



DEPARTMENT OF CONSUMER AFFAIRS
COURT REPORTERS BOARD
 OF CALIFORNIA

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COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
SEPTEMBER 1, 2023

CALL TO ORDER

Ms. Robin Sunkees, Chair, called the meeting to order at 9:07 a.m. The public meeting was held at Department of Consumer Affairs, HQ1 Hearing Room, 1625 North Market Boulevard, Sacramento, CA 95834, and via a teleconference platform.

ROLL CALL

Board Members Present: Robin Sunkees, Licensee Member, Chair
 Laura Brewer, Licensee Member
 Michael Dodge-Nam, Public Member
 Arteen Mnayan, Public Member
 Denise Tugade, Public Member

Staff Members Present: Yvonne K. Fenner, Executive Officer
 Helen Geoffroy, Board Counsel
 Steven Vong, Regulations Counsel
 Paula Bruning, Executive Analyst

Board staff established the presence of a quorum.

1. WELCOME NEW BOARD MEMBER – MICHAEL DODGE-NAM

Ms. Sunkees welcomed to the Board its newest member, Michael Dodge-Nam of Los Angeles, who was appointed in June 2023 by the Speaker of the Assembly. Mr. Dodge-Nam currently serves as the Chief Business Officer of Roar Social. She summarized his biography located on page 4 of the Board agenda packet.

Ms. Fenner added a quick welcome to Mr. Dodge-Nam and thanked him for agreeing to be of service to California consumers.

2. RESOLUTION FOR BOARD MEMBER DAVINA HURT

Ms. Sunkees read aloud the resolution prepared for Ms. Hurt found on page 6 of the Board agenda packet.

Ms. Sunkees expressed her appreciation for Ms. Hurt's decade-long service, which benefitted both California consumers and the court reporting profession. Ms. Sunkees

added Ms. Hurt has been a guiding force for the Board and leaves big shoes to fill. Ms. Brewer voiced her high respect and admiration for Ms. Hurt. She stated that Ms. Hurt has modeled exemplary board service and behavior, and she thanked her for her years of work and accomplishments for consumers and the profession. Mr. Mnayan echoed Ms. Brewer's sentiments and thanked Ms. Hurt for her service and time. Ms. Tugade also thanked Ms. Hurt for her service, passion, accomplishments, and wealth of knowledge as a public board member.

Ms. Fenner thanked Ms. Hurt for her demand for excellence and unending capacity for hard work. She credited Ms. Hurt's commitment, dedication, and perseverance for the Board's success in reaching its goal of firm registration. Ms. Fenner wished Ms. Hurt success in her journey.

Ms. Tugade moved to adopt the resolution. Mr. Dodge-Nam seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

Ms. Hurt thanked everyone for their kind words and recognition. She also thanked the Speakers of the Assembly who appointed her over the years including John A. Perez, Anthony Rendon, and Toni Atkins. She also recognized the Board staff team for its stellar professionalism, stating that staff helped ease the way for her to serve in leadership roles for the Board while also working as a leader in her city. Ms. Hurt recognized the numerous members of the Board who shared their wisdom while working alongside each other. Ms. Hurt also thanked the stakeholders, consultants, and court reporters who shared their knowledge along the way.

She urged the Board to be bold and think deeply to meet the emerging issue of artificial intelligence. She asserted that the Board is in good hands going forward with intelligent individuals who have fresh lenses and prospectives.

Although she served on the Board for more than ten years, she stated that the time went fast. But she did learn that the time it takes to go through the democratic process to pass laws and regulations is time consuming but worth all the effort. She shared the following quote: "When you're engaged in what you love to do, it's like driving in the fast lane. Time flies by and more roads open up to you, alternate routes you may not have even known existed." She added that she really enjoyed her time on the Board and will continue to work hard for the State as an appointee of the Air Resources Board. She offered her assistance in protecting California consumers of court reporting in any way.

3. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

No comments were offered.

4. REVIEW AND APPROVAL MARCH 28, 2023, MEETING MINUTES

Ms. Brewer proposed amendments to the minutes. Page numbers annotated refer to the page numbers of the minutes, not the page numbers of the Board agenda packet, as follows:

- Pluralize the word “application” in paragraph four of page 5 of 19;
- Change “it” to “it’s” in the second paragraph of page 7 of 19;
- Delete “to” in the second line of the sixth paragraph under Agenda Item 7 on page 13 of 19;
- Delete “work” from the second line of the first paragraph under Section 8 on page 15 of 19;
- Add the word “to” after “responsibility” in the first paragraph on page 17 of 19;
- Change the third line of the third paragraph under Section 12 on page 18 of 19 to read, “There’s also a perception that it’s easy enough to capture a record...”;
- Pluralize the word “time” in the fifth paragraph under Section 12 on page 18 of 19.

Mr. Mnayan moved to approve the minutes as amended. Ms. Brewer seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: Mr. Dodge-Nam

Recusal: None

MOTION CARRIED

5. DEPARTMENT OF CONSUMER AFFAIRS UPDATE

Korrina Moreno with the Department of Consumer Affairs (Department/DCA) provided a Department update. She welcomed new Board member Mr. Dodge-Nam on behalf of the Department and thanked Ms. Hurt for her many years of service. She also thanked all the members of the Board who serve to protect the public.

DCA Diversity, Equity, and Inclusion (DEI)

On May 12, 2023, DCA’s DEI Steering Committee held its quarterly meeting in-person and elected Yeaphana La Marr as Chairperson and Paul Sanchez to serve as the Vice Chair of the Committee. During the meeting, the Committee discussed a variety of topics, which included training, strategic planning, and other DEI activities.

Providing employees access to DEI training is a priority for the Steering Committee and in June, DCA began offering three DEI courses to all DCA employees. The courses are:

- Understanding the value of DEI in the workplace
- How to Decode Our Unconscious Bias
- Unleash the Power of Generational Differences

The response from employees to participate in these new DEI learning opportunities has been significant with high registration and attendance numbers. DCA is comprised of approximately 3500 employees. and the Department is tracking training statistics quarterly. As of June 30, SOLID has provided 19 DEI-related trainings for 733 DCA employees.

The Steering Committee is pleased to announce that outside consultant Dr. Bernard Gibson will provide in-person DEI training to DCA managers, supervisors, and leaders in October. In addition, Dr. Gibson will provide virtual training to Board Members on the morning of October 9, 2023.

Information on registering for this virtual training will be sent out soon. For those that are unable to attend, the training portion will be recorded and available online at a later date.

In-Person Meetings and the Bagley-Keene Open Meeting Act

Changes to the Bagley-Keene Open Meeting Act that exempted Board Members from having to notice their meeting location or to meet in an ADA accessible location expired on July 1, 2023. Therefore, as of July 1, 2023, public meetings are subject to the traditional pre-COVID requirements for open meetings. DCA boards and bureaus should be prepared to conduct public meetings in compliance with the Bagley-Keene Open Meeting Act. This includes:

- All physical meeting locations need to be identified in the public meeting notices and agendas whether a meeting is held at a single centralized location or at multiple teleconference locations.
- Board Members must attend meetings in person at the noticed meeting locations.
- All noticed meeting locations, including locations where a single board member will be, must be ADA accessible, have an agenda posted, and be open to the public.
- The public will be permitted to attend meetings at any noticed meeting location. Members of the public must be able to hear the meeting and participate in public comment from each location.

The Department has a Bagley-Keene Open Meeting Act Guide available and has provided your Executive Officer with a list of available meeting locations throughout the state.

SB 544 is still moving through the legislative process and the Department's Division of Legislative Affairs is working with stakeholders and providing updates to the boards and bureaus on the status of the bill. This bill may allow for some meetings to be held without noticing the location of the Board Member, thus allowing remote virtual meetings.

Military Spouses and Domestic Partners Temporary License

As a result of AB 107 (Salas, 2021), effective July 1, 2023, DCA boards and bureaus, unless otherwise exempt, are required to grant temporary licensure to the spouse or domestic partner of an active-duty military member stationed in California if the spouse or domestic partner holds a license in another state with the same scope of practice as the profession in California for which they would like to practice. DCA's Office of Information Services and Communications Division have been working to support the implementation. All boards and bureaus were recently provided an outreach toolkit to help share the

message of this new benefit to military spouses. In addition, DCA has also updated its Military Resources webpage to reflect this new benefit.

Enlighten Enforcement Process

The Department is continuing work on its Enlighten Enforcement Project that is being piloted by the Dental Board of California. The Dental Board has walked through their intake, complaint processing, citation, and investigation processes. One more walkthrough session will cover the discipline and probation processes. The goal is for staff to walk through the processes with subject matter experts so improvements and efficiencies can be found for the Dental Board and that can be carried over to other boards. The project also aims to learn best practices between the boards and to standardize procedures for all boards and bureaus. The final benefit will be a template for policies and procedures related to enforcement processes for all boards to utilize.

Data Governance Project

DCA is continuing its efforts to improve its reports regarding licensing and enforcement activities. The Director recently led multiple workgroup meetings, beginning in late April through early July, with staff from each board and bureau to update the data metrics reported in DCA's Annual Report. The Department's goal is to ensure consistency with report data in the Annual Report, DCA's Data Portal, and board and bureau sunset reports. Future meetings are expected in August and ongoing, to help build new reports or modify existing ones to provide the new metrics for next year's Annual Report.

DCA held a meeting on July 17, 2023, with all boards and bureaus to review guidance on how boards and bureaus can compile and report data to the Department for inclusion in this year's upcoming Annual Report. This project will likely be completed at the beginning of 2024.

Press Release Translations

To further the Department's efforts to reach the Californians it serves, DCA will request that boards and bureaus translate any press releases they issue into Spanish, California's top non-English-spoken language. Establishing a standard of translating releases into both English and Spanish will enhance the reach of information released. In addition, boards and bureaus are also encouraged to evaluate any additional language(s) other than Spanish that may serve their audiences. For additional information on press release translations, please contact Board and Bureau Relations (BBR).

Board Member Onboarding

Board members who have been appointed and reappointed cannot begin their service or perform any official functions without first taking the oath of office. Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths. Board members should contact their executive officer to arrange taking the oath of office.

All board members will be required to complete the documents listed on the Board Member Appointment Checklist, or HR 5, and return them to the Office of Human Resources no less than 30 days after their appointment or reappointment. Duties cannot be assumed and

appointments cannot be processed until documents are received and are accurately completed. Incomplete packets may delay per diem payments and travel reimbursements due to the member.

Required Board Member Training

All DCA employees and appointees, including board and advisory council members, are required to complete Sexual Harassment Prevention Training this year. Board members are required to take the two-hour supervisory training.

Board members with an assigned DCA email (i.e., dca.ca.gov) are required to complete the Information Security Awareness Fundamentals training. This training addresses everyone's role in protecting DCA data and information, is available online, and required every year.

Both trainings are available in the Department's Learning Management System (LMS). If board members need assistance in accessing the LMS, please reach out to BBR or your board's liaison.

All board members must complete Member Orientation Training (BMOT) within one year of their appointment or re-appointment. On October 10, 2023, BMOT will be offered virtually. This will be the last training offered in the 2023 calendar year. Members can register for this training via LMS.

Board Member Travel

As a reminder, all state travel arrangements must be made through DCA's authorized travel agency, CalTravelStore or Concur. When traveling by air on official state business, all board members and staff must use the most economical fares possible. If the flight is changed, there may be additional charges. Flight changes for personal convenience are not permitted or justified, and the traveler is responsible for any associated charges. Please contact BBR if you have any travel questions.

The Attorney General recently issued a press release adding three new states to California's restricted travel list, with staggered effective dates in calendar year 2023 as follows:

- Wyoming – Travel restricted effective July 14, 2023
- Missouri – Travel restricted effective August 28, 2023
- Nebraska – Travel restricted effective October 1, 2023

Questions related to out-of-state travel can be directed to your executive officer.

Ms. Sunkees called for public comment. No comments were offered.

6. REPORT OF THE EXECUTIVE OFFICER

6.1 CRB Budget Report

Ms. Fenner provided a review of the Board's budget and referred the Board to page 30 of the Board agenda packet for the expenditure projections for Fiscal Month 12. Although it's not the final report for Fiscal Year 2022/23, it is close. She shared that the Board would see a reversion of more than \$100,000 back to its fund as a result of the cost-savings realized by remote meetings and remote testing. She stated that there was not enough expenditure data as of yet to share for Fiscal Year 2023/24 which started July 1, 2023.

Ms. Fenner referred to the Board's overall fund condition on page 31 of the Board agenda packet. She confirmed that a transfer of \$100,000 to the Transcript Reimbursement Fund (TRF) was included starting in Fiscal Year 2025/26, which leads to a projected operating reserve below six months in Fiscal Year 2026/27. Once the reserve falls below six months, transfers to the TRF must stop. The estimates shared are conservative; however, the Board may wish to consider exploring the possibility of a fee increase. The current license fee is \$225 annually with a statutory maximum of \$250. Justifying a fee increase takes quite a bit of time; therefore, it may be wise to start the background work since the majority of the Board's revenue is license renewal fees.

6.2 Transcript Reimbursement Fund

Ms. Bruning reported that the TRF paid out more than \$120,000 for pro bono cases and over \$57,000 for pro per cases during the 2022/23 Fiscal Year. She added that the TRF provisionally approved many other applications during the last fiscal year for which staff was awaiting final invoices.

Ms. Fenner shared that training had begun training the Board's receptionist, Elaina Zelnik-Padilla, to assist with processing TRF applications.

6.3 Enforcement Activities

Ms. Fenner referred to the enforcement statistics starting on page 33 of the Board agenda packet. She indicated that data for licensees and firms was presented in separate reports.

6.4 License Exam

Ms. Fenner indicated that the overall exam statistics began on page 38 of the Board agenda packet. Statistics for the July 2023 dictation exam became available after the publication of the agenda packet. She stated that of the 103 candidates, 47 were first-timers – nearly double from the previous test cycle in March. She reported the overall pass rate as 38.8 % with a first-time pass rate of 63.8%.

Ms. Fenner added that 16 voice writers took the exam, of which 15 were first-timers. She reported that 11 voice writers passed the exam with an overall pass rate of 68.7% and a 73.3% pass rate for first-timers.

Ms. Fenner again encouraged candidates to schedule early in the exam cycle to secure a proctor. If candidates have any issues with the exam, the 72 hours required to schedule a proctor for a retest may cause them to run out of time in the cycle.

Ms. Fenner shared that a couple of test-takers were caught cheating, which results in an automatic failure.

Ms. Tugade shared her excitement over the results coming in for voice writers in the short time the Board has been licensing them. She requested that staff separate the machine writers and voice writers on the exam statistics. Ms. Brewer echoed the encouraging nature of the data received.

Ms. Fenner referred to the statistics for the two written portions of the license exam, English and Professional Practice, which appeared on pages 40 through 43.

She shared that the latest Occupational Analysis has been completed by the Board's sister entity, Office of Professional Examination Services (OPES). The validation report was recently posted to the Board's website. OPES is now working with subject matter experts to review the question bank to update or remove any steno-specific questions.

Ana Costa, West Valley College faculty, asked how many overall candidates passed the July dictation exam. Ms. Sunkees responded that 40 candidates passed.

Caroline Dasher expressed her delight in the examination statistics. She thanked those in the industry who are working to recruit students and hold informational webinars to aid in the success of the profession.

6.5 Technology Modernization

Ms Fenner reported that the contract with developers began July 1, 2023. Staff meets with the development team daily to report progress and solve impediments. Additionally, staff meets twice each week to see demonstrations of the work in progress. In addition to moving the online enforcement complaint process to the new system, staff is working to get the Board's processes completely off of the antiquated legacy systems CAS and ATS. At this time, the process is on schedule, under budget, and matching the defined scope.

Ms. Fenner thanked staff for their work and commitment on the huge project in addition to their existing duties. Ms. Tugade also expressed her appreciation for the staff's expertise in the modernization efforts.

7. LEGISLATION

Ms. Fenner stated that information regarding the bills the Board tracked during the last legislative session could be found beginning on page 44 of the Board agenda packet.

7.1 SB 21 (Umberg) – Ms. Fenner reported that SB 21 and SB 22 would extend the provision of remote reporting until January 1, 2028. She stated that the remote appearance applies to the parties, not the court reporter.

7.2 SB 22 (Umberg) – Reported with SB 21.

7.3 SB 372 (Menjivar) – Ms. Fenner reported that the bill moved out of the Appropriations Committee after the publication of the Board agenda packet and is now on the floor. This bill would require a Board to replace a licensee’s former name or gender on their license and any Board-operated website upon request, when the licensee’s name or gender has been changed, or upon the licensee’s participation in the Safe at Home address confidentiality program and make documentation to support that request exempt from public disclosure. The bill would prohibit a board from publishing information relating to the licensee’s former name or gender online but instead would require the Board to post language directing the public to inquire with the Board for further information. For specified licensees, the Board would be prohibited from posting enforcement records online but would be required to post an online statement stating that the individual was previously subject to an enforcement action and directing the public to contact the Board, as prescribed. The bill would provide that all records related to a request to update an individual’s license under these provisions are confidential and not subject to public inspection or disclosure. The bill would require the Board, if requested by a licensee, to reissue any license created by the Board and conferred upon the licensee.

Ms. Tugade shared that the Board had an extensive discussion pertaining to the bill at its last meeting, however, did not take a position due to concerns of implementation and consumer protection. She believed the author to have worked to address the concerns and changes were made to bring the bill language in line with the process being used by the State Bar. She stated that the updated language provides an adequate layer of protection and individuals would still be attached to the same license number.

Ms. Tugade moved to take SUPPORT position on SB 372 (Menjivar). Mr. Dodge-Nam seconded the motion.

Mr. Mnayan expressed a need for the same consumer protection measures and information available across the board online to the consumers. Ms. Geoffroy responded that the bill’s edits seem to provide that those that have changed their name will have an indication to contact the Board if there is any further enforcement action, however, enforcement actions for all other licensees will continue to be posted as public documents on the record.

Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

- 7.4 SB 544 (Laird) – Ms. Fenner stated that the bill is seeking a way for boards to continue to meet remotely while remaining fully open and transparent to the public. The most current language would require a majority of the members of the state body to be physically present in the same location for at least one half of the meetings for that group.

Mr. Mnayan commented that remote meetings are easy on the budget and offer cost savings, especially for small boards who meet less frequently. He requested that staff gather information from other small boards that are advocating to continue having remote meetings and provide feedback to the author's office. He asserted that the cost for in-person meetings would be better allocated to programs such as the TRF.

Ms. Tugade stated that the bill language is unlikely to be amended further at this late stage of the legislative session. Any other iterations for remote meetings would not be enacted for another year. She encouraged the Board to take a support position on the bill as the allowances for remote meetings were more flexible than the current Bagley Keene Open Meeting Act provisions.

Ms. Tugade moved to take SUPPORT position on SB 544 (Laird). Ms. Brewer seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

- 7.5 SB 662 (Rubio) – Ms. Fenner stated that the bill in its current form would require reciprocity with the RPR after evaluation with OPES. The Board conducted this evaluation with the help of OPES in 2021. Additionally, this bill would expand the ability of courts to use electronic recording instead of court reporters. This is a two-year bill that did not make it out of its house of origin. It will have until January 31, 2024, to pass out of the Senate in order to continue its progress.

Ms. Dasher indicated that she is hoping the bill will be killed due to the electronic reporting language. She suggested that Board look into another avenue to forward any language in the bill that it found favorable. Ms. Fenner responded that the language regarding OPES and RPR reciprocity was not initiated by the Board.

Mary Piece stated that she preferred California reporters have the first shot of California work. Therefore, if the number of successful candidates passing the exam continues to increase, she would request the provisional licensing for RPR holders be rescinded. Ms. Fenner responded that all provisional licensing language was amended out of the bill.

- 7.6 SB 802 (Roth) – Ms. Fenner stated that the bill has to move through the Senate by the end of January 2024 in order to move forward to the Assembly.

Ms. Fenner indicated that after the Board meeting materials were printed, SB 143 went into print. Included in this trailer bill is a reinstatement of the Bagley-Keene flexibilities that ended in July and extends these flexibilities until December 31, 2023. In addition, Section 1 of the trailer bill includes the Department of Consumer Affairs' proposed language regarding Public Law 117-333, Portability of Professional Licenses of Servicemembers and their Spouses, which went into effect on January 5, 2023. The federal law allows service members and their spouses to use their professional licenses when they relocate due to military orders.

The Board took a break at 10:25 a.m. and returned to open session at 10:40 a.m.

8. REGULATIONS

8.1 Title 16, Section 2403, 2411, and 2414 – Voice Writing Skills Curriculum

Steven Vong, regulations attorney for DCA, referred to page 48 of the Board agenda packet. He indicated that staff made technical nonsubstantive changes since the Board's approval and the proposed regulatory language is pending publication at the Office of Administrative Law to be published September 8, 2023. The Board will send out a notice and regulation materials will also be available on the website for a 45-day comment period.

8.2 Title 16, Section 2420, 2422, and 2473 – Examination Results & Transcript Format

Mr. Vong summarized the regulatory proposal that relates to Title 16, California Code of Regulations (CCR) sections 2420, 2422, and 2473 for examination results and minimum transcript format standards. He said that CCR section 2420 states the exam requirement for court reporters consisting of three parts, how the passing grade is determined, and the duration of conditional credit that is granted for passed exams. CCR section 2422 allows permission for examinees to inspect their exam transcripts and a copy of the Board's official transcript upon written request and enables examinees to request reconsideration of their exam results. CCR section 2473 concerns minimum transcript format standards with which court reporters must comply.

Mr. Vong indicated that the changes are being proposed because the Board transitioned from an in-person dictation exam to online exams and by statute the Board must uphold concerns of exam security. He further said that the addition of the exam results notification to CCR section 2420 is a simple relocation and rephrasing of the provision from CCR section 2422. Mr. Vong said that the language is proposing to repeal CCR section 2422 altogether. He explained that the Board had previously approved language to repeal subsection (b) and now the proposal is to also relocate subsection (a) and repeal subsection (c) so that there is no longer a reconsideration process, but applicants will still have a chance to take the exam during the next exam cycle. Mr. Vong added that the package will amend CCR section 2473 to establish a new minimum transcript format standard that text be offered in full text search capable electronic format if requested.

Mr. Vong said that the anticipated impact is that the proposed changes to CCR section 2420 will help consolidate exam information under one regulation, repeal of

CCR section 2422 will help ensure proper exam security for the current online format of the exam, and revisions to CCR section 2473 will update transcript format standards. He said that some language is missing from the proposed motion included in the Board meeting packet, and he indicated that Ms. Fenner would state the complete necessary motion language for the Board. Ms. Fenner read the complete recommended motion language.

Mr. Mnayan moved to rescind prior motions approved November 20, 2020, and January 26, 2022, relating to sections 2422 and 2473 of the California Code of Regulations, Title 16, respectively, and approve the newly proposed regulatory text for sections 2420, 2422, and 2473; direct staff to submit the text and other required documents to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review; and, if no adverse comments are received, authorize the executive officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the executive officer to take all steps necessary to complete the rulemaking process and adopt the proposed regulations at sections 2420, 2422, and 2473 as noticed. Ms. Brewer seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

9. SUNSET REVIEW

Ms. Fenner reported that staff developed a draft sunset review report for the Board's consideration based on the discussion at the March 28, 2023, Board meeting. She welcomed edits and direction from the Board so that staff may make amendments and offer the report to the Legislature by the January 4, 2024, deadline. If there are substantive changes that require a major rewrite, the Board may be able to meet remotely if SB 143 is signed.

The Board held a comprehensive discussion and provided amendments to the draft report. In addition to wordsmithing, the Board requested more depth and detail for topics such as voice writers, title protection, integrity of transcripts, consumer protection, remote reporting, outreach appearances, and digital monitors.

The addition of a sixth CRB issue was requested in regard to ensuring the workforce pipeline of court reporters. A potential legislative action request may include the need for recruitment funding.

Ms. Sunkees called for public comment.

Ms. Pierce stated that more in-person California school options would be beneficial as many schools have wait lists. She asserted that the Board's oversight of registered firms could limit the firms from sending digital monitors to depositions where the notice indicates stenographic licensee only.

Evelyn Mah stated that there is proposed legislative language in Texas requiring notice parties when a digital monitor is being sent to the deposition in lieu of a licensee. She agreed to send a copy of the language to Board staff.

Mr. Mnayan moved to adopt the draft report as amended, and to instruct staff to make changes and to work with the Chair to finalize the report. Mr. Dodge-Nam seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

The Board took a break at 12:16 p.m. and returned to open session at 1:40 p.m.

10. EXPEDITED FEES FOR DEPOSITION TRANSCRIPTS

Helen Geoffroy, Board Counsel, provided guidance to the Board as to its role in balancing protection of the public, statutory compliance, and legislative intent pertaining to oversight of industry fees. She stated that each member has an equal role within the Board and also considers comments made by the public, in compliance with the Bagley Keene Open Meetings Act, before making decisions to move forward with action items as one body to protect the public. She further shared information from Business and Professions Code 8005, 8005.1, and 8015.

Ms. Fenner shared background regarding the issue. She stated that there is a disagreement within the court reporting industry on the ability to charge expedite fees to all parties in a deposition. Historically, the Board has considered that the expedite fee is for the sole purpose of transcribing that proceeding before other work the court reporter has. The fee is to be charged to the party that orders the expedite. Then once the transcript is available, it is to be sent to all ordering parties. However, there are some firms and/or reporters that are withholding the transcript unless each party pays an additional expedite fee. She stated that there is no basis for this additional fee, and, therefore, the Board requests refunds to those consumers. She reported that the argument has been that there are additional costs to preparing and delivering those copy orders, but in consideration of electronic delivery, the Board does not see the validity of that argument and maintains its position.

Ms. Fenner requested that the Board confirm its current position or, in the alternative, instruct staff to notify stakeholders of any change of position. She stated that staff counsel

would provide additional information on the necessity for regulations or statutory changes for clarification to licensees and consumers.

Ms. Sunkees called for public comment.

Ms. Pierce commented that there is a difference between “shall make available” and “must be sent.”

Ms. Brewer stated that the issue hinges on reasonableness of a fee. Expediting transcripts is a service and a benefit that is conferred upon the client to put certain work ahead of other work. She believed it to be a standard practice for a service rendered. She added that typically a court reporter has to be taken off calendar for the next day to handle an expedite. In the deposition industry, court reporters make their living from selling transcripts. She stated that an industry cannot be supported if the professionals are not earning a living. She said she could support guidelines for how long a copy could be held without an expedite fee.

Mr. Mnayan agreed that court reporters should be compensated for their work product but stated that copies should cost less than the original production costs.

Ms. Sunkees referred to Code of Civil Procedure (CCP) 2025.510(d), which requires that the transcript must be made available at the same to all parties. She stated that fees are not regulated for deposition transcripts, however, there is case law (Serrano vs. Stefan Merli Plastering Co) that contemplates a “reasonable fee” for expedited copies.

Ms. Geoffroy stated that the same provision of making transcripts available at the same time to all parties and their attorneys is also mirrored in CCP 2025.340. She shared that in 2007 the Legislature provided vague guidance that their intent was that the obligation to pay for transcription or other deposition productions or services shall be the responsibility of the requesting party. She added that was when they made changes that the requesting party should bear the cost, including expedited services, and there was a separate provision providing that the copy can be received by all parties that request one.

Ms. Tugade compared the practice of charging for copies to residuals received by writers or actors. She did share concerns that withholding transcripts may be problematic and suggested the Board pursue alternative legislative language that clarifies what would be required of the non-requesting parties.

Mr. Mnayan inquired as to who owns the intellectual property of the transcript. Ms. Sunkees responded that it is the work product of the court reporter. Mr. Mnayan stated that it may be better to let the market dictate what fees can be charged as consumers shop for the best price. He did not want to limit a person’s ability to earn and was open to considering a reasonable expedite fee for copies.

Ms. Fenner stated that the ordering party chooses the court reporter, therefore, if the opposing party wants to order copies they have to go through the same court reporter and does not get to comparison shop for a different price.

Ms. Geoffroy commented on the rulings of the Serrano case previously mentioned. She shared that the appellate court ruled on the first appeal (Stefan I) that a copy fee could be reasonable and sent the matter back to the trial court to determine whether or not an

additional fee on the copy was considered reasonable. The trial court found that it was unreasonable, and it went back up to the appellate court for the second appeal (Stefan II). The appellate court stated that they did not, per se, believe that an expedited fee for copies was unreasonable but merely that it had to be reasonable.

Ms. Geoffroy reported that in 2012 DCA legal counsel provided guidance to the Board that in a situation where a party who noticed the deposition had already paid the expedite fee, a reasonable fee for a copy of the transcript would not include any amount that compensates the deposition reporter for the cost to expedite the transcription. The legal guidance further said that charging the expedite fees to both a noticing and non-noticing party would be unreasonable and such conduct by a reporter would be unprofessional conduct under the code or regulation. She advised the Board to codify exactly what it means by reasonable. The Board is within its rights to determine whether or not for an expedited copy a certain percentage, for example, would be in the realm of reasonable. In order to weave that line between what is law and what is not, it is not proper to make it a policy position and must be codified in law by statute or regulation to not only provide courts and court reporters with solid basis with how they set forth their fees, but also so that there is a clear notice to the consumer.

Ms. Geoffroy indicated that one of the things that Stefan II said is that if there's notice of a fee, for example if the expedited fee is an additional fee of \$500 and for the other parties it would be an additional \$100, or \$1.50 per page instead of \$1.00 per page, this would at least be noticed to the non-requesting party of how to receive the transcript in accordance with the CCP at the same time – it's available, I can pay this expedited rate. However, the case law does not explain if the non-requesting parties are unwilling or unable to pay this additional rate and whether or not this renders this unavailable to those parties because they have to wait an unknown period of time until they can receive it at a standard transcription rate.

Ms. Geoffroy offered to perform an additional legal analysis if the Board so desired. The prior advice was to answer whether it was unreasonable to charge for an expedite fee that had already been paid and to charge both parties an expedite fee. It does not appear that the legal advice at the time or the legal question at the time was if a reduced price but still an expedited price could be provided for a copy.

Ms. Sunkees denoted that the Serrano case decision was made after the DCA legal opinion was issued. She stated that freelance transcript fees are not regulated, and she did not believe it to be prudent to start regulating fees. She added that appropriate notice would need to be given in regard to expedite fees.

Mr. Mnayan stated that more information was needed and requested a legal analysis of what is reasonable and what can be regulated.

Mr. Dodge-Nam inquired if the issue was the vagueness of the current guidelines making it difficult to hold licensees accountable and take disciplinary action, causing a need to develop detailed direction on what is reasonable. Ms. Fenner responded that a decision was needed on whether or not the Board believes it is reasonable to charge for the expedite on the copy, and then take either legislative or regulatory steps to codify the decision to enable the Board to take disciplinary action against violations.

Mr. Dodge-Nam asked as to the urgency of the decision. He wanted to know if the Board could take the time to glean more information before moving forward. Ms. Geoffroy indicated that the issue had come before the Board several times since at least 2007. She added that public safety would dictate a need to begin the process and make steps to accomplish that decision as quickly as possible.

Mr. Dodge-Nam inquired if there was an unfair advantage to one party receiving a transcript early if the other party cannot afford to pay the expedite fee. Ms. Geoffroy indicated that this is part of what needs to be interpreted. She added that the Legislature did codify in two different CCP sections that the transcript shall be available at the same time specifically for the purpose of due process and lack of unfair advantage. However, the term “make available” would be part of the interpretation needed that either the Board would set forth in regulation or provide to the Legislature.

Ms. Brewer stated that legal services are generally expensive. She indicated that one hour of attorney or expert witness time is almost always more than expedite fee unless it is a long deposition. She added that reporters are prohibited from having an interest in the outcome of the litigation.

Ms. Sunkees suggested that those who could not afford the expedite fee could apply to the TRF for assistance. Ms. Fenner clarified that the TRF application processing time would surpass the preparation time for transcripts and, therefore, would be ineffective in assisting with an expedite.

Stephanie Leslie, firm owner, thanked Ms. Brewer for her comments pertaining to the fact that deposition fees are not regulated. She contended that court reporters charge both sides fees for every other kind of service and are obligated to charge both parties equally to not be seen as favoring one side over the other. She appreciated the suggestion that clarity be brought to when reporters are expected to release transcripts.

Kellie Zollars, freelance court reporter, stated that the expedite fee on a copy is a percentage of the copy production page rate, which is less than the production and expedite page rate for the original transcript. She agreed that it would favor one side to charge one party and not the other to provide equal services. She added that a court reporter’s income should not be penalized because a litigant cannot afford to pay for the priority service. She suggested that three to five days after the expedite is provided is a reasonable timeframe to provide the transcript copy. Ms. Zollars finished by sharing that the Serrano case was a ruling about a court reporter working in court – an official receives salaries and benefits that freelance reporters do not receive.

Ms. Costa agreed with previous comments. She indicated that the market changes from city to city which may result in a significant page rate variation. She stated that court reporters are neutral guardians of the record and the majority do their best to follow all the laws by which they are regulated. She said it doesn’t feel right to hold back a transcript copy that is already ready because someone does not pay the expedite fee, however, she asked the Board to keep in mind that many court reporters are dependent on their earnings to support their families.

Kimberly D'Urso, President of the Protect Your Record Project, thanked Ms. Brewer for sharing her knowledge and perspective. She affirmed the comments from Ms. Leslie and Ms. Costa.

Ms. Tugade agreed that the Board should at a minimum take action to require clear notice for all parties.

Ms. Brewer shared that although she is serving on behalf of the consumer, she believes her professional experience informs her points of view on how the industry works.

Mr. Mnayan moved to request legal to provide legal analyses on what is reasonable and for additional feedback options for the Board including the pros and cons of taking action via the regulatory or legislative path. The motion was not seconded.

MOTION FAILED

Mr. Dodge-Nam moved to notify the public on the Board's website that expedited fees for copies are allowed with the condition that if one party receives an expedited copy the other parties must receive a copy within three to five days of that period.

Ms. Geoffroy indicated that this would require an interpretation of the CCP where it provides that the transcript be made available to all parties. She was not comfortable advising the Board to proceed with that action since interpretations of law must be done through the regulatory or legislative process. She advised the Board that it may move and vote on whether to take a position and then decide how it would like to pursue the action. She added that the Board may wish to determine whether or not it would be reasonable to charge an expedite fee for a copy, and separately vote on how to go about putting that forward. At that point, Board and legal staff would be advised to pursue a particular direction. The position the Board takes will not be formal until it is codified.

MOTION WITHDRAWN

Mr. Mnayan requested legal counsel to provide more information on the legal parameters of what the Board is allowed to do before it takes a position. Specifically, the Board directed staff to inform on whether it may regulate the charging of expedited fees, what motion language it could use to make a formal decision, and the pros and cons on each option pertaining to the law. Additionally, the Board would like to receive information on the scale of the issue, such as how often firms are charging for expedited transcripts and copies and the number of complaints received pertaining to this issue.

11. LICENSE/CERTIFICATE RECIPROCITY

Ms. Fenner reported that the Board instructed staff at its March 28, 2023, meeting to enter into an interagency agreement with OPES to evaluate the Certified Verbatim Reporter or CVR certification from NVRA, the National Verbatim Reporters Association. She stated that OPES is currently working with NVRA on the project.

Ms. Dasher requested the Board consider the same reciprocity with NCRA. Ms. Fenner stated that the Board had pursued that avenue.

12. ELECTION OF OFFICERS

Ms. Sunkees called for election of officers.

Ms. Brewer nominated Ms. Tugade as chair. Mr. Mnayan seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

Mr. Mnayan nominated Ms. Sunkees as vice-chair. Ms. Brewer seconded the motion. Ms. Sunkees called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Brewer, Mr. Dodge-Nam, Mr. Mnayan, Ms. Tugade, and Ms. Sunkees

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

13. FUTURE MEETING DATES

Ms. Sunkees stated staff would poll the Board members offline for calendar availability for the next meeting.

Ms. Sunkees called for public comment. No comments were offered.

The Board convened into closed session at 3:14 p.m.

14. CLOSED SESSION



14.1 Pursuant to Government Code section 11126(c)(3), the Board may meet in closed session to discuss or act on disciplinary matters. This item was deferred as there were no cases to review.

14.2 Pursuant to Government Code section 11126(e), the Board met in closed session to receive advice from legal counsel on litigation in the matter of *Jeffery Peterson vs. Christopher Leahy, et al.*, United States Court, Southern District of California, Case No. 21-CV-1908-RSH-BLM.

The Board returned to open session at 3:21 p.m.

ADJOURNMENT

Ms. Sunkees adjourned the meeting at 3:21 p.m.

	<u>12/13/2023</u>		<u>12/13/2023</u>
DENISE TUGADE, Board Chair	DATE	YVONNE K. FENNER, Executive Officer	DATE