

# **BACKGROUND PAPER FOR THE COURT REPORTERS BOARD**

**Joint Oversight Hearing, March 9, 2016**

**Senate Committee on Business, Professions and Economic Development  
and  
Assembly Committee on Business and Professions**

## **BRIEF OVERVIEW OF THE COURT REPORTERS BOARD**

Court reporters are highly trained professionals who stenographically preserve the words spoken in a wide variety of official legal settings such as court hearings, trials, and other pretrial litigation-related proceedings, namely depositions. Court reporters work in courtrooms as official reporters or in the private sector as freelance reporters who provide deposition services. These court reporters are officers of the court, and their competence, impartiality, and professionalism must be beyond question. A complete and accurate transcript of the proceedings made by an impartial third party is the cornerstone for all appeal rights. These transcripts, which include testimony given under oath, are relied upon by the consumer as an accurate source of information. The Court Reporters Board of California was last reviewed in 2012.

Courts of appeal, particularly for criminal cases, rely exclusively upon written briefs and written transcripts of court proceedings to determine whether there were errors in the trial's procedure or errors in the judge's interpretation of the law. A conviction can stand or fall based entirely upon what was said by a witness, a lawyer, a juror or a judge—testimony that is solely reflected in the written transcript. In civil cases, millions of dollars, lifelong careers, or the fate of business enterprises can hinge on what was said or not said in a deposition or at trial. Furthermore, the testimony in civil and criminal cases is often filled with technical terminology. No matter how obscure or technical, such jargon must be verbatim in the written transcript, and court reporters ensure its accuracy. Additionally, the practice of court reporting is dictated by many statutes and regulations. In the private sector, freelance court reporters are faced with numerous and increasingly complex ethical issues as these licensees seek to maintain their strict neutrality while working in settings that frequently involve contentious, high-stakes litigation.

The Certified Shorthand Reporters Board, now known as the Court Reporters Board of California (Board), was established in 1951 by the Legislature to protect consumers from incompetent practitioners. The mission of the Board is to protect the public's health, safety and welfare by ensuring the integrity of judicial records through oversight of the court reporting profession. The Board carries out this mission by testing, licensing and disciplining court reporters, who use the title Certified Shorthand Reporter (CSR), and by recognizing the schools of court reporting that meet state curriculum standards. By statute, the use of the acronym CSR is restricted to those individuals who have a Board-issued license. In California, a person must be licensed to work as a court reporter in state courts (official reporter) or to act as a deposition officer (freelance reporter). Freelance reporters provide services as individual contractors or through court reporting firms. Codes governing

deposition/freelance reporter practices can be found in the Code of Civil Procedure (CCP) Section 2025 *et seq.* As of August 2, 2015, there were 8,088 licensed CSRs in California, of which 6,848 licensees are active and in good standing.

The Board also has oversight over schools offering court reporting education. Although the Board “recognizes” schools, there is no statutory authority for licensure of the schools. However, only court reporting schools recognized by the Board can certify students to qualify to sit for the CSR license examination. There are 13 schools of court reporting recognized by the Board—seven public schools and six private schools. The Board can discipline schools up to and including removing recognition. The Board can also issue citations and can issue fines to schools not in compliance with Board rules.

Additionally, the Board oversees the Transcript Reimbursement Fund (TRF), a special fund fully financed by a portion of the court reporters' licensing fees. The TRF consists of a Pro Bono program and a Pro Per Program, both of which ensure indigent litigants have access to court reporting transcripts for civil cases. Historically, TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified non-profit entities, so a pilot project (the Pro Per Program) was implemented in order to maximize the benefits of the TRF and expand access to justice to those most in need. The pilot project ran for two calendar years, January 1, 2011, through January 1, 2013. The project was capped at \$30,000 per calendar year and each case was capped at \$1,500. This project is also scheduled to be repealed on January 1, 2017, unless legislation extends that date. Under the TRF programs, the Board has paid more than \$8.5 million to licensed reporters.

### **Board Membership and Staffing**

The Board is comprised of five members, two of whom are licensed CSRs and three of whom are public members. The Governor appoints, and the Senate confirms, the two licensees and one of the public members. The Speaker of the Assembly and the Senate Rules Committee each appoint one public member. There are currently no vacancies. For Board members whose term is ending, or has recently ended, there is a one-year grace period to re-appoint the member, if appropriate, or find a replacement. Board members receive a \$100-a-day per diem and meet roughly three times per year. All Committee meetings are subject to the Bagley-Keene Open Meetings Act. The Board does not have any mandatory standing committees.

<b>Board Member</b>	<b>Date First Appointed</b>	<b>Date Re-appointed</b>	<b>Date Term Expires</b>	<b>Appointing Authority</b>
<b>Davina Hurt, Chair, Public Member</b> , Ms. Hurt has practiced law in California since 2005. Ms. Hurt has a general law practice, handling both civil and criminal cases with a focus on property and securities law.	2/26/13	7/9/15	6/1/19	Speaker of the Assembly
<b>Toni O'Neill, Professional Member</b> , For the last 20 years, Ms. O'Neill has been employed by the Riverside Superior Court as an official court reporter, and she currently holds the position of supervising court reporter.	8/7/10	7/3/13	6/1/17	Governor
<b>Rosalie Kramm, Professional Member</b> , A Certified Realtime Reporter and Registered Professional Reporter from San Diego, California, Ms. Kramm is President of Kramm Court Reporting. She has been working as a freelance deposition reporter in Southern California since September 1981, and specializes in technical, complex business, and realtime court reporting.	7/3/13	N/A	6/1/17	Governor
<b>John K. Liu, Public Member</b> , Mr. Liu practices corporate and securities law in the Silicon Valley and specializes in the representation of venture capital investors, startup companies, and other venture-backed clients in the technology area.	10/25/13	N/A	6/1/16	Governor
<b>Elizabeth Lasensky, Public Member</b> , Ms. Lasensky had been an administrator at Stanford University for 20 years, where she worked for the Vice Provost and Dean of Research. She retired last year and continues her community activism while residing in Davis, Ca. Ms. Lasensky also is serving on Menlo Park's "Green Ribbon" Citizens Committee for Global Warming and is a charter member of Hometown Peninsula.	10/15/07	6/6/11	6/1/15	Senate Rules Committee

The Board's Executive Officer (EO) is appointed by the Board. The current EO, Yvonne Fenner, has served as the EO for over six years. For FY 2015/16, the Board has 4.5 authorized positions: in addition to the EO, one staff person is dedicated to Administrative, Board and Committee Outreach, School Compliance, and the Transcript Reimbursement Fund; one staff person is dedicated to Enforcement; one and a half staff persons are dedicated to Licensing and Exams; and two temporary help positions to help proctor examinations. These proctors are typically hired 12-14 hours per year and are not counted towards the 4.5 authorized positions.

### **Fiscal and Fund Analysis**

The Board is completely funded by examination and licensing fees collected from applicants and licensees. The Board receives no revenue from the State's General Fund (GF). License renewal is the Board's largest source of revenue, accounting for approximately 92% of the operating fund. Another 4% comes from examination and licensing application fees. An additional 2% is comprised of payments of citations and fines, and a final 2% is from delinquent fees. A fraction of a percentage comes from investment income.

The Board's license fee is currently at the statutory cap of \$125, which was established when the Board was created in 1951. In 1981, freelance reporter rates were deregulated, and as part of that deal, the profession initiated legislation that created the Transcript Reimbursement Fund (TRF) to fund payment of court transcripts for indigent litigants in civil matters. By law, a minimum of \$300,000 of the Board's total revenue must go to the TRF each July 1, unless the Board has less than six months of reserves. The Board typically does not use the full \$300,000 allotment for the TRF as soon as it is made available. Instead of transferring the full amount, only to return unused funds later, the Board chooses to transfer \$100,000 at a time to maintain the greatest flexibility in funding.

The total revenue, including beginning balance, anticipated by the Board is \$1.7 million for Fiscal Year (FY) 2015/16 and \$1.6 million for FY 2016/17. However, excluding the beginning balance,

anticipated revenue is \$934,000 for FY 2015/16 and \$933,000 for FY 2016/17. Meanwhile, operating costs have steadily increased each year, particularly in FY 2014/15 when two Budget Change Proposals (one to augment the line item for the Attorney General (AG) for enforcement, and one for examination development) became effective; the total expenditures anticipated for the Board is \$1.1 million for FY 2015/16 and FY 2017/17. As a result, the Board has a structural deficit, which will lead to a decreasing reserve; the Board anticipates it will have approximately 6.7 months in reserve for FY 2015/16, and 4.7 months in reserve at the end of FY 2016/17. There are no outstanding GF loans.

<b>Fund Condition (dollars in thousands)</b>						
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance	1,365	1,346	1,331	1,133	789	622
Revenues and Transfers	752	742	674	635	934	933
<b>Total Revenue</b>	<b>2,117</b>	<b>2,088</b>	<b>2,005</b>	<b>1,768</b>	<b>1,723</b>	<b>1,555</b>
Budget Authority	782	774	890	968	1,099	1,112
Expenditures	772	713	868	978	1099	1,112
Transfers to TRF	250	250	300	300	0	0
<b>Fund Balance</b>	<b>1,344</b>	<b>1,370</b>	<b>1,133</b>	<b>789</b>	<b>622</b>	<b>443</b>
<b>Months in Reserve</b>	<b>22.5</b>	<b>18.9</b>	<b>13.9</b>	<b>8.6</b>	<b>6.7</b>	<b>4.7</b>

*\*Note: This table was taken from the Board's 2015 Sunset Review Report*

## **Expenditures**

For the last four FYs, the Board has expended approximately 23.3% of its funds on enforcement, 18.9% on examinations, 12.8% on licensing, 28.7% on administration, and 16.1% on DCA pro rata. These amounts do not include funds expended under the TRF. A significant portion of the enforcement expenses is the AG line item, which deals with the more serious enforcement-related matters that are more costly to resolve. Examination expenses have risen due in large part to increased costs associated with the practical portion of the license examination. The licensing costs remain relatively stable.

The administration line item has seen significant change over the last four years. A portion of this change includes a limited-term half-time staff services analyst to work on the Pro Per TRF. Additionally, there are three other factors that contribute to the marked increase in administrative expenditures from FY 2012/13 and 2013/14. The first factor is the number of positions specific to the administration unit. In FY 2011/12, the administrative unit started with one position, and then increased to 1.3 positions in FY 2012/13, followed by an increase to 1.8 positions in FY 2013/14 and FY 2014/15. The second factor is ratio driven, in that the total number of positions is small, so any changes (small or large) will affect the outcome more significantly than if the total position count was a larger number. The third factor is related to the 5% salary increase in July of FY 2013/14, which also increased the cost of benefits as well.

Expenditures by Program Component								
	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$101,416	\$85,146	\$94,714	\$95,973	\$101,858	\$88,407	\$112,786	\$94,030
Exam	\$81,132	\$65,114	\$75,771	\$68,439	\$81,486	\$80,295	\$90,228	\$85,027
Licensing	\$81,132	\$28,264	\$75,771	\$22,292	\$81,486	\$23,834	\$90,228	\$25,184
Admin.*	\$165,662	\$29,677	\$172,670	\$27,866	\$227,590	\$41,709	\$245,411	\$44,072
DCA Pro Rata	N/A	\$137,948	N/A	\$81,997	N/A	\$142,491	N/A	\$172,828
<b>TOTAL</b>	\$429,342	\$346,139	\$418,926	\$296,567	\$492,420	\$376,736	\$538,653	\$421,141

\*Administration includes costs for TRF administration, executive staff, board, administrative support and fiscal services.

Note: Costs for executive officer have been allocated to enforcement, examination, licensing and administration.

\*Note: This table was taken from the Board's 2015 Sunset Review Report

## Licensing, Qualifications, and Examinations

The primary objective of licensing court reporters is to ensure that consumers receive accurate and timely service from court reporters who, through examination, have demonstrated a minimum level of competency. The Board provides public protection by ensuring licenses or registrations are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial. In FY 2014/15, the Board issued 96 new licenses and processed 6,864 license renewals. Licenses are renewed annually and are due on the last day of the licensee's birth month. The Board is currently processing all applications and renewals within two to five business days.

All applicants for licensure must pass the CSR examination. The vast majority of applicants qualify to take the CSR examination by completing a training program through a recognized California court reporting school. If qualifying through a court reporting school, the applicant must also have passed one speed examination, known as a qualifier.

A variety of basic information is required to be submitted by examination applicants, including the nature and length of any work experience that can be used to establish the minimum one year (1,400 hours) of qualifying work experience. The Board considers work experience from the military as an acceptable form of work experience for the license application. The Board has had three applicants list military education, training, or experience on their license applications during the period since the last sunset review, and all three were accepted. The Board accepts military experience to qualify for licensure and has waived fees for two licensees pursuant to BPC Section 114.3.

Level and location of educational background is also requested, as is information regarding court reporting certificates from other organizations or states and any criminal convictions. The Board requires primary source documentation. Supporting documentation via copies of certificates is required, and work experience must be verified on the official letterhead of the employer. The Board also uses fingerprints to check the Department of Justice database for prior criminal history. If applicants are or have been licensed in another state, history of disciplinary actions is checked by contacting the licensing agency of that state. There are no differences in the requirements for out-of-state and out-of-country applicants. All applicants must complete the same requirements in order to obtain licensure.

Applicants must pass all parts of a three-part examination consisting of two written portions and one practical or skills portion. The first written portion is Professional Practice, a 100-item multiple choice examination which tests knowledge of medical and legal terminology, ethics and code requirements.

The second written portion is English, which is another 100-item multiple choice examination which tests minimum competency in grammar, spelling and punctuation. Both written portions are administered via a computer-based testing vendor. In 2002, the Board began offering the license examination three times each year in California. Approximately 120 applicants take the examination each time. The Board is experiencing no issues affecting the processing of applications or administration of examinations.

Applicants must qualify to sit for the examination through one of five methods:

1. One year of experience (a minimum of 1,400 hours) in making verbatim records of depositions, arbitrations, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records. Applicants can gain these hours as a hearing reporter.
2. A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the Board contained in Title 16 of the California Code of Regulations (CCR) Section 2420.
3. A certificate from the National Court Reporters Association (NCRA) demonstrating proficiency in machine shorthand reporting.
4. A passing grade on the California state hearing reporter's examination.
5. A valid certified shorthand reporter's certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

Applicants have three years to pass all three parts of the examination before they are required to take the entire examination package again. They may take or retake the failed portions up to three times per year. The EO has the delegated authority to extend the three-year pass requirement for up to one additional year for good cause. Out-of-state applicants may qualify for the examination by holding a certificate from the NCRA, which requires passing a national examination, but are still required to take the California examination.

### **School Approvals**

Business and Professions Code Section 8027 requires court reporting schools to be approved by the Bureau for Private Postsecondary Education (BPPE), be it a California public school, or accredited by the Western Association of Schools and Colleges (WASC). Any school intending to offer a program in court reporting has to notify the Board within 30 days of the date on which it provides notice to or seeks approval from the California Department of Education, BPPE, the Chancellor's Office of the California Community Colleges or WASC. The Board then reviews the proposed curriculum and provides the school tentative approval or denial within 60 days. The school then applies for provisional recognition by the Board. Once granted, the school must operate continuously for no less than three years during which time the school must have at least one person successfully complete the course and pass the CSR examination. Upon completion of those provisions, the school may be granted full recognition.

There are 13 schools offering court reporting programs in the state of California. Schools are asked to send written materials to the Board annually as part of the ongoing review process. In previous years, approximately four onsite compliance reviews are conducted per year, resulting in a visit to each school from the Board approximately once every four years. The onsite reviews allow Board staff to confirm the veracity of the written materials submitted annually by looking at the files maintained by the schools. Additionally, the Board can verify that records are being kept per statutory requirements. Spot checks of the student and faculty records are conducted, as well as student interviews. No onsite visits have been conducted since the last sunset review period, due to budgetary constraints. However, the Board is actively recruiting a consultant to help with resuming the onsite reviews.

## **Continuing Education**

Continuing education (CE) is intended to ensure that the reporter maintains a high level of professionalism, including technical skills and knowledge of ever-changing legal statutory codes, thereby protecting the consumers' interests in the judicial setting. Currently only official reporters are required by the Judicial Council to take CE. There is no such requirement for freelance reporters. Despite the Board's attempt to inform all court reporters of changing laws and regulations, reporters are oftentimes too busy with their work to stay up to date on changes in the field. In addition, the advent of new and emerging technologies has allowed freelance reporters to work in virtual isolation, further complicating the Board's attempts at uniformity of knowledge and requirements within the field.

The Board contends that mandatory CE for all court reporters would ensure that a minimum level of competency is achieved and that consumers are protected in all judicial venues of California, not simply the courts, thereby enhancing public protection. However, attempts to require CEs have historically been vetoed, including AB 2189 (Karnette) of 2008, SB 671 (Price) of 2011, and most recently, AB 804 (Hernandez) of 2015, which would have required mandatory CE for renewal of a court reporting license. The Board continues to support efforts to require CEs.

## **Enforcement**

The Board is staffed with one full-time enforcement analyst performing all enforcement activities. The Board receives roughly 100 complaints per year. The majority of complaints requiring additional investigation involve a question of the accuracy of a transcript of legal proceedings or untimeliness of transcript delivery.

Additionally, the Board places a great deal of emphasis on prevention of complaints through outreach to licensees through newsletters and on the Board's website, seminars for licensees and students, and responding to inquiries regarding the complaint process, license status, and the laws and regulations relating to the practice of court reporting. When appropriate, enforcement staff resolves cases through informal mediation. The Board has found that not only does this quicker resolution save time and money for both parties, but it allows the licensee to continue practicing while the issue is resolved. Most licensees are cooperative once the Board outlines the penalties for noncompliance.

The Board has a target of 60 days for intake and investigation, with an average time of five days to assign a complaint to an investigator. The Board meets this target approximately 75% of the time and notes that the backlog can be attributed to a single enforcement analyst. The Board has addressed this issue in its *2015-18 Strategic Plan* with the intent to cross-train other staff. The Board has a target of 540 days for formal discipline, the average number of days for completion of the entire enforcement

process for cases resulting in formal discipline, and meets this target approximately 50% of the time. The Board notes that the timeline to close these cases is heavily dependent on the AG's office.

The Board has seen the number of complaints remain relatively stable. However, the type of cases have been more complicated, thus increasing the average time to close as more in-depth investigation is necessary. Most complaints come from members of the public, while additional complaints come from governmental agencies and other licensees or professional groups.

There has been an increase in disciplinary action over the years since the Board was last reviewed; however, the actual number of cases remains small. The low number is attributed to two factors: first, court reporters work in the legal arena and are more aware of the law and the consequences for acting outside the law; second, the license test is quite difficult, and most licensees are very careful to protect their license and keep it in good standing. The number of drug tests ordered in fiscal year 2014/15 is outlier in the Enforcement Statistics; however, this number does not distinguish between the number of tests ordered and the number of people actually tested.

The Board uses the complaint prioritization guidelines from the DCA. Under this model, enforcement staff reviews complaints upon receipt to determine the best course of action based on the priority assigned. The only mandatory reporting requirement is on the license renewal form on which licensees are required to self-report any convictions. The Board does not have a statute of limitations with regards to enforcement.

### **Cite and Fine**

Many factors go into the decision of whether to issue a citation or fine, including the violation itself, mitigating circumstances, and prior issues. The Board has not increased its maximum fines to the \$5,000 statutory limit. Cite and fine is used to gain compliance with the statutes and regulations governing court reporting, not as a form of punishment. The average fine pre-appeal is \$900. Upon appeal, the average drops to \$800. The most common violations are untimely delivery of transcripts, failure to produce a transcript, working without a license (i.e. failing to renew on time) and unprofessional conduct. The types of violations under unprofessional conduct include violation of the minimum transcript format standards, acting without impartiality or with bias toward one party, and gross negligence or incompetence. All disciplinary actions are public, including citations and fines, on the Board website.

### **Cost Recovery and Restitution**

The Board's policy is to request cost recovery in every instance where the case merits recovery and is ordered by the administrative law judge. Typically, the amount ordered in a cost recovery encumbers costs for the AG's Office only. The Board is generally successful in collecting these amounts. There have been nine revocations in the last three fiscal years, three voluntary surrenders and 12 placed on probation. To obtain cost recovery, the Board works with probationers to set up a payment plan over time, rather than demanding the payment in full at the time of the decision. Cost recovery is always initially requested, but on a very rare occasion the Board will abandon the request as part of a stipulated settlement. The Board does not use the Franchise Tax Board's intercepts to collect cost recovery.

There is no statutory authority for Board-ordered restitution. However, the Board has maintained a proactive stance in assisting consumers in receiving money owed to them. Claims are based on fees charged by official court reporters for transcripts, which are regulated by law in Government Code



Section 69950. There are no statutory fee requirements for work performed in a deposition or hearing setting by a freelance reporter.

The Board has participated in updating and standardizing its enforcement reporting as a part of the Consumer Protection Enforcement Initiative. As demonstrated in the Board's performance measures, enforcement targets have been set and progress is monitored to ensure goals are achieved.

In December 2015, the Board submitted its required Sunset Review Report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development (Committees). According to the Board, the following items are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes affecting the Board:

### **Major Changes Since the CRB's Last Sunset Review**

- Three new Board members have been appointed: one professional member and two public members.
- The Board had the benefit of a two-year limited term staff services analyst to work with the Transcript Reimbursement Fund's Pro Per Program from October of 2013 through October of 2015.
- The Board adopted its *2015-18 Strategic Plan*.
- A professional oath for new licensees that underlines the core ethical duties set out in statute and regulation to protect the consumer was adopted.
- Convened three task forces for the following issue areas: *Exhibit Handling* in 2014, *Interpreted Depositions* in 2014, and *Best Practice Pointers* in 2015.
- Legislative changes:
  - In 2011, Government Code Section 69950 was amended to add an exception to the established statutory transcript fees.
  - In 2013, CCP Section 2025.290 limited how long a deposition can last.
  - In 2015, AB 1197 (Bonilla), Chapter 346, Statutes of 2015, was enacted which requires a deposition notice to include a statement disclosing the existence of a contractual relationship, if any, between the deposition officer or entity providing the services of the deposition officer and the party noticing the deposition or a third party who is financing all or part of the action if known.
- Regulatory changes:
  - An amendment to the Professional Standards of Practice, 16 CCR Section 2475 was approved in 2013. The most significant change to the regulation was a clarification that the \$100 limit pertaining to gift giving or the receipt thereof applies to an entity and is not solely limited to individuals within an entity.
  - In 2014, the Board promulgated Scope of Practice regulations in 16 CCR Section 2403. Its creation was intended to ensure that the Board's licensing population is fully aware of their

individual duties and responsibilities and similarly to ensure that unlicensed entities are fully aware when they are engaging in activities and/or rendering services which are considered shorthand reporting and thus require licensure. The Board is currently pursuing one technical correction to the Scope of Practice regulations.

### **Additional Background Information**

For more detailed information regarding the responsibilities, operation and functions of the Board, please refer to the Board's *2015 Sunset Review Report*. The report is available on the Assembly Committee on Business and Profession's website at: <http://abp.assembly.ca.gov/reports>.

## **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

The Board was last reviewed in 2012 by the Committees. The Committees raised eight issues during the last sunset review. Below are actions the Board has taken to address said issues. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under the *Current Sunset Review Issues for the Court Reporter's Board* section.

**Recommendation 1:** 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:** *The Board agrees with the Committee analysis that the health, safety and welfare of the public are better protected by a well-regulated court reporting profession. The Board remains committed to improving overall efficiency and effectiveness of its operations and appreciates the staff recommendation to extend the sunset date of the [Board] for four years, hopefully as part of SB 1237 (Price). The amendments would be to [BPC Sections] 8000 as well as 8005, which addresses the executive officer's position.*

**Recommendation 2:** The sunset date for the TRF should be extended four years in order to ensure that indigent individuals are able to access justice.

**Board Response:** *The Board agrees with the Committee analysis that 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. The Board is pleased to be able to provide the administration of the TRF thereby increasing access to justice for California's most vulnerable citizens and supports the staff recommendation to extend the sunset date of the TRF for four years, hopefully as part of SB 1237 (Price). The amendment would be to [BPC Sections] 8030.2(g).*

**Recommendation 3:** BPC Section 8046 should be amended to clarify that any entity offering or providing shorthand reporter services must comply with the laws governing licensees of the Board.

**Board Response:** *There is no question that there are professional corporations owned by non-CSRs that are asserting lack of Board jurisdiction over their activities. The background as laid out in the [2016 Sunset Review Report] clearly delineates the issue the Board faces while attempting to ensure that the consumers of California are protected from unscrupulous practices. The way that a business is formed, whether sole proprietor, corporation, partnership or limited liability company, should have no bearing on its obligation to follow the laws and regulations of the State. The court reporting industry is a multi-million dollar industry in California, and the Board welcomes business to our state; however, it believes all entities that provide services should be held to the same standards. The amendment, as*

*laid out in the [2016 Sunset Review Report] to [BPC Section] 8046, would add clarity to the Board's jurisdiction to take action in cases of misconduct on the part of court reporting firms not owned by a licensee. There is ongoing litigation regarding this specific issue, and the Board feels it prudent to defer any legislative changes until the legal matter is completed.*

*SB 270 (Mendoza) is currently before the Legislature in an attempt to clarify the Board's jurisdiction over all entities offering court reporting services in California. The bill is being met with heavy opposition from those firms asserting they do not have to follow the statutes and regulations that govern court reporting services.*

**Recommendation 4:** In agreement with the Board's recommendation, no legislative changes need to be made to the TRF Pro Se Pilot Project at this point. However, the Board should notify the Committee if conditions occur which necessitate changes related to the TRF Pro Se Pilot Project.

**Board Response:** *From the perspective of maximum utilization of assistance funds, the pro per pilot project has been a success. To date over a hundred vulnerable litigants have been assisted by the pro per pilot project, many of whom may not have been able to pursue their cases or appeals without the assistance of the TRF. The large volume of applications attests to the demand for the project. When the entire \$30,000 allotment for 2011 was allocated after processing an application received July 15, 2011, there were 44 applications still pending. Clearly, demand exceeded resources. [Board] staff reviewed 22 of these applications; letters were sent to 17 applicants informing them that their requests would be processed as funding allowed, and five applicants received letters of incomplete or rejected applications.*

*Staff continued to accept and process applications as previously-allocated money became available. In most case, allocations are based on estimates provided by the applicants from the court reporters. As invoices for payment were processed, the actual cost for the transcript was commonly lower than the original estimate; therefore, previously-allocated money slowly became available and was redistributed to other applicants.*

*As of January 1, 2012, an additional \$30,000 became available. Staff began processing the 73 applications remaining from 2011. Several invoices for cases provisionally approved in 2011 were received and processed after the end of 2011; therefore, there was \$925.61 left over, which has been rolled into the available funding for 2012. There are still 45 outstanding invoices from estimates provisionally approved in 2011, totaling \$10,351.79.*

*Concern has been raised by licensees and court clerks regarding the fee waiver that is required as proof that the applicant is indigent. According to these parties, the applications for fee waivers are not verified by the court, and many of the applicants we have approved do not qualify, in their opinion. The Board finds this troublesome, but is at a loss for an adequate replacement for verification of each applicant's financial status. Currently limited staffing resources do not allow for staff to independently validate an applicant's financial situation.*

*An additional factor in consideration of the pilot project is the increasing move toward privatization of the courts in California. Some counties have decided to not provide court reporters in civil matters, requiring litigants to supply their own court reporter. This additional cost to the litigant may bring increased demand for assistance with costs associated with obtaining a transcript, which may, in turn, consume the overall fund more quickly.*

*Additionally, there could be staffing issues for the [Board] if the pilot project were to become permanent or if the \$30,000 cap were to be increased. While existing staff was able initially to absorb the workload, the overall TRF workload increased by 70% in 2011 compared to prior years. This resulted in the inability of staff to perform mandatory oversight of recognized court reporting programs and to reach significant strategic plan objectives. In addition, [BPC Section] 8030.6(f) indicates that actions shall be completed within 30 days of receipt of the invoice and TRF application; however, the processing time increased to as much as 60 days during some periods for the main fund applications due to the increase in TRF applications overall.*

*The Board is supportive of every effort to maximize the use of the TRF. In light of the increased workload, however, and the pressure that decreasing appropriations in recent years has placed upon staff resources, the Board does not feel the project can be sustained with existing staff. The Board would happily redirect resources but for the fact they have, over the past three years, cut all but mission-critical activities. With no action from the Legislature, the pro per pilot project will sunset at the end of 2012. If it is the pleasure of the Legislature to extend or expand the pilot project, the Board hopes the decision-makers are mindful of the concerns stated here and awaits further direction from the Legislature.*

*The Board has been able to maximize the Pro Per Program of the TRF while benefitting from a two-year limited-term staff services analyst. The workload is such that when the position is eliminated and existing staff absorbs it, a backlog may result. A separate issue is the underfunding of the Pro Per Program. Clearly with the current condition of the fund, an increase is not a viable solution.*

**Recommendation 5:** The Board should continue to work with the Administration on the issue of continuing education for all licensed court reporters. The Board should report back to the Committee the results of any guidance received from the Administration.

**Board Response:** *The Judicial Council of California has already recognized the need for continuing education for its court staff, including court reporters and has addressed it by instituting a mandatory continuing education requirement. Ensuring the continued competency of court reporters in order to protect the California consumer remains a priority of the [Board]. As technology business models change for the industry, the [Board] will monitor the situation and work with the Administration to address its concerns. AB 804 (Hernandez), which would have required mandatory continuing education for renewal of a court reporting license, was vetoed by the Governor.*

**Recommendation 6:** In agreement with the Board's recommendation, travel restrictions should be lifted once economic conditions allow.

**Board Response:** *The [Board] will continue to work on achieving creative ways to expand outreach efforts without travel.*

**Recommendation 7:** The Board should discuss with the Committee the Board's fund condition, and identify any unusual expenditures or shortfalls that are contributing to the diminishing fund reserves. The Board should also identify appropriate solutions, including raising fees, controlling spending, or other steps that might be taken in order to ensure a stable reserve level for the Court Reporters Fund.

**Board Response:** *The Board currently has a healthy fund condition with 19.3 months in reserve for the current fiscal year. That being said, the Committee notes a decline when projected into the future, hitting zero or negative in fiscal year 2018/19.*

*With the number of licensees remaining relatively stable, revenue remains fairly constant. During the time period since the last review, expenditures have been reduced by 3.4%. An analysis of the overall numbers reveals that the decline in fund reserves is mainly due to a decrease in budget authority, which has been reduced some 44.6 percent. Part of this reduction is explained by exceptional expenditures that arise from time to time. One example would be the occupational analysis, which is conducted approximately every five years. The occupational analysis is an extensive, detailed study of current practice in the field. The data compiled is used to develop an examination plan, which allows for the formation of legally-defensible license examinations that are current and relevant. When such a situation arises, the Budget Change Proposal process is carried out, ideally with an increase in budget authority for the time period of the specific project and subsequently returning to the baseline.*

*An additional impact on the fund condition is the ongoing funding of the TRF. In the early years, the TRF was funded in smaller amounts, as applications demanded. A few years ago the TRF began to be funded with the full \$300,000 each year, regardless of the claim amounts. Because the TRF has been fully funded for the majority of the years of its existence without being fully utilized, the reserves in the TRF are such that the [Board] could reduce or temporarily suspend the transfer of funds into the TRF. This would help the [Board]'s reserve to stay positive for the foreseeable future, while still reimbursing all eligible applicants to the TRF.*

*As set out in the answer to question No. 9, page 11 [of the 2015 Sunset Review Report], the Board has been monitoring the fund condition regularly and has made every effort to timely increase the revenue by seeking an increase to the fee cap (and ultimately the license fee).*

**Recommendation 8: A technical amendments should be made to correct the name of the Bureau for Private Postsecondary Education in BPC Section 8027 (a).**

**Board Response:** *Committee staff correctly pointed out a technical correction to B&P Code section 8027(a) to accurately reflect the current iteration of the Bureau for Private Postsecondary Education, something that could be corrected within SB 1237 (Price), it is hoped. The Board will ask for this technical correction in the next legislation it pursues.*

## **CURRENT SUNSET REVIEW ISSUES FOR THE COURT REPORTERS BOARD**

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committees, and other areas of concern for these Committees to consider. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

### **BUDGET ISSUES**

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

**Background:** In 1981, the profession initiated legislation that created the TRF to fund payment of court transcripts for indigent litigants in civil matters. By law, a minimum of \$300,000 of the Board's total revenue must go to the TRF annually on July 1. To create this fund, licensing fees were increased from \$40 every two years to \$125 the first year, and \$60 the second year. Subsequently, annual

renewal fees were increased to \$80 and then to \$100 in 1997. Beginning July 1, 2010, the renewal fee increased to \$125, the statutory limit. There are no outstanding GF loans.

The total revenue, including beginning balance, anticipated by the Board is \$1.7 million for FY 2015/16 and \$1.6 million for FY 2016/17. However, excluding the beginning balance, anticipated revenue is \$934,000 for FY 2015/16 and \$933,000 for FY 2016/17. Meanwhile, the total expenditures anticipated for the Board is \$1.1 million for FY 2015/16 and FY 2017/17. As a result, the Board has a structural deficit, which will lead to a decreasing reserve, and the Board anticipates it will have approximately 6.7 months in reserve for FY 2015/16, and 4.7 months at the end of FY 2016/17.

<b>Fund Condition</b> (dollars in thousands)						
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance	1,365	1,346	1,331	1,133	789	622
Revenues and Transfers	752	742	674	635	934	933
<b>Total Revenue</b>	<b>\$2,117</b>	<b>\$2,088</b>	<b>\$2,005</b>	<b>\$1,768</b>	<b>\$1,723</b>	<b>\$1,555</b>
Budget Authority	782	774	890	968	1,099	1,112
Expenditures	772	713	868	978	1,099	1,112
Transfers to TRF	250	250	300	300	\$0	\$0
<b>Fund Balance</b>	<b>\$1,344</b>	<b>\$1,370</b>	<b>\$1,133</b>	<b>\$789</b>	<b>\$622</b>	<b>\$443</b>
<b>Months in Reserve</b>	<b>22.5</b>	<b>18.9</b>	<b>13.9</b>	<b>8.6</b>	<b>6.7</b>	<b>4.7</b>

*\*Note: This table was taken from the Board's 2015 Sunset Review Report*

While there is no statutory mandatory reserve level for the Board, the TRF cannot be funded when the Board reaches less than six months of operating expenses in reserve. In addition, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to six months of reserve. Maintaining an adequate reserve of at least six months provides for a reasonable contingency fund so that the Board has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

According to the Board, the reason for the increase in expenditures is attributed to a number of factors, including the ongoing funding of the TRF; increased administrative costs for a two-year limited term half-time staff services analyst position to assist with the workload from the TRF's Pro Per Program; and the approval of two BCPs submitted in FY 2013/14 totaling \$120,000 each year, to augment the line item for the AG for enforcement by \$40,000, and for an additional \$82,000 expenditure for examination development.

When the Board reduced its number of examination development workshops to a total of six workshops per year, pass rates increased dramatically. The increase in pass rates suggests the questions are obsolete or compromised. Although emergency action by the Board replaced compromised questions on a recent set of examinations, the Board requested a BCP to conduct an occupational analysis (OA). A full OA could make for a better examination and allow the Board to evaluate and replace obsolete or compromised questions. Historically, an OA typically only occurs every 7 to 10 years, but after five years, the questions are known by potential examinees. Ideally, the Board would conduct a total of 12 workshops per year to address: 1) item writing; 2) item review; 3) exam construction; and, 4) pass point setting.

The average cost for a two-day workshop is \$4,000, which includes airfare or mileage, lodging and per diem. To save money, the Board typically only conducts three workshops per exam, alternating the item writing and item review with the exam construction and pass point setting. There are three exams

per year, which amounts to nine two-day workshops at a total of \$36,000. Additionally, the Board contracts with the Office of Professional Examination Services to facilitate the workshops, trains the subject matter experts, and communicates with the online vendor. The contract for three English examinations and three professional practice examinations per year amounts to \$46,000. So the grand total for the examination development is \$82,000.

Expenditures by Program Component								
	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$101,416	\$85,146	\$94,714	\$95,973	\$101,858	\$88,407	\$112,786	\$94,030
Exam	\$81,132	\$65,114	\$75,771	\$68,439	\$81,486	\$80,295	\$90,228	\$85,027
Licensing	\$81,132	\$28,264	\$75,771	\$22,292	\$81,486	\$23,834	\$90,228	\$25,184
Admin.*	\$165,662	\$29,677	\$172,670	\$27,866	\$227,590	\$41,709	\$245,411	\$44,072
DCA Pro Rata	N/A	\$137,948	N/A	\$81,997	N/A	\$142,491	N/A	\$172,828
<b>TOTAL</b>	\$429,342	\$346,139	\$418,926	\$296,567	\$492,420	\$376,736	\$538,653	\$421,141

\*Administration includes costs for TRF administration, executive staff, board, administrative support and fiscal services.

Note: Costs for executive officer have been allocated to enforcement, examination, licensing and administration.

\*Note: This table was taken from the Board's 2015 Sunset Review Report

Budget Change Proposals (BCPs, dollars in thousands)								
BCP ID #	Fiscal Year	Purpose of BCP	Personnel Services				OE&E	
			# Staff Req.	# Staff App.	\$ Req	\$ Aprv	\$ Req	\$ Aprv
1110-02L	2013/14	Enactment of SB 1236 will extend the Pro Per Pilot Project of the TRF.	Half-time 2-yr Limited Term Staff Services Analyst	Half-time 2-yr Limited Term Staff Services Analyst	\$34	\$34	\$10	\$10
1110-019	2015/16	Request for ongoing augmentation for projected Attorney General activities.					\$40	\$40
1110-020	2015/16	Request for ongoing augmentation to fund examination development workshops.					\$82	\$82

\*Note: This table was taken from the Board's 2015 Sunset Review Report

The Board believes that the 1951 license rate is no longer viable in 2015, and that there is an urgent need to increase revenue to continue adequate and timely funding of the TRF, as well as enforcement efforts. Last year, the Board attempted to secure an author for a bill that would increase the fee cap to \$250 but was unsuccessful.

**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.*

**TRANSCRIPT REIMBURSEMENT FUND (TRF)**

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

As previously mentioned, the two programs under the TRF include the Pro Bono Program, available to pro bono attorneys representing indigent litigants, and the Pro Per Program, which was an expansion of the TRF in 2011 for indigent pro per litigants. Both programs assist indigent litigants in civil matters; however, they differ in who may apply and how much monetary assistance is available to individual cases and all cases overall. The Pro Bono Program is operated on a fiscal year basis, while the Pro Per Program operates on a calendar year basis.

<b>Transcript Reimbursement Fund (Pro Bono)</b>				
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
No. of Requests for Reimbursement Received	393	331	343	397
No. of Requests Approved	374	301	330	357
No. of Requests Denied	19	30	13	40
Amount of Funds Disbursed	\$241,295	\$197,454	\$179,304	\$209,411
Amount of Funds Recovered by Judicial Award of Costs	\$66,650	\$36,043	\$7,165	\$39,932

*\*Note: This table was taken from the Board's 2015 Sunset Review Report*

<b>Transcript Reimbursement Fund (Pro Per Program)</b>				
	2011	2012	2013	2014
No. of Requests for Reimbursement Received	232	294	126	113
No. of Requests Approved	130	134	133	145
No. of Requests Denied	29	70	35	45
Amount of Funds Allocations (Provisional Approval)	\$28,572	\$31,832	\$28,387	\$44,455
Amount of Funds Disbursed	\$19,272	\$22,765	\$21,191	\$27,429
Amount of Funds Recovered by Judicial Award of Costs	\$0	\$0	\$0	\$0

*\*Note: This table was taken from the Board's 2015 Sunset Review Report*

According to the Board, limited funding for the Pro Per Program has rapidly become an issue in the administration of the program. The total amount of annual funding is \$30,000, which is quickly exhausted each year as there are enough unpaid claims at the end of the year to appropriate the full \$30,000 at the beginning of the next year, creating an ever-growing backlog of applications. Per BPC Section 8030.6(h), "Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund. Applications held over shall be given a priority standing in the next fiscal year." As a result, by mid-January 2015, the full \$30,000 had been allocated to the previous year's applications. As of mid-August 2015, applications have been received totaling \$27,000, essentially the full allocation for 2016.

In addition to the shortage of funds under the Pro Per Program, concerns have been raised by some licensees and court clerks that the fee waivers for applicants are not appropriately vetted because some courts do not verify the litigant's financial status. However, limited staffing resources do not allow Board staff to independently validate each applicant's financial status.

**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.*

**ISSUE #3: Should an extension be granted to continue the TRF for indigent litigants?**

**Background:** Previously, rates charged by freelance court reporters were set by statute. In 1981, as part of the deal to abolish these rates, the TRF was created ensure that deregulation did not harm indigent litigants. Under the TRF program, the Board reimburses the cost of transcripts for indigent litigants who could not otherwise afford the services of freelance reporters. The costs repaid to a CSR varies with the service rendered; for example, the Pro Bono Program may repay \$40 to \$60 to cover services related to divorce proceedings, but the fees are capped at \$1500 per case. Since its creation, the Board has paid more than \$8.5 million to licensed reporters from the TRF.

The TRF is a special fund and does not rely on any GF monies for its operation. The purpose of the TRF is to provide transcript reimbursement costs in civil cases where an indigent litigant needs a copy of a transcript. The criteria to qualify for reimbursement are:

- The litigant must be indigent and must be represented by legal counsel.
- The applicant must be a qualified legal services project, qualified support center or other qualified project.
- The case cannot be fee-generating.
- The applicant must certify to refund the full amount of all reimbursements from TRF from any award of court costs or attorney fees.
- TRF provides reimbursement for costs as outlined in BPC 8030.6

By law, the TRF must begin each FY (July 1) with a minimum balance of \$300,000, made up from the Board's fund. Since its inception in 1981, the TRF has had a sunset date, which the Legislature has continued to extend. The TRF is currently scheduled to be repealed on January 1, 2017, and unless legislation is passed extending that date, all unencumbered funds remaining in the TRF, as of that date, will be transferred to the Court Reporters Fund.

In addition to the original TRF program, SB 1181 (Cedillo), Chapter 518, Statutes of 2010 authorized a two-year pilot project, expanding TRF to pro se litigants who are indigent. Historically, TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified nonprofit entities, so this pilot project was implemented in order to maximize the benefits of TRF and expand access to justice to those most in need. The pilot project ran for two calendar years, January 1, 2011, through January 1, 2013. The project was capped at \$30,000 per calendar year and each case was capped at \$1,500. This project is also scheduled to be repealed on January 1, 2017, unless legislation extends that date.

**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?*

### **ENFORCEMENT ISSUES**

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

**Background:** From the Board's perspective, there are two aspects to unlicensed activity. In the first situation, there are court reporters who neglect to renew their licenses on time but continue to report, which is unlicensed activity from the standpoint that they are working without a current license. The Board issues citations and fines for this violation. The second type of unlicensed activity relates to foreign corporations who are offering court reporting services in California without authorization.

In response to complaints about unethical gift giving (violation of 16 CCR Section 2475(a)(8)) and violations of the minimum transcript format standards (violation of 16 CCR Section 2473), a task force was appointed by the Board in 2007, to study the issue of firm oversight. The members of the task force included small, medium and large-firm owners. Ultimately, the task force determined that a legislative fix was necessary to address this issue, which was included in AB 1461 (Ruskin), of 2009. The bill sought to clarify that in addition to corporations, a firm, partnership, sole proprietorship or other business entity providing or arranging for shorthand reporting services (any entity offering or providing the services of a shorthand reporter) was barred from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. The bill died in the Assembly Appropriations Committee.

Also in 2010, the Board received a complaint that U.S. Legal, a Texas-based corporation, was violating gift-giving provisions under 16 CCR 22475(b)(8). After investigation, a citation and fine were issued, but U.S. Legal denied the Board's jurisdiction to issue it a citation. In April of 2011, the Board brought suit against U.S. Legal for declaratory relief (*Court Reporters Board v. U.S. Legal*). After a hearing, the Court ruled that although U.S. Legal was rendering court reporting services in California and was in violation of gift-giving regulations, there was no explicit authority in current statute authorizing the Board to impose citations or fines against U.S. Legal because U.S. Legal was not authorized to do business in California. Corporations Code Section 13401(c) provides that, "'Foreign professional corporation' means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the BPC for the performance of professional services by a foreign professional corporation." As a result, the Court determined that because there was no authority under the BPC to render court reporting services in California, because the BPC did not explicitly authorize foreign professional corporations, the Board could not have any jurisdiction over the corporation – because it was not supposed to conduct business in the state in the first place.

According to the Board, as a result of the ruling in *U.S. Legal*, the only remedy against violations by foreign corporations appears to be trying to prevent foreign corporations from operating in California, since the foreign corporations offering court reporting services in California are successfully refusing to acknowledge or simply ignoring the Board's jurisdiction in the enforcement arena.

However, it would be difficult for the Board to bring civil actions against all foreign corporations offering court reporting services based on high litigation costs which the Board's budget would be unlikely to sustain, as these corporations would likely fight the characterization of being a professional corporation. At essence, this is the problem with the Board's jurisdiction over these corporations. Corporations Code Section 13410(a) requires "professional corporations" (those that provide services for which a license is required) to be "subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged[.]" As a result, while the Corporations and BPC make clear that professional corporations are required to abide by rules and regulations that apply to the licensed industry, the court reporting corporations do not believe they are subject to these rules because they are not professional corporations that offer professional services. Instead these corporations believe they only contract for professional services, and are therefore exempt from rules that would otherwise apply to professional corporations and licensees. As a result, the Board would have to bring suit against each corporation, and the question of whether or not they are in fact a professional corporation would have to be decided on a case-by-case basis, and litigation costs would likely consume a significant portion, if not all, of the enforcement budget (i.e. the Attorney General line item). For example, in the case of *Court Reporters Board v. U.S. Legal*, the Board spent approximately \$100,000, but at the time the Attorney General line item was only \$40,000.

As was written in the *2012 Sunset Review Background Paper*:

"The ultimate consumer of the transcript is the litigant, and their need to have transcripts that are lawful, honestly and accurately prepared is the same regardless of the corporate form of the entity that arranged for the proceeding.

If an attorney hires a firm because of a large gift, a direct violation of [16 CCR] Section 2475(a)(8), rather than competitive rates or quality of service, the consumer, the lawyer, and the litigant are the unknowing potential victims. Similarly, if there is a violation of Section 2473, the minimum transcript format standards, the litigant could end up paying hundreds or even thousands of dollars more for transcripts." (Senate Business, Professions & Economic Development Committee, Background Paper for the Court Reporters Board (2011-2012 Regular Session) March 12, 2012)

According to the Board, additional complaints have been received about overcharging for court transcripts, a violation of Government Code 69950 and is direct consumer harm; the overcharging of one party for transcripts is in practice cost-shifting or akin to giving a large gift. This is a practice whereby a court reporting firm offers to charge the noticing party a nominal amount if the noticing party chooses to utilize the services of that firm. The costs of the transcripts are then shifted over to the defending attorney(s), who has no ability to choose the court reporter and is essentially stuck with the bill presented in order to obtain a transcript. While the practice is not specifically illegal on the face, the Board is concerned about the serious ethical considerations that arise out of this type of scenario. As a result, it is important for the Board to ensure that the same rules that apply to all licensees that serve to protect consumers are enforced against all entities that provide court reporter services.

Last year, SB 270, (Mendoza) of 2015, was introduced and is currently pending in the Assembly Committee on Business and Professions after it failed to receive enough votes to pass out of the Committee. This bill has been met with heavy opposition from foreign court reporting corporations. While the bill initially sought to clarify the Board's authority over foreign professional corporations and increase penalties for violations of law, the author proposed amendments that would have instead

required these corporations to register with the Board. The registration would be similar to requirements that were in place until the 1990s. However, the Board decided that registering with the Board duplicated the filing required by the Secretary of State's office. (See Corporations Code Section 13401(b) exempting "professional corporations" regulated by the Board from having to register.) This would purport to resolve the problem under the *U.S. Legal* ruling, which required the BPC to first authorize a foreign professional corporation in order for the Board to assert jurisdiction over it. However, complications may arise if the Board is seen as authorizing the registration of corporations that are in fact providing professional services and therefore operating as professional corporations, if those corporations' shareholders are not licensees of the Board, as required under the Corporations Code and the BPC.

***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 other solutions to the issues of foreign corporations operating in California without Board oversight.*

### LICENSING ISSUES

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

**Background:** The National Court Reporters Association, in conjunction with Ducker Worldwide, published an industry outlook report which predicts a shortage of some 2,320 court reporters in California by the year 2018, due to increased demand for court reporting services, as well as the demographics of the current workforce. Approximately 70 % of existing court reporters will retire in the next 20 years. Additional judicial reporters will be siphoned away from court reporting due to increased captioning demand.

As part of its *2015-18 Strategic Plan*, the Board established the goal of supporting schools' recruitment efforts in order to preserve the integrity and continuity of the court reporter workforce for consumer protection. Board staff will work with the DCA's Office of Public Affairs to develop a communications plan. Additionally, the Board seeks to update student brochures and develop content for its website to ensure that potential reporters are provided essential information. In addition, Board staff meets with schools as a group three times a year in conjunction with the practical portion of the license examination. Board staff is also available upon request to speak at court reporting schools at all levels, from beginning classes to more advanced classes. Licensee Board members and the EO also participate in trade association meetings at local, state and national levels and make presentations at career fairs and high school events. Seminars are prepared and given at industry meetings as well as at court reporting schools.

Outreach is negatively impacted by discretionary travel restrictions. According to the Board, travel requests to attend events such as industry conventions, seminars, etc. are often rejected. Board members and licensees would like to do more outreach at trade association meetings and fairs, but are limited by costs associated with the location of such events.

***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.*

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

**Background:** Licensure is attained by passing all parts of a three-part examination: two written portions and one practical or skills portion. The first written portion is Professional Practice, a 100-item multiple choice examination which tests knowledge of medical and legal terminology, ethics and code requirements. The second written portion is English, which is another 100-item multiple choice examination which tests minimum competency in grammar, spelling, and punctuation. Both written portions are administered via a computer-based testing vendor.

The practical examination (dictation/transcription portion) consists of a ten-minute exercise, and successful candidates must achieve 97.5% accuracy. The two written portions of the examination are developed in conjunction with DCA's Office of Professional Examination Services (OPES).

Development of the English and Professional Practice portions of the CSR examination begins with an occupational analysis (OA) to identify current job knowledge and skills necessary for entry-level court reporters. Upon validation of the OA, an examination plan is developed to not only identify knowledge and skills required, but also to weight them based on how important and/or how frequently the knowledge or skill is required.

Upon completion of the examination plan, four types of examination development workshops are held. Groups of subject matter experts (SMEs) made up of working court reporters, facilitated by OPES, write questions for the two written exams, each question being tied to the current examination plan. A subsequent group of SMEs reviews the questions, adding finished questions to the test bank. A third group of SMEs constructs the actual examination by selecting questions from the bank, weighted in a manner reflective of the examination plan. Finally, a fourth group of SMEs sets the passing score for a particular examination in accordance with the 16 CCR Section 2420, which outlines the Board regulation that requires the passing grades for the written examinations be determined by the Angoff criterion-referenced method.

Given the critical importance of the role of a court reporter and the near-irrevocability of the mistakes, the examination is appropriately rigorous. Candidates taking the test for the first time have a higher pass rate than those who must retake the examination. When the examination was converted to computer-based testing, the vendor was unable to track first-time candidates versus retakes, counting them all as first-timers; therefore, the actual first-time statistics are not available until the 2010-11 year, three years after the switch. Written examinations are updated three times a year.

While examination scores appear to have fallen between FY 2013/14 and FY 2014/15, according to the Board, the aberration is not with the decrease in scores, but rather the increase in scores in FY 2012/13 and FY 2013/14. According to the Board, passage rates are typically low based on the rigorous exam standards, and exam scores only increased when the Board was unable to conduct as many examination development workshops as it usually does due to budget concerns. However, the Board recently received a BCP to augment its examination budget by \$82,000 per year in order to continue fully funding its examination development workshops. Despite the funding of its examination development workshops, the Board has been unable to secure funding for an OA. The Board's last OA was conducted in 2010. According to the Board, if an OA was approved, which would reevaluate the entire examination; it might serve to reduce future examination development costs which are based on constant revisions to the existing examination.

Examination Data				
California Examination (include multiple language) if any:				
License Type		CSR	CSR	CSR
Exam Title		Dictation/Skills	English	Professional Practice
FY 2011/12	# of 1 <sup>st</sup> Time Candidates	125	119	114
	Pass %	40.8	47.1	57.0
	# of Overall Candidates	350	249	206
	Pass %	22.3	38.6	52.4
FY 2012/13	# of 1 <sup>st</sup> Time Candidates	105	125	126
	Pass %	58.1	66.4	78.6
	# of Overall Candidates	286	281	184
	Pass %	38.1	50.2	70.7
FY 2013/14	# of 1 <sup>st</sup> Time Candidates	131	123	119
	Pass %	55.0	72.4	85.7
	# of Overall Candidates	384	230	174
	Pass %	28.6	58.3	78.7
FY 2014/15	# of 1 <sup>st</sup> time Candidates	147	144	147
	Pass %	55.1	37.5	57.8
	# of Overall Candidates	396	256	206
	Pass %	33.3	27.3	49.5
Date of Last OA and name of OA developer		2010, OPES		
Target OA Date		2017		

\*Note: This table was taken from the Board's 2015 Sunset Review Report

**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?*

### TECHNOLOGY ISSUES

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

**Background:** The "BreEZe Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. BreEZe will provide all DCA organizations with a solution for applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve DCA's service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012/13, and the final release was projected to be complete in FY 2013/14. In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to Release 1 of the BreEZe system. Release Two is scheduled to go live in March 2016, three years past the initial planned release

date. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014 that the current vendor contract is no longer in place, and the regulatory entities that were scheduled for Release 3 will not transition to the current BreEZe system. The Board was scheduled for Release Three.

As a result, the Board is impacted by the freeze to its existing legacy systems, prohibiting any changes to the current system in the interim. The Board can continue to complete tasks to enable business as usual, but changes, such as those affecting veterans and active duty military, become difficult, if not impossible to make. Furthermore, according to the Board, the Board's current technology is so antiquated it is still unable to accept a credit card for license renewal payment.

**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 the Committees about any administrative or fiscal challenges facing the Board as a result of its current database system.*

#### **ISSUE #8:** *How is the Board and the profession affected by technological advancements?*

**Background:** The practice of court reporting itself faces issues with respect to verification or authentication of an original transcript as electronic communication replaces physical paper. Currently, the original transcript must have an actual "wet" signature or be digitally signed through a service that offers authentication of the signature to ensure there have been no changes to the text of the transcript.

Firms outside of California are live-streaming depositions within California and utilizing court reporters in other states to produce deposition transcripts that are under the jurisdiction of California courts. Consequently, there is no oversight of these out-of-state reporters by the Board of California to ensure compliance with California statutes and regulations that protect consumers.

Additionally, the Board is tracking technological advances in forms of videoconferencing as that becomes a more common practice for depositions. Existing laws and regulations continue to apply to the practice and are not really impacted by the online aspect. The Board will continue to monitor trends, however, and take action should the need arise.

**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 practice.*

### **EDITS TO THE CRB PRACTICE ACT**

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

**Background:** The Board has indicated in its *2015 Sunset Review Report* that there are non-substantive and technical changes to its practice act that may need to be made. The appropriate place for these types of changes to be made is in the Senate Committee on Business, Professions and Economic Development's (BP&ED) annual committee omnibus bills.

Each year, the Senate BP&ED Committee introduces two omnibus bills. One bill contains provisions related to health boards/bureaus and the other bill contains provisions related to non-health boards/bureaus. The Senate BP&ED Committee staff reviews all proposals, and consults with the Republican caucus staff and Committee member offices to determine the provisions that are suitable for inclusion in the committee omnibus bills. All entities that submit language for consideration are notified of the BP&ED Committee's decision regarding inclusion of the proposed language.

Below, is a summary of the technical changes that may needed:

1. On January 1, 2007, the Bureau for Private Postsecondary and Vocational Education sunsetted. In 2009, AB 48 (Portantino, Chapter 310, Statutes of 2009) established the Bureau for Private Postsecondary Education. Staff notes a technical correction needed in BPC Section 8027(a) to correctly reference the name of the Bureau.
2. Additionally, several sections in Chapter 13 of the BPC have become obsolete. Examples of technical changes are as follows:

BPC 8027(o)(6) should be amended to read, “~~On and 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.”

BPC 8027(n) should be amended to read, “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.

**Staff Recommendation:** *The Board should submit their proposal for any technical changes to its practice act to the Senate BP&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 BPC 8027 et seq. to correct outdated timeframes. The Committees also should 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.*

### **CONTINUED REGULATION OF THE PROFESSION BY THE BY THE COURT REPORTERS BOARD**

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

**Background:** The health, safety and welfare of the public are better protected by a well-regulated court reporter profession. CSR's provide an invaluable service to the legal community. They are highly trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation-related proceedings such as depositions. The Board continues to be an effective mechanism for licensure and oversight of court reporters and should be continued.

The Board has shown over the years a strong commitment to improving the effectiveness and efficiency of the Board's operation and has worked cooperatively with the Legislature and these



Committees to bring about necessary changes, especially with respect to the TRF and the development of quality examinations that accurately reflect the nature of court reporting. The Board should be continued with a four-year extension of its sunset date so that the Committees may review once again whether the issues and recommendations in this Background Paper have been addressed.

**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.*