COURT REPORTERS BOARD
OF CALIFORNIA
2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
Fax (916) 263-3664 / www.courtreportersboard.ca.gov

COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF STRATEGIC PLANNING SESSION
DECEMBER 4, 2014

CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 10:13 a.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, Emerald Room, Sacramento, California.

ROLL CALL

Board Members Present:

Toni O'Neill, Licensee Member, Chair
Davina Hurt, Public Member
Rosalie Kramm, Licensee Member
Elizabeth Lasensky, Public Member
John K. Liu, Public Member

Staff Members Present:

Yvonne K. Fenner, Executive Officer
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

The Board engaged in strategic planning during open session on December 4, 2015, with the assistance of facilitators Elisa Chohan and Noel Cornelia from SOLID Training and Planning Solutions of the Department of Consumer Affairs. Input was offered by representatives of the industry associations and public.

The facilitators will utilize the information discussed during the session to develop a draft Strategic Plan for the Board's review. Once approved, the facilitators will meet with staff to create an action plan with objectives for the Board.

The meeting recessed at 5:41 p.m.

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COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
DECEMBER 5, 2014

CALL TO ORDER

Ms. Toni O'Neill, Chair, reconvened the open meeting at 9:05 a.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, Emerald Room, Sacramento, California.

ROLL CALL

Board Members Present:	Toni O'Neill, Licensee Member, Chair Davina Hurt, Public Member Rosalie Kramm, Licensee Member Elizabeth Lasensky, Public Member John K. Liu, Public Member
Staff Members Present:	Yvonne K. Fenner, Executive Officer Angelique Scott, Staff Counsel Paula Bruning, Executive Analyst Melissa Davis, TRF Coordinator

A quorum was established, and the meeting continued.

The Board first heard Agenda Item VI, DRA Petition for Rulemaking in RE Scope of Practice. The Board then moved to Agenda Item I, Minutes of March 14, 2014 Meeting.

I. MINUTES OF THE MARCH 14, 2014 MEETING

Ms. Lasensky commented that the minutes were done well. Ms. Kramm and Ms. O'Neill agreed.

Ms. Lasensky moved to approve the minutes as presented. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. **MOTION CARRIED UNANIMOUSLY.**

II. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner referred to the Budget Report on page 20 of the Board agenda packet. She stated that the first quarter of the fiscal year had passed and offered to answer questions.

Ms. Hurt requested explanation for the public of the OIS Pro Rata line item. Ms. Fenner stated that pro rata fees are for a share of government services. Some examples are the Board's use of Department of Consumer Affairs (DCA) services, such as the facilitator at the Strategic Planning Session and the Web cast staff and services being utilized the day of the Board meeting. Some higher-level service providers include Cal HR. The fees are not negotiated by the Board. Ms. Kramm asked if additional services can be requested at the same rate or if that would affect the charges the Board receives. Ms. Fenner indicated that the fee would not change. Ms. Hurt inquired if there was a list of services included in the pro rata. Ms. Fenner responded that staff takes advantage of as many services available through DCA as possible.

Ms. Fenner then turned the attention of the Board to page 21 for the Board's overall fund condition. As a result of the trend of the Months in Reserve decreasing, staff included projections for the next two budget years in advance instead of one. She suggested the Board start considering solutions for a potential shortage. Revenue has been slowly decreasing as a result of a downward trend in licensees, as well as an increase in the costs of doing business. It is anticipated that by Budget Year 2016/17 there will be very little in reserve. Therefore, the Board will eventually need to decide where to make cuts and/or where to raise revenue. Since the Board is currently collecting the maximum license fee allowed in the B&P, any decision to raise fees would require enough time for a legislative change.

B. Transcript Reimbursement Fund

Ms. Fenner indicated there was not much change to the fund condition of the Transcript Reimbursement Fund (TRF) as highlighted on page 22.

Ms. Bruning reported that $58,000 had been allocated for the TRF Pro Bono Program so far this fiscal year, paying 97 invoices. At the time of the meeting, there were 90 applications pending with a total requested amount of approximately $47,000. Ms. O'Neill inquired if the TRF Pro Bono Program had ever neared the $300,000 limit. Ms. Bruning responded that her research indicated that the last two years averaged $195,000; however, those years were odd due to the repeal of a portion of the B&P Code that governs the TRF between January and October 2013. She stated that the distribution was closer to $250,000 for each of the two years prior to that. In addition, there is now $30,000 of the TRF being allocated to the Pro Per Program.

Ms. Davis indicated that the $30,000 allowance for the Pro Per Program is allocated very quickly each year. The entire allowance for 2014 was apportioned by April. She reported there were 77 applications pending funding, totaling over $36,000. However, since at least 13 of those applicants did not provide estimates, the actual amount of requested funding is greater. She stated that she reviews applications within a couple of days of receipt and notifies applicants of the status of their application in writing. When information is missing, she points it out in hopes of obtaining all the necessary information before funding becomes available. Since it is sometimes difficult for the litigants to obtain the necessary estimates from the court reporters, staff often needs to assist by contacting the reporters or the courts, which is quite time-consuming. At this time, more than 40 of the pending applications are missing some form of the necessary information.

Ms. Davis reported that she began reviewing cases from previous years where funds were allocated but not expended in an attempt to release those funds to newer cases. To date she has been able to release $15,000 of unused funds, assisting 31 additional applicants. She reiterated that $30,000 is not enough for the program, and many litigants become upset when staff relays that the funding has been exhausted.

Ms. Hurt inquired about how staff was dealing with the change made by the Administrative Office of the Courts limiting TRF applicants to 90 days to gain an approval. Ms. Davis responded that staff worked with the courts to develop language for the outgoing letters to applicants, referring them to the appropriate Rule of Court section and suggesting they contact the court to determine how to proceed. Ms. Bruning added that not all counties interpret the rule the same way. Ms. O'Neill shared that it falls back on the Court of Appeal. Ms. Hurt expressed her appreciation for the added language.

Ms. Fenner noted the positive impact that has been achieved by having Ms. Davis join the staff part-time. Ms. Bruning would not have been able to take on the extra efforts that were necessary to track down the unused money from the beginning of the Pro Per Program to reallocate, due to time constraints and existing workload.

C. Exam

Ms. Fenner referred to the historical examination history reports on pages 23 through 28 of the Board agenda packet. She indicated that the charts are on now on the back side of the spreadsheets due to the amount of data captured on the reports. However, the information we collect is relatively small statistically; therefore, the charts appear to reflect bigger trends. She suggested the focus be more on the numbers than the charts.

She reported that 139 candidates were in attendance at the November 21, 2014 dictation examination, of which 49 were first-time applications.

D. School Updates

Ms. Fenner reported that she met with the schools and the Deposition Reporters Association (DRA) in Anaheim in September as a follow-up to the direction she received from the Board to work with stakeholders on any solutions to the education matters raised at the March Board meeting. Unfortunately, the public schools and private schools were unable to reach a consensus on something that would work for all parties. It was her understanding that the schools are still working on possible overall fixes and on individual problems as they arise.

Ms. Hurt inquired about the status of the Bryan College teach-out. Ms. Fenner replied that the Sacramento campus closed its court reporting program and all remaining students either transferred to the Bryan University online program or other bricks and mortar schools.

E. CRB Today Newsletter, Fall 2014

Ms. Fenner referred to the latest edition of the Board's newsletter in the packet. She indicated that a change took place in personnel at the Department of Consumer Affairs (DCA) Office of Publication and Design Editing; therefore, the Board lost the editor that had been contributing to the newsletter over the last couple of years. Staff may pursue assistance from the Department for the next edition.

Ms. Bruning shared accolades e-mailed to the Board, wherein a seasoned licensee indicated she still finds questions answered in the newsletter. Ms. Kramm and Ms. O'Neill indicated that they receive great feedback about the publication as well.

Ms. Fenner reported that staff has a goal of creating an index of the FAQs.

F. BreEZe

Ms. Fenner stated that DCA had a conference call in which she and Ms. Hurt participated regarding the BreEZe project. As a reminder, Release 1 went live in 2013. However, deadlines have been pushed back delaying Release 2. The contract had two parts: one for development fees and then separate fees to each board as they were integrated into the new system. Many boards and bureaus in Release 2 wanted to delay integration until the system was exactly what they wanted; however, the contractor was urging them to go live sooner. Director Kidane reported in the conference call that the contract for development was terminated after a time-consuming negotiation. Release 2 will still go forward next year since they are far enough into the process. All the boards and bureaus in Release 3, including this Board, will have a new plan and be fed into the program as it becomes available. Unfortunately, there is not a time line for that at this time. A new contactor will need to be found for the remaining boards and bureaus. The antiquated systems that we work from until then are frozen since changes are specialized and time-consuming.

Mr. Liu inquired if the financial projections on the overall fund condition included the BreEZe costs. Ms. Fenner responded that since the Board is scheduled for Release 3, the costs were not included. Some costs associated with this contract were already encumbered, but the Board does not have an outlay of the costs for going live yet. She also indicated that the development has not affected the Board's staff time, which some other boards and bureaus reported as being problematic during development. Mr. Liu advised that the Board budget those costs in when examining solutions for a potential shortage. Ms. Fenner suggested that licensees be polled on their reaction to allocating a portion of a fee raise toward updating the program. Ms. O'Neill asserted that all licensees will want the option to renew their license online.

G. Regulatory Agency Collaboration Update

Ms. Fenner reminded the Board that the State Bar and Bureau of Real Estate collaborated on issues related specific to their entities. They then invited other Boards and Bureaus to create a working group to pool resources and brainstorm ideas to protect consumers. She highlighted that one benefit at this point was the receipt of the Directory of Services from the Los Angeles County Department of Consumer Affairs, which is helpful in referring consumers to the appropriate entity to find help.

H. Mandatory Training

Ms. Bruning acknowledged that the Board members' time is valuable and appreciated. She noted that DCA staff have been following the fulfillment of the training requirements more closely. As such, she outlined the mandatory training on page 29 of the Board agenda packet. She offered to speak with the Board members individually to discuss any outstanding training components.

I. Sunset Review

Ms. Fenner reminded the Board that it will sunset January 1, 2017. Staff has not yet received the questions from the Legislature, but Ms. Fenner wanted the Board to know the report is imminent. It will be due to the Legislature in the fall of 2015, and the hearings will most likely take place in the spring of 2016. Although staff will be involved in physically putting the large report together, it is the Board's report, and input by its members will be imperative. The review is heard by a joint legislative committee with representatives from both the Senate and Assembly.

III. ENFORCEMENT REPORT

Ms. Fenner indicated that final 2013/14 enforcement statistics are included in the Board agenda packet starting on page 31, followed by the 2014/15 first quarter statistics on page 33.

Mr. Liu asked staff for thoughts about how to get greater cooperation from the Attorney General's Office (AG) on time responsiveness. Ms. Fenner responded that she could let them know through DCA that we have concerns; however, she believes they are doing everything they can to streamline their processes. She added that the AG liaison has reported that it is an issue of budget. It is not likely that there is anything we can do. Internally, Ms. Conkle has instituted a tickler program and follows up after a certain amount of time. Ms. Hurt commended staff on the ability to whittle down the number of complaints processed and resolved before they go to the AG.

The Board took a break at 10:54 a.m. and reconvened into open session at 11:05 a.m.

IV. STRATEGIC PLAN UPDATE

A. Task Forces

Ms. Kramm reported that she met via videoconferencing with stakeholders from Northern and Southern California to brainstorm best practices for Exhibit Handling at Depositions and Interpreted Depositions. The best practices are a beginning guideline to help court reporters in the field deal with exhibits. It is very basic in many ways, but attempts to answer questions that come up often, as well as unusual situations, in a practical manner.

She indicated that she received some feedback from stakeholders after the Exhibit Handling document was put out in the Board agenda packet. Some of the changes were incorporated and were distributed to the Board as a new draft for consideration (see Attachments 1 and 2).

Ms. Fenner stated that this is not an underground regulation, but a response to the industry for guidance. While it is considered best practices, it is not a document that would be used by enforcement.

Ms. Lasensky found the document handy and in line with the strategic planning session ideas. She inquired if it will be added to the Board's Web site. Ms. Fenner confirmed that it would if the Board approved it.

Ms. Pulone stated that it was practical information she believed would be beneficial to students and inquired if it would be shared with the court reporting programs. Ms. Fenner replied that it would.

Ms. Hurt thanked Ms. Kramm for her work. She inquired if the Board could utilize DCA services to make it more visually appealing. Ms. Fenner indicated that the Office of Publication and Design could make it more attractive.

Ms. Bruning pointed out that the task force meeting was held via videoconference with the costs absorbed by Ms. Kramm and Mr. Spievak at their sites. Board staff utilized DCA facilities through pro rata services. Ms. Fenner added that there were minimal costs as a result of the videoconferencing.

Mr. Liu asked if the document had already been distributed for public comment. Ms. O'Neill indicated that public comment was not required in the same manner as regulatory language. Ms. Bruning added that the task force meeting was publicly noticed and the document was included in the Board agenda packet noticed to the public. Ms. O'Neill stated that if further comment was received later, it can be updated as needed.

1. Exhibit Handling at Depositions Best Practices

   Ms. Hurt moved to approve the Best Practices for Exhibit Handling for Depositions. Second by Ms. Lasensky. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. **MOTION CARRIED UNANIMOUSLY**.

2. Interpreted Depositions Best Practices

   Ms. Hurt moved to approve the Best Practices for Interpreted Depositions. Second by Ms. Lasensky. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. **MOTION CARRIED UNANIMOUSLY**.

B. 2015-2018 Strategic Plan

Ms. O'Neill commended the group, including the participating stakeholders, on a creative and productive day. Ms. Fenner added that it was successful, and the facilitators will use their notes to create the actual plan that will be presented to the Board for approval at the next meeting. Once approved, Board staff will work with SOLID staff to generate an action plan with individual line items and goals.

Ms. O'Neill stated that she was impressed by the facilitators. Ms. Bruning informed the Board that the facilitators were likewise impressed by the participants.

V. REPORT ON LEGISLATION

Ms. Fenner summarized the end of the last legislative session in the Board agenda packet beginning on page 43. She placed two asterisks next to items that were directly related to the Board, most of which were connected to internal workings of the Board.

She referred to copies of the two position letters on pages 45 and 46. Ms. Hurt inquired about the status of AB 2006. Ms. Fenner indicated that it remains pending, but she expects it to die. A new legislative cycle is beginning, and bills have two years to get through.

The Board first heard Agenda Item VI, DRA Petition for Rulemaking in RE Scope of Practice.

VI. DRA PETITION FOR RULEMAKING IN RE SCOPE OF PRACTICE

Ms. O'Neill opened the discussion to the Board and requested their comments and questions before inviting the petitioner to comment.

Ms. Hurt asked about the procedural time frame for the amendment. Ms. Fenner responded that the package would need to go through the full regulatory process, which takes approximately one year. Ms. Hurt stated that her review of the petition yielded a concern that the list is not exhaustive. She added that there did not appear to be anything clarifying about the proposed language, which could lead to more misinterpretation. There may be some clarification gained by adding the timing aspect; however, that may not be enough to be deemed substantially necessary to initiate a regulatory package. She expressed a desire to hear from the petitioner.

Mr. Liu inquired of counsel if there are specifics provided for in other aspects of the law so that this could be read to be a broad scope of duty provision that is supplemented or refined in other parts of the code and practice regulation. Ms. Scott responded by distinguishing the Scope of Practice (Scope/CCR 2403) from the Standards of Practice (Standards/CCR 2475). She stated that the Scope is the when, where and how, and the Standards are the guidelines as to how shorthand reporting should be practiced.

Ms. Scott shared that the term "immediately" comes from California Code of Civil Procedure (CCP) 2025.510. The act of notifying parties is within the Scope, and adding a time frame would be inconsistent with the intent of California Code of Regulations (CCR) 2403. She stated that she did not believe this change will embellish, endorse and/or clarify the current Scope of Practice and would not be the same as putting it in the Standards of Practice. Adding or amending the time frame may be more appropriate in the Standards of Practice regulation; however, using the word "immediately" would not be clarifying because it is an imprecise term.

Ms. Scott then referred to the proposed amendments regarding "rough drafts, partial transcripts or expedited transcripts." She stated that CCP 2025.510, from where CCR 2403 was derived, governs the original or copy of the transcript. She did not see anywhere else in the CCP or Business and Professions Code (B&P) that covered the proposed

amendments of rough drafts, partial transcripts or expedited transcripts. Therefore, the changes would appear to strike "original and copy" and replace it with "rough drafts, partial transcripts or expedited transcripts." She questioned whether adding "rough drafts, partial transcripts or expedited transcripts" is an intent to elaborate and/or clarify "original or copy" of the transcript. Since the CCP already addresses "or any portion thereof," she stated that partial transcripts would be covered. The CCP also covers expedited transcripts in the language by stating "prior to." She inquired if there was a problem in the industry where this language is unclear. She reiterated that the Scope of Practice is not standards. It does not say you are required to notify the parties, but that providing notification is within the scope of a court reporter's duties. The Board would need to evaluate whether or not that also affects rough drafts.

Ms. Scott referred to the proposed amendment regarding "deposition product or service." She stated that there is inclusion of the deposition officer's responsibilities in the CCP, which for shorthand reporters is the transcript. She questioned what deposition products or services were other than the actual transcript. If it is in relation to audio or video recordings, that would not be within the scope of the reporters or the Board.

Ms. Scott reminded the Board that in order to amend a regulation, the changes need to be fixing a problem or issue that is in that specific industry. She requested that the petitioner clarify these points.

Mr. Liu found Ms. Scott's explanation was helpful. Ms. Lasensky wondered what authority the Board would have to set out a time line and agreed that the word "immediately" lacks context and does not add any clarity without a point of reference. Ms. Scott indicated that the idea of "immediately" is used in CCP 2025.510, so the intent may be to make the word meaningful by associating it with an actual time period. However, the Board should use caution with regards to making specific definitions in regulation pertaining to the CCP because the CCP is under the purview of the Judicial Council. The Board has jurisdiction over the B&P, but the term is not used in the B&P.

Ms. Hurt asked staff to speak to their recommendation of putting the proposed language in the Standards of Practice rather than the Scope of Practice. Ms. Fenner responded that the Standards of Practice may be a more appropriate place to amend the language if the Board finds merit in the language offered. She reiterated that the Scope is for clarification or as a guideline for the larger legal industry and broad litigation support companies and is not intended to be a comprehensive list of all duties of court reporters. Ms. Scott stated that the Standards of Practice are found in CCR 2475.

Ms. O'Neill shared concern over the word "immediately." She envisioned the language being rejected by the Legislature if it were presented in bill form, questioning if it is any better than "promptly notify" as used in the Standards of Practice. She further revealed concern regarding the suggested removal of the copy since it is required in CCP 2025. Again, a lot of the proposed language exists in the Standards of Practice. She also indicated clarification from the petitioner would be helpful.

Ms. Kramm agreed with the prior comments regarding the term "immediately." Additionally, she expressed her appreciation for the current CCP language regarding notification of parties when copies are ordered. It helps protect the reporter when someone asks them to not tell the other parties that a copy was ordered.

Ms. O'Neill invited the petitioner to come forward.

Ed Howard and Toni Pulone appeared before the Board representing DRA. Mr. Howard thanked the Board for accommodating their schedules and allowing the opportunity to address them regarding the petition.

Mr. Howard agreed that the intent of the Scope is to delineate what licensees do. The original objective of the Scope was to assist the Board in moving forward in enforcement matters against non-licensee-owned corporations by distinguishing that which is rendering professional services without duplicating the Standards or the CCP.

Mr. Howard indicated that licensees became confused, however, about what the law is because the regulation is not sufficiently abstract. Particularly, CCR 2403(b)(3) states, "Notifying all parties attending the deposition of requests made by other parties for either an original or copies." He denoted that the level of specificity used in the language reads more similarly to code instead of scope. The petition is in reaction to the confusion of whether or not the regulation reflects what licensees are supposed to be doing. The language could lean toward the abstract by stating something to the effect of, "Notifying the parties as required by the CCP and consistent with the Standards of Practice as to when products or services are offered to one party or another." However, the petition seeks to follow the trend of specificity set by the Board by filling in the details included in the Code. And it is hoped that by clarifying the duties that already exist under CCP 2025.510, it will be clear that new duties are not being imposed.

Ms. Pulone echoed the remarks made by Mr. Howard. She indicated that she began receiving calls and emails from confused licensees within minutes of the Scope of Practice regulation being published. The callers assumed it was a mistake since it appeared to introduce new requirements contrary to the CCP. She stated that the regulation appears to impose a requirement to notify all parties when the original or copies are requested, which reporters have never done.

Mr. Howard referred the Board to page 4 of the petition where CCP 2025.510(d) is quoted, which states:

"If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time."

He stated that the statute begins with the conditional word "If." He also highlighted the word "prior" in the portion that reads, "...available prior to the time the original or copy would be available..." The practice in the industry is to make the original and copy available without noticing requirements unless there is a special request. He urged the Board to clarify the Scope, whether through the proposed language in the petition or through other means, so as to make it clear to licensees that there are not additional obligations imposed. He requested the language either be made more specific to

accurately reflect the practice or be general enough to not confuse the Scope with the Code.

Ms. Pulone focused on the word "and" in the Code, which is followed by the conditions set for when the parties must be notified about an order for an expedited transcript versus the normal processing time. This is aligned with the requirement to offer equal timely service to all parties. Notification regarding the original is not required at all because it is statutorily set out that the noticing attorney is ordering the original. Mr. Howard agreed, stating that although the Scope appears to mimic the Code in many aspects, it does not capture that the reporter is only obligated to notify other parties when the transcript would be available prior to the time the original or copy would be available.

Ms. O'Neill expressed a concern about the language starting with, "prior to the time the original or copy would be available to any other party." She asked staff to provide feedback on their understanding of the language.

Ms. Fenner started by attesting that the Board office did not receive a similar flood of questions regarding the Scope. She believes it important that all people understand that the Scope of Practice is a definition and does not impose an obligation at all on the court reporters. Therefore, better communication from the Board to the licensees to reinforce this fact may be a better solution over changing the regulation.

Mr. Liu asked staff and counsel to speak to the process and statutory basis for developing the Scope. Ms. Fenner responded that the Scope was developed by abbreviating information from the CCP.

Ms. Fenner stated that she believed the core of the petition was that "prior to" should be included in the Scope. Ms. Howard responded that the critical source of the confusion was that the Scope imposes a duty to notify when there the Code does not require the notification. He suggested the Scope could be corrected by using abstract language such as "special" or "unusually time sensitive" in front of the requests. The "prior to" language is only one way a conditional factor could be used.

Ms. Scott quoted CCR 2403, which states:

"The practice of shorthand reporting is defined as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court-ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. The accurate transcription thereof includes, but is not limited to:"

She stated that the Scope categorizes the range of duties that are considered the "accurate transcription thereof." She added that the Standards of Practice is where standards, duties and obligations are listed. The Scope is extrapolated from CCP 2025.510, but is not implying that it is the duties. However, it is making known that when a request is made, it is the responsibility of the licensee, not a firm or corporation, to provide the special notifications. She indicated that the petition appears to be listing specific duties in the Scope.

Mr. Howard responded that the petition is a request to clear up the confusion that is easily inferred. Ms. Scott reminded the Board and the petitioner of the difference between Scope and Standards. The Scope does not say that it is a list of specific duties, and that is the reason the Scope and the Standards are two different regulations.

Mr. Howard suggested that the adding "for certain kinds of" before "original or copies" could cure the confusion of scope versus law.

Ms. Fenner shared that if the Board received a complaint about somebody not receiving the proper notice of an order or copy, the staff would refer to the CCP, not the Scope of Practice, as a means of determining violations.

Mr. Howard expressed that the confusion is reinforced by the fact that the plain meaning of what is included in the Scope is not accurate to what licensees do. The notification requirement only exists in certain circumstances.

Ms. Kramm asserted that reporters do have an obligation to notify all parties when the original transcript was produced and where it is going, and code sets a 30-day timeframe for signing the transcript. Mr. Howard responded the problem with the Scope is that it specifically reads that all parties attending the deposition must be notified of requests made for an original without a caveat.

Ms. Pulone responded that it is disconcerting to tell licensees that they do not have to abide by the Scope. It is suggestive that the Scope is not important.

Ms. O'Neill called for other public comment.

Ignacio Hernandez, representing the California Court Reporters Association (CCRA), appeared before the Board. He stated that he did not intend to make any comments on this, his first, appearance; however, after hearing the discussion, he was moved to raise a couple of points. He indicated that if there is an opportunity to reduce confusion for licensees, it should be taken. He offered support in drafting language. Internal discussions at CCRA revolved around full or partial transcripts available prior to the normal time frame and the need for clarification. He added that the information shared by staff on the difference between the Scope and the Standards was very instructive in terms of how to approach this. He gleaned some good points by the petitioners; however, he cautioned the Board on drafting language hastily. He shared his prior experience in drafting legislation and suggested collaboration by the stakeholders to make the language better for all involved.

Ms. Hurt asked Mr. Hernandez if CCRA had received calls from confused members. Mr. Hernandez responded that he just began representing CCRA and was not aware if calls were received based on the internal discussions. Ms. Kramm inquired if the internal discussions at CCRA included confusion about the Scope. Mr. Hernandez indicated that the conversations included separating the Scope and Code and the common practice of partial or quick transcripts. They were seeking clarification as to what the duty is within the definitions of the Scope and Code.

Ms. Fenner invited the Board to discuss their options and consider that the confusion was not with the Scope of Practice language but a need for licensees to understand the

difference between the Scope and Standards. She referred to the CRB Today Fall 2014 newsletter where an article initiates the process of telling licensees that no new duties were defined in the newly effective Scope. Staff can move forward with whichever way the Board deems as the best solution.

Ms. Hurt indicated that confusion seemed present, and it is important to eliminate it. She was unsure if the proposed language was the best path, but appreciated the clarification provided regarding the application of the Code when handling complaints instead of the Scope. She suggested posting a discussion on the Board's Web site to offer clarification, as well as bringing stakeholders together to clean up the language in the Scope.

Ms. O'Neill agreed with Ms. Hurt's sentiments and believed that educating the licensees was advantageous. She stated that she was open to clarifying the Scope to resolve any confusion, but was not in favor of the proposed language brought forward in the petition. She suggested the Board direct the executive officer to again see how this can be resolved, whether it be a perception problem or something else.

Mr. Liu agreed that education was necessary to differentiate scope from duties. He indicated that he was hesitant to change anything with statutory footing, but open to updating the Standards of Practice to be more clarifying instead of the Scope of Practice.

Ms. O'Neill proposed a vote on whether the Board accepts the petition. She called for further comments or questions.

Mr. Howard approached the Board offering to withdraw the DRA petition if the Board preferred to fix the language with the help of a stakeholder group. He indicated that he considers it a victory if the Board moves forward with curing the confusion. Ms. O'Neill accepted his withdrawal.

Ms. O'Neill then, with consensus of the Board, directed staff to work with the industry on exploring education of the licensees about the Scope and revision of the language, followed by a report back to the Board. Ms. O'Neill indicated that the next meeting would be held sooner than normal, possible in January or February. Ms. Hurt suggested the Board address the education component prior to the next meeting. Ms. Fenner said she would build on the foundation that had been started by working with the state associations for providing information to their members.

Ms. Kramm inquired if there was a way to expedite the regulatory process, possibly by meeting via videoconference while still including the public. Ms. Fenner replied that the Board could meet via videoconference provided the meeting locations were all publicly noticed and open to the public. Since an agenda must be developed, approved by legal, and conform to public meeting notice timeframes, some lead time is required. Ms. Kramm indicated that she would make herself available and encouraged everyone else to do the same in order to resolve any issues in a timely manner. Ms. Hurt agreed that meeting in January or February would be appropriate.

The Board then returned to the regular order of the agenda by moving to Agenda Item I, Minutes of March 14, 2014 Meeting.

VII. ELECTION OF OFFICERS

Ms. O'Neill called for election of officers. Ms. Lasensky inquired if Ms. O'Neill would be interested in continuing as chair for another term. Ms. O'Neill agreed she would be willing to do so.

Ms. Lasensky nominated Ms. O'Neill as chair. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. **MOTION CARRIED UNANIMOUSLY**.

Ms. Lasensky nominated Ms. Hurt as vice-chair. Second by Mr. Liu. Ms. O'Neill called for public comment. No comments were offered. A vote was conducted by roll call. **MOTION CARRIED UNANIMOUSLY**.

Ms. Kramm thanked both officers for serving.

VIII. FUTURE MEETING DATES

Ms. Fenner proposed the Board meet in late January or early February 2015 and again in the summer or fall. She offered to poll the members via e-mail.

Ms. O'Neill expressed her preference for Fridays, but could be flexible. Ms. Lasensky indicated that her January calendar was filling up quickly. She proposed January 30.

Ms. Fenner inquired as to the Board's preference for meeting in Northern California or Southern California. Ms. O'Neill indicated that it was easier for her to meet in Sacramento. Ms. Fenner indicated that meeting in Sacramento was less costly since more members and staff could drive in. Ms. Kramm agreed that Sacramento would be great.

Ms. Fenner indicated she would send an e-mail Monday to confirm the date and place.

IX. PUBLIC COMMENT

No comments were offered.

The Board took a break at 11:30 a.m. and convened into closed session at 11:48 a.m.

X. CLOSED SESSION

The Board convened in closed session pursuant to Government Code sections 11126(a) and 11126(e)(2)(C).

- Moose vs. US Legal Case No. 1-14-CV-258886

Upon returning to open session at 12:45 p.m., Ms. O'Neill indicated that there was nothing to report from closed session.

XI. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 12:46 p.m.

Toni O'Neill	2-6-15	Yvonne K. Fenner	2/6/15
TONI O'NEILL, Board Chair	DATE	YVONNE K. FENNER, Executive Officer	DATE

COURT REPORTERS BOARD
OF CALIFORNIA
2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
Fax (916) 263-3664 / www.courtreportersboard.ca.gov

Attachment 1

DRAFT
11/26/2014

BEST PRACTICES FOR EXHIBIT HANDLING FOR DEPOSITIONS

Physically Marking the Exhibit

- The object is to make it easy for someone later on looking through the exhibits to find the identifying label.
- Procedure – Confirm the use of this procedure with counsel before proceeding begins.
  - The exhibit is provided to the court reporter from counsel.
  - The court reporter marks the exhibit.
  - Court reporter announces the number of the exhibit ("Exhibit 1 is marked for identification" or "This is being marked as Exhibit 1") ~~and asks counsel, "May I present it to the witness?" or "Would you like it before the witness?"~~
- Labels
  - The use of exhibit labels is recommended over ink exhibit stamps.
  - Plain white labels are preferred over colored labels for best photocopying results.
  - Information on the label should include:
    - Exhibit number (numbers preferred over letters, but defer if there is attorney preference, numbers for plaintiffs/letters for defendants)
    - Witness last name
    - Court reporter's license number
    - Date of proceeding
  - Label placement:
    - Labels should be placed in the lower right-hand corner of the exhibit, one/sixteenth inch from the bottom of the page and one/sixteenth inch from the right side of the page, taking care that nothing on the page is obstructed by the label. Be mindful where the three-hole punch may appear on the page of an exhibit.
    - With oversized documents, keep consistency in mind when choosing the location for the label.
    - If there is no blank space available on an exhibit for placement of a label, place the label on the back of the exhibit in the center, one/sixteenth inch from the ~~top~~ bottom edge.
    - For objects other than paper, offer to place the label where it can be easily seen, but confirm with counsel before affixing the label. For objects where affixing a label is impossible, affix the label to a string tag and tie it on the object. Small items may be placed in an envelope, and affix the exhibit label to the envelope top or bottom.
    - A photograph may be marked on the back or affixed to a blank 8-1/2x11 sheet of paper with labels attached on the paper to the side or the bottom of each photograph.

Tracking

- It is the responsibility of the court reporter to track exhibits and exhibit numbers.

Custody

- Original exhibits are to remain in the custody and control of the court reporter unless there is a stipulation otherwise by counsel because the original exhibits (or what was marked at the deposition) must be attached to the original transcript.

- If an exhibit is to be retained by counsel or the witness providing it (~~often related to unusual or bulky items~~), a stipulation should be placed on the record and reflected in the Index of Exhibits.
- If counsel requests the court reporter retain custody of an unusual or bulky item, the court reporter should ask for a stipulation from all parties that ~~direction on the record who has permission to view it, if other parties~~ there must be notification to all parties if any party is requesting to view the exhibit in the reporter's presense, who to return the item to once the case has concluded, how to return the item. ~~ed of such a viewing, how long the item is to be retained, and what the final disposition of the item is to be.~~

Use of Previously Marked Exhibits

- If counsel shows the witness an exhibit that was previously marked at another deposition, the court reporter should clarify if the exhibit is being offered for the physical record of the present deposition or simply used for reference by the witness.

Electronic Exhibits

- Some attorneys are starting to use electronic exhibits in cases where many deponents will be referencing the same documents, such as medical chart. At the beginning of such cases, a stipulation needs to be entered between all parties regarding use of electronic exhibits and retention and handling of what is to be considered the original exhibit. ~~Mark by reference only. No physical label or physical exhibit is attached unless counsel requests the attachment of a disk containing the electronic file.~~

Objection to Exhibit

- The court reporter is not the finder of fact and may not make a determination as to admissibility of an exhibit. If there is an objection to an exhibit being offered, the court reporter takes the exhibit and labels it. If the reporter does not receive within ten days from the date of the deposition a protective order issued by the Court regarding the disposition of the exhibit, include the exhibit with the transcript as usual. ~~Before it is bound into the transcript, however, it is placed in an envelope and clearly labeled that it was objected to at the time it was presented. The attorneys can get direction from the Court whether the document is an exhibit.~~

Confidential Exhibits

- Parties need to stipulate at each deposition whether an exhibit is confidential and/or provide to the reporter a copy of any confidentiality agreement between parties with explicit instructions on how to handle a confidential exhibit. ~~Any exhibit offered during the confidential portion of a deposition is considered confidential. Such exhibits are bound only with the confidential portion of the deposition transcript and not identified apart from number on the exhibit index of the open transcript.~~

Parentheticals

- Per California Code of Regulations Title 16, Division 24, Article 8, section 2473, parentheticals and exhibit markings of two lines or more shall contain no less than 35 characters per line.
- The language of the parenthetical should be kept as simple as possible. Example: (Exhibit 1 was marked for identification.)

Substitution of Documents

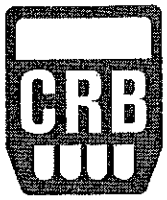
- If counsel wishes to substitute an exhibit for any reason, i.e., a clean copy of the exhibit or a duplicate was discovered and a new document is going in, whatever the situation is should be clearly stated in a stipulation, after which time the court reporter may do so.

Index

- The exhibit index should simply be entitled Exhibit Index or Deposition Exhibit Index unless other exhibits were specifically marked, i.e., plaintiff's or defendant's exhibits.
- The index should identify each exhibit number with a brief description of the exhibit including the type of document, date, Bates range, and the page at which it was marked.
- If the exhibit is retained by counsel or the witness, that information should be noted on the index.
- A separate index should be created for previously marked exhibits, including the exhibit number. No description is required. The page number at which it was first referenced may be included.
- In the case of confidential exhibits or any type of sealed exhibits, the full description of the document should be omitted from the open portion of the transcript. The full description should be included only in the confidential portion of the transcript. Confidential exhibits are included only with the confidential portion of the transcript. It is important to never e-mail exhibits containing confidential information, i.e., HIPAA information. A secure server or FTP repository should be set up to share exhibits containing confidential information.

Scenarios

- If an attorney becomes angry and leaves the deposition while the remaining attorney continues with a record, exhibits offered to the court reporter after another attorney leaves the room are to be accepted and attached to the deposition transcript.
- If the attorneys stipulate to no transcription of the stenographic notes of a deposition, any exhibits marked must be retained by the court reporter along with the stenographic notes so that in the event of a future order, the transcript will be complete with exhibits. Such exhibits may be scanned for storage if the attorneys so stipulate.
- If a case settles before the transcript is produced, the exhibits may be scanned and retained by the court reporter and the original returned to the noticing party.
- If a court reporting firm is utilized, the court reporter should send the original exhibits to the firm as quickly as possible via a reliable source which offers a tracing or tracking service. Delivery confirmation is recommended. Scanned exhibits are acceptable in cases of expedited orders, but original transcripts must contain original exhibits (or what was marked at the deposition).
- If a request is received to add an exhibit subsequent to the conclusion of the deposition, the court reporter may do so only with written stipulation of all parties.
- If a doctor refuses to release his file which has been marked as an exhibit to the custody of the court reporter, state clearly on the record that a copy service will be sent and who will be responsible for those arrangements. It should be noted in the exhibit index that the exhibit provided to the court reporter will be a copy of the file.
- In the case of an exhibit which was to be provided to the court reporter after the conclusion of the deposition but was never provided, the court reporter should contact the parties letting them know that the exhibit has not been received and that the transcript will be held until a date certain, after which time the transcript will be delivered. If the transcript goes out without such an exhibit, that information should be clearly identified on the exhibit index, i.e., (Exhibit marked but not provided). The identification parenthetical in the body of the transcript should read (Exhibit identified for the record but not provided).



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OF CALIFORNIA
2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
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Attachment 2

DRAFT
Final
View

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