COURT REPORTERS BOARD
OF CALIFORNIA
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MEETING OF THE COURT REPORTERS BOARD

Friday, April 8, 2016
9:00 a.m. to conclusion

Department of Consumer Affairs, HQ2
SOLID Training Center – First Floor Hearing Room
1747 North Market Boulevard
Sacramento, CA 95834

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

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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.

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.

AGENDA ITEM I – Approval of October 30, 2015 Meeting Minutes

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Agenda Description: Review and approval of minutes

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Brief Summary:

Minutes from October 30, 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, 3/16/2015

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Recommended Board Action: Approve minutes

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Attachment
Agenda Item I

DRAFT

COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
OCTOBER 30, 2015

CALL TO ORDER

Ms. Davina Hurt, Chair, called the meeting to order at 9:32 a.m. at the San Diego State Building, 1350 Front Street, Sixth Floor, Eshleman Auditorium, San Diego, California.

ROLL CALL

Board Members Present:	Davina Hurt, Public Member, Chair Rosalie Kramm, Licensee Member, Vice Chair Elizabeth Lasensky, Public Member Toni O'Neill, Licensee Member
Board Members Absent:	John K. Liu, Public Member
Staff Members Present:	Yvonne K. Fenner, Executive Officer Fred Chan-You, Staff Counsel Angelique Scott, Staff Counsel Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

I. MINUTES OF THE JUNE 26, 2015 MEETING

Ms. Lasensky requested that the word "falls" be changed to "fall" on the first line of page 2 of the minutes. She also requested the addition of the word "Office" after "Governor's" on page 9 of the minutes.

Ms. Hurt requested replacement of the word "that" with "the" on the second line of the third paragraph under "Review of Action Plan" on page 7 of the minutes.

Ms. O'Neill moved to approve the minutes as amended. Second by Ms. Lasensky. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

II. DISCUSSION REGARDING SOUTHERN CALIFORNIA STIPULATION CCP 2025.550

Ms. Hurt referred to the robust list of supporting materials provided in the Board agenda packet and reminded the Board that the discussion of this item needed to be framed around consumer harm. She informed the public members of the audience that the Board had not made any conclusions and looked forward to hearing their comments. Ms. Hurt invited the first speaker to the public comment table.

Charlotte Mathias, certified shorthand reporter, approached the Board and thanked them and staff for the opportunity to speak. Ms. Mathias indicated that she is a Northern California reporter who believes the Southern California stipulation (So Cal stip) may be spreading to Northern California.

Ms. Mathias asserted that as the guardian of the record, her job is to follow the California Code of Civil Procedures (CCP) 2025.550 (Code). She is not allowed to be an employee of the attorney or share her opinion on the demeanor or validity of the attorney or witness. She is also not allowed to have a financial interest in who should prevail in the matter she is reporting. She added that she is required to protect marked exhibits and the transcript against loss, destruction, or tampering, retain her notes for eight years, and be subject to disciplinary action by the Board. She asserted that the So Cal stip leaves the reporter vulnerable to adverse action by the Board for not following the duties set forth by the Code.

Ms. Mathias referred to and quoted page 22 of the Board agenda packet where she attached as her Exhibit A the mission of the Board. She then quoted CCP 2025.550(a), indicating that the reporter shall seal the transcript and the noticing attorney shall store and protect it. If the original transcript is unsealed, it may be susceptible to tampering.

Ms. Mathias quoted Merriam-Webster's definition of "shall," stating that when used in laws, regulations, or directives, it expresses what is mandatory. She referred to the additional handouts she distributed at the meeting (see Attachment 1), including an article from Bryan Garner, editor of the 9th edition of Black's Law Dictionary. Mr. Garner was responsible for replacing "shall" with "must" in the applicable Federal Rules of Civil Procedure.

The handouts also included a comparison of CCP 2025 and Federal Rule 30. Ms. Mathias stated that the Code requires the reporter to notify all parties attending the deposition when the original transcript is available for reading, correcting, and signing. She added that Rule 30 does not allow for the So Cal stip in Federal cases.

She offered that occasionally following a proceeding, she inquires with Southern California attorneys about the function of the So Cal stip. Some attorneys respond that they do not know what it is but were told to enter into it before leaving the office. Other attorneys think it is to save witnesses from traveling long distances to review and correct the original transcript. She stated that since witnesses may now review the attorney's copy of the transcript and send changes to the court reporter, traveling is no longer an issue.

Ms. Mathias stated that the "usual stip" is vague and does not specify from which duties the report is being relieved. She indicated that the relieved duties could include typing,

certifying, and sealing the transcript, notifying the deponent the transcript is ready, and sending the deponent's changes to anyone ordering a copy later.
She shared examples of how the consumer can be negatively affected by the So Cal stip. She indicated that Bill Cosby is suing the court reporting firm for releasing the transcripts in his case; however, if the So Cal stip was used, Mr. Cosby may have found it difficult to pursue the litigation.

Ms. Mathias revealed that the So Cal stip may also prevent added defendants from accessing deposition transcripts taken prior to them becoming parties to the action. She questioned what the result would be if the plaintiff fired his attorney who had been sent the original transcript, now nowhere to be found.

She shared an experience of an attorney who entered into the So Cal stip on a matter that was set in Sacramento County. Unfortunately, the judge rejected the unsealed originals and required the witnesses travel from Los Angeles to Sacramento, the cost of which was paid by the attorney.

Ms. Mathias proclaimed that the consumer is not being protected under the So Cal stip. Since the attorneys in litigation do not always get along, the impartial court reporter is needed to protect the record. She also indicated that medical records are often a part of the record and, therefore, protected by HIPPA regulations. By sealing the original, the medical records are protected from unauthorized access.

She stated that Northern California courts wanted sealed original transcripts, which results in no harm to the consumer. She added that Southern California courts continue to accept sealed original transcripts from Northern California court reporters. She said that the So Cal stip causes a division in the state because the Code is not being followed by all reporters.

She referred to an article of Caligrams published when Rick Black was the executive officer of the Board, which can be found on pages 46 and 47 of the Board agenda packet. She quoted the article, stating that the Board's legal counsel advises that the original must be sent to the noticing party as specified. She further referred to excerpts from court cases and arbitrations, which were also included in the Board agenda packet.

Ms. Mathias commented on the recommended Board action on page 18 of the Board agenda packet, wherein staff indicated that the So Cal stip would be a matter for a judge to consider. She indicated that Presiding Judge Marigonda of the Santa Cruz County Superior Court stated that an unsealed deposition transcript that may have been damaged or is missing pages or exhibits can create a significant problem for litigants and judges. A letter from Judge Marigonda may be found on page 48 of the Board agenda packet.

She reiterated that no one is harmed or inconvenienced by sealing the original transcript. However, the attorney or potential expert witness may be harmed by an unsealed transcript when filed in Northern California.

She concluded by stating that potential for consumer harm is evident and requested the Board require all certified court reporters to follow the Code set forth in CCP 2025. She further required that the Board publish its support of adherence to the Code in the California Bar Journal. She alternatively requested the Board hold town hall meetings to

explore the issue with all stakeholders and educate the Bar and court reporters in California.
Rich Alossi, president of Deposition Reporters Association of California (CalDRA) thanked the Board for its time and constant work to fight for California consumers. He quoted the Board's vision statement. He then stated that relevant sections of the Code were written with the express intent to protect the integrity and sanctity of the original transcript by outlining the way it is to be handled. He added that the practice of the So Cal stip may have been intended to allow speedy review by the witness without the need to travel to the office of the deposition officer, however, alternatives now exist that allow the deponent to review a certified or electronic copy.

Consequences of alterations to the transcript outside of the control of the court reporter include unbinding or unsealing for unacceptable purposes. He referred to the exhibits included in the Board agenda packet which outline situations where the sanctity and security of the original transcript have been compromised. He then referred to and quoted from the letter from Presiding Judge Marigonda on page 48 of the Board agenda packet.

Mr. Alossi then posed two questions to the Board, which were included in the CalDRA letter dated October 14, 2015, also found on page 56 of the Board agenda packet. The first question is whether a licensee may be relieved of her obligations to comply with CCP 2025.520, 2025.540, and 2025.550 by attorney stipulation. The second question is whether the Board would investigate a complaint about a licensee violating these code sections if the attorneys had stipulated to relieve the reporter of her duties.

CalDRA maintains that a licensee may not be relieved of his or her obligations of the Code since the parties to the stipulation are not the only parties with an interest in the protection of the record. He stated that CalDRA disagrees with staff recommendation and requested the Board interpret and apply the law.

Brooke Ryan, president of California Court Reporters Association (CCRA), spoke to the staff recommendations provided in the Board agenda packet, specifically the need for a judge to consider the matter in court. She stated that the recommendation is not a response since the issue would not be brought before a judge unless an action was filed.

She referred to the Board's 2012 statement regarding statutory rates for court transcripts, stating that the Board took a position of enforcement on the Government Code 69950, apologizing for the financial hardship it may cause. She indicated that CCP 2025.550 requires the court reporter to follow specific duties for delivering the transcript, and she questioned why the Board would enforce one law, but not the other. She stated that in several issues of the CRB Today newsletters and the MTFS video, the Board has shown no reluctance in opining which practices will or might violate the MTFS (Minimum Transcript Format Standards).

Ms. Ryan asserted that the attorneys who use the So Cal stip are asking the deposition reporter to violate state law under the implicit threat that they will deny the reporter future business if he or she does not agree to it. She questioned on what basis would there be an opinion in favor of the So Cal stip as suggested in the staff recommendation.

Marla Sharp, licensed court reporter, distributed copies of her written comments (see Attachment B). In summary, she restated the problem of the So Cal stip as being that the

original transcript is released to opposing counsel in an unsealed condition, leaving it vulnerable to loss, manipulation, and tampering. She stated that the practice is allowing a biased party with a motive for a specific outcome to be in control of the transcript, which puts the consumer in a dangerous situation.

Ms. Sharp reiterated the comments made by previous speakers regarding the process of delivering the transcript under the So Cal stip versus the Code. She stated that the So Cal stip continues to exist because it is a way for attorneys to avoid paying for a copy. However, the original then becomes a working copy which is commonly unbound for scanning and copying. The result of this tampering and manipulation voids the court reporter's certificate attesting to its accuracy and completeness. She asserted that consumers and judges do not know what is happening to the unsealed original transcript and that only sealed transcripts can be trusted as intact and accurate. She added that under the So Cal stip, the court reporter is no longer responsible for handling corrections submitted by the deponent, therefore, the changes are not kept with the sealed original.

She asked the Board to officially opine that court reporters should follow the Code to protect the original transcript in an effort to avoid potential consumer harm. She thanked the Board for taking the time to hear the concerns on the matter.

Ms. Hurt called for further speakers. Hearing none, she invited Board members to make comments and ask questions. As a point of transparency, Ms. Kramm shared that she, as a deposition reporter and firm owner, has lived with the So Cal stip for 25 years. Ms. Hurt asked Ms. Mathias to clarify the statement in her August 7, 2015 letter that the matter is "an issue of enforcement by the Board." Since enforcement infers jurisdiction over someone, she asked what the enforcing rights are and what mechanism is adequate to enforce those rights. Ms. Mathias indicated that she may have used the wrong term; however, she is under the jurisdiction of the Board to remain neutral or otherwise be fined.

Ms. Mathias continued by saying many attorneys are treating the court reporter like a secretary, making requests and demands such as leaving blank spaces in the transcript to be filled in at a later time. Others refuse to be interrupted and tell the court reporter to get what he or she can, which is no better of a service than can be offered by a tape recorder. Since the court reporter is an impartial person, the transcript can be used as evidence. She likened an unsealed transcript to any other unsealed evidence which may have been tampered with. She reported that Placer County is very strict about only allowing original documents into their court system.

Ms. Hurt inquired if the behavior Ms. Mathias is interested in changing is that of the attorneys. Ms. Mathias responded that the attorneys need to be educated about the Code. They expect the court reporter to know the Code; however, when the attorney does not like the Code, they want to stipulate it away. She stated that she does not want to be fined for malpractice.

Ms. O'Neill reported that she owned a Southern California deposition agency for eight years and is sympathetic to the issue. She said she is hearing the underlying issue is that court reporters have not been able to resolve the issue and now want the Board to take on the legal community. Ms. Mathias responded that the Board that was in existence at the time the So Cal stip began did not take a strong enough stand to enforce the Code. She said it should have been treated the same way as an enforcement matter involving

overcharging for court or losing stenographic notes. She indicated that the length of time the law violations have been occurring should not influence whether or not they should be stopped. She said many attorneys do not even know what they are agreeing to when the stipulate away the reporter's duties.

Ms. Lasensky stated that a community member, she was confused as to why there were not more statements from judges if the matter is disruptive to the court. Ms. Mathias responded that it is disruptive everywhere but Southern California. Ms. O'Neill inquired if there had been any complaints filed, which is usually the starting point for enforcement actions.

Ms. Mathias stated that she has been threatened by Southern California attorneys that they will file a complaint against her when she explains that she follows the Code. She offers to give them the phone number for the Board office, but to her knowledge no one has made a complaint against her license. She added that Southern California judges are not complaining, but Northern California judges will not take unsealed transcripts or certified copies. She stated that the Board oversees the whole state, not just the northern half or southern half.

Mr. Alossi stated that CalDRA is looking to the Board to answer whether or not a court reporter may be relieved by stipulation of his or her obligation to comply with the Code. He did not believe that anyone was asking the Board to file any action against the Bar, a particular attorney, or any licensed court reporter at this point.

Ms. Hurt quoted from a CalDRA document with a question of the So Cal stip being proper, stating, "If reporters don't interject regarding the stipulation in a deposition it's because we're in no position to education attorneys on the law, are ethically bound not to comment on the proceedings in any way, and that we certainly don't want to jeopardize working relationships by being labeled as a troublemaker because we refuse to accommodate the wishes of the parties." Ms. Hurt then asked if the Board would then be the troublemakers going after the Bar. Mr. Alossi responded that it is the uniformity of the matter, and he believed the material she referenced was something CalDRA heard from individuals not wanting to be the lone Southern California reporter who follows the law. However, if the court reporter had something from the Board stating they must follow the Code, they would be able to show it to the attorneys. Ms. Hurt asked if CalDRA had taken their concerns before the Bar on behalf of court reporters. Mr. Alossi answered that approaching the Board was a first step. He believed the Board had stated that the attorneys may stipulate to whatever they want, and CalDRA agrees; however, it does not apply to the court reporter's duties. He suggested that the process requires multiple steps, the next being education of the attorneys and Bar associations.

Ms. Kramm complimented the summarization provided by Mr. Alossi and Ms. Sharp. She stated that at the end of depositions she informs attorneys that there are courtrooms, particularly in Northern California, that will not accept an unsealed original. Many times the attorneys believe the So Cal stip is the Code, and, after hearing the vulnerability of the original transcript, they will go by Code. Educating attorneys and judges about what happens to the original under the So Cal stip is paramount. Mr. Alossi agreed that education is important, but did not agree that the court reporter is able to interpret the law. He reiterated the question put before the Board by CalDRA regarding whether or not a licensee can be relieved of his or her obligation to comply with the Code.

Ms. O'Neill confirmed that judges accept certified copies of transcripts in Southern California courts. In her experience as an official in Riverside County, attorneys or judges commonly read the deposition into the record if the witness can no longer be called to court. As a former firm owner in the 1980's, she remembered when the language in the law was changed to "shall," and the reporters in her area thought the stipulation would go away. However, that never happened because attorneys said they could do what they wanted. She added that there just hasn't been any ramification where the consumer was negatively impacted. Deposition reporters can tell attorneys that they follow the Code just as reporters do in Northern California without the Board saying it's the law. However, she understands why the reporters are hesitant to do so.

Mr. Alossi stated that there has not been a mechanism in place to eliminate the So Cal stipulation. He believes there would need to be a process in place for following the Code to become the norm across the state. He asserted that the Board has jurisdiction to state what the reporters must do, just as they do with other statutes, rules, and regulations.

Ed Howard, representing CalDRA, stated that he frequently appears before the Bar as a representative of a public interest group. He stated that if CalDRA were to appear before the Bar without the Board's response to their questions, nothing would happen. He stated that the Code in question is the Board's statute, and the Board is charged with interpreting it. The Board has final say on the statute.

Ms. Hurt indicated that the plain language of the Code does not leave a question for interpretation. Mr. Howard stated that the So Cal stip has become a custom that is inconsistent with the plain language of the Code, resulting in a misunderstanding about what it means. He asserted that the Board is the only entity that is charged with resolving the misapplication of the statute. Before the Bar renders an opinion that would end the So Cal stip, they are going to want to know that the Board agrees with them about what the statute means.

Mr. Chan-You asked which specific position CalDRA is requesting the Board to take. Mr. Alossi again pointed the Board to page 56 of the Board agenda packet where two questions were posed. Ms. Hurt asked Mr. Chan-You if the Board has the authority to create an unwritten exception the statutory code. Mr. Chan-You responded that he does not believe it does. The law is the law. Ms. Hurt inquired what regulatory process the Board would have to undertake to write an exception to the Code. Mr. Chan-You answered that if the Board were to issue a position stating that the waiver of the obligation under the Code were to be considered to be unprofessional conduct, he would recommend going through the regulatory process to include that in the language as unprofessional conduct. Ms. Fenner clarified that the Code in question is a statute so would require a legislative change, not a regulatory change.

Ms. Hurt asked Ms. Fenner if the court or any other party stated that the So Cal stip is a violation of the statutory code. Ms. Fenner said she is not aware of any place that it has been addressed. Ms. Hurt inquired as to how many times the Board has disciplined a licensee for following the So Cal stip. Ms. Fenner responded that there has never been a licensee disciplined for following the So Cal stip.
Ms. Kramm stated that approximately 20 years ago, CCRA sponsored legislative language which changed the Code to allow the court reporter to send a certified copy to the witness

to review and allow the witness to send changes back on an errata sheet so that the witness did not have to travel to the court reporter's office. The court reporter was still obligated to seal the original and send it to the noticing attorney. Unfortunately, it did not change the practice of attorneys using the So Cal stip, some of who believe the So Cal stip is the Code.

Ms. Hurt expressed that reaching an exact answer on a situation that has been 40 years in the making seemed improbable. In the end, the attorneys' behavior, knowledge, and understanding of the law are what really need to be changed. Mr. Alossi disagreed, stating that CalDRA is seeking to change the behavior of the licensees. Ms. Hurt asserted that the Board's reemphasizing the statute is not going to change the practice. However, educating stakeholders about the situation will make the practice change. She inquired what stakeholders should be at the table to discuss the custom CalDRA believes should be eradicated. Mr. Alossi responded that there are over 180,000 licensed attorneys and 6,200 active licensed court reporters in California. He asked the Board to issue a guideline as to what the law states before the education portion begins. Ms. Hurt informed Mr. Alossi that the Board had heard his request and again asked what stakeholders, if any, should be included in the discussion. Mr. Alossi indicated that the licensed court reporters are the most affected. He did not believe that it would appropriate to include the Bar at this point until there is a solid resolution of this issue at the Board's level. Ms. Hurt asked if a town hall meeting including the Bar were to be formed, if CalDRA would participate. Mr. Alossi answered that the issue is of great interest to the association, but again asked for clarification of the law. Ms. Hurt asked what part of the plain language of the law needed clarification. Mr. Alossi repeated question 1 from his letter in the Board agenda packet.

Ms. Fenner stated that the question that has been repeated is really asking whether or not the attorneys can stipulate. The Board does not have the ability to answer that question. Mr. Alossi asserted that the question is whether or not the licensee may be relieved of his or her duties under the Code.

Ms. Scott indicated there is a distinction between the questions. Whether or not attorneys may stipulate is a moot point. She believed the question being asked by CalDRA is what is the obligation and/or the duty of the court reporter at that time if the parties stipulate. CCP 2025.520 states the specific duties of the court reporter, but the law uses "unless" language where the court reporter may not have a specific obligation if there is an agreement by the parties. The language states, "unless the deponent and parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived..." At that point it is clear that the court reporter is being relieved of certain duties. The only thing that precedes the "unless" language would be sending the written notice to the deponent and all parties attending the deposition when the original transcript is available for reading and correcting. Therefore, the question is what are the court reporter's duties once they are relieved, and the language in the Code states they can be relieved of these specific obligations.

Ms. Fenner stated that complaints that were received related to the So Cal stip have been situations where the reporter honored the stipulation. The reporter would have been cited had they not followed the stipulation.

Mr. Alossi stated that the court reporter cannot be a party to the stipulation, nor can they be. Beyond the two or three parties in the room, other stakeholders exist, including the

judge and jury that are also not parties to the stipulation. He stated that attorneys can stipulate to whatever they like as long as it's not in the court reporter's purview.

Ms. O'Neill stated that even in court attorneys stipulate. The judge steps in if they cannot agree to the stipulation.

Ms. Hurt asked what the consumer harm is with the "unless" language. Mr. Alossi stated that the specific duties that the court reporter may be relieved of are outlined in CCP 2025.520. Any other duties not specified in the Code cannot be relieved. Mr. Chan-You asked if CalDRA wants the Board to clarify that the court reporter cannot waive his or her obligations under CCP 2025.540 and 2025.550. Mr. Alossi responded that he wants clarification that the licensee may not be relieved of those duties under the Code.

Ms. Fenner asked if the Board finds that the reporter may not be relieved of her duties, but the attorneys continue to stipulate, how that will affect the end result. Mr. Alossi replied that a statewide education campaign would be launched including printable documents of the Code and opinion to show the parties present about what they must or must not do.

Ms. Hurt asked Ms. Kramm if she ever felt that she was not able to express to the attorneys what the So Cal stip included. Ms. Kramm responded that she offers it as a suggestion, but many do not want to hear it. She believes that a newer reporter would be pressured to honor the stipulation to not lose business.

Ms. Sharp indicated that even if formal complaints are not filed, it does not mean that consumer harm is not happening. She stated that pages go missing from transcripts because attorneys dismantle the original to scan or copy it.

Ms. Lasensky asked if the statute were changed to remove the "unless" language, how would that affect the court reporter facing an attorney wanting to use the So Cal stip. Ms. Sharp stated that court reporters haven't had anything that says the duties of the court reporter cannot be stipulated away to protect the original transcript. An opinion from the Board stating that court reporters should follow the Code may be adequate to fend off the stipulation.

Ms. Hurt asked who the audience considered to be the consumers that need to be protected. She also inquired if attorneys would be included as consumers. Mr. Alossi agreed that attorneys would be consumers, as well as the judge, jury, litigants, parties, and witnesses. Ms. Sharp responded that anybody that has an interest in the outcome of the case would be a consumer.

Ms. O'Neill indicated that many possible scenarios were brought before the Board, but nothing case specific. She expressed that the Board is not to prejudge how a complaint is handled, but staff investigates each complaint on an individual basis.

Ms. Hurt stated that some attorneys, who are consumers, feel that the So Cal stip works for their client. This aspect increases the complexity of the issue.

Ms. Kramm expressed her sympathy to the issue and suggested that court reporters educate attorneys about CCP 2025. She does not believe it is a good idea for court reporters to tell attorneys they could lose their license for following the So Cal stip.

Mr. Alossi asked the Board to state what the court reporters must do. Mr. Chan-You asked why the court reporters would be unable to show a copy of CCP 2025 to the attorneys. Mr. Alossi stated that the common practice is so widespread that it is even taught in court reporting school. He indicated that specific cases highlighting consumer harm were included in the attachments submitted by CalDRA. Mr. Chan-You asked how an opinion from the Board would sway an attorney more than the law. Mr. Alossi stated that attorneys are authoritative figures telling the court reporters that they must honor the stipulation, and without guidance from the Board, the court reporter is left in an ambiguous situation.

Ms. Hurt suggested that bringing stakeholders together to express concerns over the matter would be an easier way to change the practice. Ms. Kramm proposed that the court reporters continue to educate the attorneys that the law is clear and that the Board agrees. Mr. Alossi asserted that it would be appropriate for the Board to issue a statement as to what must be done under the law.

Ms. O'Neill expressed that as a court reporter, she wants to follow the law; however, she cannot argue with an attorney. If at the end of a deposition she tells an attorney that she needs to follow the law, the attorney may say they can stipulate to anything. She questioned if court reporters will be filing the complaints against each other for not following the Code. Ms. O'Neill stated that she understands what result is being sought and is very empathetic to it; however, asking the Board to issue an opinion or reiterate that it is the law is a simplistic view of how to solve the matter. She indicated that more groundwork needs to be laid.

Ms. Hurt then questioned whether taking a position on the Code would create a witch hunt of court reporters filing complaints against each other. She indicated that further review of all dimensions surrounding the change to the long-term practice was needed.

Ms. Lasensky stated that the presenters did a great job on laying out the issue and helping her understand the problem; however, she did not see the historical documentation of complaints that would create the background needed to make a decision. Mr. Alossi stated that court reporters are not attorneys and he would consider it inappropriate for a court reporter to tell an attorney what the law is or is not. However, under the jurisdiction of the Board, the court reporters need an opinion to hold up as to what they must do. He recognized that there is 40 years of practice history. He stated that if the practice were to be allowed under the law, there would be a practice in place under the codes for that to happen.

Ms. O'Neill posed a question to staff counsel, inquiring whether the Board can issue a statement stating that licensed court reporters must follow the Code and cannot follow stipulations entered into by attorneys. Mr. Chan-You clarified her question to be whether or not issuing the requested opinion is telling attorneys that what they are doing is illegal. Ms. Scott responded that the Board could make that statement; however, it may not be legally sound or factual so it is not recommended. This Board is delegated with enforcing the Business & Professions Code (BPC), Shorthand Reporters Act (Act), and should use caution when making specific interpretations of other codes, including the CCP. The Board does have the power to make a determination when another code specifies the duties for its licensees and to establish whether or not failure to follow the other codes constitutes a violation of the Act. The Board has already indicated that court reporters are

required to abide by the CCP, so it appears the request is for a more assertive statement to bolster the court reporters to say they are now going to stand by the Code.

Ms. Scott added that before taking her position as staff counsel, she practiced in both Northern and Southern California. There were occasions where she used the So Cal stip, not knowing what it meant. She indicated that she would be concerned with the vagueness of the request before the Board and would suggest more specificity. As an attorney, if she were to be told by a court reporter that they cannot follow a stipulation, she would have to research the duties the court reporter states they have to follow and then decide whether she wanted to conform or continue with old practices. In addition, she questioned the weight an attorney would place on a statement issued by the Board to restate existing law.

Mr. Alossi stated that an e-mail can be sent to the attorney in advance including the duties and obligations of the court reporter under the Code. Ms. Scott asked if he is requesting a position statement or a regulatory change. Mr. Alossi responded that he is not requesting any updates to the regulations or codes. He indicated that it would be appropriate for those seeking to relieve court reporters of their duties under the Code to go through the regulatory or legislative process. Mr. Chan-You asked if it was accurate to say that the request was essentially for the Board to restate the law on a piece of paper. Ms. Sharp answered that the request is to protect the consumers by saying court reporters should go by the Code to protect the original transcript. Mr. Alossi added that he is requesting the Board to lay out the duties under the Code as to what court reporters must do.

Ms. O'Neill expressed that she would be thrilled if the So Cal stip was reversed, but it is not that simple. Ms. Sharp stated that she does not expect everyone to agree, but she wants the Board behind the court reporters to protect the original transcript.

Ms. Hurt reiterated that there are many consumers, including attorneys and clients that have their own list of pros and cons about the So Cal stip. She called for any other questions for the public.

Ms. Scott proposed Ms. Hurt's earlier suggestion of holding a public meeting forum to further vet out the three specific statutes regarding the obligations of the court reporters with all stakeholders.

Mr. Alossi restated his request for a statement on the current law. He believed that if the law were to be deviated from, there would need to a legislative change. He did not agree that a town hall forum would be appropriate.

Ms. Hurt stated that she needs further analysis of the matter and evaluation of the impact to the consumers. She asked the Board if they wanted to explore the possibility of convening a town hall meeting or potentially speak with staff counsel further and bring it back to a Board meeting.

Ms. Kramm expressed a desire to find a solution that makes sense and has enough power to be effective. The solution would also need to be something the attorneys comprehend on a level that they choose to cooperate. She suggested a proper response to the issue is more important than a quick response, looking to have a resolution to benefit the

consumer, the attorney, and the court reporter. Ms. O'Neill and Ms. Hurt agreed. Ms. Lasensky agreed that the Board is not ready to develop language or an action plan. Ms. O'Neill added that more needs to be in place, including an educational component, before rolling out a statement. She stated that the Southern California court reporters may otherwise find themselves in a dire situation. She also asserted that there would be deposition agencies and court reporters who do not care what the Board says, which may result in complaints by other court reporters. Ms. Lasensky agreed, adding that issuing a decision prematurely may result in both court reporters and the Board being exposed to more damage.

Ms. Hurt asked if the Board had a proposed action, with a possibility that staff be directed to explore who are all the stakeholders and begin discussions with them. She has heard from some attorneys that they find the So Cal stip beneficial, so she is interested in hearing from all sides. Ms. Kramm suggested that a town hall meeting including the industry associations, the Board, attorney representatives, and judge representatives be scheduled to vet out the ramifications of stipulating away the original transcript. She also considered finding complaints and stories of consumer harm to be a possible benefit to the discussion. She also wishes to be educated by staff counsel as to what the court reporter is actually able to do out in the field at the end of the deposition. By encompassing all these factors, she hopes that a solution and a way of educating the consumer will be developed, giving the court reporters tools in the field.

Ms. Hurt reiterated her desire to have all stakeholders at the table to fully understand the ramifications of responding to the request. Ms. Kramm agreed, stating that the Board needs to know what it can do legally and what power attorneys and judges have in order to help the court reporters. Both agreed that they wish to strengthen the court reporter and educate the stakeholders.

Mr. Alossi requested to see any past legal opinions, indicating that Rick Black, former executive officer for the Board, stated in 1996 that there was a legal opinion at the Board. He believed that this was the second time the issue was brought to the attention of the Board. Ms. Fenner clarified that legal opinions to the Board are attorney-client documents, not public documents. The opinion referred to by Mr. Alossi was being researched by staff counsel due to some issues, so staff would be reporting back on its findings at a later date.

Ms. Kramm moved to direct staff to organize a town hall meeting to discuss the ramifications of the So Cal stip and potential waiver of court reporters obligations under that stip as to pertains to CCP 2025.520, 2025.540, and 2025.550. Second by Ms. Lasensky. Ms. Hurt called for public comment.

Mr. Alossi requested restatement of the motion. Ms. Mathias requested that staff include Northern California judges and attorneys in the town hall invitations.

A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED.**

The Board took a break at 11:27 p.m. and returned to open session at 11:45 a.m.

III. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner invited questions regarding the budget. She referred to the year-end Budget Report for 2014-15 on page 68 of the Board agenda packet, as well as the first quarter report for 2015-16 on page 69. She discussed the Fund Condition of the Board on page 70 of the Board agenda packet, highlighting the projections for budget year 2016-17 at 4.4 Months in Reserve. When the operating expenses fall below six months, the TRF cannot be funded. Board staff will continue to work with the Legislative Counsel's Office and the various Legislative Committees, including Sunset Review, to raise the statutory license fee cap.

Ms. Hurt inquired if the Budget Change Proposals approved. Ms. Fenner confirmed that two were approved, including an augmentation to the Attorney General's line item for enforcement and an approval for ongoing examination development.

B. Transcript Reimbursement Fund

Ms. Bruning reported information provided to her by Melissa Davis, TRF Pro Per Program Coordinator. She indicated that applications have been processed and approved that have been received through February 1, 2015. A total of 138 applications were approved for the 2015 funding. Staff was able to allocate $36,000 due to releasing previously allocated funds. She added that 55 applications were reviewed and awaiting the renewed funding for 2016, totaling approximately $28,000 in estimated costs.

Ms. Bruning stated that $51,000 for 81 invoices was paid out of the TRF Pro Bono Program so far for FY 2015-16. She currently has nearly $50,000 in applications pending review. A backlog is starting to compile as a result of the multiple Board and task force meetings staffed by Ms. Bruning. It is hoped that the backlog will quickly be resolved; however, with the loss of the half-time position for the Pro Per Program, it may be difficult.

C. Exam

Ms. Fenner referred to the examination pass rates reflected on pages 72 through 77 of the Board agenda packet. Ms. Lasensky expressed that the statistics for the English examination were concerning to her. She noticed an ongoing problem, but realizes it not something the Board can resolve. Ms. Hurt also noticed the degenerated pass rates and asserted that there is an element missing at the public school level that is too difficult for candidates to gain in court reporting school.

Melissa Murray, student, inquired which style manual the Board follows for grading punctuation. Ms. Fenner responded that the grading policies are published on the Board's Web site. There is no style manual, but there are references used in the overall construction of the examination. Ms. Sharp indicated that she runs a Facebook page for punctuation for court reporters since there is a gap in knowledge in punctuation. She finds it difficult for students to study for the examination without a specific style manual to research. Ms. Fenner stated that the English test does not

have punctuation questions where the resources are conflicting. Ms. Murray inquired which style would be used to grade the dictation examination. Ms. Fenner answered that English grammar has straightforward rules. More sophisticated situations where multiple pieces of punctuation are possible are not counted wrong. Deductions for punctuation are only made when an absolute error is entered where some form of punctuation is needed and was not included, or punctuation was included that was not need. The dictation examination is developed from real life transcripts, but there are many ways they can be punctuated.

D. Enforcement

Ms. Fenner referred to the year-end 2014-15 and first quarter 2015-16 reporters provided in the Board agenda packet. She stated that complaints go up and down, but no trends have been noted.

E. School Updates

Ms. Fenner reported that the San Diego campus of Sage College has closed, dropping the number of recognized schools to 13.

She indicated that work has begun with a consultant to restart school onsite reviews, considered Phase II. The schools are required to submit specific written materials during Phase I, which Board staff would verify during regularly scheduled site visits every three to four years. The site visits include student interviews and records review. Budget challenges prohibited staff from continuing the reviews on a regular basis in recent years, but the Board is now in a position to resume the activity.

Ms. Fenner recently met with the CEO of the National Court Reporters Association (NCRA) as well as many of the court reporting schools in conjunction with the CCRA convention. NCRA is working to support school enrollment in an attempt to combat the upcoming shortage of licensed court reporters. Ms. Hurt recognized the potential workforce issue and mentioned its inclusion in the Sunset Review Report. Ms. Lasensky connected the problem with the previously mentioned pass rates for the English examination. Ms. Kramm stated that she speaks to many students and recently attended the Sage College graduation. She noted that online classes are becoming the new hope, for which she has heard of success stories from online graduates. She supports online students and programs with the closure of bricks and mortar schools.

F. CRB Today Newsletter, Fall 2015

Ms. Fenner reported that the Fall 2015 CRB Today newsletter was distributed and would be posted on the Board's Web site. Ms. Hurt and Ms. Lasensky complimented the publication.

G. Education/Outreach

Ms. Bruning shared that she had the opportunity to work with one of the larger nonprofit entities that frequently utilizes the TRF to develop and present an online training for the TRF application preparers in their various satellite offices. She stated that she plans to

turn the training into a webinar, similar to the MTFS video, to be posted on the Board's Web site. It is hoped that the video will assist with the applications being completed accurately, shortening the review process. Ms. Kramm stated that she sits on the board of the San Diego Volunteer Lawyer Program, and she can see where they would truly benefit from and appreciate the training.

Ms. Fenner reported that she attended the CalDRA fall seminar in Sacramento, where she participated on a legislative panel. She also attended the CCRA convention.

Ms. O'Neill reported that she also attended the CCRA convention where she had the opportunity to express the purpose of the Board and the difference between which activities the Board performs versus what Board staff performs. She also found that most court reporters do not understand that their renewal fees are due on the last day of their birth month and that the grace period is only on the late fee, not the license. She finds herself explaining the requirement whenever she has the chance. Further, attendance at conventions helps her get a feel for the issues and trends happening around the state. She sees a need for court reporters to keep up with technology.

Ms. Hurt agreed that the Board's outreach needs improvement. She hopes to resolve the revenue problems facing the Board to allow for more opportunities for outreach.

Ms. Ryan thanked Ms. Fenner and Ms. O'Neill for attending the CCRA convention and sharing their wealth of knowledge. She encouraged all Board members to attend.

H. Staffing

Ms. Fenner reported that the two-year limited term half-time analyst position for the TRF Pro Per Program has now ended. The loss will significantly change workload at the Board office as the Pro Per workload will be absorbed by existing staff.

I. BreEZe

Ms. Fenner stated that Release 2 of the BreEZe system is going live. The Board is part of Release 3. Migration of the legacy system for the Release 2 boards and bureaus will cause a shutdown of the systems periodically. Licensees are encouraged to renew early to avoid any delays.

IV. STRATEGIC PLAN

A. Approval of Best Practice Pointers

Ms. Hurt stated that she chaired the task force where six additional practice pointers were developed at its July 2015 meeting, bringing the total pointers thus far to 10. She thanked the members of the task force for their work. She indicated that the practice pointers are living documents than can be improved over time. She urged stakeholders to continue sending questions to the Board for inclusion in the newsletter and to be answered in the practice pointer format. Ms. Hurt reported that staff recommends the Board adopt the proposed practice pointers, number 5 through 10. She then invited discussion of the proposed practice pointers.

Best Practice Pointer No. 5 – Confidential Depositions

Mr. Chan-You expressed a concern that the practice pointer indicates attorneys can mark a deposition confidential. He indicated that a court order is needed to determine what portions are confidential. Ms. Fenner responded that attorneys often stipulate to depositions being confidential. Ms. Kramm stated that typically there is a protective order in place, which could be a court order, but the attorneys may agree by stipulation that something is "attorneys' eyes only" in entirety or in portions. Ms. Scott added that the stipulation alone does not deem the transcript confidential. The attorneys would then seek a protective order after the deposition. Ms. Fenner stated that the practice pointer would assist court reporters at the time of the deposition and is not inclusive of all legal ramifications.

Ms. Lasensky requested that the document be reflective of gender equality and use "s/he" anywhere the attorney is referred to. Ms. Hurt agreed.

Ms. Kramm suggested the word "should" be changed to "may" in the second paragraph under scenario two.

Ms. Lasensky moved to adopt Best Practice Pointer No. 5, Confidential Depositions, as amended. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

Best Practice Pointer No. 6 – Court Transcripts Designated Confidential or Under Seal

Ms. O'Neill stated that some proceedings are designated automatically confidential within statute, such as Marsden hearings. She would like to research and incorporate those proceedings the practice pointer. She would suggest keeping the caveat to refer to the most recent Rules of Court, which provides information for how the court reporter is supposed to handle confidential transcripts, but it does not specify which hearings are confidential. Ms. Fenner indicated that a list was not included for fear of not being all inclusive. Ms. O'Neill indicated there are some very common hearings that do not vary from court to court, and it could be worded in a way that the reader knows that it is not an all-inclusive list. She expressed that it could be very helpful for new reporters going into court. She added that the court she works for has a training manual with trigger words for the reporters to listen for. She volunteered to research the statute. Ms. Fenner offered to work with Ms. O'Neill to revise the practice pointer and bring it back to the Board at the next meeting.

Ms. Lasensky moved to table Best Practice Pointer No. 6, Court Transcripts Designated Confidential or Under Seal, so that Ms. O'Neill can work with staff to further clarify the practice pointer. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

Best Practice Pointer No. 7 – Subcontractor Agreements

Ms. O'Neill shared that she was very impressed by this practice pointer.

Ms. O'Neill moved to adopt Best Practice Pointer No. 7, Subcontractor Agreements. Second by Ms. Lasensky. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

Best Practice Pointer No. 8 – Swearing in Witness Mid-Proceeding

Mr. Chan-You shared concern that the practice pointer advises the court reporter to interrupt the witness and give the following instruction: "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." He indicated that Government Code (GOV) 11513(a) states, "Oral evidence shall be taken only on oath or affirmation." Further, Evidence Code 710 states, "Every witness before testifying shall take oath or make an affirmation or declaration in the form provided by law..." Considering these two codes, he indicated that any statements made before the oath is not considered testimony.

Ms. Fenner then asked if he was suggesting that the deposition would have to be restarted. He responded that his research led him to believe it would. Ms. Fenner proposed that the attorneys would need to object to and stipulate to the restarting of the deposition. She added that the practice pointer is an attempt to cure an issue where the witness was not sworn in at the proper time.

Ms. Lasensky asked if there was a different way of wording the suggested oath. Mr. Chan-You reported that he gathered that the first part of the deposition taken before the oath was given is not considered testimony so the amended oath may not have any type of legal effect. Ms. Scott suggested resolving the problem with the amendment by removing the first occurrence of the word "testimony" and replacing it by saying, "do you solemnly state that the statement you've given and the testimony you're about to give..." Mr. Chan-You recommended the Board table the practice pointer in order for him to do further research on this issue.

Ms. Hurt asked Mr. Chan-You if the change suggested by Ms. Scott would make the amended oath legally appropriate. He expressed concerns that the oath would in essence be considered meaningless.

Ms. Fenner stated that the practice pointer is not attempting to advise anyone on a point law, but merely to facilitate and correct a problem at a deposition, as well as point out to the attorney the shortfall so they may take whatever action they feel is appropriate. Upon further review, Mr. Chan-You agreed that changing the first occurrence of the word "testimony" to "statements" would negate his concern.

Ms. Lasensky suggested changing "is" to "are" on the third line from the bottom.

Ms. Hurt suggested the addition of a comma after "Occasionally" in the first sentence.

Ms. Kramm moved to adopt Best Practice Pointer No. 8, Swearing in Witness Mid-Proceeding, as amended. Second by Ms. O'Neill. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

Best Practice Pointer No. 9 – Leaving Rough Draft for Jury Readback

Ms. Kramm stated that the practice pointer is very good.

Ms. O'Neill suggested the addition of "or in accordance with local practices" to the end of the sentence. Ms. Scott asked if there would be any issue if no local practices exist and suggested starting the sentence with "Absent court practice." Ms. Fenner suggested that adding "if they exist" to the end of Ms. O'Neill's suggested change.

Ms. Fenner restated the amended language, as follows: "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 in accordance with local practices, if they exist."

Ms. Hurt questioned if leaving "electronic format" as the sole format was adequate. She suggested that adding the word "hard copy" as an optional format may be beneficial. The Board agreed.

Ms. Lasensky moved to adopt Best Practice Pointer No. 9, Leaving Rough Draft for Jury Readback, as amended. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED.**

Best Practice Pointer No. 10 – Reporter Conduct in the Jury Room

Ms. O'Neill shared that when entering the jury room, she gives a preamble to the jury to let them know they can ask her to repeat something or slow down. However, if they hear something they would like to discuss, she asks that they stop her so she may leave the room. She suggested that similar language be added to the practice pointer to aid the court reporters.

Ms. Kramm stated that the additional language suggested by Ms. O'Neill would be incredibly helpful for new and pro tem reporters and recommended that the practice pointer be tabled for further research. Ms. Kramm moved to table Best Practice Pointer No. 6, Court Transcripts Designated Confidential or Under Seal, so that Ms. O'Neill can work with staff to further clarify the practice pointer. Second by Ms. Lasensky. Ms. Hurt called for public comment.

Steve Kosmata stated that readback also takes place in open court, so he suggested adding that facet to the practice pointer as well. Ms. Fenner indicated that this particular practice pointer was specific to readback in the jury room and suggested that Mr. Kosmata would be a great resource for creating a separate practice pointer for readback in open court.

Keren Guevara stated that there is a jury instruction given to the jurors when they are in the jury room informing them to not speak to the court reporter. Ms. O'Neill verified that they do receive instructions, but added that they are provided with many directions and may not have understood the instruction.

A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED.**

B. Update on Action Plan Accomplishments

Ms. Fenner referred to the CRB Action Plan in the Board agenda packet and indicated that updates had been made in the status column. She offered to answer any questions.

VIII. CLOSED SESSION (out of order)

The Board then moved to Agenda Item VIII, Closed Session at 12:39 p.m. The Board took a break at 12:59 p.m. before returning to open session.

Upon returning to open session at 1:36 p.m., Ms. Hurt indicated that there was nothing to report from closed session. The Board then moved to Agenda Item V, Legislation.

V. LEGISLATION

A. Update on licensee fee cap increase

Ms. Fenner reiterated that staff has been working the Senate Business, Professions and Economic Development Committee, who is in turn working with the Office of Legislative Counsel. She stated that she is encouraged that, at the very least, it is being actively looked at on behalf of the Board, and she hoped to have more to report as the Board goes into the sunset review process.

B. Status of bills relevant to the Board

Ms. Fenner stated that the report is informational and the Board was not being asked to take a position on any of the industry-related bills.

AB 804

Ms. Fenner reported that AB 804 (Hernandez) pertaining to continuing education was vetoed by the Governor.

AB 1197

Ms. Fenner related that AB 1197 (Bonilla) was signed into law on September 28, 2015.

SB 270

Ms. Fenner indicated that the language for SB 270 (Mendoza) was being worked on by the author's office, which is not yet public. It will be coming back to the Board when the language is finalized.
Ms. Hurt stated that letters of support were sent regarding all three of the aforementioned bills before the last Board meeting.

Mr. Alossi stated that with the enrollment of AB 1197, CalDRA is kicking off the educational phase of their campaign.

VI. STATUS OF SCOPE OF PRACTICE REGULATION
Title 16, California Code of Regulations, section 2403(b)(3)

Ms. Fenner reported that the regulation was sent to the Department of Consumer Affairs for review, then it will sent to Business, Consumer Services and Housing Agency before going to the Office of Administrative Law.

VII. BURD v. BARKLEY COURT REPORTERS, INC.
Consideration of request for amicus curiae brief on behalf of Plaintiff

Ms. Hurt summarized the request and stated that Board staff recommended a full discussion of the repercussions as it relates to consumers. She then invited public comment.

Jim Patterson, plaintiff's attorney in the case, approached the Board. He indicated that his client, Tara Burd, was charged $600 for a 30-minute transcript. A case was filed based on the belief that the charges were in excess of the statutory rates provided in GOV 66950. Extensive research was done considering the Board's position, which has been consistent since 1999. Due to the layoffs in court and the influx of freelance reporters appearing in court, the Board issued a memo in May 2012 stating that the code applied to all reporters in court, both official and pro tem reporters (see May 14, 2012 letter on pages 101 and 102 of the Board agenda packet).

After filing the case, Defendant Barkley Court Reporters filed a motion for judgment of the pleadings, taking the position that the case failed as a matter of law because the government code limitations do not apply to private reporters appointed by the court.

Mr. Patterson requested the Board maintain its position that the statutory rates apply to pro tem reporters for a number of policy reasons, including protection of the consumer. He asserted that if private court reporters were allowed to charge the market rate as they do in depositions, it would lead to the undesirable result of giving wealthier litigants an advantage over litigants of less means. As an official transcript of a government hearing, there has always been protection provided, which is why the limits were originally put in place.

Ms. Patterson referred to the Spring 2012 CRB Today newsletter where Ms. O'Neill stated there can be no hint of impropriety regarding the reliability of the official record. In these days of belt tightening and declining resources, it's easy to cut one corner too many. But it's important to never compromise one's belief system in difficult times.
He indicated that he is not aware of any prior cases where a court reporting agency was challenged for trying to circumvent the statutory fee. In opposition of the judgment of the pleadings, the plaintiff requested that the Court take judicial notice of the materials issued by the Board. After doing so, CalDRA filed an amicus brief supporting the defendant, taking the position that the statutory fees do not apply to private reporters. He stated that in its brief, CalDRA "accuses the Board of failing to cite or consider the pivotal statutes, acknowledge the applicable constitutional law, cite any indicia of legislative intent that might support its conclusions and fail to weigh the consequences of its interpretations."

CalDRA also asked the Court to not give any deference or weight to the Board's prior position, actions, or memorandums.

Mr. Patterson requested the Board file an amicus brief making it clear to the judge that the Board's position has been and continues to be that the statutory rates apply to official reporters and private pro tem reporters, providing equal access to justice. He stated that it also encourages public policy of openness in government proceedings and a written record that is beneficial to the litigants and the courts.

Ms. Kramm asked if the Board would like to hear a representative of Barkley Court Reporters before asking any questions. Ms. Hurt agreed that would be beneficial in that the Board may get the answers to their questions during the defendant's testimony.

Mr. Howard, representing CalDRA, confirmed that the association filed an amicus brief on behalf of the defendant and provided two reasons. First, he questioned if the Legislature intended to impose the same price caps that were imposed on official court reporters, who were full-time salaried employees, on freelance pro tem reporters who depend on the transcript fees for their entire compensation. He asserted that the Board's interpretation of the statutory code is incorrect because it fails to cite or examine a pivotal statute.

Mr. Howard continued, stating that the two critical statutes that serve as the basis of the Board's opinion are GOV 69950 and 69954, which set the price caps, but do not specify either official or pro tem. The Board did not consider in the May 2012 letter GOV 69947, which states "Except in counties where a statute provides otherwise, the official reporters shall receive for his services the fees prescribed in this article." Mr. Howard indicated that this statute specifies official reporters, but does not mention pro tem reporters. He asserted that if the Government Code wants something to apply to both official reporters and pro tem reporters, it mentions both.

Mr. Howard requested that the Board read both the plaintiff's and the defendant's briefs to have all the information from both sides of the case before making a decision on the plaintiff's request.

Mr. Howard stated that application of the fee caps to pro tem reporters would be terrible for consumers. He provided a hypothetical example of a Los Angeles area freelance court reporter being retained to report a motion for summary judgment. In the scenario, the hearing is 45 minutes long, with a transcript of roughly 30 pages. If GOV 69950 were applied, the pro tem would charge about $3.00 page, equaling $90.00 for the 45-minute job. When parking and gas are taken into consideration, this reporter may only gross $40.50 for the job. If the reporter had to drive two hours roundtrip, spend a couple hours at the courthouse, and then prepare the transcript, that might equate to $6.23 per hour. He asserted that consumers would be unable to find reliable and competent freelance reporters to take this kind of job for what equates to less than minimum wage, resulting in the consumer not getting the record.

He stated that official reporters, who earn a full-time salary, have also complained that the price caps are too low. Applying the caps to freelance reporters is wrong on the law and disastrous public policy.

Mr. Howard informed the Board that in other instances where it was asked to provide an amicus brief, the Board's decision was to wait until there was a court of appeal decision on the question of the first impression, and he believed the same would apply to this situation.

Mr. Patterson stated that the problem is that consumers are unable to afford the higher transcript rates, which is why the fee caps exist. He added that most major reporting agencies abide by the statute. Pro tem reporters can charge a daily fee, which is not capped, as well as get travel cost reimbursements. He reported that the Government Code is inconsistent, using official reporters and pro tem reporters together in some places and not in others.

Ms. O'Neill asked Mr. Patterson if the $600 charged to his client included per diem or only pages of the transcript. Mr. Patterson did not have a copy of the bill, but believed there may have been a per diem included, which is not regulated. He added that if a wealthy litigant hires the court reporter and pays the per diem, the litigant of lesser means may be able to afford to buy a copy of the transcript.

Ms. Kramm inquired if the plaintiff hired the court reporting firm and checked their rates before the hearing. Mr. Patterson confirmed that the plaintiff did hire the court reporting firm, but did not believe she knew what the rates were going to be. He asserted that the plaintiff may have assumed the statutory rates would be charged. He shared that the reporters he has been using for years follow the statutory rates, and they are competent.

Ms. O'Neill expressed that she thought the plaintiff was requesting support from the Board regarding court reporters charging the statutory fee for court transcripts; however, the Board cannot take a position on the per diem, and the two appeared comingled. Mr. Howard agreed. Mr. Patterson disagreed, stating the plaintiff is not requesting a position on the per diem and that the case is solely limited to the statutory rate, specifically the copy costs.

Ms. Kramm commented that the request appeared to be merely a restatement of the law, which does not hold much power. Mr. Patterson stated that the Board has the ability under the Business and Professions Code to enforce the Government Code. Ms. Scott disagreed, stating that there is no such authority for the Board to enforce the Government Code. The Board has the authority to enforce the Business and Professions Code, but can also consider licensees' conduct regarding violations in another area, such as a violation of the Government Code or the CCP.

Ms. Lasensky asked about the actual bill or invoice for the service. Mr. Patterson said there is a bill, but at this point, it's just a total number. The invoice will come out in discovery. The defendant does not deny that the charges exceed the statutory rate; they are saying that the rates do not apply to their reporters as pro tem reporters.

Ms. Hurt inquired of Mr. Chan-You what the process would be if the Board wanted to write a declaration for the plaintiff as an alternative to an amicus brief. Mr. Chan-You responded that it would be similar to the May 2012 memorandum from the Board. Ms. Scott asked for clarification on what is being sought by issuing a declaration, whether it is a position statement or something else. Mr. Patterson responded that the plaintiff is seeking a declaration that connects the reasons why the Board took the position in its May 2012 letter that the statutory rates apply to both official reporters and pro tem reporters.

Although the court was provided a copy of the May 2012 letter, the defendant argued that the Board failed to consider all applicable statutes. He would like a statement including the history of the Board's position and how the budget cuts made in the court system affected the way court reporters are hired. The Board is being requested to defend its position.

Mr. Howard restated that the Board did not take GOV 69947 into consideration when it issued the May 2012 memorandum, since GOV 69950 and 69954 do not mention official reporters or pro tem reporters, but GOV 69947 specifies "official reporter." He added that GOV 69941 and GOV 69944 mention both official and pro tem reporters. He asserted that when the code wants to include both types of reporters, it mentions both types of reporters.

Ms. Hurt asked if counsel had the legislative history. Mr. Howard replied that he did not, but the plain language of the statute does not group official and pro tem reporters together as the May 2012 letter does. He suggested the Board read the other pleadings and request that staff counsel do the same before coming to a decision.

Mr. Patterson stated that the statute uses "official reporter" and "pro tem reporter" interchangeably. He argued that by definition, an official reporter includes an official pro tem reporter.

Ms. Hurt asked the Board if they had any additional questions. Ms. Lasensky asked Mr. Howard if it was apparent to him that the statute was missing when the Board issued the May 2012 letter. Mr. Howard responded that he had reviewed the statutes cited in the letter but did not see if there were other statutes missing.

Ms. O'Neill stated that the Board's position all along has been that official and pro tem reporters are subjected to the same codes. She stated that in her court, pro tem reporters must charge the statutory rate. She did not feel comfortable issuing an amicus brief, but would support issuing a declaration to restate the Board's policy.

Ms. Hurt inquired with staff counsel who would write its position paper. Mr. Chan-You stated that staff would prepare it similarly to the May 2012 letter. She then asked for details on the process for filing an amicus brief. Mr. Chan-You explained that he would draft the brief and the Governor's Office Action Request that would be sent to the Governor's Office. If approved, it would then go to the Attorney General's Office for review, who would then write it on behalf of the Board if they approve it.

Ms. O'Neill inquired if the May 2012 letter was reviewed by staff counsel before being issued. Ms. Fenner confirmed it was.

Mr. Patterson stated that the May 2012 letter refers to a December 1999 letter, which he did not have. He said it appears that was the first time the Board took the position that the statutory rates applied to both official and pro tem reporters. He asked the Board to take into consideration the fact that the Legislature has not corrected the Board for the position it has taken since 1999. Case law says that you can take into consideration how long something has been a public opinion without any sort of response from the Legislature.

Ms. Fenner reported that the December 1999 letter was issued under former Executive Officer Rick Black and was essentially the same as the May 2012 letter. Mr. Howard pointed out that the December 1999 letter also failed to mention GOV 69947 and asked if

the Board had adopted its position with that particular statute in mind. Ms. Fenner responded that she did not know what all was considered when the original letter was issued.

Ms. Scott clarified that the Board is being asked to either issue a declaration to defend its position or file an amicus brief on the case that is now in litigation. If the Board is considering filing an amicus brief, she suggested the Board be provided a copy of the initial complaint, the response, etc.

Ms. Hurt stated that there was a lack of information for making a decision. She asked the Board if anyone wanted to a make a motion, suggestion, or recommendation on how staff should move forward, if at all.

Mr. Howard volunteered to provide to the Board copies of all the relevant pleadings.

Ms. Lasensky asked about the time frame for which a response was needed. Mr. Howard indicated the case was continued to January 10.

Mr. Howard compared the discussion regarding the case to the discussion held earlier in the day regarding the So Cal stip. He asserted that if the Board did not believe it needed to restate the law in one case, why did it in the other.

Mr. Kosmata, an official reporter, stated that the recession brought budget cuts that led to layoffs of official court reporters. The statute has not yet caught up to what happened in the state and may be lacking in some places. He, too, would like to see the statutory rates raised. The court pays him to preserve the record, which he is happy to do; however, transcript production is separate from that, and he has costs involved with producing the transcripts. He stated that hiring a scopist and a proofreader take up half the fee he is able to charge.

Ms. Kramm asserted that the words official, pro tem, pro tempore, and official pro tem have become blurred since the recession and layoffs. The names are interchangeable. Otherwise, a freelance reporter in court plays by a different set of rules than the official reporter. Ms. Hurt asked if the Board wanted to underline that the law applies to both. Ms. Kramm responded that she did not believe the Board has the right to say what the law is, but would suggest there was a reason that the Board took the position it did when it issued the May 2012 letter.

Mr. Chan-You stated that the Board has four possible actions. The first was to defend the Board's position via an amicus brief or position paper. Second, the Board could direct staff and staff counsel to review its position to determine whether or not it's legally sound. The third option was request more information from the litigants. And finally, the Board could take no action at all.
Ms. Fenner suggested the Board frame its decision in the sense of its overarching concern of consumer protection. Ms. Hurt questioned whether the consumer is protected if the Board takes no action and if it is the Board's duty to protect this consumer. Ms. Lasensky and Ms. Kramm agreed that the Board is charged with protecting consumers of court reporting services.

Mr. Patterson informed the Board that the suit is a class action case; therefore, it is on behalf of all other similar situated consumers who are charged more than the statutory rate. The Board indicated that it did not previously have this information. Mr. Patterson stated that since the case came before the Board at the last minute, he was unsure of what information the Board would need. He offered to send the documents to the members, noting the substantial volume of materials.

Mr. Howard commented that CalDRA is not asking the Board to do nothing, but to review the entire record before making a decision.

Ms. Hurt stated that a class action suit is a pretty important thing to weigh in on, especially considering the consumer protection aspect. The Board agreed it needed additional information before making a decision. Noting the fact that the Board meets infrequently, she questioned how it could be effective moving forward. Ms. Fenner responded that the earliest the Board would be able to meet would be December, taking into account the lead time needed to prepare for and notice the meeting, which does not allow much time before the case goes back to court in January.

Ms. O'Neill expressed that the first step for her would be to ensure the Board did not miss anything in the statute since that allegation has been raised. Ms. Hurt agreed and asked for a motion to explore all the relevant statutory code that affects the Board's position.

Ms. Fenner then asked if the Board was directing staff to discontinue enforcing its position on the code until it decides which direction it wishes to go. Ms. Hurt stated that, for the record, she was not saying that these codes do not apply. The Board concurred. Ms. Hurt continued, stating that the Board received a request to make a declaration, which requires more exploration of all the laws that are associated.

Mr. Patterson stated that the plaintiff is just looking for the Board to reaffirm its position as a result of the amicus brief filed by CalDRA. He added that the Board was not being asked to change its position, but to confirm it continues to be the same position.

Ms. Fenner asserted that the absence of a specific code in the letter did not mean that it was not considered. There were many codes considered, but not specifically named if they were not relevant to the point of the position.

Ms. O'Neill asked if the plaintiff was merely looking to have the May 2012 letter updated with a new 2015 date to confirm the Board has retained its position. Mr. Patterson confirmed that as correct.

Mr. Alossi asserted that the Board did not have enough information about the case, including details pertaining to the charges of the invoice the plaintiff was charged for. He recommended the Board not go down the path of a declaration or amicus brief.

Ms. Lasenksy commented that updating the date of the letter would confirm the Board's position has remained unchanged and would not be taking a position on the case.

Ms. Hurt inquired as to the impetus of the May 2012 letter. Ms. Fenner indicated that the court layoffs caused the Board to start getting complaints on overcharging.

Ms. Kramm stated that in 2012, CalDRA sponsored seminars and invited the members of the Board to inform the California court reporters that the statutory rules and rates apply to the freelance reporters going to court as pro tem reporters. The industry associations created a town hall meeting to help educate reporters about what they could and could not charge in court in the various counties. Ms. Fenner added that it was very controversial, and some firm owners declared that the statutory rates did not apply to them.

Ms. Hurt expressed that she believed it would be a good idea to write a 2015 position paper.

Ms. Scott shared concern that simply updating a position statement not associated with the litigation versus an amicus brief would not be sufficient notice to the public for individuals to come comment regarding the position. She quoted from the May 2012 letter, highlighting that the Board confirmed that it had not changed its position since 1999, and that if the Board determines a court reporter has charged more than the statutes allow, it may take disciplinary action again the court reporter's license in addition to requiring a refund to the consumer. The letter does not specify the amount to be charged, but says to follow the statute. She then asked if the Board intended to reissue the letter that just says to follow the statute. She asserted that based on her legal opinion, the statutes are not clear about what can and cannot be charged. It is also apparent that the law has not caught up with the recent time. She believed it was good that the matter was going before the court to make the determination of what pro tem reporters should charge. Ms. Scott stated that to reiterate what is in the May 2012 letter would not be taking a position. It merely says: Here is the law; follow the law.

Ms. O'Neill reiterated that she was not ready to take a position and agreed it would be up to a judge to decide. She wrestled with the option of reissuing the same letter with a new date just to restate the law. Ms. O'Neill moved to reprint the May 14, 2012 letter it in its exact same form and change the date to a 2015 date. Second by Ms. Kramm. Ms. Hurt called for public comment.

Mr. Alossi urged the Board to take into account on this particular case that there may have been charges that the code is silent on, such as expedite fees, so as to not prejudice the case in one direction. Ms. Kramm recommended the Board not begin a discussion on other fees due to the complexity of the matter already at hand.

Mr. Patterson indicated that he was in agreement with Mr. Kosmata that the statutory fees should be raised. He stated that he depends on court reporters for his livelihood and would be in favor of legislation that changes the statutory rates.

Mr. Alossi opposed the Board reissuing the letter if there were no changes to be made to it.

Mr. Chan-You asserted that the reissuance of the letter was not noticed on the agenda. Ms. Fenner responded that the Board has not been limited in the past as to what it has to list for possible action. Ms. Scott added that the subject matter placed on the agenda was pertaining to the Burd v. Barkley case and not reevaluation of the May 2012 letter.

Ms. Hurt stated that the plaintiff's attorney contacted the Board to inquire about the letter and confirmed the Board's position, for which the Board is willing to write the updated date. Ms. Fenner stated that the Board's agenda indicated that action may be taken on any item

on the agenda, and it would be impossible to anticipate which items the Board will act on or all possible solutions they may develop.

Ms. Scott stated that there is not a problem acting on the items listed on the agenda, but a question as to making a decision on something that is not clearly articulated or not specifically noticed. Ms. Fenner stated that the letter would be reissued at the request of the particular litigation. Ms. Hurt added that they requested either an amicus brief or a declaration.

Mr. Chan-You and Ms. Scott suggested the motion be revised to reflect that the Board is reissuing the letter in relation to the Bud vs. Barkley matter.

At the request of the Board, Ms. Bruning restated the motion currently on the table.

By amendment, Ms. O'Neill moved to reprint the May 14, 2012 letter in its exact same form and change the date to a 2015 date in response to the request by counsel in the Burd v. Barkley matter. Second by Ms. Kramm.

Ms. Hurt called for public comment.

Mr. Alossi requested the Board include some mention of fees that may be charged outside the purview of the codes to not prejudice the case. Ms. Fenner stated that such a modification would change the motion.

A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED**.

Mr. Patterson thanked the Board.

The Board heard Agenda Item VIII, Closed Session, prior to Agenda Item V, Legislation.

VIII. CLOSED SESSION

(taken out of order, see page 19)

IX. APPROVAL OF SUNSET REVIEW REPORT TO LEGISLATURE

Ms. Hurt stated that although staff participates in gathering information, the Sunset Review Report is the Board's report. She indicated that she and Ms. O'Neill conducted a Sunset Review Task Force meeting in August with staff and members of the public in attendance. The task force reviewed documents and accepted many topics and policies that should be included in the review. She added that the draft report presented in the Board agenda packet is the work of many people. She indicated that staff would be making live edits to the document as revisions were provided by the Board during the discussion. Throughout the discussion, the Board provided punctuation and grammar corrections, which are reflected in the final draft presented to the Joint Sunset Review Committee.

Ms. Hurt inquired if the Board found that any policy issues were missing from the document, such as workforce issues or fee increases. Ms. O'Neill expressed that every issue was included and well-covered.

Ms. Kramm recommended the addition of a second paragraph to Section 1, Item 4 regarding non-licensee-owned court reporting firms. As a result, the licensees are looking to the Board more than ever since they cannot go to their agency for guidance, making the development of best practice pointers increasingly important.

In reference to Section 7, Item 55, regarding online practice issues, Ms. Kramm reported that companies are marketing one-way webcam depositions to attorneys in California cases, among others. The individual taking the record may be in any state and may not be a court reporter, let alone a California licensee, leaving no oversight of the reporters. Language was developed to add the issue to this section.

Ms. Fenner updated the Additional Board Response for Issue 5 to reflect that AB 804 had been vetoed.

Ms. Kramm suggested that the practice of cost-shifting mentioned in Section 5, Item 37, is akin to giving a large gift as mentioned in the paragraphs preceding that concern.

Mr. Chan-You suggested the Board update the status of AB 1197, as described in Section 1, Item 3, to reflect that the bill was chaptered.

Ms. Hurt complimented the additions and called for public comment. Mr. Kosmata also praised the Board for a job well done.

Ms. Lasensky moved to adopt the Sunset Review Report as amended and to give the executive officer authority to make non-substantive corrections to the final report. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED.**

X. DRA PETITION REGARDING VOLUNTARY CONTINUING EDUCATION
Request to revise Board disciplinary guidelines or modify professional standards of practice

Ms. Hurt prefaced the conversation stating that the Board believed that mandatory continuing education would be optimal; however, it would consider alternatives considering the veto of the continuing education bill.

Mr. Alossi requested that the Board adopt staff recommended action to add continuing education as a mitigating factor in its Disciplinary Guidelines.

Mr. Chan-You requested that the petitioner articulate the necessity for the regulatory changes. Ms. Bruning responded that the Disciplinary Guidelines are a policy, not a regulation.

Ms. Hurt inquired where CalDRA envisioned individuals going to attend the continuing education classes. Mr. Alossi anticipated that CalDRA would see an increase in voluntary attendance at association events. Ms. Hurt asked if the continuing education should be specific to any particular areas, such as law and ethics versus yoga for court reporters. Mr. Alossi indicated that CalDRA surveys their members frequently to find where the need is, such as technology, punctuation, and working in court. He envisioned the Board reviewing which courses the licensee took in connection with the violation being reviewed.

Ms. Hurt reported that the State Bar requires continuing education for which there are licensed groups that provide the education. Mr. Alossi indicated that due to the low volume of court reporters in the state, there is limited demand for outside groups to provide continuing education for court reporters.

Ms. O'Neill and Ms. Hurt suggested the Board narrow the continuing education to areas of laws and ethics.

Ms. Lasensky asked how the reporters would acquire the classes and how enforcement staff would obtain proof of completion. Ms. Fenner responded that continuing education classes are already offered. The Board already provides a copy of the Disciplinary Guidelines to the licensee, which details the mitigating factors. The burden would then be on the licensee to provide proof of their continuing education history.

Ms. Hurt asked for an explanation on the difference between revising the Disciplinary Guidelines versus revising the Professional Standards of Practice (Standards). Ms. Fenner responded that amending the Disciplinary Guidelines would only require policy approval by the Board and publication on the Board's Web site. Changes to the Standards would require a regulatory change which is a lengthy process. She did not see any additional enforcement or value by revising the Standards.

Ms. Scott indicated that the Board is faced with responding to the petition, which it could accept or deny, or accept in part and deny in part. Additionally, although the Disciplinary Guidelines are policy, they are contained within the California Code of Regulations 2472, with a guideline revision date of February 1, 1989. The regulation is what gives the Board its authority to enforce the guidelines. To change the Disciplinary Guidelines, the Board would be required to go through the regulatory process, including the public comment period. She stated that a Section 100 change would not be appropriate. It may appear that the Board would merely change the revision date of the Disciplinary Guidelines annotated in the regulation; however, substantive changes would be made to the document within the regulation and require a full regulatory package. She added that the Board previously updated the Disciplinary Guidelines in 2013 but did not yet update the regulation.

Ms. Scott reiterated that the Board needs to respond to the petition and could accept the modification to the Disciplinary Guidelines, but due to noticing requirements may not be able to move forward with the regulatory change.

Ms. O'Neill moved to accept the petition regarding revision of the Disciplinary Guidelines to include continuing education as a mitigating factor.

Ms. Scott stated that the Board could not consider changing the current language, but could consider denying the petition taking into consideration that they are going to adopt the language to go into the current Disciplinary Guidelines once the regulation is brought before the Board for adoption.

Ms. Hurt asked is CalDRA would consider rescinding its petition. Mr. Alossi agreed to do so in anticipation that it will resubmitted when the Board is able to address in an appropriate manner. Ms. O'Neill withdrew her motion.

XI. CERTIFICATE OF APPRECIATION FOR MELISSA DAVIS

Ms. Hurt stated that during the limited time she had to work with Ms. Davis, she noted her positive spirit, camaraderie, and volume of work completed. She commented that she would be truly missed.

Ms. Fenner added that Ms. Davis played an important role in diminishing the backlog for the TRF Pro Per Program. She also worked diligently to recover unused funding to assist additional litigants. She was also an incredible team player, an asset that will be missed.

Ms. Kramm wished Ms. Davis well and volunteered to give her a recommendation for future endeavors.

Ms. Hurt quoted the Certificate of Appreciation found on page 131 of the Board agenda packet.

Ms. Lasensky moved to adopt the Certificate of Appreciation for Melissa Davis. Second by Ms. O'Neill. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call. For: All present. Opposed: None. Mr. Liu was absent. **MOTION CARRIED.**

XII. FUTURE MEETING DATES

Ms. Hurt asked the Board if they wanted to meet again before the end of the calendar year, noting that the overwhelming task of the Sunset Review Report was adopted, causing no need to meet again on that item.

Ms. O'Neill stated that she would be willing to meet if something urgent arose, but did not see the need to set a date yet. Ms. Hurt agreed.

Ms. Fenner indicated that the only thing she currently had to put before the Board for the next meeting was the Disciplinary Guidelines, but that did not incite any urgency.

The Board agreed to meet after the new year in 2016. Ms. Fenner stated that she would poll the Board members once there was enough to form another meeting, most likely in the spring.

XIII. PUBLIC COMMENT

No comments were offered.

XIV. ADJOURNMENT

Ms. Hurt adjourned the meeting at 4:14 p.m.

DAVINA HURT, Board Chair	DATE	YVONNE K. FENNER, Executive Officer	DATE

AGENDA ITEM II – Certificate of Appreciation for Angelique Scott

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Agenda Description: Possible Action

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Brief Summary: The Legal Affairs Office of the Department of Consumer Affairs assigns staff counsel to advise the Board on administrative matters. From time to time attorneys are reassigned to different boards or bureaus. Angelique Scott acted as staff counsel to the CRB for a number of years, but has been reassigned to other clients. Her dedication and hard work on behalf of the CRB are greatly appreciated.

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Attachment – Certificate of Appreciation

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: Award certificate of appreciation

Certificate of Appreciation

This certificate is awarded to

Angelique Scott

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 8th day of April 2016

Davina Hurt, Board Chair

Yvonne Fenner, Executive Officer

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, Spring 2016
G. Education/Outreach
H. BreEZe

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Support Documents:

Attachment 1, Item A – Budget Report, FM 08 Projection 2015-16
Attachment 2, Item A – Fund Condition Analysis for Fund 0771, CRB
Attachment 3, Item A – Fund Condition Analysis for Fund 0410, TRF
Attachment 4, Item C – Historical Examination Pass Rates
Attachment 5, Item D – Enforcement Report – July 1, 2015 – February 29, 2016
Attachment 6, Item F – CRB Today Newsletter, Spring 2016 (bound separate from agenda packet)

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Fiscal Impact: None.

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: (Informational)

COURT REPORTERS OF CALIFORNIA
BUDGET REPORT
FY 2015-16 EXPENDITURE PROJECTION
FM 08
Updated 3/16/2016

	OBJECT DESCRIPTION	FY 2014-15 ACTUAL EXPENDITURES (MONTH 13)	FY 2014-15 PRIOR YEAR EXPENDITURES FM 08	FY 2015-16 Governor's Budget 2015-16	FY 2015-16 CURRENT YEAR EXPENDITURES FM 08	FY 2015-16 PERCENT SPENT	FY 2015-16 PROJECTIONS TO YEAR END	FY 2015-16 UNENCUMBERED BALANCE
	PERSONNEL SERVICES							
003	Civil Service - Perm	242,350	160,908	225,000	147,800	66%	223,031	1,969
063	Statutory Exempt (EO)	87,511	57,240	84,000	58,672	67%	88,008	(4,008)
033.04	Temp Help (907)	2,581	1,526	11,000	12,597	90%	13,953	(2,953)
063.01	Board Member Per Diem	3,700	1,600	8,000	1,400	50%	2,800	5,200
083.00	Overtime	9,357	6,392	6,000	6,441	68%	9,429	(3,429)
	Staff Benefits	193,154	127,999	151,000	126,414	66%	190,762	(39,762)
	TOTALS, PERSONNEL SVC	538,653	355,665	485,000	353,324	67%	527,983	(42,983)
	OPERATING EXPENSE AND EQUIPMENT							
201.00	General Expense	4,716	1,633	0	(3,541)	167%	(2,117)	2,117
213.04	Fingerprint Reports	686	392	9,000	228	57%	399	8,601
226.00	Minor Equipment	1,251		3,000	0	0%	3,000	0
241.00	Printing (General)	1,230	514	0	612	42%	1,465	(1,465)
251.00	Communication	4,774	2,921	1,000	2,748	58%	4,711	(3,711)
261.00	Postage (General)	11,317	5,783	6,000	5,672	51%	11,100	(5,100)
291.00	Travel In State	19,382	13,145	23,000	16,591	67%	24,887	(1,887)
331.00	Training	0	0	2,000	0		0	2,000
343.00	Facilities Operations	43,690	43,321	29,000	43,328	99%	43,696	(14,696)
382.00	C & P Services - Interdept.	0	0	84,000	0		0	84,000
402.00	C & P Services - External (General)	0	0	27,000	3,452	96%	3,600	23,400
	DEPARTMENTAL SERVICES:							
424.03	OIS Pro Rata	71,740	63,426	107,000	80,250	75%	107,000	0
427.00	Indirect Distributed	57,025	41,304	54,000	40,500	75%	54,000	0
427.10	IA with OPES	38,226	38,226	0	47,938		47,938	(47,938)
427.30	DOI-ProRata Internal	1,779	1,290	1,000	750	75%	1,000	0
427.34	Communication Pro	2,063	1,260	1,000	2,250	225%	1,000	0
427.35	PPRD Pro Rata	1,995	1,380	2,000	0	0%	2,000	0
	INTERAGENCY SERVICES:							
428.00	Consolidated Data Center	59	25	3,000	25	25%	100	2,900
.00-449.00	Data Processing	2,538	1,538	2,000	0	0%	2,000	0
438.00	Central Admin Svc-ProRata	36,375	27,281	47,000	35,173	75%	47,000	0
	EXAM EXPENSES:							
343.20	Exam Rent - Non State	25,934	36,972	0	48,100	100%	48,100	(48,100)
404.00	Administrative - Ext	14,160	14,160	0	7,080		7,080	(7,080)
404.01	C/P Svcs-External Expert Examiners	19,749	14,186	39,000	12,470	72%	17,360	21,640
	ENFORCEMENT:							
396.00	Attorney General	47,055	23,083	167,000	13,310	58%	22,817	144,183
397.00	Office Admin. Hearings	10,395	80	16,000	3,125	58%	5,357	10,643
418.97	Court Reporters Service	100		0	175		175	(175)
4.31/33/34	Evidence/Witness Fees	5,000	3,500	26,000	900		1,800	24,200
452-472	Major Equipment	0		0			0	0
501.00	Other Items of Expense	0	0	1,000	0		1,000	0
	TOTALS, OE&E	421,239	335,420	650,000	361,136	79%	456,467	193,533
	TOTAL EXPENSE	959,892	691,085	1,135,000	714,460	73%	984,450	150,550
991937 01	Sched. Reimb. - Fingerprints	(490)	(392)	(17,000)	(343)		(429)	(16,571)
991937 02	Sched. Reimb. - External/Private/Grant	(940)	(705)	(1,000)	(235)		(353)	(647)
995988 01	Unsched. Reimb. - Inves Cost Recovery	(6,738)	(4,696)	0	(5,771)		(8,280)	8,280
	NET APPROPRIATION	951,724	685,292	1,117,000	708,111	73%	975,388	141,612
							SURPLUS/(DEFICIT):	12.7%

0771 - Court Reporters Board
Analysis of Fund Condition

(Dollars in Thousands)

Updated
2/22/2016

2016-17 Governor's Budget			ACTUALS 2014-15	Budget Act CY 2015-16	Gov's Budget BY 2016-17
BEGINNING BALANCE			$ 1,133	$ 1,134	$ 950
Prior Year Adjustment			$ 3	$ -	$ -
Adjusted Beginning Balance			$ 1,136	$ 1,134	$ 950
REVENUES AND TRANSFERS					
Revenues:					
4129200	125600	Other regulatory fees	$ 10	$ -	$ -
4129400	125700	Other regulatory licenses and permits	$ 38	$ 39	$ 39
4127400	125800	Renewal fees	$ 881	$ 875	$ 869
	125900	Delinquent fees	$ 19	$ 18	$ 18
	150300	Income from surplus money investments	$ 3	$ 3	$ 2
	161400	Miscellaneous revenues	$ -	$ -	$ -
Totals, Revenues			$ 951	$ 935	$ 928
Totals, Resources			$ 2,087	$ 2,069	$ 1,878
EXPENDITURES					
Disbursements:					
1110 Program Expenditures (State Operations)			$ 952	$ 1,117	$ -
1111 Program Expenditures (State Operations)			$ -	$ -	$ 1,186
8880 Financial Information System for California (State Operat			$ 1	$ 2	$ 1
Total Disbursements			$ 953	$ 1,119	$ 1,187
FUND BALANCE					
Reserve for economic uncertainties			$ 1,134	$ 950	$ 691
Months in Reserve			12.2	9.6	6.8

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%.

0410 - Transcript Reimbursement Fund
Analysis of Fund Condition

(Dollars in Thousands)

Updated
3/16/2016

2016-17 Governor's Budget	Actuals 2014-15	Budget Act CY 2015-16	Gov's Budget BY 2016-17
BEGINNING BALANCE	$ 422	$ 209	$ 109
Prior Year Adjustment	$ 1	$ -	$ -
Adjusted Beginning Balance	$ 423	$ 209	$ 109
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	$ -	$ -	$ -
125700 Other regulatory licenses and permits	$ -	$ -	$ -
125800 Renewal fees	$ -	$ -	$ -
125900 Delinquent fees	$ -	$ -	$ -
141200 Sales of documents	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -
150300 Income from surplus money investments	$ 1	$ 1	$ 1
160400 Sale of fixed assets	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ -	$ -	$ -
161400 Miscellaneous revenues	$ -	$ -	$ -
Totals, Revenues	$ 1	$ 1	$ 1
Transfers from Other Funds			
F00771			
Court Reporters Fund per B&P Code Section 8030.2	$ -	$ -	$ -
Totals, Revenues and Transfers	$ 1	$ 1	$ 1
Totals, Resources	$ 424	$ 210	$ 110
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	$ -	$ -	
1110 Program Expenditures (State Operations)	$ 215	$ 100	$ -
1111 Program Expenditures (State Operations)			$ 100
8880 Financial Information System for California (State Operations)		$ 1	$ -
Total Disbursements	$ 215	$ 101	$ 100
FUND BALANCE			
Reserve for economic uncertainties	$ 209	$ 109	$ 10
Months in Reserve	24.8	0.0	0.0

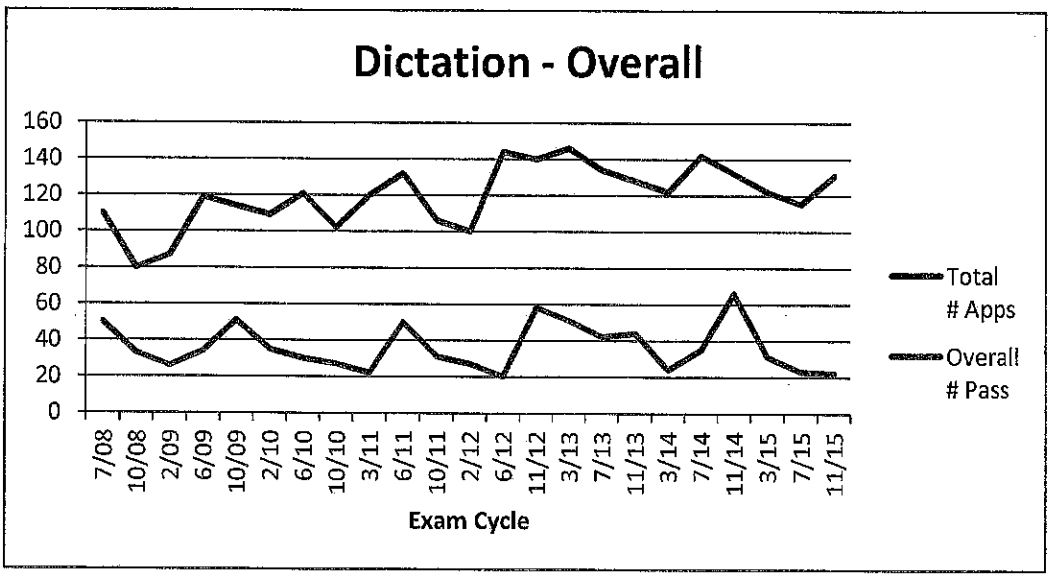
NOTES:

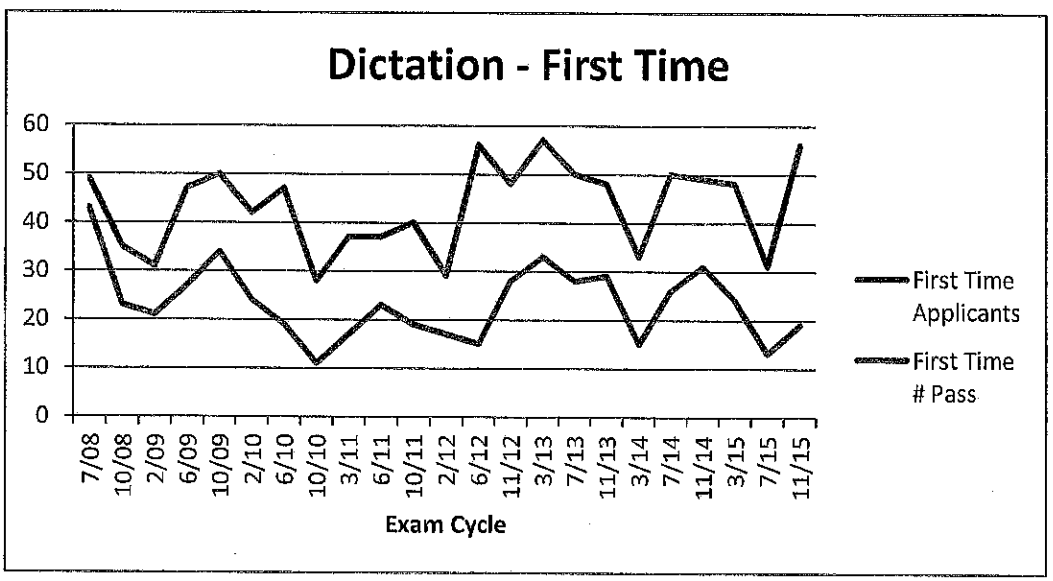
A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
C. ASSUMES INTEREST RATE AT 0.3%.

Dictation Exam

Exam Cycle	Total # Apps	Overall # Pass	Overall % Pass	First Time Applicants	First Time # Pass	First Time % Pass
Jul 2008	110	50	45.45%	49	43	87.76%
Oct 2008	80	33	41.25%	35	23	65.71%
Feb 2009	87	26	29.89%	31	21	67.74%
Jun 2009	119	34	28.57%	47	27	57.45%
Oct 2009	114	51	44.74%	50	34	68.00%
Feb 2010	109	35	32.11%	42	24	57.14%
Jun 2010	121	30	24.79%	47	19	40.43%
Oct 2010	102	27	26.47%	28	11	39.29%
Mar 2011	120	22	18.33%	37	17	45.95%
Jun 2011	132	50	37.88%	37	23	62.16%
Oct 2011	106	31	29.25%	40	19	47.50%
Feb 2012	100	27	27.00%	29	17	58.62%
Jun 2012	144	20	13.89%	56	15	26.79%
Nov 2012	140	58	41.40%	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	24.60%	50	26	52.00%
Nov 2014	132	66	50.0%	49	31	63.3%
March 2015	122	31	25.4%	48	24	50.0%
July 2015	115	23	20.0%	31	13	41.9%
Nov 2015	131	22	16.8%	56	19	33.9%

Dictation Exam

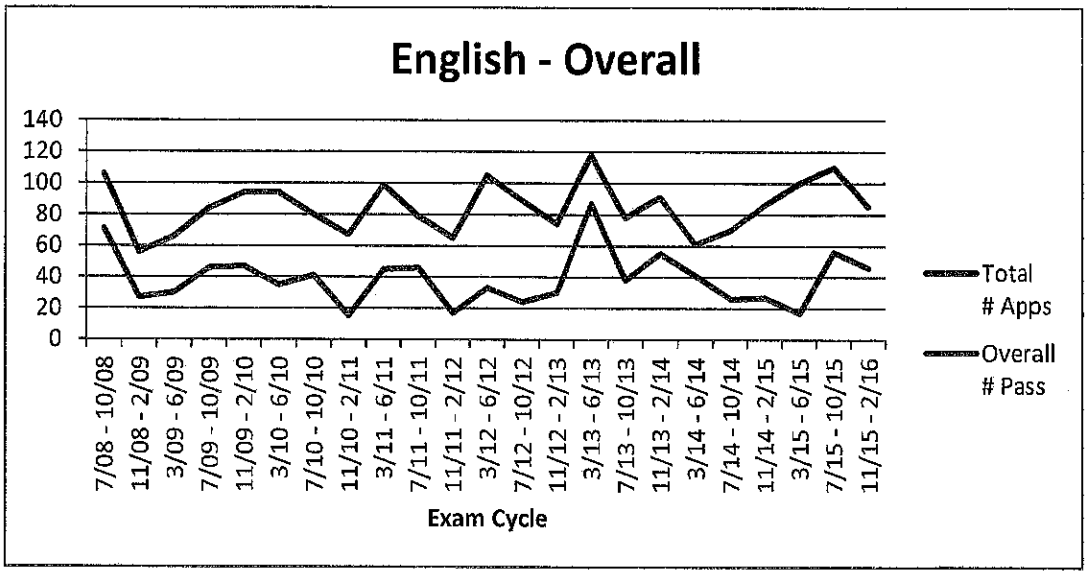


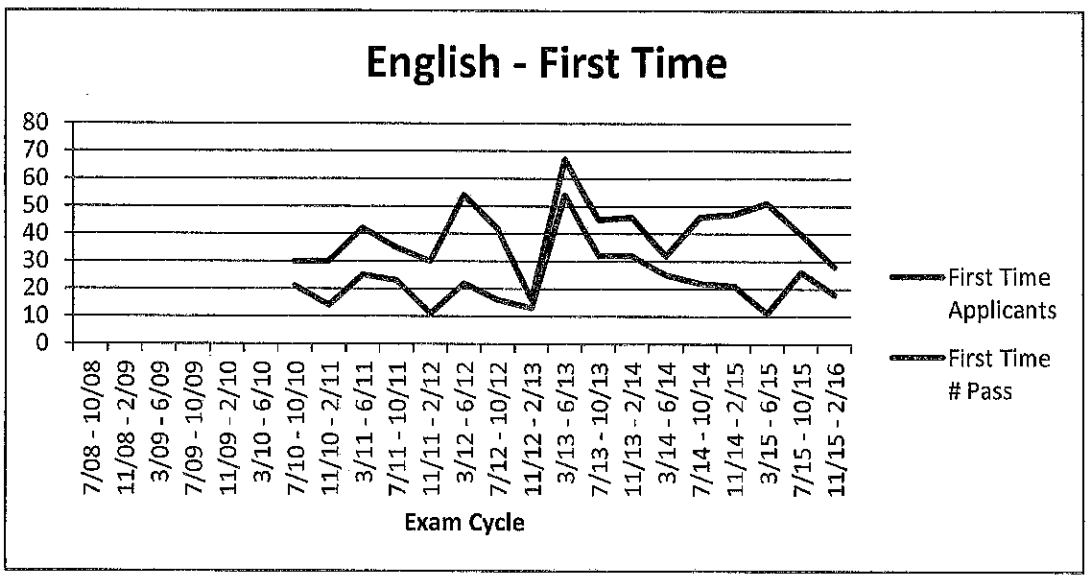


English Exam

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%
Jul 2015 - Oct 2015	110	56	50.9%	40	26	65.0%
Nov 2015 - Feb 2016	85	46	54.1%	28	18	64.3%

English Exam

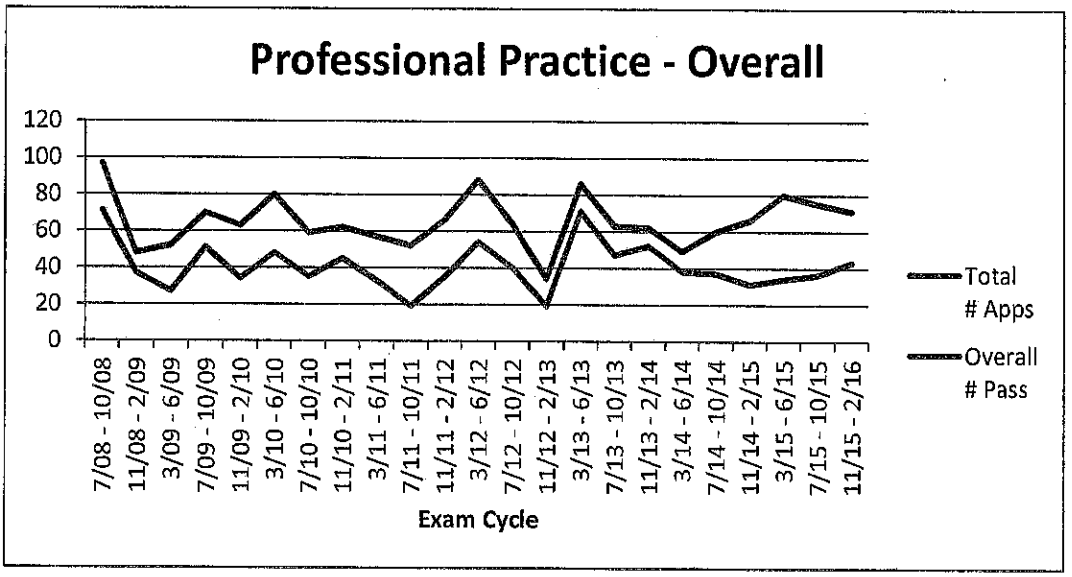


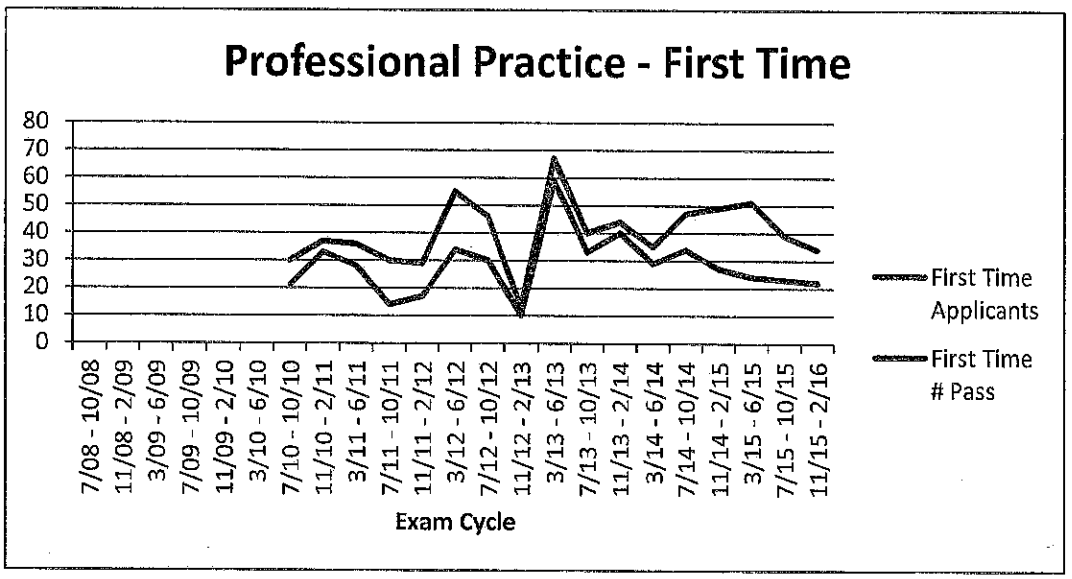


Professional Practice Exam

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%
Jul 2015 - Oct 2015	75	36	48.0%	39	23	59.0%
Nov 2015 - Feb 2016	71	43	60.6%	34	22	64.7%

Professional Practice Exam





Consumer Protection Enforcement Initiative
Fiscal Year 2015-2016 Enforcement Report
July 1, 2015 - February 29, 2016

Complaint Intake

Complaints	July	August	Sept	Oct	Nov	Dec	January	Feb	March	April	May	June	Total
Received	7	1	13	5	9	11	7	7					60
Closed without Assignment for Investigation	0	0	0	0	0	0	0	0					0
Assigned for Investigation	7	1	13	5	9	11	7	7					60
Average Days to Close or Assign for Investigation	1	1	1	1	1	1	1	1					1
Pending	0	0	0	0	0	0	0	0					0 *

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

Investigation

Initial Assignment for Desk Investigation	7	1	13	5	9	11	7	7					60
Closed	8	23	10	9	1	13	7	7					78
Average Days to Close	122	65	108	89	146	45	50	73					76
Pending	39	17	19	15	23	21	21	18					22 *

Assignment for Sworn Field Investigation	0	0	0	0	0	0	0	0					0
Closed	0	0	0	0	0	0	0	0					0
Average Days to Close	0	0	0	0	0	0	0	0					0
Pending	0	0	0	0	0	0	0	0					0

Closed	8	23	10	9	1	13	7	7					78
Average Days to Close	122	65	108	89	146	45	50	73					76
Pending	39	17	19	15	23	21	21	18					22 *

*Average number of cases pending per month

Enforcement Actions

Enforcement Actions

AG Cases	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
AG Cases Initiated	1	0	2	0	0	0	0	3					6
AG Cases Pending	6	6	8	8	6	6	5	8					7*

SOIs/Accusations	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
SOIs Filed	0	0	0	0	0	0	0	1					1
SOIs Withdrawn	0	0	0	0	0	0	0	0					0
SOIs Dismissed	0	0	0	0	0	0	0	0					0
SOIs Declined	0	0	0	0	0	0	0	0					0
Average Days to Complete SOIs	0	0	0	0	0	0	0	160					160
Accusations Filed	0	0	0	0	0	0	0	1					1
Accusations Withdrawn	0	0	0	0	0	0	0	0					0
Accusations Dismissed	0	0	0	0	0	0	0	0					0
Accusations Declined	0	0	0	0	0	0	0	0					0
Average Days to Complete Accusations	0	0	0	0	0	0	0	209					209

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

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	2	0	1	0					3
Average Days to Complete	0	0	0	0	710	0	290	0					570
Interim Suspension Orders	0	0	0	0	0	0	0	0					0

Citations	July	August	Sept.	Oct.	Nov.	Dec.	January	Feb.	March	April	May	June	Total
Final Citations	0	6	0	2	0	1	1	0					10
Average Days to Complete	0	62	0	38	0	21	68	0					54

*Average number of cases pending per month

AGENDA ITEM IV – Online Skills Exam

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Agenda Description: Consideration of proposal to administer the skills portion of the license exam online via a third-party vendor.

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Brief Summary:

Board staff has been working with myRealtimeCoach (RTC) to explore the feasibility of partnering to offer the skills portion of the license exam online. RTC has over 30 years' experience in developing learning and evaluation systems for businesses and the U.S. military. They moved into the court reporting profession in 2006, offering both exercise and testing packages to court reporting schools. They have most recently expanded their testing services to licensing and accreditation bodies, most notably the National Court Reporters Association (NCRA). NCRA has eight different certifications, and RTC administers the certification exams online.

If the Board were to move the skills portion of the CSR to online delivery, the Board would have the option to create and record the exam itself or have RTC provide those services.

For the most secure delivery, an online proctored environment is recommended, utilizing a combination of RTC and Proctor U. Staff recommends offering the test three times a year, as it currently is, to begin with to help ease the transition for the schools and candidates, having it available for a one-week period each testing session. Candidates can be proctored from almost any computer with a web cam and a high-speed Internet connection. They will be connected to a live person during their exam who will guide them through the process, answer any questions not related to exam material, and assist with any technical problems. There are a variety of security measures employed to ensure the security of the test and the testing environment.

One of the significant benefits to the online platform is provision of immediate electronic grading for candidates. Test results within a specific range would be re-checked by human graders. This not only assists the candidate by receiving immediate preliminary results, but would also save significant staff time spent in grading.

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Support Documents:

Attachment 1 – myRealtimeCoach background information
Attachment 2 – ProctorU background information and FAQs
Attachment 3 – ProctorU data security information

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Fiscal Impact: For the Board, the fiscal impact is a significant savings. Some of the savings are direct costs such as site rental and travel costs. Some of the savings are more indirect such as the saving in staff time.

There would be little fiscal impact to candidates, assuming they have access to a high-speed Internet connection. Even if they had no web cam and needed to purchase one, they would be saving the travel costs to the exam, plus any hotel fees.

The Board may want to look at increasing the exam fees to ensure the candidates taking the exam are not using it as a "pretest" experience. Currently it costs $40 to apply for the exam and an additional $25 per each of the three parts of the exam. The $40 application fee is good for three years. The $25 per exam portion is charged each time the candidates takes that portion of the exam.

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Report Originator: Yvonne Fenner, 3/23/2016

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Recommended Board Action: Staff recommends the Board move the skills exam online.

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Realtime
Learning Systems™

Company History

Online Learning and Testing Expertise and Technologies. No other company now serving the court reporting profession has as much experience in online learning and testing as Realtime Learning Systems, developers of myRealtimeCoach™. We helped to pioneer the merger of video and computer technologies for learning. For over 30 years, our owners have created successful learning and evaluation solutions and technologies for the country's largest companies and institutions, including rigorous, high-stakes learning and evaluation systems for the US military, IBM, Xerox, Prudential, Cisco, and many others, for a total learner audience of over a million people. We have also worked closely with many schools and universities to develop extensive curricula with full testing programs.

Court Reporting Expertise We also have extensive experience in all aspects of court reporting. Our national marketing manager, and key liaison with NCRA for this testing program, is Marybeth Everhart, MA, RPR, CRI, CLR, CPE. Well known in the profession and to NCRA, Marybeth brings over 35 years of experience in the profession as a reporter, CART provider, captioner, teacher, school director, and professional coach and speaker. As one leader observed, she "has the profession surrounded." In addition to her personal direction, she coordinates the input and guidance of other professionals to ensure that our solutions meet and exceed reporters' needs.

Learning and Evaluation Solutions for the Reporting Profession. This unique blend of world-class expertise in both elearning/evaluation and court reporting allows Realtime Learning Systems to provide ground-breaking service to the reporting profession.

Learning Management System. Our patented learning management system (LMS) provides the foundation for myRealtimeCoach™, the leading reporter skill-building system. It daily tracks and assesses skill development of thousands of working reporters and students who have collectively logged over 2.5 million practice hours with better than 99.99% uptime. This "fourth generation" LMS (extending beyond the capability of older 3rd party systems), allows us to capture and report learner on-task time, activity, success, and overall performance. It includes a unique capacity to update content and tests across multiple locations (and even multiple LMSs) and to gather data from multiple sites and systems. It is robust, secure and reliable, and

importantly, it is ours! We can and do adapt and improve it constantly, allowing flexibility no possible with other third-party vendors. Building upon our powerful learning management system, we have created the myRealtimeCoach™ family of products, also patented. Here are some key features that apply to this proposal.

- *Interface design.* Given our experience in multiple industries and professions and with widely divergent audiences, we've learned the power of simplicity and user-friendliness. As one subscriber described recently: "The myRealtimeCoach™ system is like my iPhone—easy, powerful, cool."
- *Single login and complete integration.* Because we own and integrate all our technologies, users access all our packages and features through one simple login for practice, testing, reporting, mentoring, everything—all from one integrated dashboard.
- *No software downloads* = easy maintenance, instant upgrades.

  Exercise packages. myRealtimeCoach™ offers thousands of different exercise options, all of which combine multi-media presentations, active practice, and instant feedback: Judicial, Captioning, Cert Prep, Barrier Busters, Medical Terminology, "build your own" Community options, Theory and Readback, Inspirational and others. Each exercise offers multiple user options to match individualized needs—video, audio, text, adjustable speeds, user-controlled segmentation and feedback, and more.
- *Test packages.* Working with some of the best test content developers in the profession, myRealtimeCoach™ currently offers thousands of test options to schools to enable weekly, timely testing with feedback. Speeds run from 60 wpm to over 225 wpm. Likewise, secure online testing is available for associations and organizations, as well as test creation and recordation.

We are still the only company to offer these practice and testing capabilities in a fully online, integrated, secure solution, and we continually upgrade and refine our products to ensure user success. In 2014, 78% of those who passed at least one leg of an NCRA certification were myRTC users, and most of the largest reporting schools in the country depend on myRealtimeCoach™ to help students succeed.**Resources and People**

Company and Facilities. Realtime Learning Systems, founded in 2005, conducted intensive research, development and field testing of myRealtimeCoach™ technologies through 2005 and 2006 and offered the product to the public beginning in 2006. As outlined above, our owners merged decades of online learning and testing experience, combined with subject matter expertise of leading reporters and captioners.

The company has business and customer service offices in Salt Lake City, Utah, with sales headquarters in Annapolis, Maryland. Staff includes operations, customer service, and engineering personnel.

World-class computer network facilities are located in Orem, Utah. These facilities provide seamless hosting for the constant activities of thousands of users and offer state-of-the-art security, capacity, and redundancy. Details available upon request.

Testing Options and Benefits

Options: The myRealtimeCoach™ (RTC) platform can be used to securely deliver both written knowledge (WKT) and skills tests. For the most secure delivery, an online proctored environment is recommended, utilizing a combination of RTC and ProctorU (information attached). Skills tests can be created by you or by RTC, based on either word count or syllabic density. Tests can be recorded by you or by RTC, including in HD video.

Benefits: Online, on-demand testing benefits both the members and the association as follows:

- Provides immediate electronic grading for members.
- Significantly reduces grading load and turn-around time of final results.
- Reduces/eliminates travel and additional overhead costs for association staff and volunteers.
- Provides a consistent testing experience for all candidates.

my Realtime Coach™

ProctorU

A NEW Way to Test

Real People. Real Proctoring.

www.ProctorU.com • 888 - 355 - 8043 • contact@proctoru.com

Why ProctorU?

ProctorU provides security, convenience and savings to organizations and their examinees by allowing them to complete tests from anywhere with a high-speed Internet connection. The service provides authentication and proctoring to certifcation and training organizations, corporations and universities that offer online assessments. Proctors secure the environment with an easy, three-step process:

1 We observe the test-taker via webcam.

The test-taker is connected to a real person who speaks with them to guide them through the process.

2 We watch the test-taker's screen in real time.

We can see everything that the test-taker is doing both at their location and on screen.

3 We authenticate the test-taker's identity.

Using a multi-factor process - the strongest in the industry - we ensure that the person being monitored is the proper test-taker.

Set Up

Getting started with ProctorU is easy. To become a partner institution, simply contact our partnership coordinators at 888-355-8043. There are no set up or contract fees and we do not require a minimum number of exams. Our process works with your current Learning Management System (LMS), such as Blackboard, Moodle, Sakai, D2L, and Canvas. We also have exam delivery options available, if needed.

We can bill an institution monthly or test-takers can pay with a credit card online when they make their appointments. In the test-taker-pay scenario, our service doesn't cost the institution anything. With a simple orientation phone call, you will be well on your way toward ensuring the integrity of your online programs.

Preparing Your Examinees

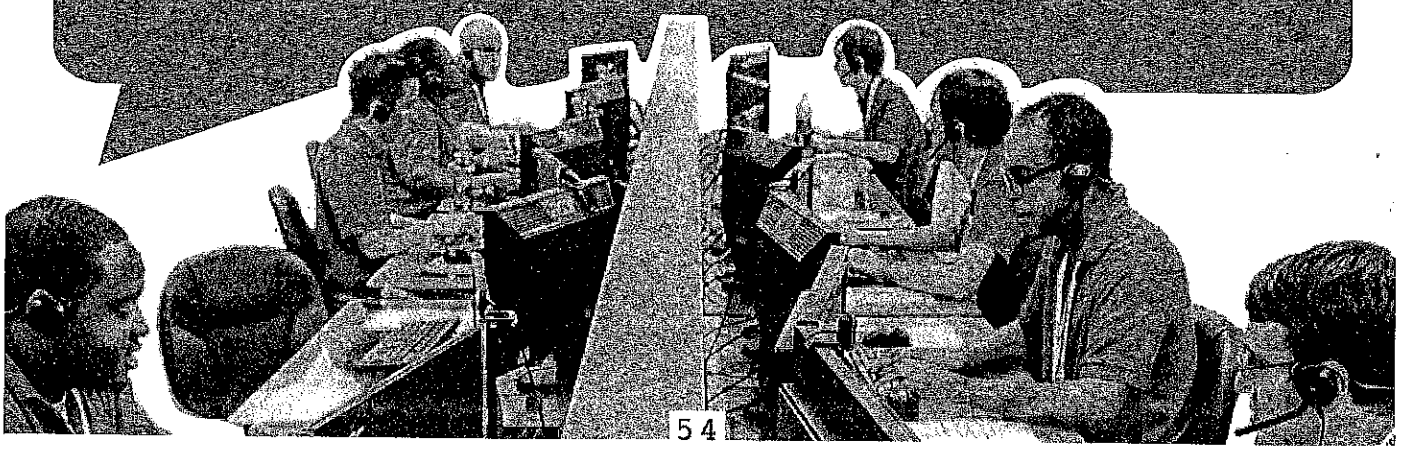
Test-takers can take exams from home 24 hours a day, seven days a week. They will be connected to a live person during their exam who will guide them through the process, answer any questions not related to exam material, and assist with any technical problems. If there are any questions, they can always call us at 855-772-8678.

Procedure

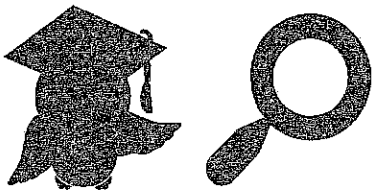
Test takers should plan ahead for their sessions, make sure they have a quiet, private location in which to take the test and have a photo ID ready to show their proctor. The examinee will create an account at **https://go.proctoru.com**

At the time of their exam, the test-taker will log into the ProctorU website. If there are any problems connecting, test-takers can call ProctorU at 855-772-8678.

The test-taker will connect with a live proctor who will talk them through the authentication process and take them to their exam. Any unauthorized notes or other attempts to cheat once the test has started will be reported to the instructor.



Proctoring Buying Guide



Are your test-takers able to communicate with live people?
Test-takers using ProctorU are connected to a human being with two-way audio and video feeds during the entire exam. If technical problems arise, test-takers may call our proctoring line at 855-772-8678 and one of our dedicated technical support team members will assist.

Are your test-takers' identities authenticated?
ProctorU uses the strongest authentication process in the industry - also employed by banking and security agencies worldwide - that takes a multilayer approach to identify exam takers.

Are you looking for a service or for something you can operate yourself?
A great benefit to using ProctorU is the dedicated team of professionals based in the Birmingham, Ala., San Francisco, Calif. and Folsom Calif. areas. Our team works diligently to uphold your institution's standards.

Will the proctoring solution work with your Learning Management System (LMS) or exam delivery system?
There is no integration required with ProctorU; it works right alongside your current system. ProctorU also offers exam delivery solutions when needed.

Are you looking to integrate proctoring with your LMS or exam delivery tool?
ProctorU has several integration options available, including an Application Programming Interface (API) and other tools that create a single sign-on for your examinees.

Will the service require your faculty to change the way they deliver exams?
ProctorU's service does not require a change. All it takes to get started is a couple of brief phone calls and e-mail exchanges. ProctorU also offers exam delivery solutions when needed.

Will the company allow you to contact any of their client organizations?
ProctorU is proud to work with hundreds of prestigious organizations all over the globe. A listing of the company's partners can be found at https://proctoru.com/partners.php, and testimonials and referrals are available upon request.

How easy is it for test-takers to use? Does it require examinees to purchase certain hardware or software?
Test-takers using ProctorU can be proctored from almost any computer with a web cam and a high-speed Internet connection. Test-takers are not required to purchase any additional equipment or software to use our system.

Who provides the technical support, you or the company?
Our proctors are fully trained to handle most technical problems that may arise. We focus on hiring individuals with a great deal of technical aptitude, customer service experience and high levels of integrity.

Does it meet accreditation, quality, and common sense standards?
ProctorU is a member of the National College Testing Association. Our proctors apply common sense integrity standards by watching the examinee, watching what they are doing and knowing who they are.

What are the Technical Requirements?
Test-takers may be proctored from almost any computer on a high-speed Internet connection. A detailed list of specifications can be found at http://www.proctoru.com/tech.php.

Compliance and Certification

Protection and Privacy of Data in Europe

As part of standards for privacy protection, ProctorU complies with both the U.S. - Europe and U.S. - Swiss Safe Harbor Frameworks when providing services to all nations. Following these directives allows ProctorU to safely and efficiently exchange data for international test-takers.

http://export.gov/safeharbor

TRUSTe Certified for Online Privacy

ProctorU has been awarded TRUSTe's privacy seal signifying that the company's privacy policy and practices have been reviewed by TRUSTe and are in compliance regarding the collection and use of personal information.
Compliance gives ProctorU the ability to effectively manage data as a part of the proctoring process, and protect test-takers by preventing misuse of their information.

http://www.truste.com

Audited for FERPA Compliance by AACARO

ProctorU was successfully audited for FERPA compliance by AACRAO and remains committed to test-taker privacy. Family Educational Rights and Privacy Act (FERPA) compliance protects test-takers' data and proper training is ensure in the usage of data gathered during the proctoring process.

http://www.aacrao.com

Data Security

ProctorU is dedicated to securing test-taker data collected during all aspects of our business and to managing test-taker information in compliance with the Family Educational Rights and Privacy Act (FERPA).

1 Personal Information

Test-taker directory information such as name, address, and profile picture is collected over a secure connection and stored for internal use only.

2 Financial Information

Credit card transactions are handled with encryption and online payment industry standards. ProctorU does not see or store credit card information.

3 Exam Records

When examinees set up an account and undertake an examination, ProctorU has created an record that is handled with the strictest adherence to privacy guidelines. All proctors must also complete FERPA training.

Methods

- ProctorU.com is channeled through an HTTPS connection
- SSL encryption is used for all financial transactions
- ProctorU partners with the payment gateway service provider, authorize.net
- Screen-sharing technology used by proctors transmits with full, end-to-end 256-bit SSL encryption, the same encryption method endorsed by MasterCard, Visa and American Express
- ProctorU does not share any test-taker information with outside partners for marketing purposes

Server Compliance

Our servers meet the following compliance requirements for regulations:

- Payment Card Industry Data Security Standards (PCI/DSS)
- Health Insurance Portability and Accountability Act (HIPAA)
- Sarbanes-Oxley Act (SOX)
- Gramm-Leach-Bliley Act (GLBA)
- Federal Information Security Management Act (FISMA)
- Statement for Standards for Attestation Engagements (SSAE) No 16 Type II
- Service Organization Control (SOC) 1

Built upon a hardened, purpose-built operating system for security services, ProctorU's server firewalls provide the highest level of security and have earned many industry accolades including ICSA Firewall and IPsec certification and Common Criteria EAL4 evaluation status.

For more information about ProctorU's security protocols, please direct questions to our Senior Vice President of Technology Matt Jaeh at mjaeh@pr 5 7 u.com or 855-772-8678, ext. 605

ProctorU in the News

THE CHRONICLE of Higher Education

Behind the Webcam's Watchful Eye, Online Proctoring Takes Hold

"ProctorU is part of a cottage industry of online proctoring providers that has grown in recent years as colleges and universities have set their sights on "nontraditional" students who want to earn degrees without leaving home."

http://ow.ly/IqU4B

The New York Times

Keeping an Eye on Online Test-Takers

"Employees at ProctorU, a company that offers remote proctoring, watch test-takers by using screen sharing and webcam feeds at offices in Alabama and California. ProctorU recently signed an agreement to proctor new credit-bearing MOOCs from Coursera..."

http://ow.ly/IqUci

WALL STREET JOURNAL

Web Classes Grapple With Stopping Cheats

"Both Udacity, another MOOC provider, and Coursera have teamed up with an online test-taking company called Proctor U that pays employees in Alabama and California to monitor test takers through a webcam trained on the student's face."

http://ow.ly/IAwPM

PBS

Catching Cheaters on Open Online Courses

"Coursera is in discussions with a company called ProctorU, over how to make sure online tests are secure and fair, requirements if colleges are going to give credit (for) coursework done online."

http://ow.ly/IqUky

Technology Review PUBLISHED BY MIT

In Online Exams, ProctorU Will Be Watching

"Sitting at computers in ProctorU's offices... the proctors use webcams and screen-sharing software to observe students anywhere as they take a test or complete an online assignment."

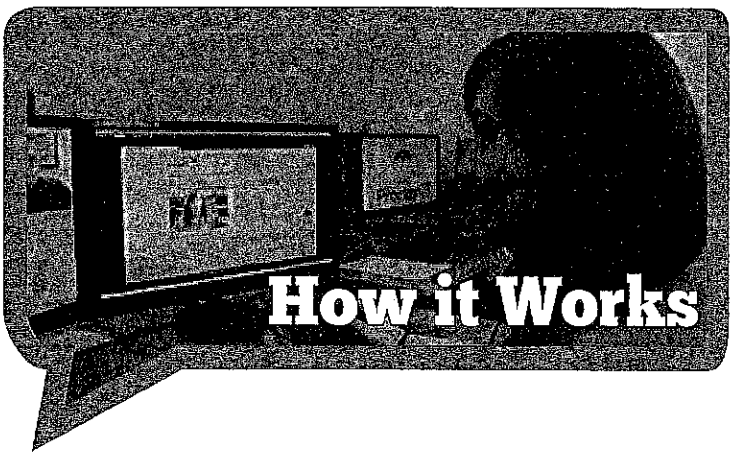
http://ow.ly/IAxr0

Instructional and Informative Videos

We've created several video presentations to help interested institutions learn more about our company. Most of our videos are available on our website, www.proctoru.com, and direct links have been included here for your convenience.

01

ProctorU is an online proctoring service that allows exam takers to complete an assessment at home while ensuring the integrity of the exam for the institution. We use proctors who monitor exam takers in an easy, three-step process that is described in this instructional video. The two-minute video is available at: **https://tinyurl.com/procudemo**



02

Find out more about the people proctoring test-takers, who they are and where they work. Discover why it's advantageous to have exams proctored by real people who wear uniforms and report to closely-monitored proctoring centers. This segment is available at: **http://tinyurl.com/procuppl**

03

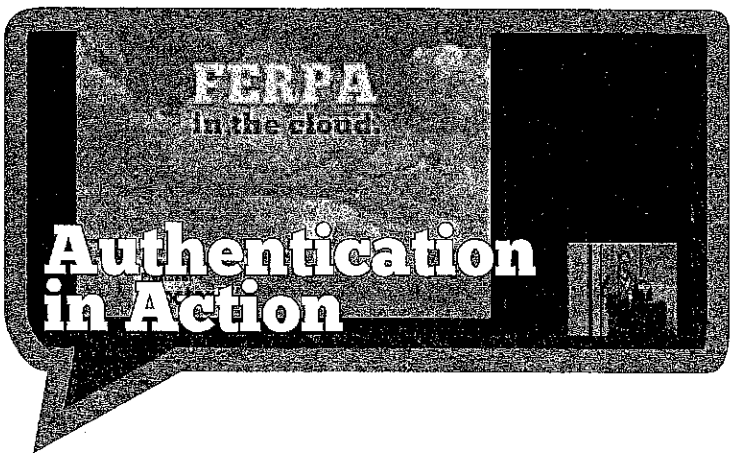
This two-and-a-half minute video describes the philosophies and culture behind ProctorU and briefly touches on our four company pillars of Integrity, Service, Simplicity and Fun. This segment is available at: **https://www.proctoru.com**

04

ProctorU President Don Kassner and Executive Vice President Jarrod Morgan visited Columbia University in April 2011 to demonstrate ProctorU's process at the New York institution's EdLab seminar. To view the presentation in its entirety, visit: **http://www.proctoru.com/videopops/columbiavideo.php**

05

ProctorU President Don Kassner explains the implications of storing and transferring test-taker data within cloud servers and how it can impact federal funding. This video was recorded from a live streaming session at the Sloan Consortium's International Symposium for Emerging Technologies for Online Learning in Las Vegas on July 26, 2012. This video is available at: **http://vimeo.com/46509902**



Contact Us

To learn more about ProctorU, please visit our website at

www.ProctorU.com
or call 855-772-8678.

Don't forget to like us on Facebook and follow us on Twitter!

www.facebook.com/ProctorU

http://twitter.com/ProctorU

Trusted by over 500 Institutions

JamesHardie

ILLINOIS ASSOCIATION OF REALTORS®

Global Linguist Solutions

National Food Safety Training Program NFSTP

South Carolina

randstad

Bloomberg INSTITUTE

bcs The Chartered Institute for IT

bpma
british promotional merchandise association

tenable network security

For a list of MORE partners visit

https://proctoru.com/certifications.php
https://proctoru.com/highered.php

How does ProctorU monitor its proctors?

Each proctoring center has managers on duty whose sole responsibility is to monitor proctors, and help manage the workload. ProctorU also employs quality control staff that anonymously monitors proctors to ensure they are following exam parameters and address any training needs. Proctors are audited eight to 15 times each month and receive monthly performance reports.

Proctors receive two weeks of one-on-one training and then begin proctoring under close supervision of hand-picked trainers before monitoring test-takers on their own. All proctors receive monthly group training and constant one-on-one coaching. Fully-trained proctors and managers are distinguished by their uniforms: proctor trainees wear white polo shirts, fully-trained proctors wear blue and managers wear black.

All proctors must pass a criminal background check and a Family Educational Rights and Privacy Act (FERPA) training course. Standard proctors must have at least one year of customer service experience and pass an in-house technical aptitude exam. K-12 proctors must have the previous requirements in addition to a fingerprint screening against an FBI database and extensive background checks.

Does ProctorU record sessions?

ProctorU's philosophy is to use live proctors, as opposed to an automated recording method, to prevent incidents of academic integrity through real time interaction with the test-taker. ProctorU proctors are linked to test-takers in real time, with live audio and video connections. Live feeds to test-taker monitors are viewed through screen-sharing technology. ProctorU uses multiple layers of recording and reporting, including full session video and audio; screen capturing; spot recording, if needed; and documentation through user chat logs. End-to-end recording of the entire exam session is available and session recordings are available for institution staff to review for up to 30 days. Currently, video sessions are transferred to a secure online server and institution administrators are provided with a password to review the sessions. These videos are available for up to 30 days after the testing date. ProctorU's technology team is also developing a proprietary system that will increase accessibility and security.

Can ProctorU access my files?

No, ProctorU cannot access test-taker files. During the initial phase of the proctoring process, proctors, with

permission from the test taker, have the ability to view the screen and move their mouse and keyboard as if the proctor was sitting next to the test taker. The proctor cannot access anything on the test-taker's computer without the test taker's knowledge. Once the examination is launched, the proctor will change their permission to view only. During the monitoring phase, the proctor can monitor everything that happens on the examinee's computer screen, but can no longer move the test-taker's mouse and keyboard. If something irregular occurs, the proctor can reinitiate the ability to move the test-taker's mouse and keyboard, in which case the test-taker is alerted and can see everything that the proctor is doing. During this entire process, an interface log, or chat box, is running on the test-taker's computer and they can see what permissions the proctor currently has at anytime.

Finally, the entire session log is saved and there is a permanent record of what actions the proctor took while accessing the test taker's computer. Throughout the process, the test-taker can see everything the proctor is doing to the computer by watching them move their mouse.

How does ProctorU authenticate my identity?

ProctorU uses the strongest methods of multifactor identity authentication in the industry.

- Photo ID Check: Each test-taker is asked to show a photo ID and their proctor takes and saves a picture of the candidate. Before future exams, file photos are used compared to verify that the correct person has returned. Any government-issued ID meets ProctorU's requirements, but the institution may designate another form of ID as acceptable.
- Authentication Questions: Proctors authenticate candidates using authentication questions derived from public and private records. Questions are generated by the same process used in the banking and healthcare industries, and are typically related to previous addresses, phone numbers, roommates and relatives. The quiz includes four questions out of a test bank of over 120.
- Exam Password Protection: Once a candidate passes the authentication quiz, they are observed logging into their Learning Management System (LMS). Each test-taker is authenticated before an exam is unlocked by the proctor, unless otherwise noted, and institution administrators can view proctoring notes through ProctorU's administrative accounts.

Another possible authentication method is:

- Keystroke Analysis: Keystroke analysis is used to create a profile for test-takers. Detailed analyses have shown that, on average, only two in 10,000 people have very similar typing behavior.

Where do challenge questions come from?

Data for the challenge questions come from a U.S. consumer database at Acxiom. The data are public records collected primarily from state and federal government sources. The challenge questions may come from public records including property deeds, marriage licenses, professional licenses, birth certificates and death notices. Information is also available from court proceedings, voter registration files, driver's license records and motor vehicle registrations. Federal and state laws place restrictions on the use of some of these sources, but some information is considered in the public domain, meaning everyone has access to it. Information in the public domain often includes telephone directory listings, professional registries, classified ads and more.

Are the questions FERPA Compliant?

Yes. Because the system relies only on directory information to verify a student's identity, we are not exposing the institution to any FERPA violations.

ProctorU has been audited successfully for Family Educational Rights and Privacy Act (FERPA) compliance by the American Association of College Registrars and Admissions Officers (AACRAO) and remains committed to test-taker privacy. FERPA compliance not only protects test-takers' data, but also ensures proper training of proctors in the use of data gathered during the proctoring process.

Attachment 3
Agenda Item IV

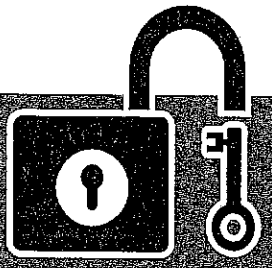
ProctorU

Data Security

www.ProctorU.com
888 - 355 - 8043
contact@proctoru.com

Data Security

ProctorU is dedicated to securing test-taker data collected during all aspects of our business and to managing test-taker information in compliance with the Family Educational Rights and Privacy Act (FERPA).



1 Personal Information

Test-taker directory information such as name, address, and profile picture is collected over a secure connection and stored for internal use only.

2 Financial Information

Credit card transactions are handled using encryption and online payment industry standards. ProctorU does not see or store credit card information.

3 Exam Records

When examinees set up an account and undertake an examination, ProctorU has created an academic record that is handled with the strictest adherence to FERPA guidelines. All proctors must complete FERPA training.

Methods

- ProctorU.com is channeled through an HTTPS connection
- SSL encryption is used for all financial transactions
- ProctorU partners with the payment gateway service provider, authorize.net
- Screen-sharing technology used by proctors transmits with full, end-to-end 256-bit SSL encryption, the same encryption method endorsed by MasterCard, Visa and American Express
- ProctorU does not share any test-taker information with outside partners for marketing purposes

Server Compliance

Our servers meet the following compliance requirements for regulations:

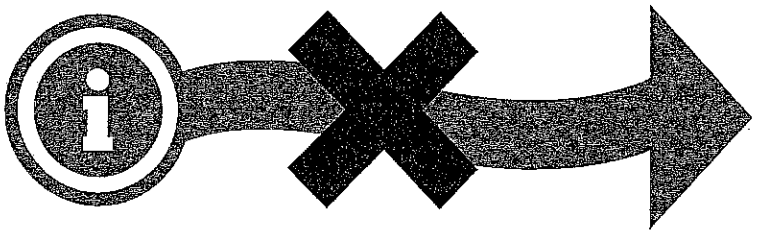
- Payment Card Industry Data Security Standards (PCI/DSS)
- Health Insurance Portability and Accountability Act (HIPAA)
- Sarbanes-Oxley Act (SOX)
- Gramm-Leach-Bliley Act (GLBA)
- Federal Information Security Management Act (FISMA)
- Statement for Standards for Attestation Engagements (SSAE) No 16 Type II
- Service Organization Control (SOC) 1

Built upon a hardened, purpose-built operating system for security services, ProctorU's server firewalls provide the highest level of security and have earned many industry recognitions including ICSA Firewall and IPsec certification and Common Criteria EAL4 evaluation status.

For more information about ProctorU's security protocols, please direct your questions to Chief Technical Officer, Matt Jaeh at mjaeh@proctoru.com or 855-772-8678, ext. 605

IT Security and Exam Records

ProctorU does not share any test-taker information with outside partners for marketing purposes.

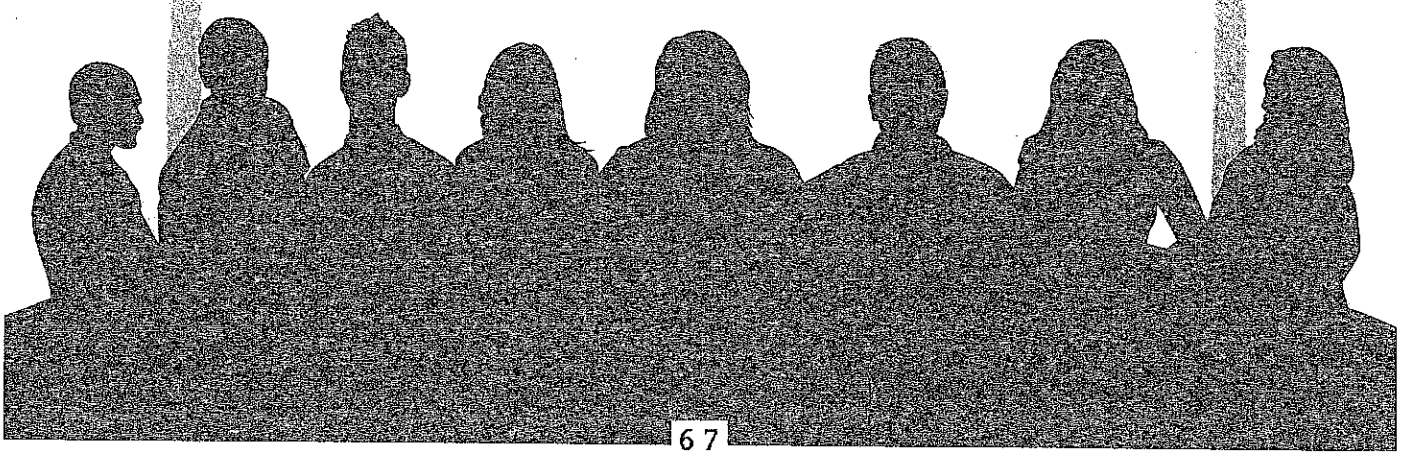


Service Organization Control (SOC) 1, 2 & 3 Compliant

ProctorU uses Amazon Web Services (AWS) and Rackspace servers for the storage and transmission of test-taker information. Both AWS and Rackspace are dedicated to the highest industry standards and a list of their full certification and compliance reports can be seen on their respective websites.

amazon web services™

rackspace® HOSTING



Test-Taker Security

The screen-sharing technology used by proctors transmits with full, end-to-end 256-bit SSL encryption. This is the same level of protection and encryption method that is used by the financial and healthcare industries. The protocols allow client and server applications to communicate in a way that is designed to prevent eavesdropping, tampering and message forgery.

Student Privacy Pledge

STUDENT PRIVACY PLEDGE SIGNATORY

ProctorU is a signatory on the Student Privacy Pledge, which is dedicated to protecting a test-taker's private information. ProctorU remains committed to test-taker privacy by adhering to guidelines as laid out in the the Family Educational Rights and Privacy Act (FERPA). FERPA not only protects test-taker data, but also ensures proper training of proctors in the use of data gathered during the proctoring process.

http://studentprivacypledge.org

TRUSTe Certified for Online Privacy

TRUSTe

ProctorU has been awarded TRUSTe's Privacy seal signifiying that the company's privacy policy and practices have been reviewed by TRUSTe and are in compliance regarding the collection and use of personal information. Compliance gives ProctorU the ability to effectively manage data as part of the proctoring process, and protect test-takers by preventing the misuse of their information.

http://www.truste.com

U.S. - E.U. Safe Harbor

U.S.•EU SAFEHARBOR U.S. DEPARTMENT OF COMMERCE

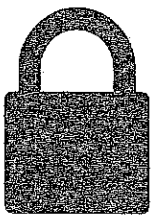
ProctorU meets the European Union (EU) "adequacy" standard for privacy protection and has been Safe Harbor-certified. The Safe Harbor framework was established in 1998 to bridge differences in privacy laws between the United States and the EU, enhancing privacy protection for citizens.

http://export.gov/safeharbor

Financial Security

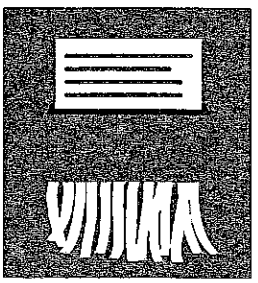
ProctorU uses a variety of techniques to handle financial information.

ProctorU partners with the payment gateway service provider, Authorize.net, for all payments of service. Authorize.net serves more than 400,000 merchant customers and provides credit card processing, fraud prevention, subscription billing and payment tokenization. Charges applicable to the examinee must be paid with a credit or debit card. Examinees will be required to enter payment information on a secure page connected to a third-party card processor. The page is encrypted and secure, and ProctorU does not see or store the credit card data. Examinees will be required to re-enter payment information each time new charges are incurred. University-pay or hybrid models are arranged with ProctorU's billing department, based on the unique needs of the institution.



All financial transactions conducted on Proctoru.com and associated servers use SSL encryption and are encrypted with 256-bit SSL protection.

ProctorU is in compliance with this federal law that set new and enhanced standards for all U.S. public company boards, management and public accounting firms. Extended documentation can be found at soxlaw.com



All payments made through ProctorU.com are transmitted directly through the payment gateway service provider, Authorize.net. ProctorU does not store, document, or view the financial information of any test-taker.

ProctorU is fully compliant with Payment Card Industry Data Security Standards (PCI/DSS) to ensure payment card data security. The standards provide a robust framework that establishes a standard payment card security process that includes prevention, detection and appropriate reaction to security incidents.

Gramm-Leach-Bliley Act (GLBA)

ProctorU provides consumers with privacy notices and documentation that outlines the company use and information-sharing practices regarding customer information. A copy of ProctorU's privacy policy is available at www.proctoru.com/privacy.txt

ProctorU is TRUSTe certified, a leading global Data Privacy Management platform to ensure businesses adhere to best practices regarding the collection and use of personal information. This certification seal has also been awarded to Apple, Disney, eBay, Forbes, LinkedIn and Oracle.

Test Item Security

ProctorU

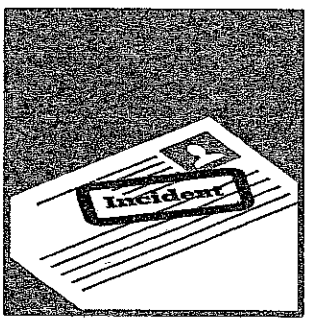
Secure Browser

ProctorU's secure browser requires no installation and enhances the security of testing environments by:

- Disabling virtual machines and secondary computer monitors.
- Removing test-taker ability to copy, paste, print or save exam materials.
- Disabling test-taker ability to navigate away from the exam page and open new browser tabs or windows.

Live Proctors

ProctorU's philosophy is to prevent cheating rather than just simply catching it. By utilizing live proctors, as opposed to automated recording methods, ProctorU prevents incidents of academic integrity through real time interaction with test-takers and has the ability to stop integrity breaches as they occur.



Incident Prevention

Because ProctorU relies on live proctors monitoring the examination process in real time, academic integrity breaches can be avoided. In the event of an institution-specified irregularities, proctors are there to document and prevent test-taker conduct as it happens, rather than after the fact, as with automated recording methods.

Incident Documentation

Proctors are linked to test-takers in real time, with live audio and video connections, as well as with an established chat box. Live feeds of computer desktop activity are viewed using ProctorU's screen-sharing technology. ProctorU uses multiple layers of recording and reporting, including full-session video and audio; screen-capturing; spot recording, if needed; and documentation through user chat logs.

AUTHENTICATION

ProctorU uses a multi-factored authentication system to verify the identity of test-takers. Using a variety of techniques, the identity of the test-takers that enter the ProctorU system is insured to be accurate.

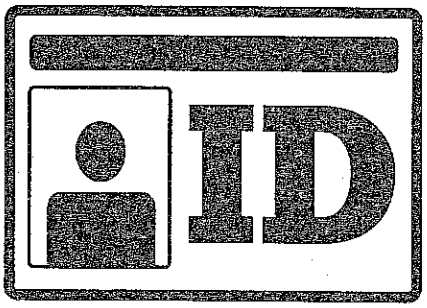
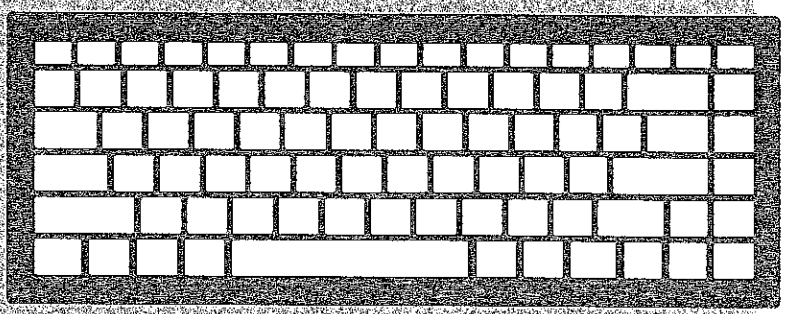


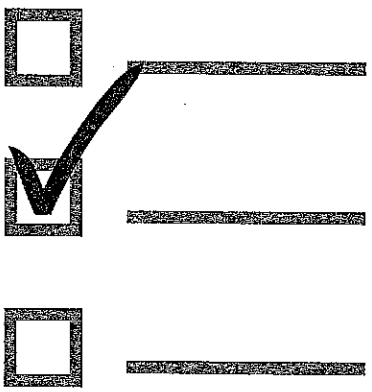
Photo ID

Examining photo identification is the first layer in confirming that the test-taker entering a proctoring session is indeed who they say they are. Proctors check a government-issued photo identification or institution identification card.

Keystroke

Keystroke analysis adds another layer of security for identity verification. By examining the unique typing patterns inherent to individuals, identity can be further ensured. Raw timing measurement data is used to create an examinee "typing signature" that is unique to them.





Challenge Questions

A third layer of verifying the identity of a test-taker is having them answer a bank of challenge questions based on data from public records related to them. Since this information is proprietary to each test-taker, a high degree of identity verification is ensured.

Questions are generated via a Public records-based quiz using personally-identifiable information against a test bank of over 120 randomly generated questions from Acxiom, a third party provider.

Compliance and Certification

Protection and Privacy of Data in Europe

As part of standards for privacy protection, ProctorU complies with U.S. - Europe and U.S. - Swiss Safe Harbor Frameworks when providing services to all nations. Following these directives allows ProctorU to safely and efficiently exchange data for international test-takers.

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http://studentprivacypledge.org

FISMA

Federal Information Security Management Act FISMA

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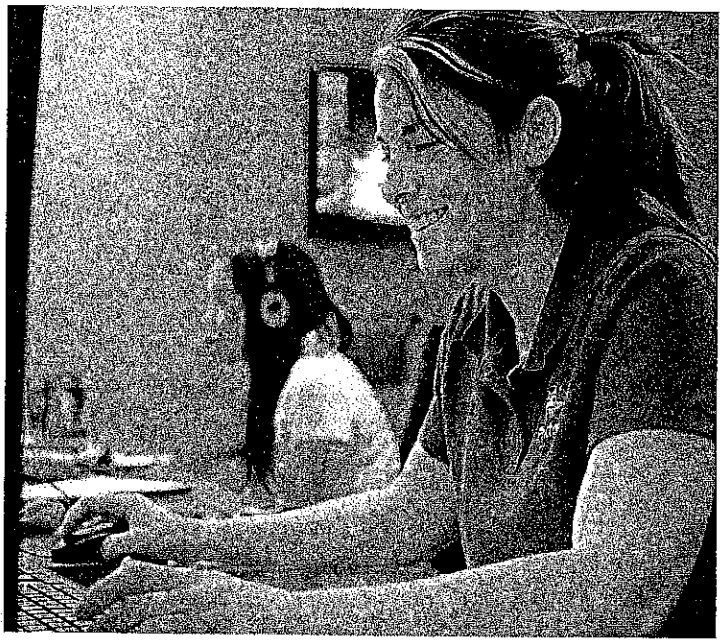
http://csrc.nist.gov/groups/SMA/fisma/

Schedule a Visit to One of Our Centers



ProctorU invites your team to tour one of our facilities in Gilbert, Ariz., Folsom, Calif., Livermore, Calif., or Hoover, Ala.

Contact Us

To learn more about ProctorU, please visit our website at

www.ProctorU.com

or call 888-355-8043.

Don't forget to "like" us on Facebook and follow us on Twitter!

www.facebook.com/ProctorU

http://twitter.com/ProctorU

AGENDA ITEM V – Strategic Plan

==========

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

A. Best Practice Pointers Task Force
No. 6. Court Transcripts Designated Confidential or Under Seal
No. 10. Reporter Conduct Readback in the Jury Room

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Brief Summary:

Revised drafts of Best Practice Pointers 6 and 10 are attached for Board consideration.

==========

Support Documents:

Attachment 1 – Best Practice Pointer No. 6 – Court Transcripts Designated Confidential or Under Seal
Attachment 2 – Best Practice Pointer No. 9 – Leaving Rough Draft for Jury Readback

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: Staff recommends the Board adopt proposed Best Practice Pointers 6 and 10.

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B. Communications Plan

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Brief Summary:

Staff has been working with DCA's Office of Public Affairs (OPA) to develop a communications plan to further several objectives in the Board's strategic plan. OPA has submitted the attached communications plan for the Board's review.

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Support Documents:

Attachment 3 – Communications Plan

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Fiscal Impact: None

==========

Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: Staff requests feedback on draft Communications Plan.

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C. Update on Action Plan Accomplishments

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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 as a tool to update the Board on the progress of achieving the strategic plan goals.

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Support Documents:

Attachment 4 – Action Plan Timeline

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: Staff requests feedback on Action Plan.

==========

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 proceedings and, therefore, are not available to anyone, including the attorneys who were present *and/or the defendant,* without a court order *unsealing the proceedings. This includes proceedings that are automatically sealed, such as Marsden and Pitchess motions or any proceeding that is ordered sealed by the judge. In addition, any request for a transcript of a juvenile proceeding made by an individual who is not the minor, the minor's parent or guardian, or the minor's counsel must be made to the court.*

Please refer to the most current Rules of Court regarding Confidential Records or Records Under Seal. *In addition, please refer to your court's protocol or procedure for handling the preparation of proceedings deemed confidential by law or by order of the court.*

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. **However, if the judge has not admonished the jurors in advance of the reporter reading back to the jury, prior to the start of reading back to the jury, the reporter may instruct the jury that as the reporter is reading the testimony, if any of the jurors would like the reporter to repeat what was just read (i.e., an answer), the jurors can stop the reporter and make that request. In addition, the reporter can remind the jurors that they are not discuss the case while the reporter is in the room, and if the jurors do wish to engage in a discussion about the case, they are to ask the reporter to please leave the deliberation room and wait outside until the jurors call the reporter back in to continue with the reading back of testimony.**

- 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."

COURT REPORTERS BOARD OF CALIFORNIA

COMMUNICATIONS PLAN - 3.4.16

Department of Consumer Affairs
Office of Public Affairs - Michelle McVay

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Attachment B
Agenda Item V.B

GOALS

Educate stakeholders (such as courts, the general public and legal community) on the Board's complaint process

Support schools' recruitment efforts to preserve the integrity and continuity of the court reporter workforce for consumer protection

GOALS

Launch a strategic awareness campaign to educate consumers about the Board's services and standards

Investigate and implement strategies to increase Website use to maximize efficiency in addressing consumer information requests

MESSAGING

How to file a complaint with the Court Reporters Board (Stakeholder education)

Electronics Cannot Capture Everything (Stakeholder Education)

Take charge and assert yourself in the courtroom (Licensees)

MESSAGING

Court Reporters do more than transcribe depositions (Awareness campaign)

Want a Career With High Growth, High Income Potential and Become Your Own Boss? (Recruitment)

What Do English and Technology Majors Have in Common? (Recruitment)

AUDIENCE

PRIMARY

Judges, Courts and Attorneys

Applicants for licensure (students, out-of-state professionals)

Current licensees

Consumers involved in litigation

Consumers with disabilities (deaf, hard of hearing)

AUDIENCE

SECONDARY

Colleges / Universities / Trade Schools

Associations / Organizations

Select State, City & County Agencies

Legal Non-Profits & Self-Help Centers

Law Libraries

Event Planners

TACTICS

TRADITIONAL MEDIA

ONLINE / SOCIAL MEDIA

COLLATERAL MATERIALS

PARTNERSHIPS

EVENTS

STRATEGY

TRADITIONAL MEDIA

- News Release
- Interviews (radio / television / print) with local & statewide media outlets
- Article in Consumer Connection
- Direct mail (slips in paychecks)

STRATEGY

ONLINE / SOCIAL MEDIA

- Revise Existing You-Tube Video
  - Re-title sunset review
- Video Development (You-Tube)
  - Best Pracitce Pointers
  - Transcript Reimbursement Fund (TRF)
  - Speak-Up! How to interrupt proceedings

STRATEGY

ONLINE / SOCIAL MEDIA

- **Social Media Campaign (e.g., #Betcha Didn't Know, #Speak-Up!, #Typos)**
  - Facebook
  - Instagram
  - Twitter
  - Pinterest (great for infographics)

STRATEGY

ONLINE / SOCIAL MEDIA

- Board Website
- Board E-Mail Alerts
- The DCA Page Blog Post

STRATEGY

COLLATERAL MATERIALS (bi-lingual)

- Re-name: Launching A Career As A Court Reporter Brochure (i.e., Court Reporters Do More Than Transcribe Depositions)
- One Sheet: What you can do with a court reporter certificate

STRATEGY

PARTNERSHIPS

- Bureau of Private Postsecondary Education
- Colleges / Universities / Trade Schools
- Select State, City & County Agencies
- National & Statewide Associations
- Affinity Groups (i.e., Girls Scouts)

STRATEGY

EVENTS

- Statewide College Career Fairs
- National Court Reporting & Captioning Week 2017
- NextEd Conference - Cal Expo Fall 2016

DCA RESOURCES

Office of Publications, Design and Editing
Office of Public Affairs

- In-house design and printing capabilities
- Strategic communications
- Communications plan development - including branding concepts
- Video production

DCA RESOURCES

Office of Publications, Design and Editing
Office of Public Affairs

- Website/Social media assistance with content design, layout and management
- Consumer Connection Magazine article (quarterly)
- The DCA Page Blog (article)
- Spanish translation for some items

Court Reporters Board of California
2015-2018 Action Plan Timeline

Action Items	Target Date	Status
Perform new occupational analysis to confirm that tested knowledge, skills and abilities are relevant to the industry	June 2017	In budget approval process
Conduct exam development workshops to produce a robust bank of test questions to safeguard the integrity of the exam	Dec 2018	Contract with OPES with 2016 calendar
Research realtime captioning standards and assess industry practices for the Board to evaluate the need for consumer protection	Sept 2018	
Educate the Governor's Office on the importance of mandatory continuing education	Dec 2016	Talking points to CCRA. Bill vetoed.
Identify entities providing court reporting services in California that are violating applicable laws and take correction action to effect compliance.	Dec 2018	
Conduct cross-training to protect the continuity and timeliness of the consumer complaint process	Dec 2016	
Educate stakeholders (such as courts, the general public and legal community) on the Board's complaint process to prevent or proactively address consumer harm	Sept 2018	Comm plan draft
Expand compliance and education for licensees to prevent enforcement issues.	Dec 2018	Best Practice Pointers – Developed ten
Support schools' recruitment efforts to preserve the integrity and continuity of the court reporter workforce for consumer protection	Sept 2018	Comm plan draft
Increase court reporter school site visits to more effectively monitor compliance with applicable laws and regulations	Dec 2018	Contract with reviewer
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	Dec 2018	Comm plan draft
Cross-train staff to protect continuity of effective and efficient service	Jan 2017	
Investigate and implement strategies to increase Web site use to maximize efficiency in addressing consumer information requests	Sept 2016	Comm plan draft

AGENDA ITEM VI – Sunset Review

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Agenda Description: Status update on Sunset Review

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Brief Summary:

On November 30, 2015, the Board submitted its Sunset Review Report to the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions (the Committees). Board staff worked with various Legislative staff answering questions.

In early February 2016, the Board received notification of a sunset review hearing date as well as an outline for its oral presentation to the Committees. In early March, the Board received clarification of which issues the Committees wished the Board to address at the hearing.

On March 9, 2016, the Board had its sunset review hearing before the Committees. Chair Davina Hurt, Vice Chair Rosalie Kramm, and Executive Officer Yvonne Fenner testified, providing background information and addressing the issues as requested by the Committees.

The Board has 30 days from the date of the hearing to respond in writing to the issues raised in the background paper and at the hearing.

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Support Documents:
Attachment – Written response to issues - draft

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Fiscal Impact: None

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: Staff recommends the Board review the draft response to sunset review issues and provide feedback to finalize response.

Board Response to Sunset Review Issues

Issue #1: Are current license fees sufficient to maintain the Board's long-term fiscal solvency?

Staff Recommendation: ***The Committees may wish to consider amending BPC Section 8031 to increase the statutory fee cap for license fees from $125 to $250, in order to ensure that the Board retains its solvency and can meet its statutory duties, including funding the TRF. In addition, the Board should explain to the Committees if it is considering raising other fees, such as examination fees, that are not currently at their statutory caps.***

Board Response: As part of its fiduciary oversight, the Board closely monitors the budget and projected that the Board would need to address a projected fund imbalance for fiscal year 2017-18. Having already implemented all cost-savings measures, the Board looked at the various options for increasing revenue. The Board looked at increasing the examination fees, but with a relatively small number of candidates annually, even a Draconian hike in the exam fee would not significantly improve the Board's long-term solvency. The Board has also evaluated the possibility of doing continuing education to increase revenue, ultimately finding that the required increase in staff would not make it cost-effective, nor would it be a mission-critical activity.

Thus, in January of 2015, the Board decided that an increase in the license fee was necessary. The Board is currently at the statutory cap for license fees set in 1951. The statutory cap was reached in 2010. The Board directed staff to look for an author for legislation to change B&P Code section 8031, increasing the fee cap from $125 to $250. The Legislative Counsel's Office informed the Board that because a portion of the license fees is used to fund the Transcript Reimbursement Fund, the fee cap increase would actually be considered a tax, requiring a two-thirds vote. While the Board pointed out another board that successfully avoided this tax label with a similar type program, this board and industry and legislative proponents were unable to change the final decision. Despite overall support for the fee cap increase, the Board was unsuccessful in finding an author, but has continued working with consultants from both Senate and Assembly Business and Professions Committees to find a solution to the dilemma.

The timing of a solution is becoming critical as the funding to the TRF is now in jeopardy. Business & Professions Code 8030.2(a) prohibits a transfer being made from the Court Reporters Fund to the Transcript Reimbursement Fund if the transfer will result in reduction of the balance of the Court Reporters Fund to an amount less than six months' operating budget. That is projected to occur as early as fiscal year 2016-17. The TRF comprises roughly one-third of the Board's total budget. If the TRF were not funded, the Board would be able to accomplish its licensing and enforcement programs for several more years.

Since 1981, the TRF has provided over $8.5 million in transcripts to those in need.

The Board has been working closely with legislative staff to find a workable solution to the license fee cap issue in order to maintain not only the access to justice provided by the TRF to the most vulnerable of consumers, but also to continue the Board's other mission-critical programs already mentioned. It is important to acknowledge that in our search for an author to increase the fee cap, every legislator's office we contacted said they could support this bill; however, none were willing to actually author the bill. We respectfully ask the oversight committees to author this bill for us.

Issue #2: Should the Legislature amend the $300,000 amount that must, unless reserves are too low, be allocated to the TRF each year?

Staff Recommendation: ***The Committees may wish to consider amending the Pro Bono Program to allow for a review at the end of the Pro Bono Program's fiscal year, June 30th, to see if there are unspent funds in the Pro Bono Program from that year and authorize the Board to transfer leftover funds to the Pro Per Program, which runs on a calendar year. The Legislature could also consider raising the Pro Per Program's statutory cap of $30,000 per year in order to accommodate more flexibility in how the TRF funds are disbursed. In addition, the Committees should consider whether the Board should be able to transfer less than $300,000 to the TRF at the beginning of the fiscal year, depending on the TRF fund balance in order to provide the Board with greater flexibility. Lastly, the Committees may wish to require the Board to establish a review program to verify the financial status of applicants, and should explore ways to ensure that recipients of TRF pro per funds are deserving of those funds. For example, the Board could consider ways to limit access to certain types of litigants, such as vexatious litigants who are identified by courts as bringing frivolous lawsuits.***

Board Response: Funded completely from court reporter license fees, the TRF was set up to assist qualified indigent litigants with transcript costs. The fund has two programs. The main fund, set up in 1981, requires indigent litigants to have a pro bono attorney handling the case. In 2011, a two-year pilot project was developed to allow pro per litigants, litigants representing themselves, access to the fund. The pilot project was a success and is now a permanent part of the TRF.

Business and Professions Code 8030.2 requires a transfer of $300,000 from the Court Reporters Fund to the Transcript Reimbursement Fund at the beginning of each fiscal year. One proposed sunset amendment that would be helpful to the Board and offer greater flexibility would be amending the language to allow for transfers "as needed" up to $300,000 per fiscal year.

As it relates, he Pro Per Program is capped at $30,000. Since its inception, that cap has proven to be too low for the demand. It is not uncommon for the funds to be

completely allocated only three months into the funding year, requiring applicants to wait well over a year to receive reimbursement. This shortage of funds became so severe it impacted the schedule of litigation in courts and a Rule of Court was adopted requiring litigants to receive provisional approval from the TRF within 90 days, find an alternative method of obtaining transcripts, or forfeit their cases. One method of increasing access to the Pro Per Program without increasing the overall transfer to the TRF is to use the calendar versus fiscal year difference between the two programs. The main fund or the Pro Bono Program runs on a fiscal year. The Pro Per Program runs on a calendar year. The total program is capped at $300,000 per year, of which $270,000 is given to the Pro Bono Program and $30,000 to the Pro Per Program. Because the Pro Bono Program rarely utilizes the entirety of the $270,000 allocated to it, language could be added to the statute allowing for a transfer of non-expended funds from the Pro Bono Program at year end, June 30th, to the Pro Per Program. This would also require an increase to the $30,000 cap in existing law. As this would be mid-year of the Pro Per Program, many more pro per litigants would be able to receive assistance without added burden to court reporters through higher fees.

The Board notes that there is a legislative staff recommendation for the Committees to require the Board to establish a review program to verify financial status of applicants to ensure that the recipients of TRF pro per funds are deserving of those funds. While the Board applauds the intent behind this recommendation, it is important to note the difficult if not impossible nature of the task to set up fair, accurate, and objective procedures to verify the financial status of applicants to the Pro Per Program with our budgetary and administrative personnel restraints. However, in an effort to ensure the best use of the fund, the Board would seek to prohibit vexatious litigants from having access to the fund. The Judicial Council's duty under Code of Civil Procedure section 391.7 is to maintain the Vexatious Litigant List that is updated monthly. The council has delegated the responsibility of maintaining the list to its staff. Judicial Council staff compiles and disseminates a list of persons against whom prefiling orders have been entered [or issued]. Publication of this list began in 1991. Only orders filed from 1991 to the present are included on this list. The Board will review this list in an ongoing effort to ensure that those deserving of the funds receive them.

Issue #2: Should the Legislature amend the $300,000 amount that must, unless reserves are too low, be allocated to the TRF each year?

Staff Recommendation: ***The Committees may wish to consider deleting the sunset date for the Pro Per Program if the funding issues can be resolved to ensure the program's solvency. The TRF is a valued program serving the indigent community and that it is vital for the court process to have an extension of the program, thereby increasing access to justice for California's most vulnerable citizens. Has the Board considered developing an alternative funding source that is not statutorily tied to the license renewal fees?***

Board Response: The TRF is funded entirely from license fees, using no General Fund money whatsoever. It has helped countless indigent litigants obtain transcripts necessary for their litigation, reimbursing more than $8.5 million in transcript costs to date. The Board agrees with Legislative staff's analysis that it is a valued program serving the indigent community, helping those in need get access to justice.

The Board sees no harm in the staff recommendation to delete the sunset date for the Pro Per Program, thus reinforcing that it is one program, funding two types of applicants. Clearly, this assumes the funding issues we've been discussing are resolved.

The Board has been able to find no alternate funding source for the TRF that is not tied to license fees and allowed per statute. It is our understanding that the State's General Fund is already stretched to the maximum. Through the State Bar of California, attorneys already have the option for a portion of their license fees to go toward the Bar's pro bono efforts. The Judicial Council could match funds, but it is constantly seeking cost-savings measures and greater efficiencies, and their budget is stretched thin as well. The current situation is truly a win-win situation. Court reporters are completely willing to fund the TRF via license fees, knowing that ultimately these funds will be paid back to them in the form of reimbursement for transcripts, and clearly the qualified indigent litigant who receives the necessary transcripts at no or low cost also benefits.

Issue #4: Is the Board able to enforce court reporting statutes against foreign court reporting corporations?

Staff Recommendation: ***The Board should continue to monitor the progress of SB 270, which was granted reconsideration to be heard by the Assembly Committee on Business and Profession, and inform the Committees of any issues as the bill moves forward. The Board should explain to the committee if it has considered any solutions to the issues of foreign corporations operating in California without Board oversight.***

Board Response: The Board has had a long journey in its quest to ensure all companies offering court reporting services obey the same laws and regulations governing court reporting, starting with convening a task force to explore the issue in 2007. In 2009, the Board supported AB 1461 (Ruskin), which would have clarified that any entity offering court reporting services was required to comply with all laws governing court reporting. That bill ultimately failed.

In 2010, the Board received a complaint against U.S. Legal for violation of gift-giving provisions. After an investigation, a citation and fine were issued, but U.S. Legal denied the Board's jurisdiction. In 2011, the Board brought suit against U.S. Legal for declaratory relief. The Court in that matter found that although U.S. Legal was rendering court reporting services in California and was indeed in violation of the gift-

giving regulations, there was no explicit authority in statute authorizing the Board to impose citations or fines against a foreign corporation breaking the law.

The heart of the problem is with the Board's jurisdiction over these corporations. Corporations Code 13410(a) requires professional corporations, defined as those that provide services for which a license is required, be subject to the same rules and regulations as licensees. So while both the Corporations Code and the Business and Professions Code are clear that licensees and professional corporations must be held to all the rules and regulations applicable to the practice of court reporting, the corporations in question claim they are merely "arranging" for court reporting services and not providing them, therefore are exempt from following the law. This would mean pursuing an injunction against each corporation, and the court would need to determine on a case-by-case basis if that corporation were providing court reporting services. Clearly a decision of this financial magnitude would need to be analyzed carefully in conjunction with the Attorney General's Office.

The Board has been exploring many options, and we find ourselves listening to people who are very passionate about their positions on the best course of action. It's the Board's job to sort through the rhetoric and make decisions based on what is ultimately best for the consumer.

One avenue the Board is exploring is firm registration. We anticipate SB 270 (Mendoza) to be amended to include firm registration, which, if implemented, would assist the Board in enforcement efforts regarding court reporting firms. This would not be a complete change for the industry as the Board had registered firms until the early 90s when it decided registering with the Board was duplicative of the filing requirements of the Secretary of State. For many years there were no issues, but increasingly if there are problems, the non-licensee-owned firm points the finger at the court reporter, while the court reporter points the finger at the firm that hired them. We have corporations overbilling, re-formatting transcripts to increase the cost to the litigant, cost-shifting wherein one side unwittingly and unknowingly ends up funding the litigation costs, as well as indulging in excessive and unethical gift-giving.

The court reporting in California is a multi-billion-dollar industry, making it attractive to large out-of-state firms owned by non-licensees. Like other pro-business stakeholders, the Board welcomes business owners. That being said, those businesses may not come in and do whatever they want to the California consumer. It is imperative that they be held to the same standards set out in California statute and regulation.

The Board's job becomes difficult and complex when there are multiple consumers with, at times, competing interests. Certainly when there are opposing viewpoints, there is no way for all sides to win. But the Board is striving to help all interested parties work together to achieve the best possible outcome for the consumers.

Requiring all businesses offering court reporting services to register with the Board with a designation of a licensee to be held accountable would greatly enhance the Board's

ability to protect the California consumer from practices outside the law. It is the first step of many to reign in those who do not follow the law.

Issue #5: How can the Board address the pending shortage of court reporters?

Staff Recommendation: ***The Board should continue to monitor the issue of workforce shortages, inform the Committees of the biggest obstacles to ensuring an adequate court reporter workforce, and how best to overcome these obstacles. The Committee recommends that the DCA work with the Board to develop content for the website in addition to developing a communications plan.***

Board Response: The Board will continue to monitor all workforce issues. On a positive note, the predicted shortage is several years out, giving the industry and schools opportunity to improve and/or increase recruitment efforts. There are a number of challenges with regard to ensuring an adequate court reporter workforce. First, the demand for captioners, both broadcast and in educational settings, is providing stiff competition for traditional judicial reporters (court and deposition). The FCC requires more and more mandatory captioning of television broadcasts, and needs from the hearing-impaired community have expanded that to closed captioning of movies and live theater events, as well as conventions and meetings.

Second, we have a bit of a generational issue at play. Millennials are less motivated by remuneration and are much more concerned with quality of life and achieving a good work-life balance. While court reporting as a career offers a great deal of flexibility with regard to schedule, school is a rigorous program requiring a measure of fortitude and perseverance.

Third, while court reporting has changed immensely with technological advancements, the stenographic keyboard has not changed, leading many a layperson to believe technology in the form of voice recognition will soon make court reporters obsolete. Nothing could be further from the actual truth. There are areas where voice recognition can be utilized, but it's simply not useful in a captioning or judicial context, where access to communication or access to justice is at stake. The multitude of speakers with a variety of accents and technical subject matter is only accurately captured with the aid of a human brain in the form of a court reporter.

The image problem is likely the easiest to overcome, as the National Court Reporters Association has taken on that particular piece of the puzzle, working with marketing consultants to help update the image with the general public. Their work can be expanded to reaching the newest generation of workers, whether appealing to the

constant variety offered or issuing a challenge to see who can make the cut, for instance.

Enrollment and recruitment is the biggest obstacle, and a multi-pronged approach will have to be utilized. Not only is it necessary to target those just entering the workforce, but court reporting is a wonderful second career choice as all the prior work and life experience will increase the odds of success.

The Board has been working with DCA's Office of Public Affairs to develop a communications plan, a portion of which is targeted to supporting the recruitment efforts of schools.

Should the demand for court reporters actually outstrip the supply, the Board can look at several options, including expanding reciprocity of licensing from other states, provisional licensing of students who have passed the qualifying exam and are awaiting a testing date, as well as looking at alternative ways of making the record such as voicewriters. It appears to be premature to explore these options at this point, however, as a recent official court reporter position in Sacramento netted 69 applications for the single opening.

The Board will clearly monitor the situation and respond as the situation changes to ensure a strong labor force for the consumer.

Issue #6: How can the Board best address issues relating to examination development?

Staff Recommendation: ***The Board should keep the Committees informed about its request to conduct an OA, and continue to explore ways to reduce and recovers its costs for examination development, including, for example, by increasing examination fees which are currently only $25 per examination. Has the Board considered moving towards a nationally recognized examination provider, which may help reduce Board costs and increase the accessibility of reciprocity for licensed court reporters?***

Board Response: The Board works closely with DCA's Office of Professional Examination Services to develop the written portions of the license exam. Last year, the Board received approval for ongoing exam development costs to help ensure a robust bank of test questions to ensure understanding of the subject matter, not the memorization of answers to rote questions.

Essential to this process is the occupational analysis, which per DCA policy should be conducted every five to seven years in order to ensure that the exam accurately reflects the skills and knowledge that are currently required in the industry. The occupational analysis results in an examination plan outlining the skills and knowledge necessary for an entry level court reporter. Each question on the license exam is directly tied to the most current occupational analysis. The last occupational analysis for the CRB was validated in 2010. In accordance with the policy of conducting a new occupational analysis every five to seven years, the Board has submitted a BCP for one-time funding to complete a new occupational analysis beginning in budget year 2016-17 and finishing in budget year 2017-18. It is reflected in the Governor's budget. The Board is currently working with the Assembly and Senate budget subcommittees to answer questions they have about the BCP.

The Board has considered raising the examination fees, although the relatively low number of candidates will not result in a significant increase in revenue. Clearly, an increase would help offset the cost of the occupational analysis.

The Board has considered moving to a nationally recognized examination provider; however, the national exam is a completely different format from the license test currently used in California. With its long history of consumer protection, California has always had one of the most comprehensive license exams in the country, which is appropriate for one of the largest court systems in the country.

Issue #7: What is the status of BreEZe implementation by the Board?

Staff Recommendation: ***The Board should update the Committees about its plan and procedures for the transition to a new system. In addition, the Board should inform the Committees about any costs it has incurred as a result of the original BreEZe project. Does the Board have any updates on potential release dates for a new system? The Board should also inform he Committees about any administrative or fiscal challenges facing the Board as a result of its current database system.t***

Board Response: The Board is in Release Group 3. Groups 1 and 2 have already gone live with the BreEZe system. The benefit to being later in the queue means we reap the benefits of lessons learned in prior implementation waves. Currently DCA is evaluating the options for the next release, including whether it would be better to contract with a new consultant or whether there is now enough knowledge in-house to bring the remaining boards and bureaus on line using DCA staff. Until that evaluation is complete and a decision for the best way to move forward is reached, no release date is available.

The Board has incurred costs of $ (number coming from Budgets) to date for its share of the BreEZe development.

The main challenge to using the legacy systems are on the customer service side. For instance, it is unfathomable to licensees and applicants that in 2016 the Board is unable to accept a credit card or debit card for payment of fees.

Issue #8: How is the Board the profession affected by technological advancements?

Staff Recommendation: ***The Board should continue to monitor this issue and inform the Committees about the need for any potential statutory changes to clarify issues relating to online practices.***

Board Response: Court reporters have a long history of embracing changes in technology. In the past 30 years alone they have moved from dictating notes for a typist using carbon paper to make copies to realtime translation of the spoken word web streamed around the world. These changes do make for challenges, however, as the Board seeks to keep the practice within existing statutes. In the case of web streaming to remote locations, for instance, it is possible that the Board will seek statutory or regulatory language to set rules in place on disclosure of who is receiving a feed.

Additionally, the courts are moving toward e-filing, making paper transcripts obsolete. The deposition field will no doubt follow, so the Board will continue to monitor changes to electronic and digital signatures to ensure the integrity of the electronic transcript.

Issue #9: Are there technical changes to the practice act that may improve the Board's operations?

Staff Recommendation: ***The Board should submit their proposal for any technical changes to its practice act to the Senate PB&ED Committee for possible inclusion in one of its annual committee omnibus bills. A technical amendment should be made to correct the name of the Bureau for Private Postsecondary Education in BPC Section 8027(a) and amend DPC 8027 et seq. to correct outdated timeframes. The Committees should also consider repealing BPC Sections 8027(p); 8027.5(ac) and (ad); 8030.2(b); and, 8030.5(c) and (d), which are no longer applicable.***

Board Response: The following technical changes are submitted for possible inclusion in a committee omnibus bill:

1. BPC 8027(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school shall also make this disclosure to all students enrolled on or after January 1, 2002.

2. BPC 8027(o)(6) ~~On or after January 1, 2005,the~~ The school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

Issue #10: Should the licensing and regulation of CSRs be continued and be regulated by the current Board membership?

Staff Recommendation: ***The court reporting profession should continue to be regulated by the current Board in order to protect the interests of the public and be reviewed once again in four years.***

Board Response: Court reporters play an essential role in our judicial system as a neutral third party who creates verbatim transcripts of proceedings in a timely fashion, thus ensuring the appeal rights of all litigants. Under the watchful eye of the Board, court reporters do their best work, and, should any fall short, the Board is available to step in and correct the issue or work to ensure it does not happen again.

The Board embraces its consumer protection mission and has worked hard to parlay scarce and limited resources into the most effective operation possible. The Board works hard to balance the multiple consumer interests that would otherwise be left to the entity with the deepest pockets and strongest power, despite a right or wrong position. The current Board members are actively engaged in their policy-setting duties as well as the enforcement matters that rise to their level. The current Board should continue its dedicated oversight of the court reporting industry.

AGENDA ITEM VII – Legislation

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Agenda Description:

A. Update on licensee fee cap increase

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Brief Summary:

At the March 9th, 2016 Sunset Review Hearing, the Board asked the legislative oversight committees (Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions) for assistance in authoring a bill to increase the statutory fee cap.

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Recommended Action: Discussion and possible action

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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 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 1834 (Wagner) – Electronic court reporting**

(Assembly Judiciary)

This bill would allow a court to use electronic recording equipment in a family law case if an official reporter or an official reporter pro tempore is unavailable.

AB 1939 (Patterson) – Licensing Requirements

(Assembly Desk – introduced 2/12/2016)

This bill would require the Director of DCA to conduct a study and submit to the Legislature by July 1, 2017, a report identifying, expoloring, and addressing occupational licensing requirements that create unnecessary barriers to labor market entry or mobility specifically as it pertains to dislocated workers, transitioning service members, and military spouses.

*****AB 2192 (Bonilla) – Court Reporters Board: personnel**

(Assembly Business and Professions)

This bill would extend the sunset date of the Court Reporters Board to January 1, 2021.

AB 2629 (Hernandez) – Court Reporters
Spot bill

AB 2859 (Low) – Professions and vocations: retired category: licenses
(Assembly Desk – introduced 2/19/2016)
This bill would allow all programs within DCA to issue a retired license, with specific limitations.

*****SB 270 (Mendoza) – Court Reporters Board: civil actions: corporations**
(Assembly Business and Professions)
[Awaiting amended language]

*****SB 1007 (Wieckowski) – Arbitration awards**
(Senate Judiciary)
This bill would require a court to dismiss an arbitration award if the court determines that the rights of a party were substantially prejudiced by the refusal of the arbitrators to allow the party, at the party's expense, to have a certified shorthand reporter transcribe any deposition, proceeding, or hearing as the official record.

SB 1155 (Morell) – Professions and vocations: licenses: military service
(Senate Desk – introduced 2/18/2016)
This bill would require DCA to develop a program to waive the initial application and license fees for veterans who have been honorably discharged from the California National Guard or U.S. Armed Forces.

SB 1348 (Cannella) – Licensure application: military experience
(Senate Desk – introduced 2/19/2016)
This bill would require all DCA programs that accept military education, experience, or training to amend their applications to advise veteran applicants of the ability to apply that education, experience, or training.
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Support Documents:

Attachment 1 – AB 1834
Attachment 2 – AB 2192
Attachment 3 – SB 1007
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Report Originator: Yvonne Fenner, 3/16/2016
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Recommended Board Action:

Staff recommends the Board review the proposed bills and decide if they wish to support, oppose, or remain neutral.

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

Assembly Bill No. 1834

Introduced by Assembly Member Wagner

February 09, 2016

An act to amend Section 69957 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1834, as introduced, Wagner. Electronic court reporting.

Existing law authorizes a superior court to appoint official reporters and official reporters pro tempore as are deemed necessary for the performance of the duties of the court and its members. Existing law also authorizes a court to use electronic recording equipment to record an action or proceeding in a limited civil case, or a misdemeanor or infraction case, if an official reporter or an official reporter pro tempore is unavailable.

This bill would additionally allow a court to use electronic recording equipment in a family law case if an official reporter or an official reporter pro tempore is unavailable.

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

The people of the State of California do enact as follows:

SECTION 1. Section 69957 of the Government Code is amended to read:

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

(b) Notwithstanding subdivision (a), a court may use electronic recording equipment for the internal personnel purpose of monitoring the performance of subordinate judicial officers, as defined in Section ~~71601 of the Government Code,~~ *71601*, hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance shall not be used for

any other purpose and shall not be made publicly available. ~~Any~~ *A* recording made pursuant to this subdivision shall be destroyed two years after the date of the proceeding unless a personnel matter is pending relating to performance of the subordinate judicial officer, hearing officer, or temporary judge.

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

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

Assembly Bill No. 2192

Introduced by Committee on Business and Professions
(Assembly Members Bonilla (Chair), Jones (Vice Chair), Baker, Bloom, Campos, Chang, Dodd, Mulling, Ting, Wilk, and Wood)

February 18, 2016

An act to amend Sections 8000 and 8005 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2192, as introduced, Committee on Business and Professions. Court Reporters Board of California: personnel.

Existing law provides for the licensure and regulation of court reporters by the Court Reporters Board of California, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer and committees and to employ other employees, as specified. Existing law repeals these provisions on January 1, 2017.

This bill would extend those provisions until January 1, 2021.

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

The people of the State of California do enact as follows:

SECTION 1. Section 8000 of the Business and Professions Code is amended to read:

8000. (a) There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

(b) This section shall remain in effect only until January 1, ~~2017,~~ *2021*, and as of that date is ~~repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.~~ *repealed.*

(c) Notwithstanding any other ~~provision of~~ law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 2. Section 8005 of the Business and Professions Code is amended to read:

8005. (a) The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other ~~provisions of~~ law.

(b) This section shall remain in effect only until January 1, ~~2017,~~ *2021*, and as of that date is ~~repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.~~ *repealed.*

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

Senate Bill No. 1007

Introduced by Senator Wieckowski

February 10, 2016

An act to amend Section 1286.2 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1007, as introduced, Wieckowski. Arbitration awards.

Existing law establishes standards for arbitration, and requires a court to vacate an arbitration award if it makes certain findings.

This bill would, in addition, require a court to dismiss an arbitration award if the court determines that the rights of a party were substantially prejudiced by the refusal of the arbitrators to allow the party, at the party's expense, to have a certified shorthand reporter transcribe any deposition, proceeding, or hearing as the official record.

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

The people of the State of California do enact as follows:

SECTION 1. Section 1286.2 of the Code of Civil Procedure is amended to read:

1286.2. (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(1) The award was procured by corruption, fraud, or other undue means.

(2) There was corruption in any of the arbitrators.

(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being ~~shown therefor or~~ *shown*; by the refusal of the arbitrators to hear evidence material to the controversy; *by the refusal of the arbitrators to allow a party, at the party's expense, to have a certified shorthand reporter transcribe any deposition, proceeding, or hearing as the official record;* or by other conduct of the arbitrators contrary to the provisions of this title.

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed, upon receipt of timely demand, to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

AGENDA ITEM VIII – 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 regulatory package was approved by the Department of Consumer Affairs (DCA) and the Business, Consumer Services, and Housing Agency and returned to the Board in early March. The package was delivered to the Office of Administrative Law (OAL) who has 45 days to review for procedural accuracy.

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: (Informational)

AGENDA ITEM IX – 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 filed a complaint with the Superior Court of California against Barkley Court Reporters for overcharging for court transcripts. Barkley Court Reporters alleged 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.

On February 6, 2016, a judgment was entered in favor of the defendant, Barkley Court Reporters.

On February 25, 2016, Plaintiff's attorney contacted the Board, advising the Board that the trial court erroneously found that the protections provided by Government Code do not apply to private reporters acting as official reporters pro tempore and notified the Board of their intent to appeal the judgment. Plaintiff's attorney renewed their request for the Board to write an amicus curiae brief to support Plaintiff's appeal of the judgment, noting the importance of consumer protection provided by the relevant Government Codes.

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Support Documents:

Attachment 1 – Order Granting Defendant's Motion for Judgment on the Pleadings
Attachment 2 – February 25, 2016 letter to CRB from Patterson Law Group

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action:

Staff recommends a full discussion of the repercussions of the judgment as it relates to consumer harm.

If the Board decides to pursue an amicus curiae brief, it must first receive permission from the Governor's Office. If the Governor grants permission to pursue the amicus curiae brief, the Board must petition the Attorney General's Office, and if permission is again granted, the AGO would actually write the brief and submit it on the Board's behalf.

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 follow up with the Attorney General's Office for permission and ultimate preparation of the brief.

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Superior Court of California
County of Los Angeles

JAN 08 2016

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TARA R. BURD, on behalf of herself and all others similarly situated, Plaintiff, vs. BARKLEY COURT REPORTERS, INC., a California Corporation; and DOES 1 through 20, Defendants.	Case No.: BC556703 ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS Hearing Date: January 8, 2015 Time: 2:30 p.m. Dept.: 307

Plaintiff Tara Burd ("Plaintiff") or ("Burd") brings this putative class action alleging that Defendant Barkley Court Reporters ("Defendant" or "Barkley") violated Cal. Gov. Code §§ 69950 and 69954 by charging more than the statutory rate for official court reporters. Plaintiff alleges causes of action for declaratory relief and violation of the UCL. Defendant moves for judgment on the pleadings. The Court finds that under a plain reading of the statute, the fees set forth in sections 69950 and 69954 apply only to court reporters employed

by the court. Accordingly, the Court GRANTS Defendant's motion for judgment on the pleadings.[1]

I. Introduction

Official court reporters are public employees paid by the county to provide transcription services for superior court proceedings. Prior to 2008, California superior courts provided salaried official court reporters to transcribe all court proceedings. Beginning in 2008, in response to budget cuts affecting the court system, the California courts ceased to provide official court reporters for civil proceedings. (Compl. ¶ 1.) In 2012, the Los Angeles Superior Court instituted a policy making official court reporters available in general jurisdiction civil courts only 2 and ½ days per week. (Def. RJN Exh. A.) It also adopted a policy allowing parties to "arrange for privately retained reporters by stipulation and order." (*Ibid.*) As a result, many litigants now hire private reporters through companies such as Barkley who are appointed to transcribe court proceedings as official reporters pro tempore.

As alleged in the Complaint, on June 27, 2013, Plaintiff hired Defendant to provide transcribe a court proceeding and requested to have a transcript of the hearing. (Compl. ¶ 15.) On July 2, 2013, Defendant issued an invoice for the June 27, 2013 hearing in the

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[1] The Court GRANTS Plaintiff's Requests for Judicial Notice and Supplemental Requests for Judicial Notice. Defendant objects to Plaintiff's Supplemental Request for Judicial Notice of the Court Reporter Board's opinion letter on the grounds that the letter is not a legislative enactment and may not be judicially noticed under Evid. Code 452(b). The Court overrules this objection as the CRB's opinion letter is not reasonably subject to dispute (Evid. Code § 452(h)) and is the type of advisory opinion that "while not controlling upon the courts by reason of [its] authority, do[es] constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 815 [105 Cal.Rptr.2d 59, 66].) Similarly the Court overrules Defendant's objections to Plaintiff's Supplemental Request for Judicial Notice of publications by the California Court Reporters Association and Deposition Reporters Association interpreting the statutes in question. The Court takes notice of the existence of those documents without accepting the truth of the matters asserted therein.

The Court GRANTS Defendant's Requests for Judicial Notice of court policies (§452(e)), statutes (§452(a)), legislative history (§452(a)), and a Daily Journal article concerning reporter fees (§452(h)). The Court GRANTS Amicus Curiae CCRA's Request for Judicial Notice of a court reporter job description (§452(d), (h)) and a Bureau of Labor Statistics consumer price index report (§452(c)).

amount of $587.00 (calculated at $6.10 per page for the transcript, $250 for a half-day per diem, $20 for a PDF copy of the transcript and exhibits, $20 for delivery of the original transcript, and $42 for transcript production) which Plaintiff duly paid. (*Id.* at ¶ 16.). Plaintiff alleges that these charges were unlawful because they exceeded the charges those mandated by statute. (Compl. ¶ 5, 33.)

On May 30, 2014, Plaintiff filed this putative class action alleging the following causes of action:

1. Violations of Cal. Gov. Code §§ 69950 and 69954; and
2. Violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

Plaintiff seeks to certify the following class:

> All California consumers who purchased a transcript from Defendant Barkley Court Reporters, Inc., for reporting at an official court proceeding, and who paid more than the statutory rate at any time from July 2, 2009 to the present.

Defendant now moves for judgment on the pleadings as to both of Plaintiff's causes of action. The Deposition Reporters Association of California ("DRAC") has submitted an *amicus curiae* brief in support of Defendant's motion. Plaintiff opposes.

II. Analysis

"A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired." (Weil & Brown, Civil Proc. Before Trial (The Rutter Group, 2013) ¶ 7:275.) Like a demurrer, the grounds for a motion for judgment on the pleadings "shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc. §438(d).) "In deciding or reviewing a judgment on the pleadings, all properly pleaded material facts are

deemed to be true, as well as all facts that may be implied or inferred from those expressly alleged." (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.)

Plaintiff's causes of action are premised on the assumption that private court reporters such as those employed by Defendant are subject to the transcription rates set forth in Gov. Code §§ 69950 (Transcription Fees) and 69954 (Transcripts Prepared with Computer Assistance; Fees). As explained below, the Court finds that (1) under a plain reading of the statute, the fees set forth in those sections apply only to court reporters employed by the court; (2) the Court is not bound to follow the Court Reporters Board of California; and (3) public policy does not support Plaintiff's position.

A. *The Fee Provisions of the Government Code Plainly Do Not Apply to Private Court Reporters*

As a preliminary matter, it is apparent from the language of Article 9 that its provisions were written at a time when the courts were fully staffed with salaried court reporters. The language in Article 9 was not written with the understanding or expectation that, with diminutions of the courts' budgets, many of the courts' salaried reporters would be eliminated and replaced by private reporters appointed on a case by case basis. As a result, the language of Article 9 is not perfectly consistent with an intention not to regulate rates for all reporters who transcribe courtroom proceedings. Reading Article 9 as a whole, for the reasons explained below, the Court nevertheless interprets Article 9 to impose statutory rates only for court reporters employed by the courts.

"When the Legislature 'has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded.' [Citation.]" (*Pasadena Police officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576 [273 Cal.Rptr. 584, 797 P.2d 608]; *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 737 [95 Cal.Rptr.3d 53, 58].) Indeed, "[w]hen one part of a statute contains a term or provision, the

omission of that term or provision from another part of the statute indicates the Legislature intended to convey a different meaning." (*Klein v. U.S.* (2010) 50 Cal.4th 68, 80 [112 Cal.Rptr.3d 722, 731, 235 P.3d 42, 50].)

In this case, as Defendant points out, six different sections of Article 9 (governing court reporters) distinguishing between "official reporters" and "official reporters pro tempore:"

- Gov. Code, § 69941: "A superior court may appoint as many competent phonographic reporters, to be known as **official reporters** of such court, and such **official reporters pro tempore**, as are deemed necessary . . . ."
- Gov. Code, § 69944: "Until **an official reporter** of any court or **official reporter pro tempore** has fully completed and filed all transcriptions of the reporter's notes in any case on appeal which the reporter is required by law to transcribe, the reporter is not competent to act as official reporter in any court."
- Gov. Code, § 69946: "Before entering upon the duties of his office, the **official reporter** of any court or **official reporter pro tempore** shall take and subscribe the constitutional oath of office.
- Gov. Code, § 69952(b): "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."
- Gov. Code, § 69955(a): "As used in this section, "reporting notes" are the reporting notes of all court reporters employed to report in the courts of California, who may be known as official reporters and official reporters pro tempore."
- Gov. Code, § 69957: "If an **official reporter** or an **official reporter pro tempore** is unavailable . . . the court may order that . . . the action or proceeding be electronically recorded . . . ."

The use of these two distinct terms indicates that the Legislature intentionally used the term "official reporter pro tempore" to distinguish privately employed reporters appointed pro tempore from official reporters employed by the court.

The two sections of Article 9 setting forth transcription fees, sections 69950 and 69954, make no reference to "official reporters" or "official reporters pro tempore." However, section 69947 states that, "[e]xcept in counties where a statute provides otherwise, **the official reporter** shall receive for his services the fees prescribed in this article," which includes the fees set forth in sections 69950 and 69954. The fact that section 69947 only refers to "the official reporter" is evidence that the Legislature did not intend the fee provisions of Article 9 to apply to private reporters acting as official reporters pro tempore.

Plaintiff argues that the Legislature's use of the definite article "the" before the term "official reporter" in section 69947 suggests that the Legislature intended section 66947 to include all official court reporters, including reporters pro tempore. This argument is undermined by the Legislature use the definite article "the" to refer to official reporters in the preceding section. Section 69946 states," Before entering upon the duties of his office, **the** official reporter of any court **or** official reporter pro tempore shall take and subscribe the constitutional oath of office." (Gov. Code, § 69946.) Because it appears that the Legislature did not intend the term "the official reporter" in section 69946 to include "official reporters pro tempore," the Court cannot accept Plaintiff's reading of section 69947.

Plaintiff also contends that the Legislature used the term "official reporter" to refer to both official reporters and official reporters pro tempore in sections 69942 and 69944. However, the Court finds that the Legislature's use of that term in those sections is distinguishable. In section 69944, the Legislature clearly refers to both "official reporters" and "official reporters pro tempore." The statute then goes on to state that both types of reporters must complete and file transcriptions of their notes in any case on appeal before they are competent "**to act as** official reporter in any court." Similarly, section 69942 states that "[n]o person shall be appointed to the ***position* of official reporter** of any court unless the person has first obtained a license to practice as a certified shorthand reporter from the

Court Reporters Board of California." These references to the position of official reporter are distinct from the use of the term "the official reporter" in section 69947.

Accordingly, because the Legislature omitted the term "official reporter pro tempore" from section 69947, the Court finds that the fee provisions of Article 9 do not apply to private reporters appointed pro tempore. The extensive provisions in Article 9 establishing the rates for reporters in specified counties provides additional support for the Court's interpretation. These provisions underscore the Legislature's intent to ensure that rates charged within each County were uniform. The need to establish uniform rates charged in each courtroom and to prevent salaried court reporters within the same courthouse or the same County from competing with one another by charging different rates explains the Legislature's decision to regulate rates charged by official court reporters. The same concerns are not present with respect to non-salaried official reporters pro tempore.

B. The Court is Not Bound by the Court Reporters Board of California's Interpretation

In general, there are two categories of administrative rules: (1) quasi-legislative rules made by an agency that "has been delegated the Legislature's lawmaking power"; and (2) administrative rules interpreting a statute. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10 [78 Cal.Rptr.2d 1, 6, 960 P.2d 1031, 1036] ("*Yamaha*").) In *Yamaha*, the Supreme Court described the degree of judicial deference to be awarded to the latter category of administrative rules:

> "Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite

> legal and regulatory issues. It is this "expertise," expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion,* however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. [Citation.]

(*Id.* at 11.) In this case, Plaintiff argues that the Court should defer to the Court Reporters Board of California's interpretation of the statutes in question. Plaintiff submits a May 14, 2012 letter issued by the Court Reporters Board stating that "[t]he 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." (Pl. RJN Exh. A.) Plaintiff also submits the Board's Fall 2012 Newsletter stating, "If there is a privately-hired court reporter producing an official record, that reporter is considered a pro tempore and is the official court reporter of record for that proceeding, and statutory transcript rates would apply." (Pl. RJN Exh. B, p. 3.)

Because the Board's letters merely express an agency's interpretation of a statute, they are entitled to a "lesser degree of judicial deference." As discussed above, the Court finds that the plain language of the statute fails to embrace court reporters appointed pro tempore and the Court is not persuaded otherwise by the Board's letters.

C. *California Rule of Court 8.130 Does Not Support Plaintiff's Position*

Plaintiff next argues that Cal. Rule of Court 8.130, governing the filing of a reporter's transcript on appeal, would be ineffective if Government Code sections 69950 and 69954 do not apply to official pro tempore reporters. Rule 8.130 sets forth rules governing the filing of a reporter's transcript in the event that an appellant intends to "raise any issue that requires

consideration of the oral proceedings in the superior court." (Cal Rule of Court 8.120(b)(1).) Once an appellant has designated a reporter's transcript as the record on appeal, the court clerk "must promptly send the reporter notice of the designation . . . and notice to prepare the transcript . . . ." (Rule 8.130(d)(2).) "When the transcript is completed, the reporter must notify all parties to the appeal that the transcript is complete, bill each designating party at the statutory rate, and send a copy of the bill to the superior court clerk." (Rule 8.130(f)(2).) According to the Advisory Committee Comments, "[t]he fee for reporter's transcripts are established by Government Code sections 69950 and 69554."

Plaintiff argues that if sections 69950 and 69554 do not apply to official reporters pro tempore, then Rule 8.130 is rendered ineffective. The Court disagrees. Rule 8.130 only applies where the reporter's transcript has been designated as the record on appeal -- a designation that requires the court reporter to file a transcript in court and to augment that record if the Court of Appeal requires it. As Defendant points out, there is a reasonable rationale for regulating fees. Rule 8.130(a)(4) provides that "[i]f the appellant elects to proceed without a reporter's transcript, the respondent cannot require that a reporter's transcript be prepared [but] the reviewing court, on its own or the respondent's motion, may order the record augmented. . . [and] the appellant is responsible for the cost of any reporter's transcript [so ordered.'" (Rule 8.130(a)(4).) With the appellate court in a position to order the appellant to pay for a transcript, it makes sense that the cost of the transcript should be capped at the statutory rates. It does not follow, from this rule, that the Legislature intended to regulate rates for all transcripts prepared by pro tempore reporters in the trial courts ordered by the respective parties to the proceedings.

D. Public Policy Does Not Support Requiring Private Reporters to Comply with the Fee Provisions of Sections 69950 and 69954

Finally, Plaintiff argues that public policy supports regulating the statutory transcription rates because regulated rates will "[make] the official recordings of public court

proceedings accessible." (Opp. p. 10.) However, Plaintiff fails to cite any statute, rule or case law giving civil litigants or the public the right to an official transcript. The Court has no information that, even at the regulated rates, all parties can afford to order an official transcript. The California Rules of Court already provide alternative procedures for creating an official record of proceedings for litigants who are unwilling or unable to pay for a private court reporter. Under Rules 8.134 and 8.137, parties who lack an official transcript may designate a "settled statement" or "agreed statement" as the record on appeal. (Cal. Rules of Court 8.134 and 8.137.)

The Court is concerned, moreover, that government regulation of private reporter rates compromises strong countervailing public policies favoring free enterprise and competition. The Court also agrees with Defendant that regulating the rates for private reporters may have additional impacts on the free market and potentially reduce the economic incentive for highly qualified private court reporters to serve as official reporters pro tempore thereby creating a shortage of qualified reporters available to serve pro tempore. As the Board of Court Reporters explained in its Fall 2012 newsletter, "[t]he statutory transcript rates were set with the idea in mind that official court reporters are already receiving a salary and additional benefits such as health insurance and retirement." (Pl. RJN Exh. B, p. 3.) As a matter of public policy, it makes sense to impose uniform, regulated rates for public employees who provide additional services for a fee. With taxpayers are no longer providing official court reporting services to all litigants and private reporters generating their own salaries, insurance and benefits, it is difficult to justify regulating private reporter rates as a matter of public policy.

III. Conclusion

The Court rejects Plaintiffs' interpretation of the applicable statutes and finds that Plaintiffs have failed to state an actionable claim. The Court therefore GRANTS Defendant's motion for judgment on the pleadings.

Dated: 1/08/2016

AMY D. HOGUE

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT

PATTERSON LAW GROUP

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February 25, 2016

VIA E-MAIL

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

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

Dear Ms. Fenner:

Please consider this request that the Board add our case to the agenda for the April 2016 board meeting. We will be asking the Board to submit an amicus brief in support of our position in the Court of Appeal in the *Burd v. Barkley Court Reporters* case.

To summarize, our client filed a class action lawsuit against Barkley Court Reporters for excessive court reporting fees. Barkley has a companywide policy of charging fees far 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, their legislative history, and this Board's consistent interpretation of the law for the last 16 years.

Nevertheless, the trial court recently granted Barkley's motion for judgment on the pleadings, which was heavily supported by two private advocacy groups that submitted briefs in support of Barkley's position. The trial court erroneously found that the protections provided by Government Code do not apply to private reporters acting as official reporters pro tempore. We are appealing the attached judgment.

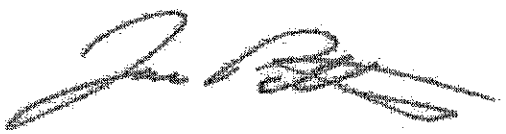
The important consumer protections provided by Government Code Sections 69950, 69954, and 69947 are more important than ever, since the state no longer provides reporters for the majority of civil matters. These statutes control the price for official transcripts, *and for copies of official transcripts.* Unfair practices such as Barkley's threaten equal access to justice for litigants of lesser means who will not be able to afford to hire a reporter, or even order a copy of the transcript prepared by a private reporter hand-picked by wealthier litigants.

The integrity of the official record of court proceedings is sacrosanct. That is why the Legislature long ago set statutory limits on the price that reporters could charge for official transcripts, and copies of official transcripts. Allowing the wealthiest litigants to hand-pick "friendly" reporters, who charge exorbitant prices for copies of the transcripts, defeats the entire purpose of Government Code Sections 69950, 69954, and 69947. At best, wealthy litigants would gain an unfair advantage by pricing their opponents out of having access to the official records. At worst, a large corporate litigant might control and tilt the official record by hiring a biased reporter, time and time again. The purpose of the relevant Government Code Sections is to ensure that this can never happen by precluding any financial incentive to fudge the record.

Barkley has enlisted the help of the Deposition Reporters Association of California and California Court Reporters Association, Inc. Each submitted a brief in support of Barkley's motion for summary judgment and appeared at the hearing, and they will both file amicus briefs in the upcoming appeal. The ruling on appeal will become the law of the land. As such, it is imperative that the Board weigh in and support Plaintiff's position, which is the same position the Board has taken over the past 16 years.

Regards,

PATTERSON LAW GROUP



James R. Patterson

AGENDA ITEM X – 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, 3/16/2016

AGENDA ITEM XI – 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. The Board heard the matter at its October 30, 2015 meeting in San Diego. After hearing from court reporters, the Board asked staff to convene a town hall meeting to convene industry stakeholders to gather further information.

A town hall was set up in Sacramento on February 6, 2016, and on March 9, 2016, in Los Angeles. Attorneys were invited via local state bar newsletters, and judges were invited via contacting the presiding judges of the larger counties. Three attorneys attended the Sacramento town hall meeting, two from industry associations. No attorneys attended the LA town hall meeting. No judges attended either town hall meeting. A summary of the comments received, both by attendees and written submissions, is attached (See Attachment 1).

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Support Documents:

Attachment – Summary of town hall meeting comments

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action: If the Board finds there is sufficient consumer harm, staff recommends holding licensees responsible for following the CCP, including as it relates to sealing of the original. It would be recommended to notify the Bar and educate licensees before issuing citations and/or fines.

So. Cal Stip – Town Hall Meeting Comments

February 6, 2016, Sacramento

Court Reporter Comments

1. Preservation and security of original transcript is the primary issue. Now have an advocate who is handling the transcript versus a court reporter (the attorney might have a vested interest). The law was set up to leave it in the hands of the court reporter.

2. The reporter has a statutory duty; attorneys cannot stipulate this away. The Board cannot consider what attorneys do. The Board has a duty to protect the public welfare – when the law is violated, this is violated.

3. As a firm owner, see many times that the client does not know/is not aware that they stipulate away the original. In addition, in instances that the client wants a duplicate original, they have to be charged again for something they already paid for (this may be consumer harm).

4. When you have counsel from S. Ca. that comes to N. Ca., we find that they do not know that there is a code. Sometimes they might still stipulate; however, most of these attorneys do not know what the code is all about. I believe that the stipulation affects the integrity of the original – we should follow the code. If the original is not sealed in N. Ca, some courts will not accept it (attorneys in S. Ca. may not know that). Also, some of the reasons why attorneys want to stipulate is because they do not want to go to the court reporters office (which really is not the case).

5. Consumer protection: deposition is an out of court statement (under oath without a judge present) can be admitted into evidence in a courtroom. The statutes maintain the integrity and admissibility of the deposition in a courtroom. For consumer protection, the legislature created a statutory scheme that ensures a neutral chain of custody for this deposition. At the end of the day, the Board doesn't have final say about how consumers will be protected – the legislature does. With this issue, the legislature has already identified how to maintain consumer protection by making sure that the parties and advocates cannot get ahold of it, that it stays with a neutral party. The legislature has also made a determination that a certain amount of expense is warranted.

6. We need to be clear to court reporter students about what they should and should not be doing (they are very malleable). The underlying issue why S. Ca attorneys do the stipulation is that they get a "free copy" of it (they take the original and make a copy for their purposes). When someone orders a transcript, we are required to notify the parties involved that someone has requested it. When it gets passed out at will, who knows wh ogets access to it. The reason we have a Board is to tell us what we should/shouldn't be doing. The code is "shall" language (seal the original, protect the original, etc). Just because S. Ca. is going against it, doesn't mean that we should too.

7. Q: Fallout for not accepting stipulation.... A: (1) threatened to report the court reporter to the Board (this was not followed through on). (2) Sometimes the attorneys are compliant; other times they might be argumentative. (3) Attorneys will refuse to work with the firm for refusing to do that So. Ca stipulation – it's hurting our practice.

8. We're not asking the Board to tell attorneys what they should/not do; we are asking the Board to tell the court reporters to what their mandatory duties are.

9. Until this law is clarified by the Board, the question of admissibility of every single transcript/deposition into the court of law in So Ca under the stipulation is very uncertain. And this impacts a lot of things. Clients do not know whether their testimonies will be entered into court.

Attorney Comments

1. Consumer protection has to do with cost, to a large extent. Anything that delays a proceeding costs a client money. Every superior court has a right to veto whatever decision is made. If there is an unsealed document and the judge decides not to admit it, the client is the one that has to pay for it. Also, the client of the noticing lawyer is subsidizing the cost of the other side of the case – he/she probably doesn't know that. That is a direct cost to the client that he/she probably never agreed to. Also, I would think that electronic transcripts are much easier to change than the original. In addition, the arguments that go around in S. Ca over the stipulation is another delay in the proceedings that is going to cost the client.

2. October 16th letter sent to the Board: stipulation is just a word for "agreement" only among the parties. Parties can stipulate anything they want to as long as it's not contrary to law. The attorneys cannot stipulate to bind someone who is not a party to the lawsuit: the court reporter. There are a number of subsections to the law that are exceptions to the court reporter's mandatory duties – in these noted cases, the lawyers can stipulate away what would be the court reporter's mandatory duty. This statute specifically says that the reporter "shall" seal and ship the transcript – there is no exception to this. Lawyers cannot stipulate away their mandatory duties. It would also be interesting to find out if the S. Ca court reporters feel intimidated and/or fear losing business if they go against the stipulations.

Other Group Comments

1. Scopist and proofreader comment: as a party to the case, if the stipulation is entered into, does that mean that I can't review my testimony? Also, if it's not sealed, does that mean it could be in the media? That's a big deal; I don't want that public.

What Else Should the Board Consider?

1. The examples submitted to the Board at the last Board meeting laid out examples of transcripts being unsealed.

2. If the stipulation is allowed statewide, the rates in Ca will go up. This will impact the consumers. Then, the attorneys who follow the law will still want them sealed and they

will be forced to pay a higher rate for following the code.

March 9, 2016, Los Angeles

1. Why is there a regional divide to begin with?

2. Court reporters are required to do an accurate transcript. We follow code, but attorneys stip that away. The question being asked is should attorneys be able to stip away without the approval of the court reporters, who are officers of the court? The code should be followed as it is written, and there is currently no mention of stipulation as it relates to court reporting duties. The attorney compromises the integrity of the transcript by unsealing the original, making changes and copies, and then turning it in. It is no longer the intact original that the court reporter created. A judge will ultimately be using that transcript, and if stip has been entered, he may not know he is not looking at the original.

3. Court reporters also expressed concern with attorneys opening a sealed transcript then piecing it back together without anyone knowing whether a page has been added or removed or a word or words changed.

4. The code is put in place to protect the consumer, but is the consumer really protected? The consumer is paying more with SoCal stip. Changes to a deposition were not recorded in the original transcript. This is consumer harm. Consumers have no idea that their transcript is being put into the hands of the opposing party. There is direct consumer harm because the transcript contains personally identifying information and medical records, which are often included in the exhibits.

5. Cost-shifting is real. One side is subsidizing another side's case. Court reporters can sell a copy of the original, but when an attorney has added changes, it is unfair to the consumer to not have that final copy. Court reporters will tell attorneys to notify us of changes they have made, but they don't always do that. Also, court reporters will let a witness know he has 30 days to file changes. Attorneys who don't include the court reporters may forget or not even alert the witness to what is happening. As a result, a juror's perspective of the witness is tainted because the witness is seen as not credible due to the So Cal stip. This is consumer harm.

6. There is no accountabilityfor what happens to the transcript once it is out of the hands of the court reporter. You will not see a court reporter arguing with attorneys about following the letter of the law. The size of the firm does make a difference. Clients will go somewhere else to get what they want if a court reporter insists on following code.

7. When you allow an interested party to hold on to the original, it is the equivalent of leaving a fox to guard the henhouse.

8. Some attorneys have admitted they don't like to enter into stip, but if they don't, they are seen as disagreeable. One Nor Cal attorney said she would never stip again based on the bad experience she had even though she has been down in SoCal for some time. Attorneys read off a script. Many of them don't even understand the process. Some attorneys will cite the old code, which no longer exists. This means that they don't even know what they are stipulating to. The consumer may not even understand what they have stipped away with regard to the original transcript or fees.

9. SoCal stip has bred a whole new generation of stips. If one attorney wants to punish another, she will threaten to close by code to get back at the opposing attorney. This means she knows that SoCal stip is not right. Also, a witness's attorney, not paying the bill, can take longer breaks, ask inane questions, etc., to punish the other side. If plaintiff's counsel is not having to pay, there is less burden on them to be discriminating in bringing other, more frivolous charges. Crowded courtrooms bring more cost to the consumer (including taxpayers).

10. Who is going to report when something has been stipulated away? Are we going to start reporting on each other?

11. Some judges will take it out on attorneys if the transcript is not handled per code, which helps the court reporters, but that is not always the case.

12. Suggestions: We need to educate attorneys. Perhaps If court reporters had something to show the attorneys as directed by a governing board, it would help the cause because we could show we must follow code. It needs to come from the top down; CRB *and* BAR should stress the importance of code and communicate the same message to both court reporters and attorneys.

13. If the board gives us backing to follow the code, resulting in licensure ramifications, this will help us do our job. The first year this is put in place, there can be a few violations with smaller fines. Using the phased-in approach, violations can increase, along with the fines.

14. Suggest putting a warning on the original transcript that states, "You are about to unseal an original transcript." Perhaps this will stress the risks of unsealing the original.

15. Now that the board is tasked with the enormous responsibility to protect the consumer at all costs, I trust that they will make the right decision and ultimately choose to assist court reporters in abolishing the So Cal Stip.

16. Attorneys are unaware as to the code's handling of the transcript and reporter's duties. They spout out these stipulations and have no idea why other than that's just how it's always been done.

17. I believe it's a legal question: Do attorneys have right to stip away CR duties? We have a code to follow and should be required to follow it.

18. Decision from Board must cover all reporters.

Summary of written comments

1. I cannot thing of any reason why, other than financial savings to the attorney, the So. Cal. stip continues. The excuse of hardship for a witness traveling to the court reporter's office for transcript signing has long been replaced with the ease of online access. Under whose authority is the attorney releasing me from my obligations under the CCP? May I suggest requiring attorneys who insist on the stip to rewrite the code to cite their authority into the record.

2. The CRB is charged with protecting consumers. The ultimate consumers are the litigants who pay the bills and the judicial system itself. It is a fallacy to consider attorneys the consumer. I see no danger of the So. Cal stip compromising the record. A certified copy can be used in lieu of the originals; attorneys are charged with notification of changes. If/when a deposition is filed with the court, it will be accurate. The thought that it can be altered and an opposing attorney not recognize it is a red herring. Any unauthorized alteration would be cause for court sanctions and/or discipline by the State Bar. However, a potential problem with the stipulation involves transcript sales to third parties. This may become a larger issue with the advent of expert deposition databases. Under the stipulation, the court reporter/firm is never notified of any changes made by the witness. Hence, any third party purchasing a transcript directly from the CSR will not receive the changes. It is unfair to the third party and the witness to provide a transcript for use or publication that does not reflect the final review. This could be solved following the code or requiring the attorney to copy the reporter on any corrections. It has long been the opinion that attorneys have the right to stipulate to all aspects of the conduct of a deposition with the words, "any manner." I don't believe that language was meant to allow attorneys to predominate other officers of the court without consent. At a minimum the Board should require the reoprter's affirmative consent to waive duties on the record. Realistically, no So Cal reporter would refuse since s/he would have a hard time finding work, but it would go a long way to educate attorneys and give No Cal reporters a leg to stand on when dealing with So Cal attorneys.

3. [A transcript was submitted from Alameda Superior Court in which a judge is noting for the record that she did not receive a sealed original, noting it appears to be accurate but it was not sealed. The attorneys go on to read from the testimony, but the errata sheet with the witness' changes was not attached to the original, so the witness is being unfairly impeached.]

4. I am in support of abolishing the So Cal stip. It is very damaging andhas caused trouble for me as an agency owner. [no details provided]

5. Deposition reporters are to be independent. They are ministerial officers of the court, subject to the court's control in order to protect the administration of justice. The obvious purpose of these statutory and case law provisions is to ensure the integrity of the judicial record deposition reporters create. Re CCP 2016.030, a purposed 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. Given that a deposition CSR is an independent 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 stipulation. Persons who are not parties to an action cannot be bound by a stipulation among p arties to that action. Some statutes imposing statutory duties on deposition CSRs can be stipulated away because those statutes contain a mechanism for exemption from otherwise mandatory duty (i.e., CCP 2025.330(b), 2025.510(a), 2025.520(a), 2025.520(b)).

6. The stipulation is extremely problematic because it is unclear which duties the deposition officer is no longer boundy by statute or regulation to peform. If the board's position is that licensees may be relieved of those duties by stipulation, that allows for the consumer to be harmed. The board would lose its jurisdiction over licensees on a case-by-case basis, even in matters of discipline for unprofessional conduct. Relieveing the reporter of duties under the code allows for the licensee to not have to accurately transcribe the proceedings or retain steno notes. It allows for the licensee to charge higher rates to one side for services like rought drafts. It allows for nonlicensed reporters to take depositions. This board exists to ensure that court reporters and professional corporations obey the laws that govern them and protect the public. This board cannot ensure that court reporters and corporations are obeying the law if the board remains silent when asked what the law means, in the face of confusion among licensees.

AGENDA ITEM XII – PRESENTATION ON HOLDING OF NORTH CAROLINA CASE

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Agenda Description: Presentation by staff counsel

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Brief Summary:

In February 2015, the U.S. Supreme Court ruled that the North Carolina State Board of Dental Examiners had violated antitrust laws when it issued a cease and desist order to non-dentists performing teeth-whitening services. This decision has far-reaching implications which the Legal Affairs Office of DCA has been exploring with the Attorney General's Office. Staff counsel will update the Board further.

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Report Originator: Yvonne Fenner, 3/16/2016

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Recommended Board Action:

Informational only

AGENDA ITEM XIII – Future Meeting Dates

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Agenda Description: Proposed Meeting Dates

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Support Documents:

Attachment – 2016 Board Calendar

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Current scheduled activities:

Examination Workshops:
April 22-23, 2016 – Sacramento

CSR Dictation Exam:
July 15, 2016 – Los Angeles

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Recommended Board Action: Information exchange

Attachment
Agenda Item XIII

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

JANUARY 2016

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FEBRUARY 2016

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MARCH 2016

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APRIL 2016

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MAY 2016

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JULY 2016

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AUGUST 2016

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SEPTEMBER 2016

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ACTIVITY

- BD - Board Meeting or Activity
- Exam - Dictation Exam
- Workshop - Exam Workshop
- TF - Task Force Meeting
- TH - Town Hall Meeting
- Shaded Dates - Board Office is Closed

CITY

LA-LOS ANGELES
SAC-SACRAMENTO
SD-SAN DIEGO
SF-SAN FRANCISCO

GENERAL LOCATION

NC-NORTHERN CALIFORNIA
SC-SOUTHERN CALIFORNIA

AGENDA ITEM XIV – 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.