STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
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FIRM REGISTRATION TASK FORCE MEETING MINUTES
November 30, 2007
1:30 p.m.

Board Member Present:	Gregory Finch, Chairman Yvonne Fenner, Vice Chairperson
Task Force Members Present:	Sheila Atkinson-Baker Debra Codiga Dan Feldhaus Diane Saunar
Staff Present:	David E. Brown, Executive Officer Diane Dobbs, Staff Legal Counsel Laura Freedman Eidson, Staff Legal Counsel

Chairman Finch called the meeting to order at 1:30 p.m., and introductions were made.

Mr. Finch outlined the mission of the task force as follows: to identify methodologies to protect consumers from allegations of firm misconduct and recommend a position to the Board on firm oversight. He identified the approach to include confirming the Board's current authorities for firm oversight, evaluate examples of consumer harm caused by firms, identify methodologies to protect consumers from allegations of firm misconduct and to recommend a position to the Board on firm oversight. For background and to help the group keep a proper focus, Mr. Finch then read the CRB mission statement and Business and Professions Code section 8005.1.

To begin to evaluate examples of consumer harm caused by firms, Mr. Finch's asked Mr. Brown to share examples of complaints that the CRB has received. Mr. Brown pointed out that at the point a complaint reaches the CRB, the complaining party typically has tried all options to solve and is just extremly exasperated, leading to a relatively small number of actual complaints. A recent complaint involved a firm changing a transcript that the CSR had turned in so that it was outside the minimum transcript format, increasing the number of pages included in the billing resulting in a higher cost to the consumer. Another complaint involved a firm using pre-signed forms and attaching the wrong signature to a transcript, putting the validity of the transcript at risk.

Mr. Finch then asked for examples of consumer harm from task force members.

Mr. Feldhaus began by pointing out that many regulations have been passed for the protection of the consumer which apply specifically to the individual CSR but not to the actual firm, which allows firms to operate without being bound by these same regulations. He asserted that under the current regulations, a firm that is owned by a CSR is actually penalized, as opposed to having benefits and privileges, and knows of no other operation where being licensed provides you less ability to conduct business. The current laws allow

anyone to set up a court reporting firm without any knowledge of the laws governing transcript production and sales, for example. An example where non-CSR-owned firms have been given a business edge is unregulated gift-giving. A specific example of this practice causing harm to the consumer is an attorney who stated she wanted to receive the $40 gas cards (for example) and didn't really care what the actual deposition costs were because her client, an insurance company, was going to pay for it. Another attorney said these firms charged more, but sent reporters who could not read back, so they were sending less experienced reporters and that transcripts were often very late.

Regarding sales of transcripts, Mr. Feldhaus reported that attorneys have asked for clarification regarding sale of a transcript to a nonparty. They said generally the firm would just send the transcript and bill it, while his office, a CSR-owned firm, has to explain the law describing the procedure allowing 30 days for the filing of a protective order. Mr. Feldhaus also cited a reformatting example. He cited overbilling and double billing without refunds upon discovery of the error as well as copy prices higher than the preparation of the original transcript, the copy prices making up for the attractive prices being charged to the noticing attorney. He stated that because of the high cost of gifts to attorneys and staff, many non-CSR firms pay lower commissions, resulting in some firms hiring reporters willing to take the lowest commission, often inexperienced and/or incompetent reporters. He concluded with reporters complaining of problems receiving proper and timely commisions from out-of-area firms.

Ms. Codiga and Ms. Fenner stated Mr. Feldhaus had covered the problems they had heard.

Mr. Finch noted that Mr. Ed Howard had submitted written comments for the record, as well as a letter submitted by Barkley Court Reporters.

Mr. Feldhaus spoke to a comment in the written submissions that many other states don't regulate firms. He asserted that is because it's a recent occurrence and has information from three other states that do regulate firms, Texas, Nevada and Hawaii.

Ms. Saunar spoke to the comment in the written submissions about lack of complaints, stating that it's well documented that even in the most egregious of offenses in a supermarket, only one in ten people will actually file a formal complaint.

Ms. Codiga pointed out that sometimes the person who is the least knowledgeable is the person most injured in these situations. The person paying the bill does not realize that they're being taken advantage of.

Ms. Stephanie Grossman of Palo Alto reported that the Parker Directory lists a firm in Los Angeles County, Nationwide Court Reporters, what lists themselves as certified shorthand reporters. The law says that only CSRs can use that term. She complained to a firm executive officer, who contacted the firm to cease and desist. They refused and Ms. Grossman was told that the CRB has no control over them as they are not certified. She protested as a CSR having to compete with firms who are unrestricted in their gift giving. She reported her understanding that such a complaint had been filed with the CRB, but because they are non-CSR firms, the CRB has no authority to enforce the code. She also reiterated the problem with selling transcripts to nonparties. She concluded that the CRB cannot protect consumers if they have no enforcement powers over non-CSR firms.

Ms. Sandy Bunch Vanderpol, immediate past president of CCRA, brought to the task force's attention that on May 30th, 2007, CCRA had written a letter to the CRB setting forth concerns about the inequities created byProfessional Vocational Regulation Title 16, Division 24, Article 8, Section 2475(c)(8). She expressed appreciation and support of the CRB's efforts in firm oversight. She distributed a letter to the Orange County Trial Lawyers Association from a court reporting firm offering gift certificates for depositions set, as an example.

Mr. Feldhaus offered Nevada as an exemplar. Non-certified reporting firms are allowed to practice in Nevada, but they must be registered with the State. If a firm does not register with the State, any CSR working for that firm is in violation.

Mr. Ed Howard addressed the comment in the written submissions which mentions only 20 complaints. He takes issue with the word "only," asserting that does not accurately describe the current situation.

Mr. Feldhaus reminded the task force that the rules of professional conduct have only been in force for nine months and 20 complaints in such a short duration is significant.

Mr. Finch stated his agreement with Ms. Saunar that people for various reasons tend not to complain.

Ms. Saunar spoke to a shift in educational dynamics as business has changed. When firms were smaller and CSR-owned, they were very aware of the codes and took on the training of new reporters. As businesses have become bigger and non-CSR firms have moved into the marketplace, they have largely abandoned that role. She has given seminars to attorneys on the CCP as it relates to court reporters' obligations, and reported that they are unaware of the specific regulations governing the CSR. She affirmed the value of knowing the CSR being tested on the laws governing court reporting. She advocated licensing the firms so that they undergo some sort of a testing procedure similar to what the CSR undergoes so that they're aware of what the statutory requirements are.

Ms. Grossman asserted large national firms see a benefit to not educating new reporters, finding it easier to just get the transcript and handle it as they choose, often without regard for local laws and regulations.

Ms. Saunar cited equal access regulations as another argument in favor of licensing and educating firms.

Ms. Atkinson-Baker asked if the CRB sends warning letters to firms letting them know they're in violation of the law. Mr. Brown clarified that as the law is currently written, they are not in violation. He noted that the CRB does have jurisdiction over reporting corporations owned by CSRs, but not non-CSR owned corporations, so it is unreasonable to pursue enforcement against some entities but not all.

Mr. Brown gave the history of the Legislature granting the CRB the ability to capture complaints in order to establish a need for firm regulation, but there weren't enough complaints to justify the need to the Legislature. He noted that quite possibly has changed with the passage of the professional code of conduct.

Mr. Feldhaus asked if it were legal for non-CSR firms to operate in California under 8044 which says except as provided in section 13403 of the Corporations Code, each director, shareholder and officer of a shorthand reporting corporation shall be a licensed person as defined by section 13401 of the Corporations Code.

Ms. Freedman Eidson noted that that was a complicated issue and legal counsel would not be prepared to answer it simply off the cuff, but she did note that that only applied to corporations and not other business entities.

Mr. Feldhaus mentioned a Bay Area reporter who said a Southern California firm had hired a marketing company who was offering iPods to secretaries who would schedule depos with them.

Mr. Finch turned the task force's attention to possible solutions, urging them to consider a path utilizing the least amount of change necessary to solve the problem in order to have the best chance of a successful resolution.

Karen Ollinger from the Contractors State License Board presented information on their methods. She noted that while most boards issue licenses to individuals in a one-to-one ratio, at the CSLB they issue licenses to business entities. When an entity applies for licensure with the CSLB, they require a licensee be listed as the responsible person to be held accountable for the day-to-day activities of the firm. Any firm doing contracting business greater than $500 in California must be licensed, no exceptions.

Kristy Underwood from the Barbering and Cosmetology Board reported that they do license firms as well as individuals. To become licensed, the firm simply needs to complete an application, but there is statutory language that the establishment must be under the supervision of licensee at all times. Their board is currently working toward developing a test that firm owners must complete on the health and safety codes of California. Enforcement is taken against both licensee and firm. Firm licenses are issued to the physical location, not the corporate entity.

For discussion purposes, Mr. Finch pointed out the statutes provided from Nevada, Hawaii and Texas.

Ms. Saunar offered the opinion that we could never get language similar to Nevada's passed. Mr. Feldhaus offered the complete language and links.

Mr. Finch offered the consensus that Nevada and Texas would be too big of a change to successfully pursue and asked for response to Hawaii's language.

Ms. Fenner suggested that Mr. Howard's proposal seemed to accomplish what Hawaii's language does but within existing California statute and asked for clarification. Mr. Finch pointed out that Mr. Howard's proposal does not encompass the idea of a responsible managing person.

Mr. Finch pointed out the basic difference between the two remaining proposals was the concept of managing CSR and asked the group if that concept was a necessary step, and the task force members debated that topic at length.

Ms. Saunar moved to adopt the recommendation made to amend 8046 as follows:

8046. A ~~shorthand reporting~~ corporation, **firm, partnership, or sole proprietorship providing or arranging for shorthand reporting services** shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.

Ms. Codiga seconded the motion. The motion carried unanimously.

Ms. Saunar recommended the Board continue to gather complaints and information as the process moves along. Mr. Howard suggested that the complaints already received are compelling and with proper redaction should be included in educational materials to the Legislature. Ms. Grossman requested that the materials also include the complaints received by the Board which were not pursued for lack of jurisdiction.

After a few cleanup questions, Mr. Finch adjourned the meeting.

The informational hearing concluded at 2:30 p.m.