



COURT REPORTERS BOARD OF CALIFORNIA

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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 has projected that the Board would need to address an anticipated 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 previously 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, the 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 pre-filing 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 #3: Should an extension be granted to continue the TRF for indigent litigants?

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.

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

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 year-to-date figure will be unavailable until fiscal year 2015/16 ends, but the projected figure is \$65,305.

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 and 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 as the Board seeks to keep the practice of court reporting 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 and 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 for the protection of California consumers.