exhibits to the firm as quickly as possible via a reliable source which offers a tracing or tracking service. Delivery confirmation is recommended. Scanned exhibits are acceptable in cases of expedited orders, but original transcripts must contain original exhibits (or what was marked at the deposition).
- If a request is received to add an exhibit subsequent to the conclusion of the deposition, the court reporter may do so only with written stipulation of all parties.
- If a doctor refuses to release his file which has been marked as an exhibit to the custody of the court reporter, state clearly on the record that a copy service will be sent and who will be responsible for those arrangements. It should be noted in the exhibit index that the exhibit provided to the court reporter will be a copy of the file.

## SCENARIOS

- If an attorney becomes angry and leaves the deposition while the remaining attorney continues with a record, exhibits offered to the court reporter after another attorney leaves the room are to be accepted and attached to the deposition transcript.
- If the attorneys stipulate to no transcription of the stenographic notes of a deposition, any exhibits marked must be retained by the court reporter along with the stenographic notes so that in the event of a future order, the transcript will be complete with exhibits. Such exhibits may be scanned for storage if the attorneys so stipulate.
- If a case settles before the transcript is produced, the exhibits may be scanned and retained by the court reporter and the original returned to the noticing party.
- In the case of an exhibit which was to be provided to the court reporter after the conclusion of the deposition but was never provided, the court reporter should contact the parties letting them know that the exhibit has not been received and that the transcript will be held until a date certain, after which time the transcript will be delivered. If the transcript goes out without such an exhibit, that information should be clearly identified on the exhibit index, i.e., (Exhibit marked but not provided). The identification parenthetical in the body of the transcript should read (Exhibit identified for the record but not provided).



**COURT REPORTERS BOARD**  
OF CALIFORNIA

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(SPACE BELOW FOR FILING STAMP ONLY)

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5 Attorneys for Plaintiff Omar Rodriguez

6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10

11 OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN;  
12 ELFEGO RODRIGUEZ; AND JAMAL CHILDS,

13 Plaintiffs,

14 -vs-

15 BURBANK POLICE DEPARTMENT; CITY OF  
16 BURBANK; AND DOES 1 THROUGH 100,  
INCLUSIVE.

17 Defendants.

18

19 BURBANK POLICE DEPARTMENT; CITY OF  
20 BURBANK,

21 Cross-Complainants,

22 -vs-

23 OMAR RODRIGUEZ, and Individual,

24 Cross- Defendant.

25

26 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

27 PLEASE TAKE NOTICE that Plaintiff Omar Rodriguez, by and through his attorneys of  
28 record, hereby lodges the following deposition transcripts, in Department 37, of the above-  
referenced Court:

CASE NO.: BC 414 602

Complaint Filed: May 28, 2009

Assigned to: Hon. Joanne B. O'Donnell, Judge

**PLAINTIFF'S NOTICE OF LODGING  
DEPOSITION TRANSCRIPTS WITH THE  
COURT**

DATE: May 16, 2011

TIME: 8:30 a.m.

DEPT.: 37

- 1 1. Deposition Transcript of Omar Rodriguez, Volume I, Wednesday, August 5, 2009;
- 2 2. Deposition Transcript of Omar Rodriguez, Volume II, Thursday, February 11, 2010;
- 3 3. Deposition Transcript of Omar Rodriguez, Volume III, Friday, February 19, 2010;
- 4 4. Deposition Transcript of Omar Rodriguez, Volume IV, Thursday, August 26, 2010;
- 5 5. Deposition Transcript of Omar Rodriguez, Volume V, Thursday, January 13, 2011;
- 6 6. Deposition Transcript of Omar Rodriguez, Volume VI, Friday, January 14, 2011;
- 7 7. Deposition Transcript of Steve Karagiosian, Volume II, Friday, November 13, 2009;
- 8 8. Deposition Transcript of Bruce Slor, Wednesday, November 11, 2009;
- 9 9. Deposition Transcript of Dannel Arnold, Monday, February 15, 2010;
- 10 10. Deposition Transcript of Marsha Ramos, Wednesday, February 24, 2010;
- 11 11. Uncertified Rough Draft Transcript Deposition of Jamie Puglisi, Thursday, April
- 12 28, 2011; and
- 13 12. Uncertified Rough Draft Transcript Deposition of Travis Irving, Thursday, April 28,
- 14 2011.

15  
16 Dated: April 29, 2011

Respectfully submitted,  
**LAW OFFICES OF RHEUBAN & GRESEN**

19 By  \_\_\_\_\_  
20 Solomon E. Gresen  
21 Attorneys for Plaintiff Omar Rodriguez

**Trial Transcript of 07/16/2014 before Honorable Charles Wachob  
Placer County Superior Court  
Reported by Charlotte A. Mathias, CSR 9792**

Pages 110:13-111:17

MR. HARPER: Your Honor, may the witness be shown page 15 of his deposition transcript?

THE COURT: He may. Would counsel like me to give the jury the instruction on what a deposition is? I think it might be useful to try to de-mystify this a little bit. Let me interrupt this for a moment to do that.

MR. HARPER: Sure. Absolutely.

THE COURT: It's instruction 208.

MS. COBDEN: Yes, Your Honor.

THE COURT: Folks, during a civil litigation, the parties to the case have the right to discover or learn information and facts and evidence that the other side has, and there are various ways of doing that. One of the ways to do that is through what is called a deposition, and I'll tell you what that is.

A deposition is the testimony of a person taken before trial. At a deposition, the person is sworn to tell the truth and is questioned by the attorneys. You must consider deposition testimony that is presented to you in the same way as you consider testimony given in court.

Okay. And do you have the deposition in front you, sir?

THE WITNESS: No, sir.

MR. HARPER: Madam Clerk, may we have the original of that transcript?

THE COURT: Well, if he has the original with the witness, the court

**can't follow along and is unable to rule on any objections that may have been made at the time of the deposition. So if you have a certified copy for the witness, that would be preferable, or for the court, one or the other.**

MR. HARPER: May I approach?

THE COURT: Yes. Thank you.

**Arbitration Transcript, before JAMS, 8/18/2015**  
**Reported by Charlotte A. Mathias, CSR 9792**

**(Names changed as not public record)**

Pages 201:15-203:2

MR. SMITH: I also will probably be referring to Mr. Ness' deposition transcript.

THE ARBITRATOR: Okay.

MR. SMITH: So I don't know if -- is that one of the exhibits -- transcripts?

MR. JONES: No.

MR. SMITH: No.

THE ARBITRATOR: I don't have a transcript.

MR. SMITH: Okay. Here are copies of volumes 1 and 2.

THE ARBITRATOR: Okay.

MR. JONES: Can I see those? I see yellow on them and that causes me concern.

MR. SMITH: I think I just highlighted the name of the witness.

MR. JONES: That's what I see on the first one. Let me double check. That's the only concern. All right. Obviously, the only other concern is where are the originals, though, but I know it's arbitration.

THE ARBITRATOR: I -- I don't have that transcript.

MR. SMITH: Do we have a sealed transcript? I thought we had -- I thought we had delivered the original sealed transcripts of Bill and Calvin.

THE ARBITRATOR: I have Bill. I have Sanchez. I have Mr. Munoz, two volumes. And that's all I got. Wait a minute. Here's two down here. Bingo.

MR. JONES: Got it.

MR. SMITH: Okay. I'll take that back. Thank you, Your Honor.

THE ARBITRATOR: Thank you.

THE WITNESS: Should I have a copy of it?

MR. JONES: No. You don't have to look at them, not unless he asks you something specific.

THE ARBITRATOR: For the record, I had the opportunity to break the seals. These are volume 1 and volume 2. Okay. Go ahead.

MR. SMITH: Thank you, Your Honor.

## EXHIBIT F

### Definitions of Terms

#### SHALL

- a. Definition of "shall." Merriam-Webster.com
  - i. Will have to: must
  - ii. (1) Used to express a command.  
(2) **Used in laws, regulations, or directives to express what is mandatory.**

#### TAMPER

- 1: to carry on underhand or improper negotiations (as by bribery)
- 2.
  - a : to interfere so as to weaken or change for the worse —used with with <did not want to tamper with tradition>
  - b : to try foolish or dangerous experiments —used with with
  - c : **to render something harmful or dangerous by altering its structure or composition <was charged with tampering with consumer products>**

# CSR Board

## Officer CSR Board

more attorneys request the transcript on disk, the requests for keyword indexes seem to be lessening as they can prepare their own from the disk.

### WHAT TO DO WITH THE ORIGINAL?

Here we go again; another seemingly north/south issue. Under Code of Civil Procedure Section 2025(s)(1), the Board's legal counsel advises that the original must

---

**Impartiality should be the first rule of court reporting**

---

be sent to the noticing party as specified. While admittedly, attorneys can stipulate to most anything, including to waive the reading and the signing of the deposition as required in CCP Section 2025(q), they cannot stipulate away the obligation of the CSR. A superior court judge in Santa Clara County has rendered the same opinion verbally as did the CSR Board's legal counsel.

### HOW LONG MUST I STORE MY NOTES?

This is, no doubt, one of the most frequently asked question of the CSR Board staff. Again, following our format, we will progress from the clear to the unclear. Government Code Section 69955(d) states, "No official or pro tempore court reporter



Richard Black

For the freelance reporters there is no code section on this point. Therefore, we break our answer into two segments. First, relative to transcribed notes, the Board recommends a reporter keep those notes for a minimum of two years, and perhaps five years just as the official reporters must do.

Relative to untranscribed notes, the Board advises that these should be maintained for a minimum of seven years, or better, seven years and six months. This is based on two factors:

1. The statute of limitations allows appeals to be filed for up to seven years in most cases.
2. Just as original transcripts must be retained for six months following the final disposition of the case, it seems likely that one could argue that untranscribed notes should be retained for six months following final disposition of the case. Thus, since most reporters do not know when the case is finally disposed of, the Board recommends

## reporting

---

be sent to the noticing party as specified. While admittedly, attorneys can stipulate to most anything, including to waive the reading and the signing of the deposition as required in CCP Section 2025(q), they cannot stipulate away the obligation of the CSR. A superior court judge in Santa Clara County has rendered the same opinion verbally as did the CSR Board's legal counsel.

### HOW LONG MUST I STORE MY NOTES?

This is, no doubt, one of the, if not the, most frequently asked question of the CSR Board staff. Again, following our format, we will progress from the clear to the unclear. Government Code Section 69955(d) states, "No official or pro tempore court reporter may destroy the reporting notes taken by him, and no clerk of the court may destroy the reporting notes delivered to him until after five years from the taking of the notes and upon the order of the court." (Emphasis added.)

transcribed notes, the Board recommends a reporter keep those notes for a minimum of two years, and perhaps five years just as the official reporters must do.

Relative to untranscribed notes, the Board advises that these should be maintained for a minimum of seven years, or better, seven years and six months. This is based on two factors:

1. The statute of limitations allows appeals to be filed for up to seven years in most cases.
2. Just as original transcripts must be retained for six months following the final disposition of the case, it seems likely that one could argue that untranscribed notes should be retained for six months following final disposition of the case. Thus, since most reporters do not know when the case is finally disposed of, the Board recommends retention of untranscribed notes for a minimum of seven years and six months. Once again, the Code is sufficiently vague on this point, and there is no case law of which we are aware.

CALIGRAMS



# Superior Court of California

COUNTY OF SANTA CRUZ

PAUL M. MARIGONDA  
Presiding Judge  
Santa Cruz Superior Court

701 Ocean Street  
Santa Cruz, CA 95060  
Phone (831) 420-2200

October 7, 2015

Yvonne Fenner, Executive Director  
Toni O'Neill, Board Chair  
California Court Reporters Board  
2535 Capitol Oaks, Suite 230  
Sacramento, CA. 95833

**RE: Support for Request that Court Reporters adhere to CCP sec. 2025.550**

Dear Executive Director Fenner and Board Chair O'Neill,

I am writing in support of the Deposition Reporters Association's request that your Board forward language to the State Bar of California that court reporters are required to follow the procedures set forth in Code of Civil Procedure sec. 2025.550. This code section sets out the requirements for maintenance of a sealed certified deposition transcript that may end up being used at trial by one of the parties.

As a civil trial judge, and this Court's presiding judge, the integrity of sworn testimony is critical in a trial. An unsealed deposition that might be damaged or at worse, that is missing pages or exhibits, can create significant problems for the litigants and the trial judge. Simple adherence to section 2025.550 will improve the quality of our justice system for all involved.

Thank you for your consideration of this letter, and keep up your great work.

Very truly yours,

A handwritten signature in cursive script, appearing to read "P.M. Marigonda".

Hon. Paul M. Marigonda  
Presiding Judge of the Superior Court

PMM:p

# Bayside Reporting Company

EXHIBIT I

June 8, 2015

Stolpman, Krissman, Elber & Silver, LLP  
Joel Krissman, Esq.  
111 West Ocean Boulevard  
19<sup>th</sup> Floor  
Long Beach, California 90802

Re: *Barnett v. KHS&S Contractors, et al.*  
Original deposition transcript of Paul Sanders

Dear Mr. Krissman,

The enclosed transcript was received today in our office from the US Postal Service. The envelope is also included herewith.

It is obvious to us that this transcript has been torn apart and rebound as the materials used to do so are not the materials we use; therefore, the integrity of the Original has been compromised. The transcript does have the signature of the witness evidencing our transcript was delivered by UPS to counsel's office, but thereafter we are unaware of how it wound up in the condition it is now nor why it was returned to our office.

As our office was relieved of responsibility for the original once we sent it to the law firm of Bonetati, Kincaid & Soble, we are forwarding it on to you as the noticing party of the deposition.

If we can be of further assistance, please do not hesitate to contact us.

Best Regards,

Celeste Poppe  
Bayside Reporting Company

cc: John B. Larson, Esq.  
Mark L. Kincaid, Esq.

**Marla Sharp**

---

**From:** Lisa Rae Sommerhauser <lisa [redacted]>  
**Sent:** Wednesday, October 7, 2015 1:45 p.m.  
**To:** mariavous@ [redacted]  
**Subject:** Fwd: Southern California Stipulation

Here you go Marla! Yay!!! You might want to cut it out of this email

Lisa Sommerhauser

Begin forwarded message:

**From:** "Burkhardt Vicente, Emily" <ebvicente [redacted]>  
**Date:** October 7, 2015 at 7:51:51 AM PDT  
**To:** "lisa [redacted]" <lisa [redacted]>  
**Subject:** RE: Southern California Stipulation

Hi Lisa -

Over the last couple of years, it has become my practice to proceed per the California Code as to deposition transcripts. I have practiced in many other places around the country and have not seen the stipulation commonly used in Southern California used in any other location. In fact, in my experience, it is not used in other parts of California. The practice of mailing the original to the witness (or his counsel) for review risks damage to or tampering with the original transcript because the witness and his counsel often take the transcript apart for copying, or it can result in loss of the transcript altogether. I have had instances where the original was never returned by the witness's counsel to my office. In my opinion, the Southern California stipulation is not an appropriate way to handle the original certified transcript in a litigation matter. An original transcript should remain bound and sealed once it leaves the court reporter until it is needed for use in the case. The rule is set up as it is for a reason.

Emily Burkhardt Vicente  
 Hunton & Williams LLP

Direct dial number:

Direct fax number:

EBVicente

Visit Hunton's Employment Law Blog:

<http://www.huntonlaborblog.com>

---

**From:** lisa [redacted] [mailto:lisa [redacted]]  
**Sent:** Thursday, October 01, 2015 5:17 PM  
**To:** Burkhardt Vicente, Emily  
**Subject:** Southern California Stipulation

Hi, Emily. A colleague of mine has been given an opportunity to speak to the Court Reporters Board in late October on the subject of the So. Ca. stipulation and to potentially get it on their agenda.

She is looking for letters from agency owners like myself, as well as attorneys like you who understand the importance of not releasing the original through the stipulation; i.e., the importance of keeping the original sealed so it is not tampered with, which is what is happening when the original is released to the other side. In most cases they are taking the original apart to make copies of it so that they don't have

to order a certified copy from the agency, thereby taking our work product without paying for it. Being a division of the Department of Consumer Affairs, their main concern is the integrity of the original transcript.

If you could either shoot me a quick e-mail or letter with your opinion on this subject with your signature line that she could use to present to the Board, that would be great. If you have any evidence of original transcripts being tampered with, unbound, missing pages, etc., please pass that along too. And if you can get any of your colleagues to do the same, even better! I already talked to Chrissy about it.

Please respond back by October 6<sup>th</sup>, because she has until October 7<sup>th</sup> to submit the supporting documentation to the Board.

Thanks so much,

Lisa Sommerhauser.

# Yvette Heinze, CSR, RPR

---

P.O. Box 8853, Kalispell, MT 59904-1853, mtreporters@gmail.com

October 7, 2015

**To Whom It May Concern:**

Hello. My name is Yvette Heinze. I am the current president for the Montana Court Reporters Association. In Montana, Montana Code of Civil Procedures, Rule 30 (f)(1), states:

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing. (1) Certification and Delivery. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

The Montana Codes of Civil Procedure were originally modeled after the Federal Rules of Civil Procedure. The necessity of protecting the record has always been important, as it should be.

It has come to our attention that the custom and practice of sealing and protecting the original deposition transcripts is not followed in Southern California. The importance of protecting the record is more important today than it ever has been. As technology advances, there are multiple ways to tamper with documents without anyone knowing. Having the original officer who produces the deposition seal the transcript is a very efficient and easy way to lessen the threat of the original record being tampered with, destroyed, or being deteriorated in some way. This is common practice throughout the country.

The practice of attorneys, who are interested parties, having the ability to stipulate away the Code of Civil Procedures, which were put in place to protect the system, is simply unjust. This specific language would not have been adopted by our state legislatures if they deemed it unnecessary or unimportant.

Sincerely,

Yvette Heinze, CSR, RPR  
MTCRA, president  
[www.mtcra.com](http://www.mtcra.com)  
mtreporters@gmail.com

## DECLARATION OF FRANCINE DAIS, CSR #8855

I, Francine Dais, CSR #8855 state the following is true and correct:

When reporting trials in Northern California, the judges I have worked with make sure to notate on the record that the clerk has a sealed transcript that they are now opening in open court in the presence of the judge and the parties. Recent examples are as follows:

Excerpt from Placer County trial transcript dated 9/29/15 in Salazar vs. Future Nissan of Roseville:

"THE COURT: Yes. And, Madam Clerk, if you would open that for me, please. It is sealed and being opened.

Thank you. All right. The exhibit has been opened. It contains the original exhibits and transcript of the deposition of Mr. Martin from August 21st, 2015."

Excerpt from Placer County trial transcript dated 9/30/15 in Salazar vs. Future Nissan of Roseville:

"MR. SORRELLS: Your Honor, I would like to read from Mr. Shideh's deposition at page 58 at lines 5 through 12.

THE COURT: Okay. Thank you.

All right. For the record, Madam Clerk has -- I've seen her open the sealed transcript, the original of the deposition of Shawn Shideh, PE, dated Tuesday, September 1, 2015, previously lodged with the court under Order of the court."

Further, Placer County local rules of court require filing only of original documents, and it is further ensured the transcripts are originals by requiring they must prepare an Order to file transcripts. I witnessed the judge telling attorneys who were trying to file transcripts that they must be sealed and must have an Order. These local rules for Placer County are as follows:

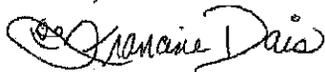
## RULE 10.9 FILING OF DOCUMENTS

E. The clerk shall file only original documents presented for filing. Copies of original documents may be "received" but not filed unless otherwise ordered by the Court.

I. Transcripts of depositions shall not be filed or lodged within the Court file without prior order of the Court. In civil cases, transcripts of Court proceedings, unless ordered prepared by the Court, will not be lodged within the Court file nor filed by the clerk without prior order of the Court.

I certify the above Declaration to be true and correct.

Dated: October 8, 2015

Signed:   
FRANCINE R. DAIS, CSR #8855

I.



October 14, 2015

Ms. Toni O'Neill, Board Chair  
Ms. Yvonne Fenner, Executive Director  
Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833

Re: **REQUEST FOR CLARIFICATION REGARDING LICENSEE DUTIES FOLLOWING SO-CALLED "SOUTHERN CALIFORNIA STIPULATION" BETWEEN PARTIES; REQUEST FOR CLARIFICATION REGARDING DISCIPLINE AGAINST LICENSEES FOR FOLLOWING STATUTORY DUTIES IN LIEU OF STIPULATION**

Dear Ms. O'Neill and Ms. Fenner:

For nearly four decades, a practice known as the "Southern California Stipulation" has been used to attempt to "relieve" reporters of statutory duties under the Code of Civil Procedure (CCP), Section 2025.520, et seq. While its origins remain unclear, its effect on the solemn duties of licensees under the oversight of the Court Reporters Board is plain to see.

Relevant sections of the CCP were written to protect the integrity and sanctity of the **original verbatim certified transcript** by clearly defining the proper method of transcription, handling of review by the witness, and sealing of the record before sending distribution in sealed form.

Thus, by acquiescing to the standard "Southern California Stipulation" in which control of the original transcript is maintained not by an impartial, unbiased officer of the court, but to a party with an obvious interest in the outcome of the proceedings, the deposition officer is unable to perform her legal and ethical duties under CCP 2025.520(e), 2025.540(a) and 2025.550(a), among others:

**2025.520(e)** *The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, 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. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.*

**2025.540(a)** *The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audio or video record of deposition testimony, as described in Section 2025.530, that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.*

**2025.550(a)** *The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that 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. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.*



Though this practice originally may have been intended to allow speedy review by the witness without the need to travel to the office of the deposition officer, new technology which provides for secure electronic review and correction at the convenience of the witness negates any reason to continue to allow the "Southern California Stipulation" to be observed. Moreover, reading and signing may be carried out by reviewing a certified copy with notification to the deposition officer by mail of any changes, per CCP 2025.520(c).

*2025.520(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.*

The potential consequences of alterations to the original transcript outside of the oversight of the deposition officer, including unbinding or unsealing for purposes unknown, are unacceptable. CalDRA and its members have presented to the Board a number of exhibits outlining situations in which the sanctity and security of the original transcript has been compromised. Such tampering is not in the best interest of the consumer, nor does it serve the fair and impartial administration of justice to which licensees hold as a sacred responsibility.

The Board has previously called into question the soundness of such practices and should immediately clarify the duties that **must** be followed by all licensees, whether engaged in the practice of shorthand reporting in Northern California or Southern California.

Because of longstanding confusion surrounding which duties licensees must follow, CalDRA respectfully requests that the Board clarify the following:

1. Whether, in the view of the Board, a licensee may be relieved of her obligations to comply with sections 2025.520, 2025.540, and 2025.550 of the California Code of Civil Procedure, when the lawyers stipulate between them that she be so relieved.
2. Whether, if the Board received a complaint (e.g., from a judge) about a licensee violating sections 2025.520, 2025.540, and 2025.550 of the California Code of Civil Procedure when the parties had stipulated to relieve the licensee of these obligations, the Board would simply on the basis of the stipulation alone refuse to consider, investigate, or take action against the licensee. In other words, is it the Board's view that the licensee's obligations to comply with these code sections is contingent upon attorney approval?

CalDRA represents more deposition reporting professionals than any organization in California and is the largest organization in the nation solely devoted to representing such professionals.

CalDRA thanks the Board and its excellent staff for the opportunity to address these important issues and respectfully requests that its request for clarification be granted.

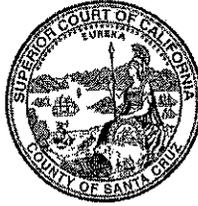
Sincerely,

*Rich Alossi, RPR, CCRR, California CSR No. 13497  
President, Deposition Reporters Association of California, Inc.*



DEPOSITION  
REPORTERS ASSOCIATION  
OF CALIFORNIA, INC.

# Attachment A



# Superior Court of California

COUNTY OF SANTA CRUZ

PAUL M. MARIGONDA  
Presiding Judge  
Santa Cruz Superior Court  
October 7, 2015

701 Ocean Street  
Santa Cruz, CA 95060  
Phone (831) 420-2200

Yvonne Fenner, Executive Director  
Toni O'Neill, Board Chair  
California Court Reporters Board  
2535 Capitol Oaks, Suite 230  
Sacramento, CA. 95833

**RE: Support for Request that Court Reporters adhere to CCP sec. 2025.550**

Dear Executive Director Fenner and Board Chair O'Neill,

I am writing in support of the Deposition Reporters Association's request that your Board forward language to the State Bar of California that court reporters are required to follow the procedures set forth in Code of Civil Procedure sec. 2025.550. This code section sets out the requirements for maintenance of a sealed certified deposition transcript that may end up being used at trial by one of the parties.

As a civil trial judge, and this Court's presiding judge, the integrity of sworn testimony is critical in a trial. An unsealed deposition that might be damaged or at worse, that is missing pages or exhibits, can create significant problems for the litigants and the trial judge. Simple adherence to section 2025.550 will improve the quality of our justice system for all involved.

Thank you for your consideration of this letter, and keep up your great work.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul M. Marigonda".

Hon. Paul M. Marigonda  
Presiding Judge of the Superior Court

PMM:p

# Attachment B

From: Janet Murphy  
Sent: Sunday, September 27, 2015 1:00 p.m.  
To: marlavous@me.com

Subject: Re: Need your help re the SoCal stip

Hi Marla!

Thanks for asking.

1. I had a secretary call me and ask me how to re-bind the Original.
2. I had a secretary or paralegal call me, claiming my Original had been sent to them with a chunk about 30 pages missing. I told them, impossible, I check every transcript myself, I flip through and count every page before binding. Then she admitted they had pulled it apart to copy and their copy service had lost that chunk.

# Attachment C

From: Lisa Brown <lisabrown@gbglp.com>  
Date: October 13, 2015 at 6:42:02 PM PDT  
To: Lisa Rae Sommerhauser <lisa@srsdepo.com>  
Subject: Southern California Stipulation - a voice against

Hi Lisa:

I have practiced in Southern California for over 10 years. Over the last 5 or 6 years, it has become my practice to proceed per the California Code as to deposition transcripts. I have taken depositions in other places around California and have not seen the stipulation commonly used in Southern California used in any other location. The practice of mailing the original to the witness (or his counsel) for review risks damage to or tampering with the original transcript because it appears that the witness and his counsel often take the transcript apart for copying, or it can result in loss of the transcript altogether. I have had instances where the original was never returned by the witness's counsel to my office, and I have had instances where the original is lost or misplaced, and we had to use certified copies. In my opinion, the Southern California stipulation is not an appropriate way to handle the original certified transcript in a litigation matter. An original transcript should remain bound and sealed once it leaves the court reporter until it is needed for use in the case. The rule is set up as it is for a reason – to preserve the integrity of the transcript and of the reporter who has certified as to its completeness and accuracy.

While some people continue to use the stipulation, I have refused to do so. It is an uncomfortable position because I otherwise like to cooperate with my opposing counsel. But this is an important issue for me and one I am not willing to compromise absent a very compelling reason.

Thank you.

Elizabeth (Lisa) A. Brown, Partner  
lisabrown@gbglp.com • direct 415.603.5002  
fax 415.840.7210 • [www.gbglp.com](http://www.gbglp.com)  
601 Montgomery Street, Suite 1150 • San Francisco, CA 94111

RICHARD L. MANFORD  
Attorney at Law  
California State Bar Number 051092  
3081 SWALLOWS NEST DRIVE  
SACRAMENTO CA 95833-9723  
Telephone: 916.923.9333  
Facsimile: 916.543.1613  
E-Mail: dick.manford@gmail.com

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OCT 16 2015

Dept. of Consumer Affairs  
Court Reporters Board of CA

BY HAND DELIVERY TO ADDRESSEES

16 October 2015

Toni O'Neill, Chair  
Yvonne K. Fenner, Executive Officer  
Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230  
Sacramento CA 95833-2944

Re: Purported Stipulation Relieving Deposition CSR of Statutory Duties

Dear Ms. O'Neill and Ms. Fenner:

I write at the request and on behalf of the CA Court Reporters Association ("CCRA") concerning an issue which impacts the Board's mission "... to protect the public health, safety and welfare by ensuring the integrity of judicial records through oversight of the court reporting profession." CCRA believes that a current practice utilized at some depositions requires a statement of the Board's position regarding the issue.

The issue is whether CSRs reporting depositions can be relieved of certain statutorily-mandated duties through a stipulation by attending counsel to that effect. The principal statutory duty in question is set forth in Code of Civil Procedure Section 2025.530(a) which provides that

"... the deposition officer shall securely seal that [certified] 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. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering." (Bold italics added.)

In some Southern California legal circles, this practice is referred to as "the usual stipulations" aka the Southern California Stipulation. I have had personal experience with this practice, both as a participant and as an objector. It works like this:

Toni O'Neill, Chair  
Yvonne K. Fenner, Executive Officer  
Court Reporters Board of California  
16 October 2015  
Page 02

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Typically at the conclusion of a deposition of a party opponent taken by noticing counsel, the practice includes either a simple statement on the record (assuming no objection) that "the usual stipulations" (although unspecified) will apply, or that attending counsel will stipulate on the record that the deposition reporter "shall be relieved" of her or his statutory duties, that the original transcript shall be delivered (unsealed) to the deponent's counsel for the deponent's review, etc., and that a certified copy of the transcript (likely that of noticing counsel who pays for transcription) may be substituted for use at trial in lieu of the original should it be damaged, lost or destroyed. CCRA is concerned that, were a deposition reporter to comply with such a stipulation by delivering the original transcript to non-noticing counsel prior to certification, s/he potentially exposes her or his license to Board discipline. The reasoning for this concern is explained below.

First, deposition reporters are to be independent. They cannot be financially interested in the action, or be related to or employed by a participating attorney or party. (Code Civ. Proc., § 2025.320(a).) Moreover, they are ministerial officers of the court in which the action is pending, subject to the court's control in order to protect the administration of justice. (*Serrano v. Stefan Merli Plastering Co.* (2008) 162 Cal.App.4th 1014, 1035.) The obvious purpose of these statutory and case law provisions is to ensure the integrity of the judicial record deposition reporters create.

Second, Code of Civil Procedure Section 2016.030 does provide that, absent a court order otherwise, ". . . the parties may by written stipulation modify the procedures provided by this title [Civil Discovery Act] for any *method of discovery* permitted under Section 2019.010." (Italics added.) The latter section specifies six discovery methods, e.g., interrogatories, depositions, document inspections, et al. Thus, under Section 2016.030, affected parties may, for examples, stipulate to a time longer or shorter than the statutory thirty days within which to respond to interrogatories (Code Civ. Proc., § 2030.260(a)), or stipulate to a time shorter than the statutory minimum of ten days advance notice for a deposition. (Code Civ. Proc., § 2025.270(a).) However, a purported stipulation "relieving" a deposition CSR of mandatory statutory duties regarding transcript certification and transmission does not appear to be a "method of discovery" subject to stipulated modification.

Third, given that a deposition CSR is independent, a ministerial officer of the court, and not a party to the action, authority exists for the proposition that s/he cannot be bound by the purported stipulation. A stipulation has limits both as to scope or subject matter

and who is bound by it. For example, a party may waive the benefit of a statute designed for his own protection (*Lesser v. McGerry & Company, Inc.* (1932) 121 Cal.App. 193, 195), but parties cannot by stipulation preclude a court from enforcing statutes designed to protect the public welfare or public policy. (*Wilson v. Wilson* (1873) 45 Cal. 399, 405; *Mary R. v. B. & R. Corporation* (1983) 149 Cal.App.3d 308, 316-17 [parties' stipulation and court order so based restricting BMQA's ability to investigate doctor for molestation of minor patient were invalid as contrary to public policy and preservation of integrity and efficiency of administration of justice].)

Additionally, persons who are not parties to an action (e.g., deposition CSRs) cannot be bound by a stipulation among parties to that action. (*Tanner v. Title Insurance and Trust Company* (1942) 20 Cal.2d 814, 821; *Nungaray v. Pleasant Valley Lima Bean Growers and Warehouse Association* (1956) 142 Cal.App.2d 653, 668 [plaintiff, not party to declaratory relief action separate from his negligence lawsuit against Association, not bound by stipulation among declaratory action counsel as to what plaintiff would testify if called as witness in declaratory action].)

Finally, there are some statutes imposing statutory duties on deposition CSRs that can be stipulated away because those statutes contain a mechanism for exemption from the otherwise mandatory duty. For examples:

- Deposition testimony shall be taken stenographically "unless the parties agree or the court orders otherwise." (Code Civ. Proc., §2025.330(b).);
- Stenographically-recorded deposition testimony shall be transcribed "unless the parties agree otherwise." (Code Civ. Proc., 2025.510(a).);
- Rules re CSR's notice of transcript availability, and re reading, correcting, and signing transcript or waiver thereof, "unless the deponent and the attending parties agree on the record" to other stated procedures. (Code Civ. Proc., § 2025.520(a).);
- Time for deponent to change form or substance of answer, and sign or not sign transcript "unless the attending parties and the deponent agree on the record or otherwise in writing." (Code Civ. Proc., § 2025.520(b).); and

Toni O'Neill, Chair  
Yvonne K. Fenner, Executive Officer  
Court Reporters Board of California  
16 October 2015  
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• Notice of availability for review of audio or video recording required where deposition testimony not stenographically transcribed “unless the deponent and all these parties agree on the record” to waive review. (Code Civ. Proc., § 2025.530(a).)

However, Section 2025.550(a) does not contain an “unless agree” provision. It unequivocally states that “. . . the deposition officer shall securely seal that [certified] transcript in an envelope or package . . . and shall promptly transmit it to the attorney for the party who noticed the deposition. . . .” Therefore, it appears that any agreement on the record, or even a written stipulation by the parties/lawyers, cannot dispense with the mandatory duty that Section 2025.550(a) imposes on the deposition CSR.

There is another statutory duty, applicable prior to the “transcript transmission” statute’s obligation, imposed on a deposition CSR that also does not contain an “unless agree” provision. Code of Civil Procedure Section 2025.540(a) provides that “[t]he deposition officer shall certify on the transcript of the deposition . . . that the . . . transcript . . . is a true record of the testimony given.” If the original deposition transcript is delivered to non-noticing counsel prior to review, correction, and/or signing, the deposition CSR will be unable to comply with the certification statute.

Because the transcript certification and transcript transmission duties appear incapable of being waived, stipulated away, or ignored, CCRA is concerned that a deposition CSR who transmits an original deposition transcript to anyone other than the noticing attorney, before the deponent’s reading/correction/signing or the stated time therefor passes, exposes her/his license to potential discipline by the Board. Therefore, with respect, CCRA requests that the Board announce a position on this matter in the next issue of CRB Today, and further publicize that position via its general email list to all Board licensees.

Respectfully yours,



RICHARD L. MANFORD  
Attorney at Law

cc: Brooke Ryan, President  
California Court Reporters Association

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

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

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Agenda Description: Report on:

- A. CRB Budget Report
- B. Transcript Reimbursement Fund
- C. Exam
- D. Enforcement
- E. School Updates
- F. CRB Today Newsletter, Fall 2015
- G. Education/Outreach
- H. Staffing
- I. BreEZe

=====  
Support Documents:

- Attachment 1, Item A – Budget Report, Final 2014/15
- Attachment 2, Item A – Budget Report, FM 03 Projection 2015-16
- Attachment 3, Item A – Fund Condition Analysis for Fund 0771, CRB
- Attachment 4, Item A – Fund Condition Analysis for Fund 0410, TRF
- Attachment 5, Item C – Historical Examination Pass Rates
- Attachment 6, Item D – Final FY 2014/15 Enforcement Report
- Attachment 7, Item D – First Quarter FY 2015/16 Enforcement Report
- Attachment 8, Item F – CRB Today Newsletter, Fall 2015 (bound separate from agenda packet)

=====  
Fiscal Impact: None.

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Report Originator: Yvonne Fenner, 10/16/2015

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

<b>COURT REPORTERS OF CALIFORNIA - 0771 BUDGET REPORT FY 2014-15 EXPENDITURE PROJECTION Through 8/24/2015 (FM13)</b>					
OBJECT DESCRIPTION	FY 2013-14		FY 2014-15		
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES (MONTH 13)	2014-15 Governor's Budget	CURRENT YEAR EXPENDITURES (MONTH 13)	UNENCUMBERED BALANCE
<b>PERSONNEL SERVICES</b>					
Salary & Wages (Staff)	225,414	225,414	244,036	242,350	1,686
Statutory Exempt (EO)	84,989	84,989	84,180	87,511	(3,331)
Temp Help Reg (Seasonals)	1,913	1,913	11,000	2,581	8,419
Temp Help (Exam Proctors)					0
Board Member Per Diem	2,100	2,100	7,310	3,700	3,610
Overtime	8,485	8,485	6,000	9,357	(3,357)
Staff Benefits	169,517	169,517	153,685	193,154	(39,469)
<b>TOTALS, PERSONNEL SVC</b>	<b>492,418</b>	<b>492,418</b>	<b>506,211</b>	<b>538,653</b>	<b>(32,442)</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>					
General Expense	7,589	7,589	4,784	4,716	68
Fingerprint Reports	510	510	1,449	686	763
Minor Equipment			7,800	1,251	6,549
Printing (General)	3,171	3,171	915	1,230	(314)
Communication	5,211	5,211	1,160	4,774	(3,614)
Postage (General)	10,461	10,461	5,516	11,317	(5,801)
Travel In State	20,414	20,414	22,941	19,382	3,559
Training			2,517		2,517
Facilities Operations	43,647	43,647	28,745	43,690	(14,945)
C & P Services - Interdept.			1,883		1,883
C & P Services - External (General)			27,042		27,042
<b>DEPARTMENTAL SERVICES:</b>					0
OIS Pro Rata	90,017	90,017	73,099	71,740	1,359
Admin/Exec	45,925	45,925	57,096	57,025	71
Interagency Services			83	0	83
C & P Services (OPES IACs #77178-79)				38,226	(38,226)
DOI-ProRata Internal	1,467	1,467	1,782	1,779	3
Public Affairs Office	1,696	1,696	1,742	2,063	(321)
CCED	1,675	1,675	1,897	1,995	(98)
<b>INTERAGENCY SERVICES:</b>					0
Consolidated Data Center (TEALE)	43	43	3,251	59	3,192
DP Maintenance & Supply	280	280	1,578	2,538	(960)
Central Admin Svc-ProRata	28,819	28,819	36,375	36,375	0
<b>EXAM EXPENSES:</b>					0
Exam Supplies			751		751
Exam Site Rental	24,752	24,752	7,680	25,934	(18,254)
C/P Svcs-External (PSI Servcs LLC)	14,662	14,662		14,160	(14,160)
C/P Svcs-External Expert Examiners	18,047	18,047	30,479	19,749	10,730
<b>ENFORCEMENT:</b>					0
Legal fees (excluding AG)					0
Attorney General	33,015	33,015	127,172	47,055	80,117
Office Admin. Hearings	19,287	19,287	15,573	10,395	5,178
Court Reporters	1,300	1,300		100	(100)
Evidence/Witness Fees	7,875	7,875	25,793	5,000	20,793
Major Equipment			0		0
Special Items of Expense					0
Other Items of Expense			1,125		1,125
Tort Payments			0		0
<b>TOTALS, OE&amp;E</b>	<b>379,863</b>	<b>379,863</b>	<b>490,229</b>	<b>421,239</b>	<b>68,990</b>
<b>TOTAL EXPENSE</b>	<b>872,281</b>	<b>872,281</b>	<b>996,440</b>	<b>959,892</b>	<b>36,548</b>
Sched. Reimb. - External/Private					0
Sched. Reimb. - Fingerprints			(17,000)	(490)	(16,510)
Sched. Reimb. - Other	(4,551)	(4,551)	(1,000)	(940)	(60)
Unsched. Reimb. - Other				(6,738)	6,738
<b>NET APPROPRIATION</b>	<b>867,730</b>	<b>867,730</b>	<b>978,440</b>	<b>951,724</b>	<b>26,716</b>
				<b>Surplus/(Deficit)</b>	<b>2.7%</b>

**COURT REPORTERS OF CALIFORNIA - 0771**  
**BUDGET REPORT**  
**FY 2015-16 EXPENDITURE PROJECTION**  
**Through 9/1/2015 (FM03)**

OBJECT DESCRIPTION	FY 2014-15		FY 2015-16		PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	ACTUAL EXPENDITURES (MONTH 11)	PRIOR YEAR EXPENDITURES (MONTH 03)	2015-16 Budget Act	CURRENT YEAR EXPENDITURES (MONTH 03)		
<b>PERSONNEL SERVICES</b>						
Salary & Wages (Staff)	242,350	80,341	219,090	55,425	222,765	(3,675)
Statutory Exempt (EO)	87,511	21,485	84,180	22,002	88,008	(3,828)
Temp Help Reg (Seasonals)	2,581	1,054	11,000	7,763	31,301	(20,301)
Board Member Per Diem	3,700	0	7,310	500	3,700	3,610
Overtime	9,357	3,305	6,000	3,401	9,500	(3,500)
Staff Benefits	193,154	47,768	143,028	49,821	199,284	(56,256)
<b>TOTALS, PERSONNEL SVC</b>	<b>538,653</b>	<b>133,933</b>	<b>470,608</b>	<b>138,812</b>	<b>554,558</b>	<b>(83,950)</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>						
General Expense	4,716	(436)	1,016	(6,023)	5,000	(3,984)
Fingerprint Reports	886	196	9,449	0	700	8,749
Minor Equipment	1,251	0	2,706	0	1,300	1,406
Printing (General)	1,230	320	916	574	2,300	(1,384)
Communication	4,774	847	160	763	5,000	(4,840)
Postage (General)	11,317	2,201	5,516	2,277	11,000	(5,484)
Travel In State	19,352	8,145	22,941	8,107	20,000	2,941
Training			656			656
Facilities Operations	43,690	42,804	28,745	42,804	44,000	(15,255)
C & P Services - Interdept.			83,883	0		83,883
C & P Services - External (General)			27,042	900	900	26,142
<b>DEPARTMENTAL SERVICES:</b>						0
OIS Pro Rata	71,740	21,142	106,568	26,500	106,568	0
Admin/Exec	57,025	13,768	53,071	13,250	53,071	0
Interagency Services	0		83	0		83
C & P Services (OPES IACs #77178-79)	38,226	38,226		47,938	47,938	(47,938)
DOI-ProRata Internal	1,779	430	720	250	720	0
Public Affairs Office	2,063	420	679	250	679	0
CCED	1,995	480	1,839	500	1,839	0
<b>INTERAGENCY SERVICES:</b>						0
Consolidated Data Center (TEALE)	59	7	3,251	7	100	3,151
DP Maintenance & Supply	2,538	1,538	1,578	0	2,500	(922)
Central Admin Svc-ProRata	36,375	9,094	47,000	11,724	47,000	0
<b>EXAM EXPENSES:</b>						0
Exam Supplies			751			751
Exam Site Rental	25,934	22,257	7,680	41,902	41,902	(34,222)
C/P Svcs-External (PSI Servcs LLC)	14,160	14,160		7,080	14,000	(14,000)
C/P Svcs-External Expert Examiners	19,749	6,984	30,479	5,462	20,000	10,479
<b>ENFORCEMENT:</b>						0
Attorney General	47,055	7,215	167,172	2,088	47,000	120,172
Office Admn. Hearings	10,395		15,573	0	10,000	5,573
Court Reporters	100			0	100	(100)
Evidence/Witness Fees	5,000	2,625	25,793	0	5,000	20,793
Major Equipment			0			0
Special Items of Expense						0
Other Items of Expense			1,125			1,125
Tort Payments			0			0
<b>TOTALS, OE&amp;E</b>	<b>421,239</b>	<b>190,403</b>	<b>646,392</b>	<b>206,353</b>	<b>488,617</b>	<b>157,775</b>
<b>TOTAL EXPENSE</b>	<b>959,892</b>	<b>324,336</b>	<b>1,117,000</b>	<b>345,265</b>	<b>1,043,175</b>	<b>73,825</b>
Sched. Reimb. - External/Private						0
Sched. Reimb. - Fingerprints	(490)	(147)	(17,000)		(500)	(16,500)
Sched. Reimb. - External/Private/Grant	(940)	(235)	(1,000)	(235)	(1,000)	0
Unsched. Reimb. - Invs Cost Recovery	(6,738)	(675)		(2,424)	(7,000)	7,000
<b>NET APPROPRIATION</b>	<b>951,724</b>	<b>323,279</b>	<b>1,099,000</b>	<b>342,606</b>	<b>1,034,675</b>	<b>64,325</b>
					<b>SURPLUS/(DEFICIT):</b>	<b>5.8%</b>

# 0771 - Court Reporters Board Analysis of Fund Condition

Updated

10/16/2015

(Dollars in Thousands)

**Proposed**

	<b>ACTUALS</b>	<b>Budget Act</b>	<b>BY</b>
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>BEGINNING BALANCE</b>	\$ 1,134	\$ 1,135	\$ 769
Prior Year Adjustment	\$ 3	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 1,137</u>	<u>\$ 1,135</u>	<u>\$ 769</u>
 <b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 10	\$ 10	\$ 10
125700 Other regulatory licenses and permits	\$ 38	\$ 39	\$ 39
125800 Renewal fees	\$ 881	\$ 875	\$ 875
125900 Delinquent fees	\$ 19	\$ 18	\$ 18
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 3	\$ 3	\$ 2
150500 Interest Income From Interfund Loans	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 951</u>	<u>\$ 945</u>	<u>\$ 944</u>
 Transfers to Other Funds			
FO0001 GF loan repayment			
 Transfers to Other Funds			
T00001 GF loan per Item 1520-011-0771, BA of 2003	\$ -	\$ -	\$ -
T00410 TRF per B&P Code Section 8030.2 (Current Year & Budget Year proposed transfer)	\$ -	\$ -210	\$ -211
Totals, Revenues and Transfers	<u>\$ 951</u>	<u>\$ 735</u>	<u>\$ 733</u>
 Totals, Resources	<u>\$ 2,088</u>	<u>\$ 1,870</u>	<u>\$ 1,502</u>
 <b>EXPENDITURES</b>			
Disbursements:			
0840 State Controller (State Operations)	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 952	\$ 1,099	\$ 1,091
8880 Financial Information System for California (State Operator	\$ 1	\$ 2	\$ -
Total Disbursements	<u>\$ 953</u>	<u>\$ 1,101</u>	<u>\$ 1,091</u>
 <b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 1,135	\$ 769	\$ 411
 <b>Months in Reserve</b>	12.4	8.5	4.4

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

(Dollars in Thousands)

Updated  
10/16/2015

<i>Proposed</i>	<b>Actuals</b>	<b>Budget Act</b>	<b>BY</b>
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>BEGINNING BALANCE</b>	\$ 422	\$ 210	\$ 104
Prior Year Adjustment	\$ 2	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 424</u>	<u>\$ 210</u>	<u>\$ 104</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	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 1</u>	<u>\$ -</u>	<u>\$ -</u>
Transfers from Other Funds			
F00771			
Court Reporters Fund per B&P Code Section 8030.2		\$ 210	\$ 211
Totals, Revenues and Transfers	<u>\$ 1</u>	<u>\$ 210</u>	<u>\$ 211</u>
Totals, Resources	<u>\$ 425</u>	<u>\$ 420</u>	<u>\$ 315</u>
 <b>EXPENDITURES</b>			
Disbursements:			
0840 State Controller (State Operations)	\$ -	\$ -	
1110 Program Expenditures (State Operations)	\$ 215	\$ 315	\$ 315
8880 Financial Information System for California (State Operations)		\$ 1	\$ -
Total Disbursements	<u>\$ 215</u>	<u>\$ 316</u>	<u>\$ 315</u>
 <b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 210	\$ 104	\$ -
 <b>Months in Reserve</b>	8.0	4.0	0.0

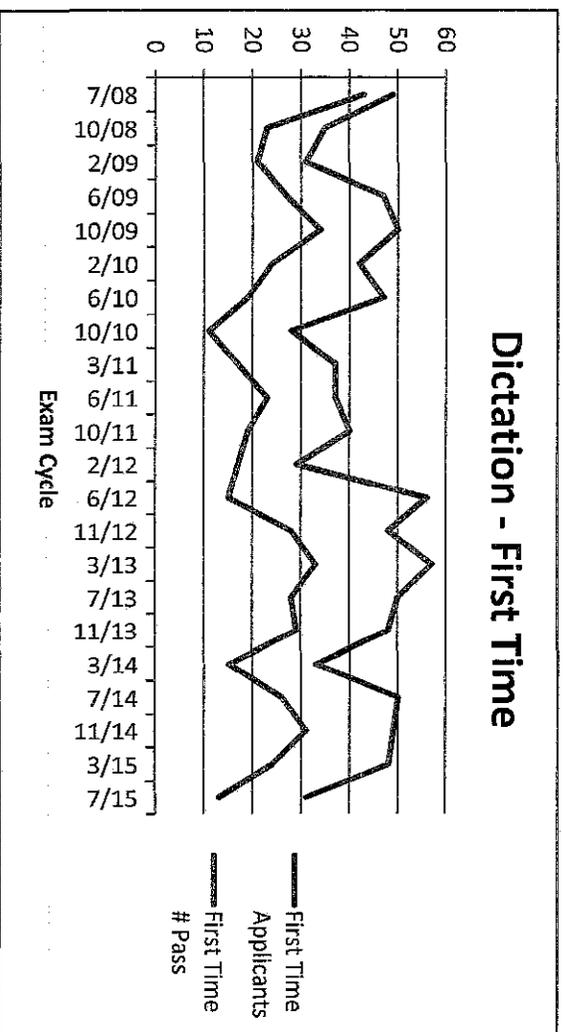
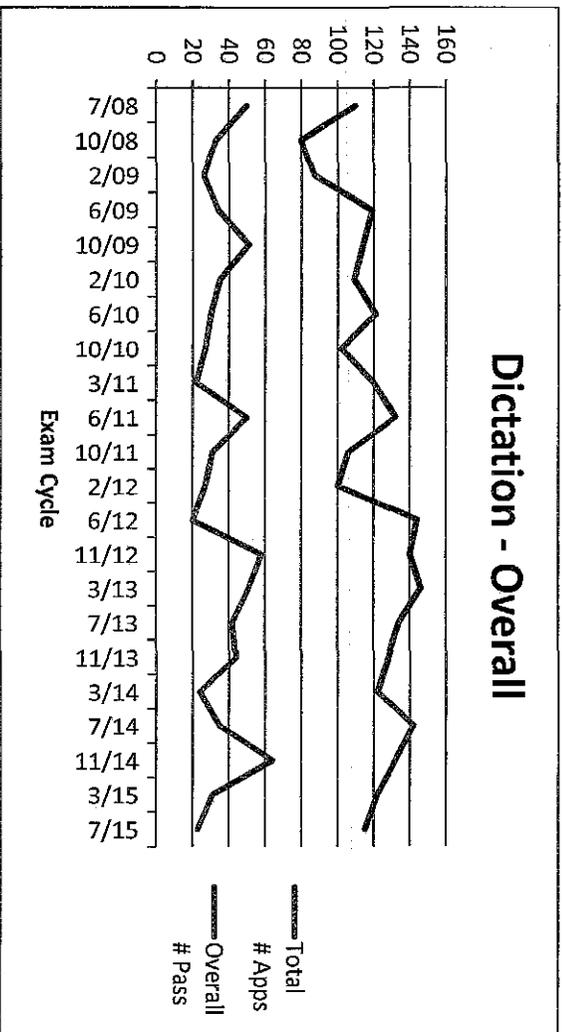
NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.

**Dictation Exam**

<b>Exam Cycle</b>	<b>Total # Apps</b>	<b>Overall # Pass</b>	<b>Overall % Pass</b>	<b>First Time Applicants</b>	<b>First Time # Pass</b>	<b>First Time % Pass</b>
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%
Mar 2014	122	24	19.70%	33	15	45.50%
Jul 2014	142	35	21.80%	50	26	44.00%
Nov 2014	132	64	48.5%	49	31	63.3%
March 2015	122	31	25.4%	48	24	50.0%
July 2015	115	23	20.0%	31	13	41.9%

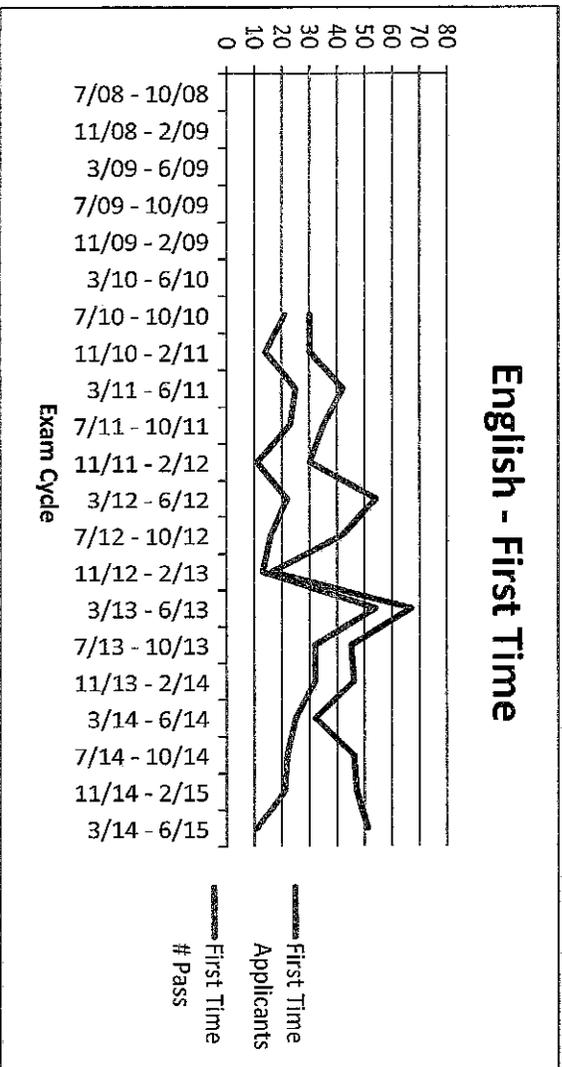
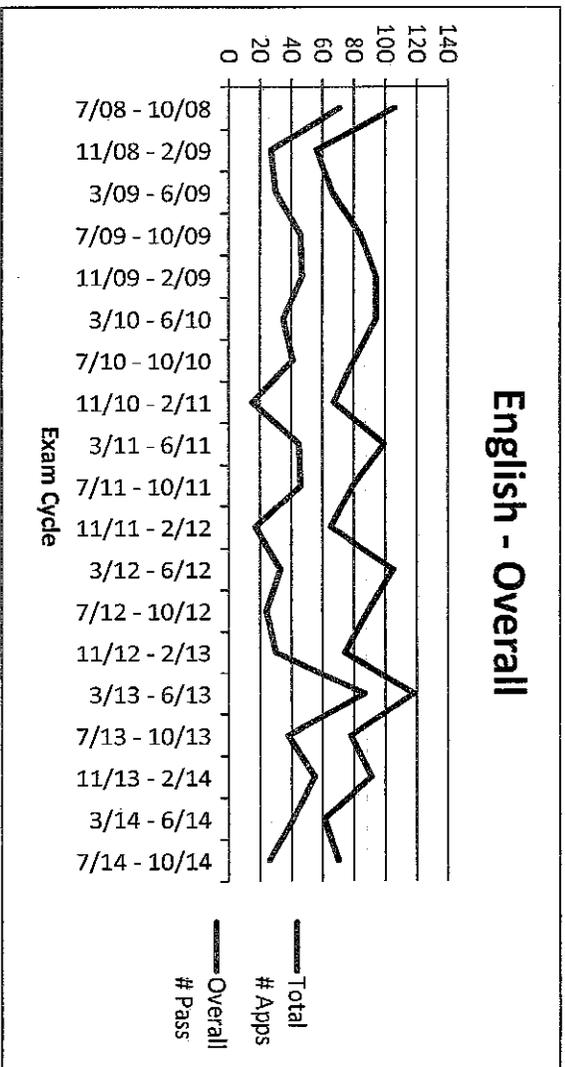
### Dictation Exam



## 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%
Nov 2013 - Feb 2014	91	55	60.4%	46	32	69.6%
Mar 2014 - Jun 2014	61	41	67.2%	32	25	78.1%
Jul 2014 - Oct 2014	70	26	37.1%	46	22	47.8%
Nov 2014 - Feb 2015	86	27	31.4%	47	21	44.7%
Mar 2015 - June 2015	100	17	17.0%	51	11	21.6%

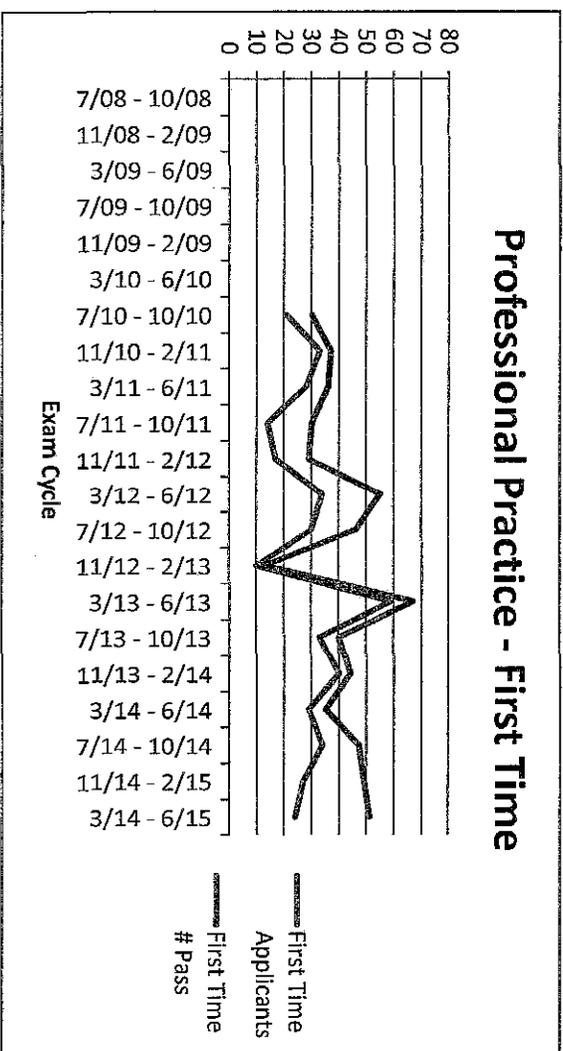
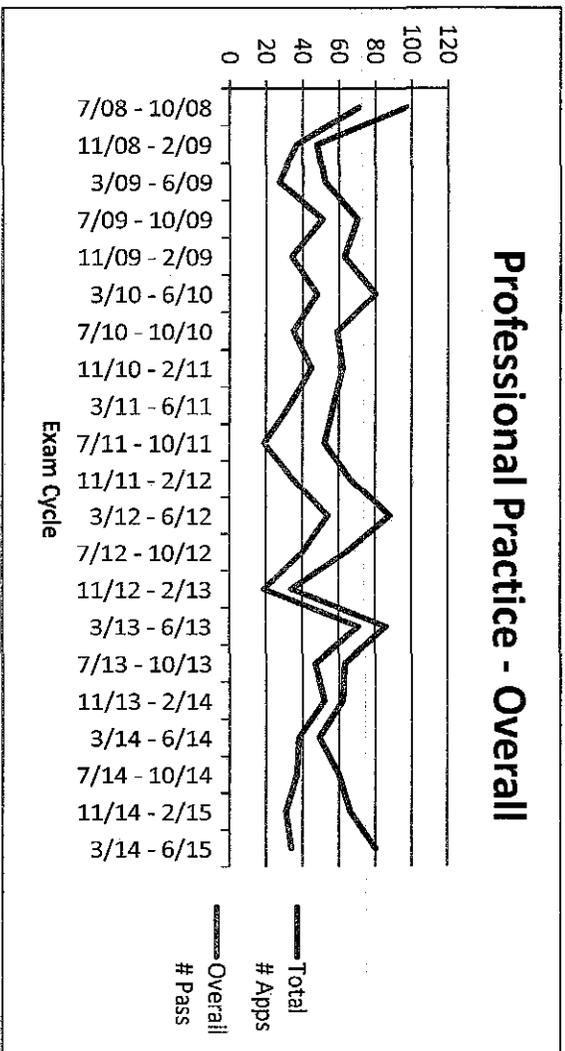
### English Exam



## 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%
Nov 2013 - Feb 2014	62	52	83.9%	44	40	90.9%
Mar 2014 - Jun 2014	49	38	77.6%	35	29	82.9%
Jul 2014 - Oct 2014	60	37	61.7%	47	34	72.3%
Nov 2014 - Feb 2015	66	31	47.0%	49	27	55.1%
Mar 2015 - June 2015	80	34	42.5%	51	24	47.1%

### Professional Practice Exam



## Consumer Protection Enforcement Initiative Fiscal Year 2014-2015 Enforcement Report FINAL

### Complaint Intake

Complaints	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Received	7	10	10	11	7	14	9	4	7	7	12	26	124
Closed without Assignment for Investigation	0	0	0	0	0	0	0	0	0	0	0		0
Assigned for Investigation	7	10	10	11	7	14	9	4	7	7	12	26	124
Average Days to Close or Assign for Investigation	1	1	1	1	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	0	2	2	0	0	0	0	0	0	0	0	4
Closed	0	0	0	2	0	0	0	0	1	2	0	0	5
Average Days to Close	0	0	0	110	0	0	0	0	182	195	0	0	158
Pending	1	1	3	3	3	3	3	3	2	0	0	0	2*

### Investigation

Desk Investigation	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Initial Assignment for Desk Investigation	7	10	10	11	7	14	9	4	7	7	12	26	124
Closed	3	18	11	16	5	5	12	10	2	4	7	11	104
Average Days to Close	25	78	81	42	38	33	60	34	44	146	56	76	62
Pending	25	17	16	11	13	22	19	13	18	21	26	41	20*

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	0	0	0	0
Closed	0	0	0	0	0	0	0	0	0	0	0	0	0
Average Days to Close	0	0	0	0	0	0	0	0	0	0	0	0	0
Pending	0	0	0	0	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	3	18	11	16	5	5	12	10	2	4	7	11	104
Average Days to Close	25	78	81	42	38	33	60	34	44	146	56	76	62
Pending	25	17	16	11	13	22	19	13	18	21	26	41	20*

\*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	0	0	1	0	0	0	0	2	2	0	0	5
AG Cases Pending	9	9	9	9	9	8	6	6	5	7	8	5	8*

SOIs/Accusations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
SOIs Filed	1	0	0	0	0	0	0	0	0	0	0	1	2
SOIs Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0
SOIs Dismissed	0	0	0	0	0	0	0	0	0	0	0	0	0
SOIs Declined	0	0	0	0	0	0	0	0	0	0	0	0	0
Average Days to Complete SOIs	147	0	0	0	0	0	0	0	0	0	0	98	123
Accusations Filed	1	0	0	2	0	2	0	0	0	0	0	3	8
Accusations Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0
Accusations Dismissed	0	0	0	0	0	0	0	0	0	0	0	0	0
Accusations Declined	0	0	0	0	0	0	0	0	0	0	0	0	0
Average Days to Complete Accusations	511	0	0	157	0	147	0	0	0	0	0	70	166

Decisions/Stipulations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Proposed/Default Decisions	0	0	0	1	0	0	0	0	0	1	1	0	3
Stipulations	0	0	0	0	1	2	0	0	0	0	2	0	5

Disciplinary Orders	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	0	0	0	0	1	1	2	0	1	0	1	3	9
Average Days to Complete	0	0	0	0	710	611	643	0	359	0	798	545	600
Interim Suspension Orders	0	0	0	0	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	0	2	3	1	2	0	0	1	0	1	0	3	13
Average Days to Complete	0	108	182	23	63	0	0	125	0	138	0	45	101

\*Average number of cases pending per month

## Consumer Protection Enforcement Initiative Fiscal Year 2015-2016 Enforcement Report First Quarter

### Complaint Intake

Complaints	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Received	7	1	13										21
Closed without Assignment for Investigation	0	0	0										0
Assigned for Investigation	7	1	13										21
Average Days to Close or Assign for Investigation	1	1	1										1
Pending	0	0	0										0*

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

### Investigation

Desk Investigation	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Initial Assignment for Desk Investigation	7	1	13										21
Closed	8	23	10										41
Average Days to Close	122	65	108										86
Pending	39	17	19										25*

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
Closed	0	0	0										0
Average Days to Close	0	0	0										0
Pending	0	0	0										0

All Investigated	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Closed	8	23	10										41
Average Days to Close	122	65	108										86
Pending	39	17	19										25*

\*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	1	0	2										3
AG Cases Pending	6	6	8										7*

SOIs/Accusations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
SOIs Filed	0	0	0										0
SOIs Withdrawn	0	0	0										0
SOIs Dismissed	0	0	0										0
SOIs Declined	0	0	0										0
Average Days to Complete SOIs	0	0	0										0
Accusations Filed	0	0	0										0
Accusations Withdrawn	0	0	0										0
Accusations Dismissed	0	0	0										0
Accusations Declined	0	0	0										0
Average Days to Complete Accusations	0	0	0										0

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

Disciplinary Orders	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	0	0	0										0
Average Days to Complete	0	0	0										0
Interim Suspension Orders	0	0	0										0

Citations	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Final Citations	0	6	0										6
Average Days to Complete	0	62	0										62

\*Average number of cases pending per month

**AGENDA ITEM IV.A – Strategic Plan**

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

- A. Best Practice Pointers Task Force
1. Confidential Depositions
  2. Court Transcripts Designated Confidential or Under Seal
  3. Subcontractor Agreements
  4. Swearing in Witness Mid-Proceeding
  5. Leaving Rough Draft for Jury Readback
  6. Reporter Conduct Readback in the Jury Room

=====  
Brief Summary:

The Best Practice Pointers Task Force has completed drafts of an additional six best practices, which are attached for Board review and approval.

=====  
Support Documents:

- Attachment 1 – Best Practice Pointer No. 5 – Confidential Depositions
- Attachment 2 – Best Practice Pointer No. 6 – Court Transcripts Designated Confidential or Under Seal
- Attachment 3 – Best Practice Pointer No. 7 – Subcontractor Agreements
- Attachment 4 – Best Practice Pointer No. 8 – Swearing in Witness Mid-Proceeding
- Attachment 5 – Best Practice Pointer No. 9 – Leaving Rough Draft for Jury Readback
- Attachment 6 – Best Practice Pointer No. 10 – Reporter Conduct Readback in the Jury Room

=====  
Fiscal Impact: None

=====  
Report Originator: Yvonne Fenner, 10/8/2015

=====  
Recommended Board Action: Staff recommends the Board adopt proposed Best Practice Pointers 5 through 10.  
=====

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM IV.B – Strategic Plan**

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

B. Update on Action Plan Accomplishments  
=====

Brief Summary:

At its June 26, 2015 meeting, the Board approved an Action Plan for the 2015 – 2018 Strategic Plan. The Action Plan Timeline is used to update the Board on the progress of achieving the strategic plan goals.  
=====

Support Documents:

Attachment 7 – Action Plan Timeline  
=====

Fiscal Impact: None  
=====

Report Originator: Yvonne Fenner, 10/8/2015  
=====

Recommended Board Action: Staff recommends the Board review Action Plan and provide feedback as needed.

## Best Practice Pointer No. 5 - DRAFT

### Confidential Depositions

If an attorney at a deposition asks for the deposition (or any portion of it) to be marked confidential, ask for a copy of the protective order because it often contains specific directions, such as each page of the confidential transcript shall contain a header "Attorneys' Eyes Only." If there is no protective order, ask for a stipulation on the record identifying exactly how the confidential transcript is to be marked.

The attorneys may designate the entire transcript as confidential or specific portions.

If a portion or multiple portions of the transcript are designated as confidential, two transcripts are created, one containing the confidential testimony and one containing the nonconfidential testimony.

#### Scenarios:

1. The attorney clearly states when he is about to begin a confidential portion and clearly states when he is finished with the confidential portion, or opposing counsel clearly states that an answer just given should be designated confidential.

In this case, the reporter excerpts the confidential portion out into a separate transcript.

2. The attorney clearly states when he is about to begin a confidential portion, but forgets to note when he is finished and starts a new topic.

In this case, the reporter should interrupt to clarify the record by asking, "Excuse me, Counsel, is this still part of the confidential portion?"

3. Nobody mentions anything about confidentiality until the deposition is finished.

It's very important for the reporter to clarify specifically what is required. The reporter may use the realtime screen to find the exact questions and answers that are to be designated confidential. Alternatively, a rough draft may be provided for the attorneys to review in order to designate portions confidential, but the reporter should be very clear on who has the authority to designate, when the reporter needs it back for transcript production, and informing all parties that if designations are not received by the agreed upon date, that the transcript will be delivered as an open transcript. If an attorney objects to another attorney's designation as confidential, the reporter will treat the designation as confidential and a judge would make a ruling on the appropriateness of the designation.

## Transcript Production:

If the entire transcript is designated confidential, that is clearly noted on the cover page and all headers or footers as provided for by the protective order or stipulation.

If one or more portions of the transcript are designated as confidential, a second, confidential transcript is created. In the open transcript at the point at which the confidential portion begins, insert a parenthetical to the effect: Pages 31 through 44 are bound separately as confidential pursuant to protective order (or attorney stipulation).

A second parenthetical is recommended: Nothing has been omitted. The next page is page 45.

Hash marks on the last line of the page are helpful to show the line or lines are intentionally left blank.

The confidential transcript is placed in its own envelope with a stamp or label noting that it is sealed pursuant to protective order (or stipulation of attorneys.)

Identify the pages that are bound separately in an Index of Confidential Designation.

## Considerations:

If a separate transcript has been created for confidential portions, a separate ASCII file must also be made.

While it's always best practice to encrypt transcripts delivered via e-mail, it's especially important for confidential transcripts.

## **Best Practice Pointer No. 6 - DRAFT**

### **Court Transcripts Designated Confidential or Under Seal**

If you are reporting in court, be aware that some proceedings are confidential and/or under seal and, therefore, not available to anyone, including the attorneys who were present, without court order.

Please refer to the most current Rules of Court regarding Confidential Records or Records Under Seal.

## Subcontractor Agreements

Just as a good contract can facilitate business by clearly articulating expectations for payment and performance, a good subcontractor agreement is key to a successful relationship between court reporters and court reporting agencies.

While a subcontractor agreement cannot cover every eventuality, certain elements clearly stated can prevent misunderstanding down the road. The list of critical elements may include:

- ❖ Valid license – require that the subcontractor be licensed in California and maintain that license in good standing.
- ❖ Transcript due date – what is considered regular turnaround versus an expedited order.
- ❖ Work product – what is expected to be delivered to the agency in addition to the transcript, i.e., ASCII, exhibits, condensed transcript, word index.
- ❖ Payment – what will the reporter be paid for, including future copy orders and appearance fees, and when will the payment be received.
- ❖ Client contact – what direct contact with the client is acceptable regarding transcript orders, including rough drafts.
- ❖ Arrival time – what is the expectation for how long before the start time that the reporter is to arrive.
- ❖ Expenses – who is responsible for miscellaneous expenses such as parking and tolls.
- ❖ Insurance – whether the subcontractor is required to carry liability and/or errors and omissions insurance.
- ❖ Services and supplies – are photocopy services available through the agency as well as binding services and supplies including stationery and postage.

Agencies need to make sure that anything that's important to their function is laid out in the agreement. To help with audits from the Internal Revenue Service, the subcontractor agreement might contain the following elements:

- ❖ Purpose – a statement that the agency is organized for the purpose of coordinating court reporting services between clients (courts, litigants, attorneys) and CSRs who are free agents.
- ❖ Performance – make it clear that the subcontractor has sole control over the manner and means of performing the reporting and transcription and that the subcontractor recognizes that he or she is working without supervision.

Likewise, court reporters need to ensure that everything is clearly specified per their expectations as well. Often, a court reporter will receive a last-minute phone call from a

new (to the reporter) agency, rattling off terms right after getting agreement to cover the job. Be careful and be clear. The reporter may be happy to be informed they will be paid for an original plus two copies for a job, only to arrive and find eight attorneys ordering copies. Additionally, the reporter should ensure there is an agreement by the court reporting firm to abide by all laws and regulations that apply to court reporting, including transcript provision and witness review requirements.

It might seem to slow things down for the calendar clerk, but an extra ten minutes executing a subcontractor agreement – or at the very least outlining key terms in an e-mail for which there is acknowledgment by both parties – may save hours and hours of dispute resolution.

**Best Practice Pointer No. 8 - DRAFT**

**Swearing in Witness Mid-Proceeding**

Occasionally a reporter inadvertently does not place the witness under oath prior to the beginning of testimony.

As soon as the reporter realizes the omission, the best practice is to stop the proceeding and place the witness under oath using an amended oath such as: Do you solemnly state the testimony you've given and the testimony you're about to give is the truth, the whole truth and nothing but the truth?

## **Best Practice Pointer No. 9 - DRAFT**

### **Leaving Rough Draft for Jury Readback**

If a reporter is not available for the entirety of a trial, a rough draft of the reported testimony in electronic format should be left with the reporter on standby for jury readback.

## **Best Practice Pointer No. 10 - DRAFT**

### **Reporter Conduct Readback in the Jury Room**

- ❖ The reporter must check in with the clerk before beginning readback and again when finished.
- ❖ The reporter may not speak with the jury.
- ❖ If a jury requests additional readback from a reporter, the correct response is, "You need to send a note to the judge."
- ❖ If the jury begins to deliberate during readback, the reporter needs to state, "If you're going to deliberate, I need to step out."

<b>Action Items</b>	<b>Target Date</b>	<b>Status</b>
<b>Perform new occupational analysis to confirm that tested knowledge, skills and abilities are relevant to the industry</b>	June 2017	BCP Concept Paper submitted
<b>Conduct exam development workshops to produce a robust bank of test questions to safeguard the integrity of the exam</b>	Dec 2018	Contract with OPES with 2016 calendar
<b>Research realtime captioning standards and assess industry practices for the Board to evaluate the need for consumer protection</b>	Sept 2018	
<b>Educate the Governor's Office on the importance of mandatory continuing education</b>	Dec 2016	Talking points to CCRA. Bill vetoed.
<b>Identify entities providing court reporting services in California that are violating applicable laws and take correction action to effect compliance.</b>	Dec 2018	
<b>Conduct cross-training to protect the continuity and timeliness of the consumer complaint process</b>	Dec 2016	
<b>Educate stakeholders (such as courts, the general public and legal community) on the Board's complaint process to prevent or proactively address consumer harm</b>	Sept 2018	
<b>Expand compliance and education for licensees to prevent enforcement issues.</b>	Dec 2018	Best Practice Pointers – Developed ten
<b>Support schools' recruitment efforts to preserve the integrity and continuity of the court reporter workforce for consumer protection</b>	Sept 2018	
<b>Increase court reporter school site visits to more effectively monitor compliance with applicable laws and regulations</b>	Dec 2018	
<b>Launch a strategic awareness campaign in collaboration with external stakeholders (such as state bar, industry associations, law libraries, self-help centers, court Web sites, schools and legal non-profits) to educate consumers about the Board's services and standards</b>	Dec 2018	
<b>Cross-train staff to protect continuity of effective and efficient service</b>	Jan 2017	
<b>Investigate and implement strategies to increase Web site use to maximize efficiency in addressing consumer information requests</b>	Sept 2016	Initiated contact for Communication Plan

**AGENDA ITEM V.A – Legislation**

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Agenda Description:

- A. Update on licensee fee cap increase

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Brief Summary:

At the June 26<sup>th</sup>, 2015 Board meeting, staff was directed to contact the Senate Business, Professions and Economic Development, the Assembly Business and Professions and Senate and Assembly Judiciary Committees for assistance in working with the Leg Counsel's Office with regard to increasing the cap for the licensing fee. A letter was sent out on October 1<sup>st</sup> (see Attachment 1). Staff is in the process of following up via phone with the various committee staff.

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Support Documents:

Attachment – 10/1/2015 Letter to Business, Professions & Economic  
Development Committee

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Report Originator: Yvonne Fenner, 10/14/2015

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Recommended Action: While it is possible to address this issue during the sunset review process, staff recommends continuing to work with the staff of the legislative committees toward a resolution.

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**AGENDA ITEM V.B – Legislation**

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Agenda Description:

- B. 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:

**AB 85 (Wilk) – Open meetings**

(Vetoed 9/28/15)

This urgency bill would require two-member advisory committees or panels of a state body to hold open, public meetings if at least one member of the advisory committee or panel is a member of the larger state body and the advisory committee is supported, in whole or in part, by state funds.

**AB 259 (Dababneh) – Personal information: privacy**

(Senate Appropriations - suspense)

This bill would require a public agency that is the source of a data breach and is required to give affected persons notice of the breach to offer to provide at least 12 months of appropriate identity theft prevention and mitigation services at no cost to the affected persons if the breach exposed unencrypted social security, driver's license, or California ID card numbers.

**AB 507 (Olsen) – Department of Consumer Affairs: BreEZe system: annual report**

(Senate Committee on Business, Professions & Economic Development)

This bill would, on and after January 31, 2016, require the department to submit an annual report to the Legislature and the Department of Finance that includes, among other things, the department's plans for implementing the BreEZe system at specified regulatory entities included in the department's third phase of the BreEZe implementation project, including, but not limited to, a timeline for the implementation.

**AB 728 (Hadley) – State government: financial reporting**

(Chaptered 9/30/15)

This bill would require all state agencies to post biennial reviews of internal accounting, administrative control, and monitoring practices to the department Web site within five days of finalization. This report is already subject to Public Record Act requests as the report is currently submitted to the Governor, Legislature, State Controller, Treasurer, and others for inspection by the public.

**\*\*AB 749 (Bloom) – Superior courts: court reporters**

(Assembly Appropriations, held on suspense)

This bill would require an official court reporter for all child custody proceedings and proceedings under the Domestic Violence Prevention Act.

**\*\*AB 804 (Hernandez) – Shorthand reporters: continuing education requirements**

(Vetoed 9/28/15)

This bill would require the Court Reporters Board, on or before July 1, 2016, to adopt regulations to establish, for renewal of a shorthand reporter's certificate, minimum approved continuing education requirements, with certain exceptions, and would require the board to establish a procedure for approving providers of those continuing education courses, as specified. This bill would also authorize the board to establish a fee for approval of those continuing education providers, not to exceed the reasonable regulatory costs, if any, to the board of approving those providers.

**AB 964 (Chau) – Civil law: privacy**

(Chaptered 10/6/15)

This bill would require data breach notifications made by businesses and public agencies to include the date of discovery of the breach in the notice to the Attorney General.

**\*\*AB 1197 (Bonilla) – Deposition Notices**

(Chaptered 9/28/15)

This bill would require the deposition notice governed by this section to include a statement disclosing the existence of a contractual relationship, if any, between the deposition officer or entity providing the services of the deposition officer and the party noticing the deposition or a third party who is financing all or part of the action, as specified. This bill would also require the deposition notice to contain a statement disclosing that the party noticing the deposition, or a third party financing all or part of the action, directed his or her attorney to use a particular officer or entity to provide services for the deposition, if applicable. This bill would permit any other party to object to the use of an officer or entity if the party noticing the deposition makes such a disclosure.

**\*\*SB 270 (Mendoza) – Court Reporters Board of California: civil actions: corporations**

(Assembly Committee on Business and Professions and Judiciary Committee)

This bill would require the court to impose specified monetary penalties against a person or corporation rendering services without a license or authorization. This bill would also authorize the court to order restitution.

**SB 467 (Hill) – Professions and vocations**

(chaptered 10/8/15)

This bill would require the Legislature to approve pro rata distributions at the department. This bill would also require the Attorney General to implement performance measures regarding case referrals.

**SB 560 (Monning) – Licensing boards: unemployment insurance**

(Chaptered 9/30/2015)

This bill would prohibit all programs in the DCA from processing an application for licensure that does not include a federal employer identification number, social security number, or individual taxpayer identification number.

**SB 570 (Jackson) – Personal information: privacy: breach**

(Chaptered 10/6/15)

This bill would add certain notification requirements when an agency that owns or licenses computerized data, including personal information, discloses a security breach of its system. This bill would also require those disclosures to be written in "plain language."

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Report Originator: Yvonne Fenner, 10/13/2015

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## **COURT REPORTERS BOARD OF CALIFORNIA**

2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833  
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**Attachment**  
**Agenda Item V.A**

October 1, 2015

Honorable Jerry Hill (Chair)  
Business, Professions & Economic Development Committee  
State Capitol, Room 2053  
Sacramento, CA 95814

Dear Senator Hill:

This letter is written to respectfully ask for your assistance in working with the Legislative Counsel's Office to raise the cap of the licensing fees for court reporters in order to ensure the integrity of judicial records and maintain a standard of competency through oversight of the court reporting profession.

In 1953, the Court Reporters Board (Board) created a license fee cap of \$125 knowing that over time fees would need to be adjusted to meet ongoing programs, personnel, and enforcement needs. In 2010, the current cap for the license fee reached the maximum of \$125 allowed per BCP 8031(d). Over the years, the Board has made every possible effort to cut costs and increase operational efficiency. Today, we must set a new cap to deal with rising enforcement costs, testing fees, licensing fees, living wages and programs that protect California consumers.

At its February 6, 2015 meeting, Board directed staff to seek an author for legislation to increase the cap for the license fee. Unbeknownst to the Board and executive staff, this meeting was not in sync with the legislative calendar. Our bi-annual meeting occurred after a legislative cutoff preventing language to be properly submitted to the Legislative Counsel. Understanding the dire need to increase fees for Board longevity, the Deposition Reporters Association via their lobbyist Ed Howard submitted language to Legislative Counsel. Legislative Counsel reviewed the language and notified Mr. Howard that because a portion of the license fee goes to fund the Transcript Reimbursement Fund (TRF), a license fee cap increase would be a tax, and therefore the bill would be tagged as such. Staff via Mr. Howard pushed back on this oversimplified conclusion explaining that 100 percent of the TRF money is returned to court reporters in the form of reimbursement, as well as pointing out that the same tax label was not placed on the Dental Board last year, which included a diversion fund. At the end of the day, no author would add a bill to their portfolio labeled as a tax, despite favorable opinions on the need to increase the fee.

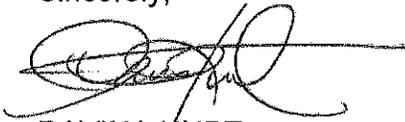
While the Board is not in danger of becoming insolvent, Board foresight and long-range planning necessitates the fee cap increase today. In the near future, the prized TRF is at risk because of Business and Professions Code 8030.2, which keeps the Board from funding the TRF when its operating reserve fall below six months. The TRF supports low-income litigants in civil cases, who are unable to otherwise afford those services. Its absence creates a hardship for a vulnerable portion of California's consumers.

Honorable Jerry Hill (Chair)  
October 1, 2015  
Page 2

Thus, the Board seeks to increase the cap to \$250 in order that it may pursue incremental increases as necessary to continue to carry out its mandated duties, including funding the TRF. This increase will be the first time since the Board's inception and will result in measurable improvements to the board's overall service to licensees and to consumers. Your assistance to help the Board make this legislative change would be greatly appreciated. Board staff will contact you next week to follow up on this issue.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Davina Hurt', written over a horizontal line.

DAVINA HURT  
Chairperson

CC: Senate Judiciary Committee  
Assembly Business & Professions Committee  
Assembly Judiciary Committee  
DCA Legislative Unit

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM VI – Scope of Practice Regulation**

**Title 16, California Code of Regulations, section 2403(b)(3)**

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Agenda Description: Update on Scope of Practice regulation

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Brief Summary:

The Final Statement of Reasons was prepared, and the regulatory package was sent to the Department of Consumer Affairs (DCA) for review. Once the DCA review is complete, the package will be send to the Office of Administrative Law (OAL) who has 45 days to review for procedural accuracy.

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Report Originator: Yvonne Fenner, 10/15/2015

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Recommended Board Action: (Informational)

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM VII – BURD vs. BARKLEY COURT REPORTERS, INC.**

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Agenda Description: Possible Action

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Brief Summary:

In greatly simplified summary, Tara R. Burd has filed a complaint with the Superior Court of California against Barkley Court Reporters for overcharging for court transcripts. Barkley Court Reporters alleges it does not have to follow the statutory rates when providing court transcripts because their reporters are not hired by the court but rather by the parties.

Plaintiff's attorney contacted the Board to inquire whether a May 14, 2012 letter correctly stated the Board's position with regard to whether statutory rates apply to official reporters as well as official reporters pro tempore (see Attachment 1). The Board confirmed that the position reflected in the letter has not changed since the time of its issuance.

Plaintiff's attorney has since contacted the Board with a request that the Board consider writing an amicus curiae brief to support plaintiff's position and in opposition to the motion for summary judgment, noting the importance of consumer protection provided by the relevant Government Codes (see Attachment 2).

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Support Documents:

Attachment 1 – May 14, 2012 letter to industry stakeholders from CRB

Attachment 2 – October 2, 2015 letter to CRB from Patterson Law Group

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Report Originator: Yvonne Fenner, 10/15/2015

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Recommended Board Action: If the Board decides to pursue an amicus curiae brief, it must first receive permission from the Governor's Office, after which the Attorney General's Office would be the entity to actually write the brief. Staff recommends a full discussion of the repercussions as it relates to the consumer.

If the Board decides to pursue the amicus curiae brief, it should move to direct the executive officer to work with staff counsel to prepare a request for the Governor's Office and, should that permission be granted, to work with the Attorney General's Office in preparation of the brief.



## **COURT REPORTERS BOARD OF CALIFORNIA**

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### **Attachment 1 Agenda Item VII**

May 14, 2012

Official and Official Pro Tempore Court Reporters  
Presidents, County Court Reporter Associations  
Court Reporter Supervisors  
Court Administrators  
California Superior Courts

To Whom This May Concern:

The fees set by statute that a licensee may charge for acting as official or official pro tempore reporters have not changed since the issuance of the Board's interpretation in its letter dated December 7, 1999. However, given the recent budgetary impact on courts and the increasing inquiries from licensees regarding current permissible fees for court reporters acting as official or official pro tempore reporters, the Board is issuing this letter to assist licensees and consumers. Please note the following sections of the Government Code:

#### **§ 69950. Transcription fee**

(a) The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words.

(b) The fee for a first copy to any court, party, or other person who does not simultaneously purchase the original shall be twenty cents (\$ 0.20) for each 100 words, and for each additional copy, purchased at the same time, fifteen cents (\$0.15) for each 100 words.

#### **§ 69951. Transcription; daily copy service; fee**

For transcription, in civil cases, the reporter may charge an additional 50 percent for special daily copy service.

#### **§ 69952. Verbatim record; payment from county treasury; fees**

(a) The court may specifically direct the making of a verbatim record and payment therefor shall be from the county treasury on order of the court in the following cases:

- (1) Criminal matters.
- (2) Juvenile proceedings.
- (3) Proceedings to declare a minor free from custody.
- (4) Proceedings under the Lanterman-Petris-Short Act, (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(5) As otherwise provided by law.

(b) Except as otherwise authorized by law, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Section 269 of the Code of Civil Procedure. When there is no official reporter in attendance and a reporter pro tempore is appointed, his or her reasonable expenses for traveling and detention shall be fixed and allowed by the court and paid in like manner. When the court orders a daily transcript, necessitating the services of two phonographic reporters, the reporting fee for each of the reporters and the transcript fee shall be proper charges against the county treasury, and the daily transcript shall be pursuant to Section 269 of the Code of Civil Procedure. When the daily transcript is prepared by a single reporter, an additional fee for technological services, as set by the court with the agreement of the reporter, may be imposed. However, the total of the fee for a single reporter and the fee for technological services shall be less than the total fee for two reporters.

**§ 69953. Verbatim record not made at public expense; payment by parties**

In any case where a verbatim record is not made at public expense pursuant to Section 69952 or other provisions of law, the cost of making any verbatim record shall be paid by the parties in equal proportion; and either party at his option may pay the whole. In either case, all amounts so paid by the party to whom costs are awarded shall be taxed as costs in the case. The fees for transcripts and copies ordered by the parties shall be paid by the party ordering them. Except as provided in Section 69952, no reporter shall perform any service in a civil action other than transcriptions until his fee for it has been deposited with the clerk of the court or with the reporter.

**§ 69953.5. Request for daily transcript requiring services of reporter; fee per day; distribution of fee**

Notwithstanding any other provision of law, whenever a daily transcript is ordered in a civil case requiring the services of more than one phonographic reporter, the party requesting the daily transcript, in addition to any other required fee, shall pay a fee per day, or portion thereof, equal to the per diem rate for pro tempore reporters established by statute, local rule, or ordinance for the services of each additional reporter for the first day and each subsequent day the additional reporters are required. This fee shall be distributed to the court in which it was collected to offset the cost of the additional reporter.

**§ 69954. Transcripts prepared with computer assistance; fees**

(a) Transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper shall be compensated at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(b) The fee for a second copy of a transcript on appeal in computer-readable format ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the original transcript shall be compensated at one-third the rate set forth for a second copy of a transcript as provided in Section 69950. A reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(c) The fee for a computer-readable transcript shall be paid by the requesting court, party, or person, unless the computer-readable transcript is requested by a party in lieu of a paper transcript required to be delivered to that party by the rules of court. In that event, the fee shall be chargeable as statute or rule provides for the paper transcript.

(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.

Additionally, please note the following section of the Code of Civil Procedure:

**§ 269. Superior courts; duties; preparation of record on appeal from felony conviction**

(a) An official reporter or official reporter pro tempore of the superior court shall take 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 officer, in the following cases:

(1) In a civil case, on the order of the court or at the request of a party.

(2) In a felony case, on the order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant.

(3) In a misdemeanor or infraction case, on the order of the court.

(b) If a transcript is ordered by the court or requested by a party, or if a nonparty requests a transcript that the nonparty is entitled to receive, regardless of whether the nonparty was permitted to attend the proceeding to be transcribed, the official reporter or official reporter pro tempore shall, within a reasonable time after the trial of the case that the court designates, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(c) If a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court's determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

Please note that the law does not allow a court reporter to charge for expedited rates, typing charges, scopist fees, processing fees, or any other added expenses.

If the Court Reporters Board determines that a court reporter has charged more than the statutes allow, we may take disciplinary action against the court reporter's license in addition to requiring a refund to the consumer.

Sincerely,



YVONNE K. FENNER  
Executive Officer



PATTERSON LAW GROUP

JAMES R. PATTERSON  
619.756.6993 direct  
jim@pattersonlawgroup.com

October 2, 2015

VIA U.S. MAIL

Ms. Yvonne K. Fenner, Executive Officer  
Court Reporters Board of California  
2535 Capital Oaks Drive, Suite 230  
Sacramento, Ca 95833

Re: **Burd v. Barkley Court Reporters, Inc.**  
Los Angeles Superior Case No. BC556703

Dear Ms. Fenner,

It was a pleasure speaking to you today. Please consider this our request that the Board add our case to the agenda for the October 30, 2015 public hearings. To summarize, our client has a case pending against Barkley Court Reporters, Inc. for excessive court reporting fees. Barkley has a companywide policy of charging fees exceeding the maximums allowed under Government Code Sections 69950, 69954, and 69947, for its reporters acting as official reporters pro tempore. Barkley claims that the statutory maximum fees do not apply to official reporters pro tempore. Barkley's position directly contradicts the plain language of the statutes, and this Board's consistent interpretation of the law for the last 16 years.

The consumer protections provided by Government Code Sections 69950, 69954, and 69947 are more important than ever since the state no longer provides reporters for the majority of civil matters. Unfair practices such as Barkley's threaten equal access to justice for litigants of lesser means. Barkley has filed a motion for summary judgment requesting the trial court rule that these important protections do not apply to private reporters sitting as official reporters pro tempore. Barkley has enlisted the help of the Deposition Reporters Association of California, which filed a brief in support of Barkley's motion for summary judgment.

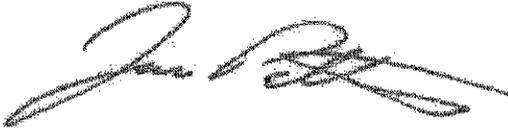
The court's decision on Barkley's motion will be a matter of first impression, which will have a profound effect on future official reporter practices. Indeed, since there are no longer any state employed civil reporters, all future official reports will be prepared by pro tempore reporters. Government Code Sections designed to protect consumers, including Sections 69950, 69954, and 69947, as well as large portion of the Court Reporters Board of California's responsibilities will

be practically null if the courts ultimately decide that the Government Code does not apply to private pro tempore reporters. As the administrative agency tasked with regulating court reporters, the Board should consider providing a brief of its own supporting our position and opposing the motion for summary judgment. Alternatively, the Board should consider providing us with a declaration outlining its interpretation of the law and the policy behind it.

We appreciate your help to ensure that litigants of lesser means enjoy a level playing field when it comes to obtaining official reports.

Regards,

PATTERSON LAW GROUP

A handwritten signature in black ink, appearing to read 'James R. Patterson', with a stylized flourish at the end.

James R. Patterson

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM VIII – 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)]

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Fiscal Impact:       None

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Report Originator: Yvonne Fenner, 10/13/2015

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM IX – Approval of Sunset Review Report to Legislature**

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Agenda Description: Possible Action

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Brief Summary:

At its June 26, 2015 meeting, the Board appointed a task force to work with staff in preparing a draft of the Sunset Review Report for Board consideration before submission to the Legislature. As a result, the Sunset Review Task Force met on August 21, 2015, and developed responses to the legislative sunset review questions.

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Support Documents:

Attachment – Draft Sunset Review Report (bound separate from agenda packet)

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Report Originator: Yvonne Fenner, 10/13/2015

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Recommended Board Action: Staff recommends the Board approve the draft Sunset Review Report to be submitted to the Legislature, giving the executive officer authority to made non-substantive corrections to the final report.

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM X – DRA Petition Regarding Revision of Disciplinary Guidelines to Include Continuing Education as a Mitigating Factor, or Professional Standards of Practice**

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Agenda Description: Possible Action

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Brief Summary: Section 11340.6 of the Government Code provides that any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation.

Petitioner Deposition Reporters Association of California (CalDRA) seeks to encourage voluntary continuing education of court reporters by requesting that the Board amend its Disciplinary Guidelines, adopted in 1989 and revised in 2013. CalDRA requests that the “Mitigating evidence” under Factors to be Considered in Determining Penalties be amended to read:

12. Mitigating evidence, including, but not limited to, whether the licensee has demonstrated an ongoing commitment to obtaining and completing continuing education.

Alternatively, CalDRA requests the Board amend the Professional Standards of Practice regulation to add a new section 2475(9) to read:

(9) In any disciplinary action the Board may consider whether the licensee has demonstrated an ongoing commitment to obtaining and completing continuing education as a mitigating factor.

=====

Support Documents:

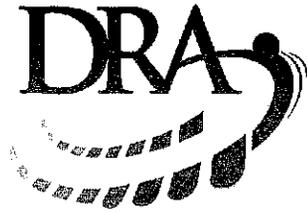
- Attachment 1 – CalDRA Petition
  - Attachment 2 – Board Disciplinary Guidelines
  - Attachment 3 – Title 16 of the California Code of Regulations, section 2475
- =====

Report Originator: Yvonne Fenner, 10/15/2015

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Recommended Board Action: The Board has long been a proponent of continuing education, believing it is proactive to educate to avoid enforcement issues. To that end, the petition at hand is a mechanism for encouraging reporters to pursue CE, and it is staff’s recommendation that the Board amend its Disciplinary Guidelines under Factors to be Considered in Determining Penalties, Additional Factor No. 12, to read:

12. Mitigating evidence, including, but not limited to, whether the licensee has demonstrated an ongoing commitment to obtaining and completing continuing education.



**DEPOSITION  
REPORTERS ASSOCIATION  
OF CALIFORNIA, INC.**

October 9, 2015

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

**Re: PETITION REGARDING REVISION OF DISCIPLINARY GUIDELINES TO  
SPECIFY THAT CONTINUING EDUCATION CAN BE A MITIGATING FACTOR IN  
DISCIPLINE OR, ALTERNATIVELY, TO MODIFY PROFESSIONAL STANDARDS OF  
PRACTICE ACCORDINGLY**

Dear Ms. Bruning:

Legislative proposals requiring mandatory Continuing Education ("CE") for court reporters have now been vetoed three times. These vetoes do not dispute the desirability of CE. Rather, they object to the mandatory aspect of the proposals. Informal conversations with Governor's staff confirm that there is no objection to efforts to encourage reporters to obtain CE voluntarily.

By this petition, the Deposition Reporters Association of California ("CalDRA") seeks to encourage such voluntary compliance simply by elevating what should be an existing Board practice to a more prominent status via a modest revision to the Board's Disciplinary Guidelines.

In the alternative, CalDRA respectfully requests pursuant to section 11340.6 of the California Government Code that the Board amend its Professional Standards of Practice regulations to add a new section 2475(9), as detailed below.

**Deposition Reporters Association of California**

CalDRA represents more deposition reporting professionals than any organization in California and is the only and largest organization in the nation solely devoted to representing such professionals. CalDRA is a California affiliate of the National Court Reporters Association (NCRA).

CalDRA was founded in 1995 by freelance deposition reporters seeking to preserve the impartiality and independence of their profession. In the early nineteen nineties, certain deposition companies and firms began the practice of offering services or prices to one party in litigation but not to others. CalDRA was founded to combat such practices.

CalDRA worked with the NCRA to organize and coordinate successful efforts across the country to preserve the impartiality of the freelance deposition reporting profession. As a result, court rules or laws preserving the impartiality of freelance deposition professionals were passed in fourteen states including Hawaii, Texas, Minnesota, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada, Kentucky, Michigan, Arkansas, Indiana, and North Carolina.

## The Board's Disciplinary Guidelines

The Board's Disciplinary Guidelines, adopted in 1989 and revised in 2013, contains a section as follows:

### **“Additional Factors**

In determining whether the minimum, intermediate or maximum penalty is to be imposed in a given case, the following factors should also be considered:

7. Actual or potential harm to the consumer
8. Actual or potential harm to the public
9. Prior disciplinary record
10. Number and/or variety of current violations
11. Aggravating evidence
12. Mitigating evidence
13. Overall criminal record
14. Whether the conduct was intentional or negligent, demonstrated incompetence
15. Acceptance of the Board's suggested resolution to consumer complaint
16. Attempts to intimidate consumer
17. Evidence that the unlawful act was part of a pattern of practice
18. Financial benefit to Respondent from the misconduct
19. If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.”

“Mitigating evidence” is not explained or elaborated upon. This petition asks simply that the Guidelines be amended to read as follows:

“12. Mitigating evidence, **including, but not limited to, whether the licensee has demonstrated an ongoing commitment to obtaining and completing continuing education.**”

Voluntarily seeking out education is a mitigating factor used by the State Bar in considering discipline. *See, e.g.,* “In mitigation ... voluntarily attended client trust accounting school”<sup>1</sup>

Failure to comply with CE requirements is likewise an oft-cited aggravating factor. *See, California Board of Accountancy Disciplinary Guidelines, p. 5,* “Failure to comply with continuing education requirements as ordered by the CBA or its designated representatives pursuant to Section 87.5.”

Proof of CE compliance is likewise standard when monitoring probation. *See Board of Pharmacy Disciplinary Guidelines, p. 23,* “Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.”

It is apparent, then, that in a disciplinary matter if a licensee brought forward evidence that she had voluntarily sought and obtained CE, such a voluntary dedication to keeping up-to-date on matters affecting her duties and legal responsibilities might properly be considered by the Board as a mitigating factor when imposing discipline.

While of course no substitute to mandated CE when it comes to ensuring broad participation in CE by licensees, CalDRA believes that this simple change reflecting what should already be Board practice when considering mitigation, when publicized by the Board and the trade associations, will motivate a significant number of licensees who are not currently obtaining CE to do so.

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<sup>1</sup> <http://www.callawyer.com/2015/07/discipline-report-july-2015/>

## **Six Reasons To Encourage Reporters To Obtain Continuing Education And Grant The Petition**

There are at least six reasons why encouraging CE participation by letting licensees know that it will be considered a mitigating factor in discipline is important:

**First**, deposition reporting is one of the most critical parts of our formal system of resolving disputes. However, they are currently the only licensees in the legal profession that are not required to undergo monitoring of their enduring competence through continuing education.

The Legislature's Joint Committee on Boards, Commissions, & Consumer Protection correctly underscored the importance of this frequently taken-for-granted profession in 2005 when it wrote:

An accurate written record of who said what in court is essential if the outcome of a judicial proceeding is to be accepted by the litigants and the public as non-arbitrary, fair, and credible.

In criminal cases, for example, courts of appeal rely exclusively upon [] written briefs and a written transcript to adjudicate the lawfulness of what occurred at trial. A conviction – and thus in some instances the life or death of an accused – can stand or fall based entirely upon what a witness said, what a lawyer said, what a juror said, or what a judge said, as solely reflected in the written transcript.

In civil cases, millions of dollars, life-long careers, and the fate of whole business[] enterprises can hinge on what was said or what was not said in a deposition or at trial.

Moreover, the testimony in civil and criminal cases is often thick with technical jargon. A medical malpractice case where specialist experts from both sides contradict one another can involve complex technical medical terminology; criminal cases can involve scientific language related to DNA identification; anti-trust cases can involve diction from economic theory, and so on. No matter how obscure or technical, such jargon must to-the-word accurately be reflected in the written transcript.

Court reporters are highly trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation-related proceedings such as depositions.

Against this backdrop, where a single error can translate into the distorted and arbitrary administration of justice, deposition reporting professionals absolutely must – not just at the time of licensure but throughout their careers – maintain the highest possible level of ethics and competence to protect litigants and our system of justice.

A common misperception is that deposition officials simply and passively take dictation, like the secretaries in “Mad Men.” As any serious litigator will tell you, and as a glance at the many and complex Code of Civil Procedure (CCP) sections dealing with depositions confirms, that is very wrong. As officers of the court who administer oaths, as the custodians of the record during and after the deposition, and as the only impartial person in the deposition room, freelance deposition reporters are required to manage the legal proceeding, with an aim toward ensuring that it is lawfully conducted as well as accurate. This must all be done under sometimes extraordinarily stressful circumstances, with emotional witnesses, and furious (and often screaming) attorneys jockeying for any advantage, for long hours in private offices outside the presence of a judge.

Moreover, freelancers don't just show up unprepared. Call a top-notch freelance deposition reporter on the weekend prior to a patent or trademark deposition and you will discover it is commonplace for them to be busy reading the underlying patents or pleadings to familiarize themselves with the jargon and what the jargon means, all to better ensure the accuracy of transcribed testimony. This mastery of context is how the best deposition officers will know whether one technical chemical compound (for example) is uttered over its similarly sounding cousin.

Yet there is currently no mechanism whereby even minimal professional standards of real-world, everyday practice are systematically spread throughout the profession, let alone the highest standards.

**Second**, generally speaking there are really just four ways licensing boards protect consumers: (i) entrance exams; (ii) vigorous investigation of complaints against licensees and enforcement taken against them; (iii) Internet disclosure of such actions to alert consumers and promote a market that favors trouble-free licensees; and (iv) continuing education, to help ensure that licensees are kept abreast of critical changes in law and policy throughout their careers.

Continuing education and competency is a critical compliment to the other tools available to regulators to protect consumers, and one of the few tools available.

**Third**, by order of the Judicial Council, official court reporters who work in courtrooms transcribing court hearings under the protective eyes of the judge must currently take eight hours of continuing education every two years. This continuing education requirement reflects the considered judgment of the Judicial Council – judges -- and is embraced by California Rules of Court 10.464.

But – and this is key – unlike other impartial judicial officers, deposition reporters must ensure the integrity and accuracy of the vital written record while working in a private commercial setting, and notwithstanding that they are hired by one of the parties in often hotly contested litigation.

Thus the freelance setting has practical and ethical challenges that do not exist in the official courtroom. A review of the CCP's and Business & Professions Code's many statutes related to depositions and deposition reporting confirms this. Moreover, the NCRA and the Court Reporters Board have, for example, recently adopted new rules strictly curbing freebies and kickbacks some freelance deposition reporters provide to law firm employees to drum up business. Every licensee must be aware of these rules, the pernicious conflicts of interest that prompted their enactment, and the consequences to litigants and the profession if they are disobeyed. But, today, without this bill, that is left to happenstance.

Indeed, if anything, the case for continuing education for deposition reporters is more compelling than that for official reporters.

**Fourth**, as foreshadowed above, the Joint Committee has in the past pointed the Board toward continuing education as a worthwhile goal. Issue #4 of the 2005 sunset review report appears to chastise the Board for not more aggressively pursuing continuing education. Continuing education was an issue as far back as in the 1996 Sunset Review Report.

**Fifth**, the number of laws and the rapidly evolving technologies that hallmark the profession amply support requiring deposition professionals to keep their skills up to date, not for their sake but to ensure the enduring integrity and caliber of a product so essential for fair adjudications. For example, as alluded to above, deposition reporters are obligated to understand and follow the requirements of more than thirty multi-subdivision statutes in the Code of Civil Procedure, in the Business & Professions Code, the Government Code, the Labor Code, the California Rules of Court, the California Code of Regulations in addition to the Federal Rules of Civil Procedure.

Many of these laws are amended on a frequent basis, calling for regular and ongoing re-education in the interests of consumers and professionals. Similarly, the Code of Ethics of the NCRA and the California Court Reporters Board have in the last few years changed significantly and will continue to do so.

Currently, continuing education is happening informally, through word-of-mouth, or on our Facebook page, where licensees post questions and maybe get useful or correct answers.

This is no way to run a legal system where licensees doing a critical job worthy of a license are concerned. In fact, this is why a majority of states require continuing education of court reporters.

**In sum:** As it currently stands, the only licensed professionals in the legal field who are not required to undergo any continuing education are freelance court reporters, notwithstanding their status as officers of the court, notwithstanding the critical function they provide to civil and criminal cases, notwithstanding the unique ethical and professional challenges they daily confront, notwithstanding the complexity of their task, notwithstanding that their official courtroom colleagues must undergo such education, and notwithstanding the ever-changing legal and technological landscape within which they work.

#### **Alternative Substance Of The Request**

In the alternative to simply revising the Guidelines, for the reasons set forth above, CalDRA requests that the Board add a new section 2475(9) to its Professional Standards of Practice regulations, as follows, for the reasons above, pursuant the authority provided by B&P sections 8007, 8025, 8025.1, 8030:

**(9) In any disciplinary action the Board may consider whether the licensee has demonstrated an ongoing commitment to obtaining and completing continuing education as a mitigating factor.**

#### **Conclusion**

CalDRA thanks the Board and its excellent staff for the opportunity to address these important issues and respectfully requests that its request or petition be granted.

Sincerely,

*Ed Howard*

Howard Advocacy, Inc.  
on behalf of CalDRA

# Disciplinary Guidelines of the



## COURT REPORTERS BOARD OF CALIFORNIA

Adopted February 1989  
Revised November 2013

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

**STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

Denise Brown, Director

**COURT REPORTERS BOARD**

Toni O'Neill, Chairperson  
Davina Hurt  
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Additional copies of these disciplinary guidelines  
may be downloaded from the Board's Web site

**COURT REPORTERS BOARD**  
**DISCIPLINARY GUIDELINES**

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## Introduction

The Court Reporters Board (Board) is responsible for the enforcement of statutes and regulations related to the practice of shorthand reporting, more commonly known as court reporting. The Board serves the consumers of California by:

- ❖ Developing and administering the license exam, ensuring that newly-licensed court reporters possess the basic skills needed for the job;
- ❖ Oversight of curriculum of court reporting schools;
- ❖ Disciplining licensees in the case of a violation of law or regulation;
- ❖ Administration of the Transcript Reimbursement Fund, which provides reimbursement for transcripts to qualified indigent litigants.

The integrity of our legal system rests on accurate records. Court reporters play an essential role by ensuring that there is a verbatim record of judicial proceedings. The Board recognizes the importance of ensuring a verbatim transcript produced by a neutral third party and diligently enforces all applicable statutes and regulations.

To foster uniformity of penalties and to ensure that licensees understand the consequences of violating laws or regulations pertaining to court reporting, the Board has established disciplinary guidelines. These guidelines are intended for everyone involved in and affected by the disciplinary process, namely, the general public, attorneys, courts, administrative law judges, licensees, Board staff and Board members who review and vote on proposed decisions and stipulations.

The offenses for which the Board may take disciplinary action are specified within the Board laws and regulations. These guidelines provide a range of penalties for each section of law which is found to be violated.

The Board recognizes that there are often extenuating, mitigating or aggravating factors in a matter which may necessitate variation. The Board respectfully requests that the administrative law judge take into account these factors, that they be fully considered and noted in the proposed decision when deciding the severity of the penalty within the range. However, when such factors are found to exist, they should be detailed in the "Findings of Fact." Of utmost importance is the effect the licensee's conduct had or can have on the consumer. In determining appropriate discipline, the administrative law judge should note the Board's determination of severity of various offenses as outlined in the Citation and Fine regulations, per Title 16, California Code of Regulations, section 2480.

The Board seeks recovery of all investigative and prosecution costs up to the hearing in all disciplinary cases in accordance with Business & Professions Code section 125.3. This includes all charges of the Office of the Attorney General, including, but not limited to, those for legal services and includes charges by expert consultants. The Board believes that the burden of paying for disciplinary cases should fall on those whose conduct requires prosecution, not upon the profession as a whole.

Should a probationary period be part of a proposed decision, the Board requests that the administrative law judge impose the appropriate conditions of probation as outlined in these Disciplinary Guidelines. These conditions are intended to protect the public from the probationer without being unduly burdensome or anti-competitive.

If an order of probation is issued staying a revocation or suspension and the order of the probation is proven at hearing to have been violated, then following 10 days' notice to the licensee, the Board shall lift the stay, and the revocation and/or suspension shall go into effect immediately.

Whenever a revocation is ordered, the licensee shall be required to return the original and any duplicate (wall) licenses which the Board issued, to the Board office, within 15 days of the effective date of the revocation order.



## **Factors to be Considered in Determining Penalties**

Business & Professions Code 8025 provides that the Board may take disciplinary action against the holder of, and suspend or revoke, a license certificate issued by the Board.

### **Denial of a License**

When considering the denial of a court reporter's certificate under section 480 of the Business & Professions Code, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for certification, shall consider the following criteria:

1. Nature and severity of the act(s), offense(s) or crime(s) under consideration
2. Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial
3. Time elapsed since commission of the act(s) or offense(s)
4. Extent of compliance with any terms of parole, probation, restitution or other sanctions lawfully imposed
5. Evidence, if any, of rehabilitation

### **Suspension or Revocation of a License**

When considering the suspension or revocation of the certificate of a court reporter on the grounds that the person certified has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his present eligibility for certification, shall consider the preceding factors 1 through 5 as well as the following:

6. Total criminal record

## Additional Factors

In determining whether the minimum, intermediate or maximum penalty is to be imposed in a given case, the following factors should also be considered:

7. Actual or potential harm to the consumer
8. Actual or potential harm to the public
9. Prior disciplinary record
10. Number and/or variety of current violations
11. Aggravating evidence
12. Mitigating evidence
13. Overall criminal record
14. Whether the conduct was intentional or negligent, demonstrated incompetence
15. Acceptance of the Board's suggested resolution to consumer complaint
16. Attempts to intimidate consumer
17. Evidence that the unlawful act was part of a pattern of practice
18. Financial benefit to Respondent from the misconduct
19. If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code



## Penalty Guidelines for Violations

The following minimum and maximum penalties shall apply to the appropriate violation of the code:

1. Business & Professions Code section 8016: Necessity of Certificate

This section would generally apply to licensees who are practicing with expired licenses (see section 8024). It may also apply to exam applicants (see 8020 and 8025(a)(b)(c)).

**Maximum:** Revocation of license or denial of admittance to exam. In the case of licensees who practice without a license, the maximum penalty would be imposed in cases where the licensee had been notified by the Board of an expired license and had failed to renew the license. In the case of the exam applicant, in addition to the refusal to admit the applicant, he/she cannot reapply to take the exam for a minimum of one year from the date of the decision, and the appropriate fine should be part of the order.

**Minimum:** Revocation – stayed and probation for four years.

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

2. Business & Professions Code section 8018: Title and Abbreviation

This section would generally apply to violators of 8024 through 8024.5, as well as unlicensed practice.

**Maximum:** Revocation. This would apply to people who have failed to comply with previous notices from the Board.

**Minimum:** Suspension – stayed and probation for four years.

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

3. Business & Professions Code section 8019: Aiding or abetting

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for four years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

4. Business & Professions Code section 8025(a): Conviction of a crime substantially related to the qualifications, functions and duties of a CSR

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for three years or the same period as given for conviction, whichever is longer

**Conditions of probation:** A, B, C, D

5. Business & Professions Code section 8025(b): Failure to notify the Board of a conviction described in subdivision (a), in accordance with Business & Professions Code section 8024 or 8024.2

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for three years or the same period as given for conviction, whichever is longer

**Conditions of probation:** A, B, C, D

6. Business & Professions Code section 8025(c): Fraud or misrepresentation resorted to in obtaining a certificate hereunder

**Maximum:** See 8016 above. Denial of application for (entrance to) exam. Applicant prohibited from applying for the exam for one year from date of

decision and fine. In the case where a license has already been issued:  
Revocation

**Minimum:** Revocation

**Conditions for probation:** None

7. Business & Professions Code section 8025(d): Fraud, dishonesty, corruption, willful violation of duty

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for four years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

8. Business & Professions Code section 8025(d): Gross negligence or incompetence in practice

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for four years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

9. Business & Professions Code section 8025(d): Unprofessional conduct

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for four years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

10. Business & Professions section 8025(e): Failure to transcribe or file notes

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for two years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

11. Business & Professions section 8025(f): Loss or destruction of steno notes

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for two years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

12. Business & Professions section 8025(g): Failure to comply with or to pay a monetary sanction imposed by any court for failure to provide timely transcripts

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for two years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

13. Business & Professions section 8025(h): Failure to pay a civil penalty relating to the provision of court reporting services or products

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for two years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D

14. Business & Professions section 8025(i): Revocation of, suspension of or other disciplinary action against a license to act as a certified shorthand reporter by another state

**Maximum:** Revocation

**Minimum:** Suspension – stayed and probation for two years

**Conditions of probation:** A1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, B 1, 10, C, D



## Probation

Probation conditions are divided into two categories: **(A) STANDARD CONDITIONS**, which are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and **(B) OPTIONAL CONDITIONS**, which vary according to the nature and circumstances of the particular case.

### A. Standard Conditions of Probation

During the period of probation, Respondent shall:

1. **OBEY ALL LAWS** – Respondent shall obey all laws and regulations governing shorthand reporters.
2. **COMPLY WITH THE BOARD'S PROBATION PROGRAM** – Respondent shall fully comply with the conditions of the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's

probation program. Respondent shall provide Board representative's unrestricted access to inspect shorthand reporting records, transcriptions and notes required to be maintained by the licensee. Respondent shall inform the Board in writing within fifteen (15) days of any address change and claim all certified mail issued by the Board. Respondent shall timely respond to all notices of reasonable requests, and submit reports, remedial education documentation, verification of employment, or other similar reports, as requested and directed by the Board or its representative(s). Failure to appear for any scheduled meeting or cooperate with the requirements of the probation program, including timely submission of requested information, shall constitute a violation of probation.

3. **QUARTERLY REPORTS OF COMPLIANCE** – Respondent shall submit Quarterly Reports of Compliance to the Board's designee in accordance with a specified schedule. Quarterly Reports must be completed and signed under penalty of perjury regarding compliance with all conditions of probation. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation. Quarterly reports are due for each year of probation and the entire length of probation as follows:
  - For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 10th.
  - For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 10th.
  - For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 10th.
  - For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 10th.
4. **MAINTAIN VALID LICENSE** – Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees prior to the license expiration date shall constitute a violation of probation.
5. **RESIDENCY OUTSIDE OF THE STATE** – Respondent shall immediately notify the Board's designee of any and all address changes. If Respondent should travel outside California for a period greater than sixty (60) days, Respondent must notify the Board's designee, in writing, of the dates of departure and return. Periods of residence outside the State of California shall not apply toward a reduction of this probation time period.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California totals three years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that

state, in which case the three-year period shall begin on the date probation is completed or terminated in that state.

6. **FAILURE TO PRACTICE- CALIFORNIA RESIDENT** – In the event Respondent resides in the State of California and for any reason Respondent stops practicing in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation.
7. **CRIMINAL PROBATION** – If Respondent is on criminal probation for the acts upon which disciplinary action is based; Respondent shall submit reports from the criminal court probation officer regarding Respondent's progress during criminal probation to the Board's designated representative. Reports shall be filed quarterly and continue until Respondent is no longer on criminal probation or the Board's probation is terminated, whichever occurs first. Quarterly reporting shall be consistent with the guidelines set forth in the Standard Conditions, to comply with the conditions of the probation program.
8. **RESTITUTION** – Respondent shall make restitution to each identified victim when the evidence has demonstrated that there are uncompensated victims.
9. **COST RECOVERY** – Respondent shall pay the Board its costs and charges of investigating and enforcing this matter in the amount of \$ \_\_\_\_\_ in \_\_\_\_\_ (#) equal, consecutive quarterly payments of \$ \_\_\_\_\_ per month. The first payment shall be due within 30 calendar days of the effective date of this decision and order. The following \_\_\_\_\_ (#) quarterly payments shall be due by the first of the following month. Any payment that is not received by the tenth day of the month shall be considered late. Any late payments shall be a violation of probation.
10. **VIOLATION OF PROBATION** – If Respondent violates the conditions of his/her probation, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the Order and impose the stayed discipline (revocation/suspension) of Respondent's license.  
  
If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.
11. **NOTICE OF FINANCIAL INTEREST** – (This condition only applies to licensees who operate reporting firms) Report to the Board, in writing within

30 days of the effective date of this decision, any financial interest which Respondent has in any corporation required to be registered pursuant to section 8040 of the Business & Professions Code. Respondent shall notify the Board 30 days prior to changing their financial interest in any such corporation.

12. **NOTIFY EMPLOYEES** – (This condition only applies to licensees who operate reporting firms) Post and circulate to all employees a notice which accurately recites the terms and conditions of probation. “Employees” as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.
13. **NOTIFY OWNERS, OFFICERS** – (This condition only applies to licensees who operate reporting firms) Within 30 days after the effective date of this decision, submit proof of notification of probationary status to the owners, officers, or any owner or holder of 10% or more of the interest in Respondent or Respondent’s stock.
14. **ADVERTISING APPROVAL** – (This condition only applies to licensees who operate reporting firms) Submit any proposed advertising copy, whether revised or new, to the Board at least 30 days prior to its intended use. Any such copy must be approved by the board prior to being used.

#### **B. Optional Conditions of Probation**

During the period of probation, Respondent shall:

1. **NOTIFY EMPLOYER/FIRM** – Notify employer or owner of court reporting firm with which Respondent is associated or subcontracted of the decision in case number \_\_\_\_\_ and the terms, conditions, and restrictions imposed on Respondent by said decision.

Within 30 days of the effective date of this decision and within 15 days of Respondent undertaking new employment or associating with a different court reporting agency, Respondent shall submit written proof to the Board that he/she has provided notice of his/her probationary status to his/her employer or court reporting agency with which he/she is associated or subcontracted.

2. **REHABILITATION PROGRAM** – Submit to the Board for its prior approval, within 30 days of the effective date of this decision, the name, address, phone number, and description of a rehabilitation program for the abuse of chemical substances and/or alcohol which Respondent shall successfully participate in and complete. Respondent shall provide the Board or its designee with a copy of Certification of successful completion of the rehabilitation program. The costs for such rehabilitation program shall be borne by Respondent.

3. **MEDICAL EVALUATION/TREATMENT** – Respondent shall within 30 days of the effective date of this decision and on a periodic basis thereafter, no less than quarterly, but as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo physical or mental treatment, Respondent shall within 30 days of written notice from the Board submit to the Board for its prior approval the name and qualifications of a physician or psychotherapist of Respondent's choice. Upon the Board's approval of the treating physician or psychotherapist, Respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Failure to timely submit to, or schedule physical or mental treatment shall result in violation of probation.
4. **PSYCHOLOGICAL EVALUATION** – (To be used in cases involving a sexual offense, pattern of chemical substance/drug/alcohol abuse or violence.) Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo psychological evaluation by licensed psychologists and/or psychiatrists as are approved by the Board. Such evaluator shall furnish a written report to the Board or its designee regarding Respondent's judgment and ability to function independently, safely and or pose a threat to the public. The cost of such evaluation shall be borne by Respondent. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. The evaluation shall be treated as confidential by the Board. Failure to timely submit to or schedule a mental examination shall result in violation of probation.
5. **PSYCHOTHERAPY** – (To be used in cases involving a sexual offense, pattern of chemical substance/drug/alcohol abuse or violence.) Within 30 days of the effective date of this decision, Respondent shall submit to the Board or its designee for its prior approval, the name and qualifications of one or more therapists of Respondent's choice. Such therapist shall possess valid California license and shall have had no prior business, professional or personal relationship with Respondent. Upon approval by the Board, Respondent shall undergo and continue treatment until the Board determines that no further psychotherapy is necessary. Respondent shall have the treating therapist submit quarterly reports to the Board and notify the Board immediately if the therapist believes Respondent poses a threat to the public or Respondent's clients. All costs of therapy shall be borne by Respondent. Respondent shall execute a release of Information authorizing the therapist to divulge information to the Board.
6. **ABSTAIN FROM PRACTICE** – If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing shorthand reporting until the treating physician recommends, in writing and stating the basis therefore, that Respondent is physically and/or

mentally fit to practice shorthand reporting and the Board approves said recommendation.

7. **ATTEND COURSES** – Respondent shall attend a recognized court reporting school and successfully complete a final examination in one or more specified courses.
8. **RETAKE LICENSE EXAM** – Respondent shall pass the (name of examination section(s)) portion(s) of the next regularly scheduled license examination after the effective date of this decision. Should Respondent fail said examination, Respondent shall be suspended, upon written notice of failure, until he/she takes and passes the same (name of examination sections(s)) portion(s) at a subsequent examination.
9. **PROOF OF ADVERTISING CORRECTION** – Respondent must correct misleading advertisement within 30 days of Decision. Respondent shall not practice until proof of correction has been submitted to the Board or its designee.
10. **REIMBURSEMENT OF PROBATION PROGRAM** – Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$\_\_\_\_\_ per year/\$\_\_\_\_\_ per month.
11. **ABSTAIN FROM CONTROLLED SUBSTANCES / SUBMIT TO BIOLOGICAL FLUID TESTING** – Respondent shall completely abstain from the use or possession of controlled or illegal substances during the period of probation unless lawfully prescribed by a medical practitioner for a bona fide illness. Respondent shall immediately submit to biological fluid testing and/or other required drug screening, at Respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding shall constitute a violation of probation.
12. **ABSTAIN FROM USE OF ALCOHOL / SUBMIT TO BIOLOGICAL FLUID TESTING** – Respondent shall completely abstain from the use of alcoholic beverages during the period of probation. Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding shall constitute a violation of probation.
13. **PROVISION OF RECORDS** – Respondent shall provide specific records for Board inspection as required.

14. **ADMINISTRATIVE CITATION** – The Board is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to Sections 125.9 or 148 of the Business and Professions Code against a licensee or an unlicensed person who has committed any acts or omissions which are in violation of the Act or regulations.

**C. Probation Violation**

Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

**D. Probation Completion**

Upon successful completion of probation, Respondent's license will be fully restored.



**Terms of Suspension**

It is the position of the Board that the minimum period of suspension should be 30 days and that item A should apply in most instances.

During the period of suspension, Respondent shall:

- A. Attend a recognized court reporting school and successfully complete the specified number of hours and final examination(s) in specified course(s), in accordance with Board regulations.
- B. Pass the (name of examination section(s)) portion(s) of the next regularly scheduled license examination after the effective date of this decision. Should Respondent fail said portion(s) of the examination, the period of suspension shall be extended until Respondent successfully passes said (name of examination section(s)) portion(s) of the examination.
- C. Notify employer(s) or reporting firm owners(s) of the decision in case number \_\_\_\_\_ and the terms, conditions, and restrictions imposed on Respondent by said decision.

Within 30 days of the effective date of this decision and within 15 days of Respondent undertaking new employment or associating with a different reporting agency, Respondent shall cause his/her employer or firm owner to report to the Board in writing, acknowledging the employer has read the decision in case number \_\_\_\_\_.

[Home Table of Contents](#)**§ 2475. Professional Standards of Practice.**

16 CA ADC § 2475

**BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS**Barclays Official California Code of Regulations Currentness

Title 16. Professional and Vocational Regulations

Division 24. Court Reporters Board of California

Article 8. Denial, Suspension and Revocation of Certificates

16 CCR § 2475

**§ 2475. Professional Standards of Practice.**

(a) Consistent with any action that may be taken by the Board pursuant to Sections 8025 and 8025.1 of the Code, the Board may cite a business that renders professional services, namely shorthand reporting services, within the meaning of Corporations Code Section 13401 or cite or discipline any certificate holder, including suspending, revoking, or denying the certification of a certified shorthand reporter, for violation of professional standards of practice.

(b) Every person under the jurisdiction of the Board who holds a license or certificate, or temporary license or certificate, or business that renders professional services, namely shorthand reporting services, within the meaning of Corporations Code Section 13401, shall comply with the following professional standards of practice:

- (1) Make truthful and accurate public statements when advertising professional qualifications and competence and/or services offered to the public.
- (2) Maintain confidentiality of information which is confidential as a result of rule, regulation, statute, court order, or deposition proceedings.
- (3) Perform professional services within the scope of one's competence, including promptly notifying the parties present or the presiding officer upon determining that one is not competent to continue an assignment. A licensee may continue to report proceedings after such notification upon stipulation on the record of all parties present or upon order of the presiding officer.
- (4) Comply with legal and/or agreed-to delivery dates and/or provide prompt notification of delays.
- (5) In addition to the requirements of Section 2025.220(a)(5) of the Code of Civil Procedure, promptly notify, when reasonably able to do so, all known parties in attendance at a deposition or civil court proceeding and/or their attorneys of a request for preparation of all or any part of a transcript, including a rough draft, in electronic or paper form. No such notification is necessary when the request is from the court.
- (6) Act without bias toward, or prejudice against, any parties and/or their attorneys.
- (7) Not enter into, arrange, or participate in a relationship that compromises the impartiality of the certified shorthand reporter, including, but not limited to, a relationship in which compensation for reporting services is based upon the outcome of the proceeding.
- (8) Other than the receipt of compensation for reporting services, neither directly or indirectly give nor receive any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported. Such persons or entities shall include, but are not limited to, attorneys or an attorney's family members, employees of attorneys or an employee's family members, law firms as single entities, clients, witnesses, insurers, underwriters, or any agents or representatives thereof. Exceptions to the foregoing restriction shall be as follows: (A) giving or receiving items that do not exceed \$100 (in the aggregate for any combination of items given and/or received) per calendar year to or from an attorney or an attorney's family members, an employee of an attorney or an employee's family members, a law firm as a single entity, a client, a witness, an insurer, an underwriter, or any agent or representative thereof; or (B) providing services without charge for which the certified shorthand reporter reasonably expects to be reimbursed from the Transcript Reimbursement Fund, Sections 8030 et seq. of the Code, or otherwise for an "indigent person" as defined in Section 8030.4(f) of the Code.

Note: Authority cited: Section 8007, Business and Professions Code. Reference: Sections 8025, 8025.1 and 8030, Business and Professions Code.

**HISTORY**

1. New section filed 1-11-2007; operative 2-10-2007 (Register 2007, No. 2).
2. Amendment of subsections (a), (b) and (b)(8) filed 9-30-2013; operative 1-1-2014 (Register 2013, No. 40).

This database is current through 9/25/15 Register 2015, No. 39

16 CCR § 2475, 16 CA ADC § 2475

**AGENDA ITEM XI – Certificate of Appreciation for Melissa Davis**

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Agenda Description: Possible Action

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Brief Summary: When the TRF Pilot Project became a permanent part of the fund, the Board was granted a two-year limited-term half-time position to take on the additional workload. Melissa Davis completes her term at the end of October after serving the pro per indigent litigant population with dedication and compassion. Her stellar work ethic and unfailing cheerfulness and enthusiasm will be greatly missed by staff and consumer alike.

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Attachment – Certificate of Appreciation

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 10/16/2015

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Recommended Board Action: Award certificate of appreciation

# Certificate of Appreciation

This certificate is awarded to

*Melissa Davis*

In recognition of your outstanding service, support,  
and dedication to the Court Reporters Board and to the  
consumers of the State of California.

Presented this 30<sup>th</sup> day of October 2015

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Davina Hurt, Board Chair

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Yvonne Fenner, Executive Officer

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM XII – Future Meeting Dates**

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Agenda Description: Proposed Meeting Dates

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Support Documents:

Attachment – 2015 & 2016 Board Calendars

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Current scheduled activities:

Examination Workshops:

March 18-19, 2016 – Sacramento

April 22-23, 2016 – Sacramento

CSR Dictation Exam:

November 20, 2015 – Sacramento

March 11, 2016 – Los Angeles

July 15, 2016 – Los Angeles

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Recommended Board Action: Information exchange

**A YEAR-AT-A-GLANCE CALENDAR 2015  
COURT REPORTERS BOARD OF CALIFORNIA**

**JANUARY 2015**

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**FEBRUARY 2015**

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**APRIL 2015**

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**JUNE 2015**

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**OCTOBER 2015**

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**NOVEMBER 2015**

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**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
<b>GENERAL LOCATION</b>	
NC-NORTHERN CALIFORNIA	
SC-SOUTHERN CALIFORNIA	

**A YEAR-AT-A-GLANCE CALENDAR 2016  
COURT REPORTERS BOARD OF CALIFORNIA**

**JANUARY 2016**

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**AUGUST 2016**

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**SEPTEMBER 2016**

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**OCTOBER 2016**

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**NOVEMBER 2016**

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**DECEMBER 2015**

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SC-SOUTHERN CALIFORNIA	

COURT REPORTERS BOARD MEETING – OCTOBER 30, 2015

**AGENDA ITEM XIII – Public Comment for Items Not on the Agenda**

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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.