



COURT REPORTERS BOARD OF CALIFORNIA

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COURT REPORTERS BOARD OF CALIFORNIA MINUTES OF OPEN SESSION OCTOBER 27, 2011

CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 9:17 a.m. at the Red Lion Hotel, 1401 Arden Way, Sacramento, California.

ROLL CALL

Board Members Present:

Toni O'Neill, Licensee Member, Chair
Gregory Finch, Public Member, Vice Chair
Reagan Evans, Licensee Member
Lori Gualco, Public Member
Elizabeth Lasensky, Public Member

Staff Members Present:

Yvonne K. Fenner, Executive Officer
Dianne R. Dobbs, Staff Counsel
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

Ms. O'Neill reminded the audience to approach the designated table to make public comment and speak clearly so as to be heard by all.

I. STRATEGIC PLANNING SESSION

The Board engaged in strategic planning during open session with the assistance of facilitator Evin Van Outryve from the Strategic Planning and Development Unit of the Department of Consumer Affairs (DCA).

Ms. Gualco arrived at 10:27 a.m.

Mr. Van Outryve will utilize the information discussed during the session to develop a draft Strategic Plan. He will then meet with staff to create an action plan with objectives for the Board.

After completion of strategic planning at 11:00 a.m., the Board took a break before resuming open session at 12:07 p.m. They immediately convened into closed session until 12:30 p.m. (see Agenda Item XV.)

Upon returning to open session at 12:34 p.m., Ms. O'Neill indicated that there was nothing to report from closed session.

The Board then moved to Agenda Item XII, Election of Officers, before returning to Agenda Item II.

II. MINUTES OF THE JUNE 16, 2011 MEETING

Mr. Finch moved to approve the minutes. Second by Ms. Gualco. **MOTION CARRIED.**

III. FULL RECOGNITION OF TAFT COLLEGE COURT REPORTING PROGRAM – AT WESTEC CAMPUS

Ms. Bruning indicated that due to an oversight, the Board had not been afforded the opportunity to grant the Taft College Court Reporting Program provisional status after completing their first year of classes. The program must have provisional approval for a minimum of three years before requesting full recognition, and since Taft College has a student going to the examinations, they are at the point that they hope to request full recognition in the near future. Ms. Bruning recommended that the Board grant Taft College provisional approval retroactive to the date of receipt of their application for such, which was December 8, 2008.

Ms. Evans moved to grant provisional recognition to Taft College Court Reporting at WESTEC Campus retroactive to December 8, 2008, and that the Board reconsider Taft's application for full recognition when a student who has completed the Board approved course of study at Taft College attains licensure for the Court Reporters Board (CRB). Second by Ms. Lasensky. **MOTION CARRIED.**

IV. BOARD AND STAFF APPEARANCES

Ms. Lasensky indicated she had numerous discussions with staff and completed the Sexual Harassment Prevention training. She added that she met with Stephanie Grossman and Eddie Ahn, an attorney who applied for the Speaker of the Assembly position on the Board, to discuss what commitments are required to sit on the Board.

Ms. Evans shared that at the Courtroom Technology Conference in Long Beach she served as the realtime reporter and worked in the National Court Reporters Association (NCRA) booth with three other companies who provide final presentation work.

Mr. Finch participated in the video presentation for sunset review.

Ms. O'Neill stated that she completed CalATERS training at the Department of Consumer Affairs (DCA) to approve expense reports. She also joined in on monthly Board Chair telephone conferences with DCA. She additionally attended the California Court Reporters Association meeting where she was bombarded with surprising statute and Board questions.

Ms. Evans, Ms. O'Neill, and Ms. Fenner indicated that they attended the NCRA annual convention in Las Vegas, and the BreEZe launch at DCA.

Ms. Fenner expressed her gratitude to Ms. O'Neill and Ms. Evans, licensee members, for attending the association conferences as the Board reaps the benefits from their exposure to the industry and their ability to answer questions to other attendees.

V. REPORT OF THE EXECUTIVE OFFICER

A. DCA Director's Report

Ms. Fenner introduced Pam Wortman, Deputy Director of Administrative and Information Services, to provide the Director's Report. Ms. Wortman shared that DCA launched the BreEZe project the day prior to the meeting. Highlights of the kickoff meeting included opening remarks from State and Consumer Services Agency (SCSA) Secretary Anna Caballero.

Ms. Wortman shared that BreEZe will be an integrated system for licensing and enforcement, the largest regulatory system of its kind in the world. Approximately one third of DCA will be on the new BreEZe system within a year, with the remainder of the Department coming on board within two years. The Court Reporters Board is scheduled as part of the final release in the fall of 2013.

The new system will provide online application filing and tracking, electronic payment capabilities, online complaint filing and tracking, improved case management for enforcement, and automation of work flow to improve efficiency. As previously reported, an atypical procurement process was used for negotiation of this project. Additionally, a different payment approach was devised wherein the system will be live before any payments will be made.

Ms. Wortman addressed the outstanding question from the previous Board meeting pertaining to the reason why the Department estimated the cost of the project to be so much lower than what was actually agreed upon with the vendor. She indicated that DCA based the estimate on some of the market assessments that had been done in 2006 and 2007 for iLicensing, the precursor to BreEZe. She stated that having a low estimate was an advantage to the Department as the vendors did not come in with an expectation of a higher budget than what could be afforded.

Ms. Wortman reported that SB 541 passed with urgency, which allows boards to contract expert consultants on short form contracts that are exempt from the public contract code. Training and delegation will be provided to staff preparing the forms. Ms. Gualco inquired as to the urgency to hire expert consultants. Ms. Wortman responded that the urgency in the bill was so that it could take effect immediately. Ms. Fenner added that it was part of a larger bill including sunset and that it was not just the contract provision that had the urgency attached to it. Ms. Wortman stated that expert consultants, previously known as subject matter experts, are used for enforcement matters, examination development and validation, and evaluation of applicants and licensees. The State began enforcing the public contract code approximately a year earlier requiring standard contracts for expert consultants. Since these require a large amount of time, legislative staff worked to put language in the bill to allow for the shorter turnaround time needed.

Ms. Wortman provided a budget update, indicating that the hiring freeze and travel restrictions continue. It is hoped that some relief on the hiring freeze will be realized once the SCSA has approval on the Code Section 3.91 savings requirement. The budget act required certain savings throughout the state, both in general fund departments as well as special fund departments. The DCA plan was approved; however, each department under SCSA must also attain an approved plan. During the hiring freeze, vacancies can only be filled with a hiring freeze exemption. The Department has had an approximately 85% success rate on hiring freeze exemptions over the last eight to nine months.

The Board then moved to Agenda Item X, California Code of Regulations, Title 16, Section 2475(a)(8), and Agenda Item VII, Report on Legislation, before returning to Agenda Item V.B.

B. Exam

Ms. Fenner reported that the examination being offered the day following the meeting will include 110 candidates.

C. Exam Workshops

Ms. Fenner indicated that there will be some funding issues for the examination development workshops. She will bring additional information to the next meeting.

D. School Compliance Reviews

Ms. Fenner reported that most of the staff time has been devoted to the Board meeting, examination, sunset review, and strategic planning. Staff will be developing an implementation plan including the newly amended school regulations.

E. CRB Today Newsletter, Fall 2011

Ms. Fenner referred to the latest edition of the CRB Today newsletter in the Board agenda packet. She shared her wish that the Board was not bound by budget constraints and could send hard copies to all licensees or was able to obtain the email addresses of all licensees to ensure they receive and read it. She invited the Board to provide ideas or articles for the publication. Ms. Gualco complimented staff on the FAQs article.

F. BreEZe

Ms. Fenner did not have anything further to add to the information shared by Ms. Wortman under the Director's Report.

G. CRB Budget Report

1. Furloughs

Ms. Fenner indicated that furloughs would be ending in November.

2. Hiring Freeze

Ms. Fenner reported that the hiring freeze issued by the Governor is still in effect. Fortunately, the Board is fully staffed.

3. Licensing BCP – 2012/13

Ms. Fenner indicated that the Board has a licensing BCP pending regarding the examination development workshops.

4. Travel Restrictions

Ms. Fenner reported that the travel restrictions are still in place. She shared that the Board would have to be more creative in outreach since staff and members would not be able to attend every industry meeting.

H. Sunset Review

Ms. Fenner stated that the Sunset Review report is at the proofreader. She is excited to have seen the process through from the start. She welcomes the opportunity to showcase what the Board is doing to protect consumers.

I. Transcript Reimbursement Fund

Ms. Bruning reported that the main fund continues to be healthy. The full \$30,000 allowance of the Pro Per Pilot Project was allocated with applications received between January 1, 2011, and July 15, 2011. The office continues to accept and review applications, which will be given priority in January 2012 when another \$30,000 allowance is scheduled.

Ms. Fenner referred to the TRF Fund Condition on page 39 and the overall Board Fund Condition on page 38 of the Board agenda packet. Page 37 includes preliminary expenditure projections.

VI. ENFORCEMENT REPORT

Ms. Fenner referred to the enforcement statistics provided on pages 41 and 42 of the Board agenda packet, which were reported to the Department for Fiscal Year 2010/11. Statistics for the first quarter of Fiscal Year 2011/12 were provided on pages 43 and 44 of the packet.

Ms. Fenner indicated that Ms. Conkle would welcome any requests to see the statistics presented differently or any additional information in any way that would be useful to the Board.

Mr. Finch inquired if the statistic for assignment for desk investigation was the general average for the Board year after year. Ms. Fenner responded that the number is up some. She indicated that she believes it is in part due to the number of phone calls Ms. Conkle fields from office managers of large corporations who do not know how to run court reporting businesses. Since many are not CSRs, they do not know the laws involved in getting transcripts out, therefore, resulting in a call to the Board. Another common scenario

is the large number of firms that individual CSRs work for now instead of working for one firm. Since those CSRs don't have a common person to go to, they often call the Board or make the wrong decision and end up with an enforcement issue. Additionally, there are many litigants representing themselves who do not know the role of the court reporter, which also generates complaints.

VII. REPORT ON LEGISLATION

Ms. Fenner indicated that SB 541 passed and was reported on by Ms. Wortman in the Director's Report. She stated that she and Ms. Conkle have completed the training and have been delegated contracting authority.

Ms. Fenner reported that SB 671, regarding mandatory continuing education, was vetoed. She requested direction from the Board as to how they would like to proceed with the continuing education goal. Mr. Finch stated that he would like to persist in seeking mandatory continuing education.

Ms. Fenner suggested the Board start at the top of the administration by explaining why continuing education is so important since this is the third time the Board has been unsuccessful in achieving a governor's signature.

Ms. Gualco stressed her belief that those in the medical and legal professions need continuing education. She agreed with Ms. Fenner that the executive branch of the state needs additional information regarding the importance of this effort.

Ms. Lasensky inquired about the pathway to reach the administration through the Department. Mr. Finch asked that staff develop a strategic plan for the Board to approach this issue. Ms. Fenner agreed to work on a plan to bring back to the next meeting.

Mr. Howard indicated that the bill received bipartisan approval through the legislature, and DRA discussed what they thought could have been done to help get the bill approved. The Deposition Reporters Association of California (DRA) is doing continuing education on their Facebook page due to the existing need by answering questions on the public forum.

Ms. Evans inquired if the Board can work with the associations without overstepping boundaries and encountering travel restrictions and budgetary constraints. Mr. Finch requested a legal opinion as to what the Board is limited to. Ms. Fenner stated that it is important to avoid the perception that staff and Board members are being controlled by the associations while still taking advantage of speaking opportunities. She will work with Ms. Dobbs on developing an outreach plan.

~~— The Board then returned to Agenda Item V.B, Report of the Executive Officer, Exam.~~

VIII. UPDATE ON SCHOOL CURRICULUM REGULATIONS

Ms. Fenner reported that the school curriculum regulations passed and became effective September 30, 2011.

IX. UPDATE ON EXAM FEE REGULATIONS

Ms. Fenner reported that the fee regulations finally passed and will become effective November 9, 2011.

X. CALIFORNIA CODE OF REGULATIONS, TITLE 16, SECTION 2475(a)(8) - \$100 GIVE GIVING LIMIT

A. Petition from Deposition Reporters Association to Clarify Section 2475 (a)(8)

Ms. O'Neill introduced Ed Howard on behalf of DRA. Mr. Howard outlined three reasons he believes the Board should grant the petition to amend section 2475(a)(8), beginning with the confusion that it causes among licensees on how to comply with the regulation. Secondly, he suggested that it is likely causing some reluctance from either the Board or the Attorney General to enforce the regulation due to its ambiguity. Finally, the regulation currently permits an interpretation that appears to be far removed from the original intent in that some may believe that it depends on how many individuals work for an entity to determine how much the gift can be worth.

Ms. O'Neill stated that the proposed language presented by DRA could be found on page 56 of the agenda packet, with the suggested additions in bold underscore format. Mr. Howard summarized that the language from the first part of the regulation was replicated in the restrictions to resolve the ambiguity.

Ms. O'Neill pointed to the language provided by staff from the Nevada licensing department, which prohibits any gift-giving. Ms. Fenner stated that the proposal from DRA and any other changes the Board would like to make could be integrated.

Mr. Finch moved to grant the petition from DRA and modify the regulation as found on page 56 of the Board agenda packet. Second by Ms. Gualco. **MOTION CARRIED.**

B. Discussion of Possible Revision to Section 2475 (a)(8)

The Board requested comments from the public in regards to eliminating the gift-giving allowance. Mr. Howard indicated that he believes there is an enormous concern with kickbacks versus gifts. He described kickbacks as things such as theater tickets, gift cards, and bottles of champagne. These types of items would be considered income and could potentially cause tax consequences to the law firms and individuals accepting them. He stated that the regulation bans "gifts"; however, the \$100 allowance was provided as a pathway to allow for promotional items and "good will" to be distributed, such as pens and chocolates. He suggested putting the types of acceptable or not acceptable gifts in a separate category from the maximum amount of the gifts.

Mr. Howard indicated that until the Board can assert its jurisdiction over non-CSR-owned firms and corporations, there is a reluctance among the CSR-owned firms to create too much of a disparate playing field. If the corporations do not feel bound by anything including the \$100 limit, and firms owned by CSRs are banned from giving anything, they would have almost no way to promote themselves in competition with the corporations. He suggested leveling the playing field before completely banning all gifts.

Ms. Gualco agreed that the most important thing is to level the playing field first by including the corporate entities that feel they are not subject to regulation. Once that is accomplished, the Board needs to get a handle on kickbacks and incentives that are causing an imbalance in the neutrality that is sought in the legal and court reporting professions. Mr. Howard stated that in order for the market to work, it needs to be based on quality of service and price. It cannot be distorted by rewarding whoever gives the best theater tickets.

Ms. Gualco stated that many law firms may be very happy that staff is rewarded by someone else so that they don't have to worry about it. Mr. Howard shared that DRA had a booth at the last Bar Association convention where they publicized the problem. Many lawyers didn't know about the problem; some did and some didn't care.

Ms. O'Neill indicated that she believes the Board needs to wait for an outcome with regards to the jurisdiction over corporations and that no further action is needed at this time. Mr. Finch requested the items be brought back before the Board at its next meeting.

The Board then moved to Agenda Item VII, Report on Legislation, before returning to Agenda Item V.B.

XI. STATUS ON PROCESS RELATED TO EVALUATION OF THE EXECUTIVE OFFICER

Ms. O'Neill reported that she has received the instructions from DCA regarding the process, which is completed entirely online. Within the next week, Ms. O'Neill will send each member an email detailing how to rate the executive officer and add comments, which should take approximately 20 to 30 minutes. Ms. Fenner will receive the same evaluation to rate herself. The Personnel Officer will collate the evaluations for the Board. She requested the members establish a deadline to complete the evaluation and suggested the Board be ready to present it to the executive officer at the next meeting. The Board agreed to complete the ratings by November 30, 2011.

XII. ELECTION OF OFFICERS

Ms. O'Neill indicated that the Board policy calls for election of officers at the first regular meeting of the Board after June 1 of each year. Since the Board did not elect officers at the June 16, 2011, meeting, it is appropriate to do so at this time.

Ms. Lasensky nominated Ms. O'Neill as Chair. Second by Mr. Finch.

Ms. Gualco complimented the work and direction provided by Ms. O'Neill and Mr. Finch during her time on the Board. However, she suggested the Board utilize its newest resource, Reagan Evans, to serve in a leadership position. Ms. Evans indicated that she would like to serve as chair or vice in the future, but would like more time to learn from the current leaders before stepping into a lead role. Ms. Gualco supported Ms. Evans in her decision.

Since there was no further discussion, the Board took a vote of the nomination of Ms. O'Neill. **MOTION CARRIED.**

Ms. Evans nominated Mr. Finch as Vice-Chair. Second by Ms. Lasensky. **MOTION CARRIED.**

XIII. PUBLIC COMMENT

No comments were offered.

XIV. FUTURE MEETING DATES

Ms. O'Neill referred to the calendar provided in the Board agenda packet. She indicated that Ms. Lasensky is not available to meet in conjunction with the examination on February 3, 2012, in Los Angeles. She indicated that she does not want to hold a meeting if it is not necessary.

Ms. Bruning indicated that the Board could meet in the spring at a DCA conference room in Sacramento. Ms. O'Neill suggested the Board meet in March to space the meetings more properly. Ms. Fenner also offered the availability of a conference call meeting, provided the meeting is publicly noticed and each conference site is accessible to the public.

Ms. Fenner offered to send an email poll to check each member's availability. The Board agreed that would be the best way to gain a consensus on the schedule for the next meeting.

XV. CLOSED SESSION

The Board convened in to Closed Session pursuant to Government Code sections 11126(a) and 11126(e)(2)(A).

XVI. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 2:08 p.m.

Toni O'Neill
TONI O'NEILL, Board Chair

4-27-12
DATE

Yvonne K. Fenner
YVONNE K. FENNER, Executive Officer

4.30.12
DATE