

**COURT REPORTERS BOARD****OF CALIFORNIA**

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COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
APRIL 8, 2016

CALL TO ORDER

Ms. Davina Hurt, Chair, called the meeting to order at 9:00 a.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, Hearing Room, Sacramento, California.

ROLL CALL

Board Members Present: Davina Hurt, Public Member, Chair
Rosalie Kramm, Licensee Member, Vice Chair
Elizabeth Lasensky, Public Member
Toni O'Neill, Licensee Member

Board Members Absent: John K. Liu, Public Member

Staff Members Present: Yvonne K. Fenner, Executive Officer
Kurt Heppler, Senior Staff Counsel
Fred Chan-You, Staff Counsel
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

I. MINUTES OF THE OCTOBER 30, 2015 MEETING

Ms. Lasensky requested that the word "but" be added to the fifth line of the last paragraph on page 5 of the minutes, following the words, "So Cal stip began." She then requested the word "to" be added to the fourth line of the fifth paragraph on page 7 of the minutes, following the words "create an unwritten exception." She requested the addition of "role of the" be added to the second line of eighth paragraph on page 9 of the minutes, following the words, "She expressed that the." Lastly, she asked that the word "with" be added to the first line under "Update on licensee fee cap increase" on page 19 of the minutes.

Ms. Hurt requested that a paragraph space be added between the last two paragraphs on page 7 of the minutes.

Ms. O'Neill moved to approve the minutes as amended. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt
Opposed: None

Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

Ms. O'Neill commended Ms. Bruning for the useful and helpful minutes.

II. CERTIFICATE OF APPRECIATION FOR ANGELIQUE SCOTT

Ms. Hurt stated that staff counsel are assigned to the boards by the Department of Consumer Affairs (DCA) legal team. Prior to Mr. Chan-You, Ms. Scott was assisting the Board as staff counsel, but was then reassigned.

Ms. Hurt expressed her appreciation to Ms. Scott for her work with the Board. Ms. Lasensky thanked Ms. Scott for her professionalism and assistance in framing the issues before the Board. Ms. Kramm also thanked Ms. Scott. Ms. O'Neill agreed with the other Board members and wished Ms. Scott the best in her career. Ms. Fenner added that Ms. Scott provided careful and knowledgeable responses to the Board's requests for guidance and helped the Board make good decisions for the consumers of California through thoughtful analysis. She wished Ms. Scott the best.

Ms. Hurt presented a certificate of appreciation to Ms. Scott.

Ms. Scott thanked the Board and staff and stated that it has been a pleasure working with both.

Ms. O'Neill moved to adopt the certificate of appreciation. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt
Opposed: None
Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

III. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner invited questions regarding the budget projections available on page 37 of the Board agenda packet. Ms. Hurt requested information about the "Temp Help" line item. Ms. Fenner responded that Temp Help is the amount paid to the retired annuitants who help proctor the dictation examination. Ms. Hurt also inquired about the "Unscheduled Reimbursement – Investment Cost Recovery" line item. Ms. Fenner explained that all reimbursements received by the Board appear in red because they will be returned to the fund at the end of the budget year. Ms. Hurt asked about the "IA

with OPES" line item. Ms. Fenner indicated that it is an interagency agreement with the Office of Professional Examination Services, who facilitate the examination development for the two written portions of the exam.

Ms. Fenner pointed out that the Months in Reserve for Budget Year 2016-17 falls to 6.8, as listed on page 38 of the Board agenda packet. As previously discussed, when the operating expenses fall below six months, the TRF cannot be funded.

Ms. Hurt commented that a large percentage of the Board's budget goes toward pro rata.

B. Transcript Reimbursement Fund

Ms. Bruning reported that 176 invoices had been approved for the 2015-16 fiscal year for the Pro Bono Program, totaling over \$92,000. She stated that a large backlog had accumulated due to the loss of the half-time position for the Pro Per Program.

Ms. Bruning added that 61 separate approvals for 39 cases had been made for the Pro Per Program for the 2016 calendar year. She stated that more than \$18,000 of the \$30,000 allotment had been allocated, of which nearly \$4,600 had been paid out. She stated that there was \$15,000 still available to allocate due to funds cleared out from prior fiscal years by Ms. Davis. However, 47 applications requesting more than \$20,000 were pending review.

Ms. Bruning indicated that the DCA Budget Office informed the Board that the TRF had approximately \$243,000 remaining without a transfer. Considering all the pending Pro Bono and Pro Per applications, there may be \$80,000 left in the fiscal year for incoming applicants.

Ms. Hurt inquired how much time Ms. Bruning spends on the TRF applications since the half-time position was lost. Ms. Bruning responded that it was difficult to quantify since her job encumbers a large variety of tasks outside of the TRF, including Board, task force, and town hall meetings, as well as internal administrative functions. She estimated that at least 75 percent of her time was focused on TRF. Ms. Fenner added that reorganization of workload is part of the Board's strategic plan, but it would take place after the completion of the sunset review process.

C. Exam

Ms. Fenner offered to answer questions regarding the examination results reflected on pages 40 through 45 of the Board agenda packet.

D. Enforcement

Ms. Fenner referred to the statistics provided in the Board agenda packet, noting that there are no specific trends.

E. School Updates

Ms. Bruning stated a contract was recently put into place with expert consultant Ned Branch for the purposes of beginning the onsite review portion of school reviews. Mr.

Branch has an extensive background in education, including court reporting education, in both California and Oregon. It is anticipated that the reviews will begin after the beginning of the upcoming fiscal year.

Ms. O'Neill expressed her delight that Mr. Branch would be working with the Board. She stated that he is perfect for this role.

F. CRB Today Newsletter, Spring 2016

Ms. Bruning reported that the Spring 2016 CRB Today newsletter was distributed and would be posted on the Board's Web site.

G. Education/Outreach

Ms. Fenner reported that staff had recently approved proofs of the Best Practice Pointers 5, 7, 8 and 9 from the team at the DCA Office of Publication, Design, and Editing. Those documents will be added to the Board's Web site.

She added that a script was being developed with the help of Melinda Nelson for a webinar based one of the practice pointers.

H. BreEZe

Ms. Fenner stated that Release 2 of the BreEZe system successfully went live. She is waiting to see the cost analysis and studies DCA is conducting to find out what the next step will be.

IV. ONLINE SKILLS EXAM

Ms. Hurt stated that the Board received a proposal to offer the dictation portion of the examination online via a third-party vendor. Ms. Fenner stated that she had been working with Marybeth Everhart for a couple of years exploring options for live dictation examinations.

Marybeth Everhart and Jared Carmen approached the Board. Ms. Everhart is the national marketing manager for myRealtimeCoach (RTC), and Mr. Carmen is the owner of Realtime Learning Systems, the developers of RTC. Mr. Carmen provided a history, stating that RTC is the flagship product, with an online learning and testing platform that has been in use for the last 15 years as its foundation. He stated that his background includes online learning and testing for the U.S. government and military, Cisco Systems, Microsoft, and Fortune 500 companies. Ms. Everhart stated that she brings a court reporting background to the company, entering her 36th year in the profession where she reported for 20 years.

Ms. Everhart stated that the National Court Reporters Association (NCRA) moved to online testing in August 2015. She added that a number schools use RTC for testing students both online and at bricks and mortar locations. She stated that the Office of Military Commissions used RTC to vet their reporters before sending them to the GTMO Trials.

Ms. Everhart provided a summary of the benefits of moving the examination online. She asserted that the Board should consider online testing for convenience, security, and

savings. With regard to convenience, she stated that candidates testing online no longer have to travel to examination sites. The candidates can take the test in the environment and time that is most comfortable for them. Candidates receive immediate electronic scoring of their examination, which also reduces the grading by staff. The electronic grade is reviewed by staff, who set the threshold below which they will not review the exam (i.e., 90 percent).

Ms. Everhart addressed security, stated that RTC works closely with ProctorU, who developed the proctored online test approach. Last year, ProctorU conducted more than a quarter million exams from accountants to law school to skills tests. When candidates first log on, they confirm their identification. They then authenticate by answering questions regarding candidate information available in the public domain. Next, the environment is secured by a webcam. RTC recommends an external webcam so the candidate can pan around the room to ensure the location is secure and the candidate is alone. Additionally, the test must be listened to through headphones so no ambient audio can be recorded and shared, nor can another reporter report the test for the candidate. The computer clipboard must be cleared so that text from another person's examination cannot be pasted into the candidate's exam. The proctor will dictate a sentence to the candidate to confirm the candidate is writing. Finally, a disclaimer can be used to require the candidate to keep the test confidential. Some users also include repercussions for those found cheating or violating the confidentiality of the exam.

Ms. Everhart shared that candidates save money when not having to travel to examinations, and so does the Board. As previously mentioned, there is reduced time for staff grading examinations as well.

Mr. Carmen added that NCRA has given approximately 1,500 examinations since they moved to the online testing in August. He stated that beta testing has been ongoing for 10 months. The technology and platform are sound, and ProctorU is delightful to work with.

Ms. Lasensky inquired if RTC assumes candidates are taking the test from home. Ms. Everhart stated that the majority of candidates do take it home, but some take it at their office. Ms. Lasensky indicated that the Board would be assuming the candidates have the right computer configuration to handle RTC software and asked what level of computer sophistication is needed. Ms. Everhart stated that the candidate does not have to be tech savvy. There is no software to install as everything is done virtually through the RTC Web site.

Ms. Everhart reviewed the NCRA process, stating that the candidate would go to the NCRA Web site to register for the examination. The registration is then fed to RTC, who sends an e-mail with all the information needed to log onto the site.

Ms. Lasensky asked about the process for those who encounter a connection issue or computer failure. Mr. Carmen responded that online testing has been around since dialup was the best available. As technology advances, kinks are worked out. RTC has taken three steps to make testing a smooth and easy process. The first step is that the candidate clicks a link on the Web site to do a tech check when they schedule with a proctor. The Web site checks the connection and screen resolution, as well as a variety of other factors. Second, RTC provides the opportunity for the candidate to do a practice test. NCRA and ProctorU have a way for candidates to do unlimited, non-proctored practice tests, as well

as schedule a proctored practice test. He asserted that anyone who can use Netflix can use RTC.

Ms. Lasensky asked if RTC informs candidates what type of webcam will be required. Mr. Carmen confirmed that they do, which are typically available for \$6 to \$8. He added that there are online pdf and video documentations that show how to perform each test.

Mr. Carmen explained that the burden of facilities is removed from the Board and put onto the candidate. The expectation is set that the candidate needs to have a good place to test with functioning Internet and electricity, whether that be at home or another place they can be confident in the services. If the Internet or power goes out during the test, the candidate merely reschedules the test. The proctor will write notes voiding the test and requiring the candidate to reschedule.

Ms. Lasensky asked if there is more than one test available at a time. Ms. Everhart stated that the tests are randomly selected from a bank. The larger the bank, the less likely two candidates who know each other would be offered the same exam.

Ms. Hurt asked how many times each candidate can test. Ms. Everhart responded that each candidate can take a test once each time they pay and that they would only have access to each test one time. Ms. Fenner added that the larger the bank of tests, the more opportunities there would be for candidates to take the exam.

Ms. Lasensky inquired as to the time frame between scheduling the exam and actually taking it. Ms. Fenner responded that the Board would decide those factors, and the RTC and ProctorU provide the administration based on policy and procedures established by the Board. Initially, the Board may want to have a similar availability of three times each year. Mr. Carmen indicated that NCRA currently has a policy that requires the candidates to complete the test within 30 days of registering.

Ms. Kramm asked if there was any feedback from the schools and whether they would be able to provide testing rooms. Ms. Fenner stated that the proposal is new to everyone, so no feedback had been received yet. She anticipates the schools would set up a testing room to prepare them for taking the test online. Ms. Everhart added that there are out-of-state schools that do just that. Mr. Carmen stated that stress levels for the candidates are reduced when they are in an environment that is familiar.

Ms. O'Neill stated that she was able to watch the online testing procedure launch when she was on the NCRA board. She added that many states use the RPR as their license. The Board has the advantage of all the vetting done by NCRA through their transition. Since the errors have been worked out, the complaints have stopped and the candidates are really happy. She expressed that online testing could increase the number of working reporters in California. She would suggest the Board appoint a test-writing committee to increase the number of tests available, allowing candidates to test often and hopefully become licensed sooner. Ms. O'Neill stated her support of online testing for the dictation exam.

Ms. Hurt inquired about the contractual relationship between RTC and ProctorU. Mr. Carmen stated that RTC is affiliated with ProctorU, but there is no contract. The contracts are between NCRA and each of the entities separately. RTC provides the testing platform

whereas ProctorU provides the proctors. Ms. Everhart added that NCRA vetted out many proctoring companies before ultimately choosing ProctorU, primarily because it is a live-proctored process throughout.

Ms. Hurt asked how long NCRA has had a contract with RTC. Mr. Carmen responded that the relationship began approximately 10 years ago. The testing portion of their relationship began in 2011, with online testing beginning in 2014. Ms. Hurt requested clarification about the length of time beta testing has been done. Mr. Carmen stated that NCRA shifted to online testing at the end of August, but was doing beta testing for 10 months. There was a hybrid of the test where candidates took an online test at a bricks and mortar location with proctors in the room.

Ms. Hurt asked what the contractual relationship would be between the Board and RTC if there were a data breach. Mr. Carmen stated that RTC had never had a data breach and was not aware of any experienced by ProctorU. He stated that RTC and the Board could work out contractual terms for such a situation. Ms. Everhart added that the candidate and proctor share screens, but the proctor requests permission before accessing and controlling any hardware or software at each step. The candidate receives a reminder to close confidential information.

Mr. Carmen added that their entity is experienced with large scale, high stakes, secured testing. As an example they worked with the U.S. Army where over three million soldiers and civilians took an online course.

Ms. Hurt asked what happens if there is a disagreement or issue between the candidate and the proctor. Ms. Everhart stated the proctor would file an incident report, which would be sent to the Board. There have not been any incidents of this nature for NCRA. Mr. Carmen stated that NCRA set up an e-mail address dedicated to communications from ProctorU and candidates regarding questions or problems experienced.

Ms. O'Neill indicated that the Board currently uses an online test provider for the written portions of the examination and is not aware of any incidents that have risen to the level of the Board. She surmised that it would be handled similarly to current practice.

Ms. Lasensky inquired as to the volume of test takers in each cycle. Ms. Fenner responded that there is currently an average of 150 candidates per test.

Ms. Hurt asked for clarification of the concern Ms. Fenner expressed regarding using the test as a pre-test experience. Ms. Fenner stated that the Board retains statistics for the schools who report first-time pass rates to their accrediting bodies. The current cost to take the exam includes a \$40 application fee plus \$25 per each portion of the test. She asserted that the low cost may allow candidates to take the test just to see what it is like before committing to taking it to pass. She suggested the Board review the amount and manner of collecting the test fees.

Ms. Hurt conveyed that infrastructural policies would need to be decided before establishing a contract. She expressed mixed feelings, acknowledging there are benefits, but feeling concern about open answers. She shared that her personal information was breached with the IRS, causing her to be careful about information sharing. Ms. Fenner shared that she was also a victim of information theft, but believed candidates could use

laptops without personal information to take the test if they were concerned. She added that schools would have computers in their labs that candidates may be able to use. Ms. Lasensky added that public libraries may also be able to offer testing facilities and computers. Ms. Hurt indicated that she is more concerned about the information being shared through the authentication process.

Mr. Carmen stated that RTC stores a user name, password, and test results, but does not store any credit card information or other data. Ms. Everhart added that ProctorU uses the candidate's name and address when authenticating exam takers. There is no other information gathered.

Ms. Lasensky asked how the fees are collected. Mr. Carmen responded that it would be however the Board collects the fees. The Board agreed that it needed to investigate the options further.

Ms. Kramm indicated that many schools are moving to an online platform and closing their bricks and mortar locations. Students are used to being tested online. She expressed trust for RTC because they have been in the court reporting industry for many years and no one speaks poorly of them. She added that they have a good product and that they are helping court reporters become better writers. She agreed that it would benefit the industry by allowing more court reporters to be licensed more quickly. It will have save the Board money and staff time. She believed the Board could develop policies to address the security concerns expressed.

Ms. Hurt stated that she does not know anything about RTC, good or bad, and is posing questions to evaluate this proposal that will make a huge change to the industry. She would like to explore all sides, including benefits and risks. She recalled the blur of taking the Bar exam and described it as a sort of rite of passage for law students. And although the exam may be stressful, she asserted that working in court may be as well. She also expressed a need to work with the schools more to discuss expectations.

Ms. Hurt summarized that two Board members appeared in favor of moving forward with contracting with RTC. She asked Ms. Lasensky as to her position. Ms. Lasensky stated that although she had not heard public comment yet, she was supportive of the concept. She believed that the Board still had behind-the-scenes work to do before putting any plan into action.

Ms. O'Neill stated that through her involvement with NCRA, she observed that there were a few years of discussions about online examinations before it was brought to their board. They then had to go through the contract process and an implementation schedule that took approximately two years before the first tests were given. Ms. O'Neill added that having to repeat the examination with all the other test takers was not favorable for her, and she would have preferred to have been able to take it alone.

Ms. Hurt asked staff counsel if they had any input about the contract process or feedback from other DCA boards to contribute. Mr. Heppler responded that he specializes in contracts. He stated that when the DCA Director enters into contract on behalf of the Board, the Department of General Services (DGS) requires a competitive bid process unless there is nobody else who can provide the same service. There are many contracting steps and an analysis of cost reasonableness and value. Also, contracts

generally have several exhibits that speak to the responsibility in the event of a data breach. Mr. Heppler suggested the Board ask counsel to figure out how this concept would work within the current statutory and regulatory structure.

Ms. Fenner thanked Mr. Heppler for his outline and stated that she has been in contact with the contract unit to gather information regarding the first steps.

Ms. Hurt asked if the proposal was to begin online testing in 2016-17. Ms. Fenner was unsure based on the steps required, including creating and approving policy, and contracting. She shared that the Board would work with OPES to conduct an audit of the vendor's examination program as an independent third party to ensure that it meets the professional guidelines and technical standards as well as Business and Professions section 139. The audit would help make the exam legally defensible and check for questions of validity or unfairness. Ms. Fenner noted that Tracy Montez of OPES was present to answer questions.

Ms. Hurt indicated that contracting needs to begin either for hotels for onsite examinations or for moving toward online examinations. Ms. Fenner added that the Board currently has contracts in place for the dictation examination in Los Angeles for July 2016 and in Sacramento for the fall 2016 and 2017. If the Board chooses to move forward with online examination, she would recommend the Board have staff contract with the hotel in Los Angeles through 2017. The online examinations could potentially begin in 2018.

Ms. Hurt called for public comment.

Kim Krueger, CSR, approached the Board, stating she passed the test first in the 1980s, and again approximately two years ago. In addition, she has taught court reporters through a program which used RTC. She has also proctored tests and qualifiers. She shared concerns about online testing. She stated that live voices are better and easier to hear and differentiate than canned voices. She expressed that court reporting students have poor equipment and some do not have funds to upgrade or purchase some of the required hardware for online testing and that all students should be afforded the same access to the test. She asserted that students would need to be technologically savvy to use RTC. Ms. Krueger expressed concerns that RTC would "data mine" the students in an attempt to sell them other products. She declared that she observed students finding ways to cheat, and having a proctor in the room with you can make the difference. She agreed that the test can be stressful, but she asserted that students should prepare to be stressed as a court reporter. She also saw a value to networking at the exam sites. Ms. Krueger believed that online testing would eventually become reality, but believed that live dictation and the sanctity of the test should be protected at all costs to ensure the licensees are qualified and able to deal with a variety of situations.

Cynthia Zeller, CSR, inquired if the candidates can see a video while taking an online dictation exam. Mr. Carmen responded that they can.

Ms. Fenner expressed appreciation for the public comment, stating that they are the types of issues that need to be brought into policy discussions. She added that the industry is moving forward quickly, and some less technologically-savvy individuals may be left behind. She asserted that the consumers of California need licensees that have the minimum ability to do their job, which is more than writing on the steno machine.

Ms. Lasensky suggested the Board move forward with pursuing online testing and, additionally, with developing policies and procedures. Ms. Hurt asked if the Board would like to establish a task force to draft policy and separately begin the contract process. Ms. O'Neill envisioned that the Board would direct staff to gather information from DCA contracting and RTC, and meanwhile, the policies and procedures would be drafted. Ms. Hurt suggested a task force chaired by a Board member with schools and other stakeholders before the contract is approved.

Ms. Fenner recommended the Board appoint a task force to draft policy to be brought before the Board for approval. She noted it would be a big undertaking. She added that the meetings of the task force would be open to the public, which should prove to provide valuable input. She suggested the Board instruct her to move forward with the audit process through OPES.

Ms. Hurt asked if the OPES audit obligates the Board to contract for an online exam. Ms. Fenner responded that without a contract, the Board would not be required to move forward with RTC.

Ms. Krueger asked the Board to consider the cost benefit before moving forward. She stated that if there is a cost savings, the security issues are worked out, and it allows access to all interested, she could see a partial implementation. She reiterated that she feels exclusive online testing is bad idea, but that allowing those who cannot travel to a test to have access to online testing may be good. Ms. Fenner indicated that some proprietary information prohibited her from disclosing exact figures, but that the savings to the Board is substantial.

Charlotte Mathias, CSR, indicated that the cost for the written portion of the test is substantially higher than when she took it 20 years ago. She wondered if the costs for online testing would be passed on to the applicant, fearing that higher costs would deter potential future reporters. Ms. Fenner responded that the statute caps each portion of the examination at \$75. A legislative change would be required to increase that amount.

Tracy Montez, DCA Division Chief of Programs and Policy Review overseeing OPES, commented that many of the questions posed could be answered through the audit process. Some of the issues they will review include security, number of tests in the bank, retake policies, and passing scores.

Ms. Kramm moved to direct staff to move forward with the intent of conducting online testing, including getting approval through the DCA's OPES, with a goal toward online testing in 2018/2019, and a task force be formed to draft policies and procedures, to present to the Board. Second by Ms. Lasensky. Ms. Hurt called for public comment.

Ms. Mathias asked if there were going to be additional opportunities for public input. She expressed concern that people would have to use a room in their house that had mirrors all around based on something NCRA was doing. Ms. Kramm responded that the process included the use of webcams and potential public locations for candidates. Ms. Mathias added that it would be great if the schools could host online examinations.

A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, and Ms. O'Neill
Opposed: Ms. Hurt
Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

Ms. Hurt asked the Board members if any would like to chair the task force. Ms. O'Neill suggested that there be two chairs. Ms. Lasensky volunteered to be a co-chair. Ms. Kramm suggested Ms. O'Neill also co-chair, having a history with the process through NCRA. Ms. O'Neill accepted.

Ms. Hurt directed Ms. Fenner to coordinate with the co-chairs with regards to scheduling meetings. She suggested the chairs appoint members from schools and the public to the task force. Ms. Fenner stated that she would work with the chairs to develop a mission and then assist in appointing six to eight members. She thanked the presenters from RTC.

V. STRATEGIC PLAN

A. Approval of Best Practice Pointers

Ms. Hurt thanked Ms. O'Neill for reviewing and editing Best Practice Pointers 6 and 10 since the October 30, 2015 meeting. She also thanked the members of the task force for their time and expertise in developing the 10 practice pointers.

She then invited discussion and action on the proposed practice pointers.

Best Practice Pointer No. 6 – Court Transcripts Designated Confidential or Under Seal

Ms. Kramm moved to adopt Best Practice Pointer No. 6, Court Transcripts Designated Confidential or Under Seal. Second by Ms. Lasensky. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt
Opposed: None
Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

Best Practice Pointer No. 10 – Reporter Conduct in the Jury Room

Ms. Lasensky moved to adopt Best Practice Pointer No. 10, Reporter Conduct in the Jury Room. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt
Opposed: None

Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

Ms. Fenner stated that the newly-approved pointers would be sent to the DCA Office of Publication, Design, and Editing for formatting and then sent to the Board's Web site with the rest of the pointers. She added that the Board may create vignettes for some of the practice pointers.

Ms. Kramm commented that she has received positive feedback from deposition firm owners, who send them to their reporters. She thanked the task force and staff for their work on the valuable tools.

Ms. Bruning added that the formatting is done through the DCA pro rata services.

B. Approval of Communications Plan

Ms. Fenner presented the boilerplate communication plan prepared by the DCA Office of Public Affairs (OPA). She stated that the plan could be broken down similarly to the Board's Action Plan if approved.

Ms. Hurt stated that she liked the idea of revamping the Board's Web site to be more user-friendly and modern. She listed several questions, including whether the communication goals would be achievable within the Board's resource constraints. She also asked who would be the key staff for communications. Due to staff limitations, she asked what could be done in conjunction with DCA and what frequency of communication would be effective. She inquired how the Board could monitor the effectiveness of the plan.

Ms. Kramm suggested that high schools be added to the statewide career fair events under "Strategy."

Ms. Kramm moved to adopt the communication plan, adding high schools to the career fairs. Second by Ms. Lasensky. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt
Opposed: None
Absent: Mr. Liu
Abstain: None
Recusal: None

MOTION CARRIED.

C. Update on Action Plan Accomplishments

Ms. Fenner referred to the CRB Action Plan in the Board agenda packet on page 95, which indicates goals that are reached to further the Strategic Plan. She offered to answer any questions or make changes if requested.

The Board took a break at 11:02 a.m. and returned to open session at 11:15 a.m.

VI. UPDATE ON SUNSET REVIEW

Ms. Fenner stated that the Sunset Review Report was submitted at the end of November 2015 and reviewed by the Assembly Business and Professions Committee (BPC) and the Senate Business, Professions and Economic Development Committee (BP&ED), which form the joint sunset review committee (Sunset Committee). An oral presentation was given at the Sunset Review Oversight Hearing on March 9, 2016, at the Capitol by Ms. Hurt and Ms. Kramm. Written responses to the Sunset Committee's questions are required to be submitted by April 11, 2016. She requested the Board review the questions and drafted responses.

Issue 1 – Are current license fees sufficient to maintain the Board's long-term fiscal solvency?

Ms. Hurt asked the members for any edits they see necessary.

Ms. Lasensky suggested that the second occurrence of the word "projected" be changed to "anticipated" in the second line of the first paragraph under "Board Response." She stated that the response is reflective of her position.

Ms. Fenner shared that the BP&ED consultant has bill language ready for an increase to the fee cap and is awaiting a response from DCA Budgets. She believes the language will part of the Sunset bill.

Ms. Hurt requested the word "already" be changed to "previously" in the fourth line of the second paragraph on page 98 of the Board agenda packet.

Issue 2 – Should the Legislature amend the \$300,000 amount that must, unless reserves are too low, be allocated to the TRF each year?

Ms. Lasensky indicated that the "t" was missing from the word "the" in the first line of the last paragraph on page 98. She also commented that the sentence as a whole does not work. Ms. O'Neill volunteered to work on the language for that sentence.

Issue 3 – Should an extension be granted to continue the TRF for indigent litigants?

The title of this issue was inadvertently listed as a copy of Issue 2. Ms. Fenner will update the report with the correct title.

Issue 4 – Is the Board able to enforce court reporting statutes against foreign court reporting corporations?

Ms. Lasensky suggested the word "The" be removed from the first line of the fourth paragraph on page 101, and the sentence should start with "Court reporting."

Ms. Kramm expressed that SB 270, which is referred to in the response, has changed significantly and would need to be discussed before continuing with Issue 4.

The Board heard Agenda Item VII.B. – Legislation, SB 270, prior to completing Agenda Item VI – Update on Sunset Review.

VII. LEGISLATION (out of order)

B. Status of bills relevant to the Board

SB 270

Ms. Kramm indicated that SB 270 had been amended (see Attachment 1). She asserted that the term "billed wholly inside of this state" found in BPC section 8040(b)(3) negated the purpose of the bill, which is to hold foreign corporations doing business in California to California laws.

Ms. Kramm added that section 8040(b)(1) does not address penalties for corporations not registering with the Board.

She stated that these amendments had not yet been made to the bill at the time she testified before the Sunset Committee. She believed that Senator Mendoza would like the bill to be useful toward the Board's goal.

Ms. Fenner expressed that during her discussions with the author's office, there was an idea of tying a licensee to the registered corporation. However, that was not included in the amendment.

Ignacio Hernandez, on behalf of the California Court Reporters Association (CCRA), stated that the bill moved through the Senate in 2015, then went to a hearing at the Assembly BPC. During the hearing, concern was expressed by some members of the BPC that companies would be put out of business in California for arranging deposition services. Senator Mendoza then discussed potential amendments similar to the model used in Texas. Mr. Hernandez added that the amendment is in addition to the current bill language, not a replacement of it, so it should be viewed together. The bill has not been heard due to the concerns raised with the amendment by a number of people. It is eligible to be heard this year, and it is expected the BPC hear it in June at the earliest.

Ms. Kramm asked what concerns were raised and by whom. Mr. Hernandez responded that the US Legal lobbyist was more upset about the proposed amendment than the original bill because it would require them to follow California law. In addition, he shared there was unofficial concern expressed from other industry-related entities.

Mr. Hernandez stated that the ultimate objective for the amendment is to maintain very strong penalties in SB 270 for anyone who operates in California outside of California law. He stated that the additional language would give an option to these entities to

register with the Board which would then require them to follow all rules and statutes promulgated by the Board. Those operating without registration would be subject to strict daily penalties that are outlined in the original SB 270 language. The problems that have been articulated by the Board with regard to foreign corporations would be captured, giving the Board and Attorney General (AG) jurisdiction over these entities. He stated that there are opportunities to fine-tune language in the legislative process.

Ms. Hurt stated that she believed the Board supports the goals of SB 270 to ensure all corporations are following the laws and regulations, but does not see that reflected in the language. She asked Mr. Hernandez to address the concerns shared by Ms. Kramm. Mr. Hernandez responded that he believed the bill was structured so that if the entity does not register, the entity is subject to the other penalties set out in SB 270, which would be new to current law. He clarified that what was provided to the Board staff for distribution were amendments that would be added to SB 270, so it should be read in tandem with the existing bill. The original language captures entities that are working outside of California law. If California law, subject to this amendment, requires an entity to register and follow all the rules, regulations and statutes of California and they choose not to, there would be penalties, fines, and/or injunctive relief.

Ms. Fenner stated that she understood that the amendment was replacing the language and not in addition to the existing bill. Therefore, the existing bill language was not included in the Board agenda packet.

Aspasia Papavassiliou, Deputy Attorney General, indicated that she works in the licensing section of the AG's office, and she shared that her experience includes receiving cases from boards for prosecution. Ms. Papavassiliou indicated that she had read the earlier version of SB 270 and the amendment. The amendment goes farther in giving the Board jurisdiction over non-CSR owned firms. She inquired if the Board would like to put non-CSR firms out of business or regulate them. If the Board chooses to regulate, there needs to be a license requirement and a licensee that the Board can discipline. She recommended the bill be amended to make it clear that entities rendering court reporting services need to be registered. She shared concern over the language that said "billed wholly inside of this state," but suggested it could be updated to say "services rendered in California."

Ms. Kramm expressed that the word "services" has been generically defined by some entities to only include taking of stenographic notes as opposed to the production of transcripts. She does not want these entities to be able to get around the requirement due to language. She sees a great opportunity to create something that cures this problem. Ms. Papavassiliou stated that a registration requirement would go a long way toward implying that the business aspect of court reporting is part of the services that the Board is seeking to regulate.

Ms. O'Neill asked if a registration is equivalent to being licensed. She stated that she would not want to find out the bill has loopholes that allow an entity to get out of being held under the Board's jurisdiction. Ms. Papavassiliou responded that a registration can be a license. If the entity has to apply and get approved and is issued a registration number which has to be renewed, it would be fall under the definition of a license.

Ms. Lasensky asked what wording is needed to reach the Board's goal. In response, Ms. Papavassiliou stated that she would change the "billed wholly inside of this state" language to something simpler, such as "for court reporting services rendered inside California." She would also make it clear that registration is required. She reiterated that the original language does include the penalties for unlicensed activity.

Mr. Hernandez stated that he would work with the AG's office to make the language more clear and provide the Board the authority to enforce all the rules on these entities as if it were a licensee.

Mr. Heppler noted that the language includes a start date of July 1, 2016, but without an urgency clause, it would seem more likely that it would take effect January 1, 2017. He suggested that at least one licensee be connected to each firm registration. The Board may also want to consider a clear statutory path where the registration can be revoked. He added that the Board could enact regulations to set qualifications and fees for registration.

Ms. Krueger shared her experience in working as an independent contractor for large corporations who offer court reporting services. She stated that she has been pressured to do things that would violate California law. She added that many times the large corporations simply change their name and corporation so they appear to be a new firm. She concurred that a California licensee should be connected to court reporting firms for accountability. She referred to the April 6, 2016 letter from the attorneys for Holly Moose (see Attachment 2), where it states on page 3, paragraph 2 that they unaware of any other licensed profession under DCA where corporations would be entirely free to operate in the State without licensee involvement.

Ms. Hurt asked to confirm that California had firm registration in the past. Ms. Fenner confirmed that it did, which was discontinued in the 1980s. Ms. Hurt requested background information as to why it ended.

Toni Pulone, CSR, stated that a former executive officer determined that the program was not being monitored and was, therefore, not of any value. She added that most firms were not registering anyway.

Ed Howard, on behalf of the Deposition Reporters Association (CalDRA), thanked the Board and CCRA for its thoughtful discussion. He stated that CalDRA is in support of the SB 270 as it is currently written. They endorse having a licensee responsible for each registered firm as well as a fee for registration. Mr. Howard shared the concerns stated by Ms. Kramm regarding BPC 8040(b)(1) and (3).

Mr. Howard referred to and quoted the first paragraph on page 101 of the Board agenda packet. The challenge that the Board is confronting is the corporations that are flouting the Board's authority by stating that they are not professional corporations because they are not "rendering services." He then referred to the amendments of SB 270, specifically BPC 8030(b)(1). He stated that the reference and definition of "professional corporation" are the same as the current law, which is being defied by the same corporations who claim they are not "rendering services." Therefore, he asserted that the amendments do not solve the problem. Mr. Howard indicated that some states have defined what a corporation is, which the Board could do by regulation.

Ms. Kramm inquired if limited liability companies could find a loophole in this amendment. Mr. Howard responded that they could potentially. He shared that a bill was introduced several years ago that added other corporate forms to the definition of professional corporation. That bill was defeated by the same firms opposing SB 270.

He added that it should be specified what role the responsible licensee has, whether it be a shareholder, director, or officer of the corporation. Also, it should be determined whether or not the licensee will be required to be in a supervisory role, in charge of the things that licensees are supposed to do. He suggested the Board evaluate what has and has not worked in other states.

Mr. Howard asserted that SB 270 migrated from a bill that sought to make the Board's job easier, to seeking to dramatically change the underlying architecture of how court reporting is done in California.

Mr. Chan-You asked Mr. Howard to clarify his statement regarding using the regulatory process to define rendering court reporting services for corporations. Mr. Howard responded that the Board can promulgate regulations to define an ambiguous term. He added that the Board could initiate the process or do so as a response to a petition for rulemaking. He suggested that a checklist could be used to define court reporting services, including handling the production of an original or copy. He stated that the intent of the Standards of Practice was to make it easier to define court reporting services; however, it did not fix the biggest loophole.

Ms. Hurt clarified that the Board is leading a thoughtful charge to ensure all laws and regulations are followed by anybody who conducts court reporting services. She added that any involvement from stakeholders to assist in the process is important. However, it is a complex endeavor, and there have been a lot of talks in closed session related to some of the litigation that is being brought to the forefront. Mr. Howard commented that it is appropriate that this matter be discussed in the Board's Sunset Review Report, where the Legislature looks to the Board for the required principles for effective enforcement against corporations.

Ms. Pulone expressed appreciation for the efforts of CCRA in sponsoring SB 270. She shared concerns over the amendments, stating they undo the original intention. The amendments suggest removal of all current prohibitions on foreign corporations from providing court reporting services in California and do away with the requirement that a firm must be owned and directed by licensees. She concurred with the concerns shared by Ms. Kramm regarding BPC 8040(b)(3).

She indicated that she was concerned about the prohibitions or limitations on the operation of non-licensee firms be opened up and allowed in exchange for registration without any guarantee that the registration will work. She asserted that corporations already deny that they are professional corporations and will not register with the Board. Further, she shared concern that small deposition firms would be put out of business by the doors to California being opened without a way to discipline or control professional corporations.

Mr. Howard asserted that no law could deter large corporations who deny California jurisdiction from coming into the state. However, the law could make enforcement

easier. The Board has correctly identified the core problem, but unless it is fixed, nothing else matters. He stated that the Board would need to take the violating companies to court.

Ms. Pulone added that many firms are not incorporated, so she questioned how the amendment would capture those entities. In addition, many businesses who offer related services are now going into court reporting, such as interpreters, videographers, and document copiers. Unless there was a clear definition that anyone who ever provided a court reporter for a legal proceeding would be included in the requirement to register, she is unsure how the Board would be able to capture all those business.

Mr. Hernandez shared that he has been working on legislation for approximately 17 years. He indicated that he was optimistic about the discussion regarding the amendments and potential loopholes. He stated that the issues of whether or not the definition of corporation is tight enough or captures everyone has been thought about. He acknowledged that the Board needed more than the existing law to effectuate a change to the ongoing problem, and SB 270 was drafted with that goal. The penalties for violation by corporations and individuals are included in the language. He asserted that the commitment is no less now than it was when the process began more than a year earlier. He stated that it would be simple to clarify the language.

Mr. Hernandez stated that he had not previously heard the recommendation of tying a licensee to the corporation for registration. He was willing to explore it internally and discuss it with the bill author, who would ultimately make the decision on the language.

He reiterated that the bill is pretty far down the road and will be up in June. He stated that there have been ongoing discussions with a number of stakeholders, Board representatives and those engaged in enforcement for more than a year.

He stated that the issue cannot wait another one or two legislative years to be addressed. SB 270 provides an opportunity to move forward. He realizes that not everyone will comply with the law; therefore, the language is intended to be strong against those who violate it. As sponsors of the bill, CCRA wants to get it right. He recommended the Board move to support the proposed amendments and work with CCRA and Senator Mendoza on specific points. He stated that if the bill goes to hearing without support from the Board, the Legislators will question why.

Ms. Hurt asked if refined language that the Board could consider would be available by May. Mr. Hernandez responded that the plan is to refine the language to ensure it is as tight as possible, and he hoped it would be available by then. He asked for point-by-point details about what the Board wanted changed.

Ms. Hurt stated that the Board agrees with the concept of ensuring everyone follows the rules and regulations, and firm registration was suggested by several advisors; however, the means by which to do that is still a struggle. The Board has reservations with supporting the language as presented. Ms. Kramm expressed appreciation for all the work put into by the sponsor and Senator Mendoza. Nevertheless, she did not believe it would be appropriate to support the bill while not approving of the language.

Mr. Hernandez asked if the Board would have an opportunity to vote to support SB 270 before mid-June 2016 if presented with final language. Ms. Hurt said the Board could schedule another meeting to discuss this and other issues, going back to her earlier question about having the language by May. Mr. Hernandez said it is possible.

Ms. O'Neill also stated that she could not take a position either way based on the current language and amendments. She added that she reread the Board's draft response to the Sunset Committee's questions of Issue 4 and no longer sees a need for a change to the response. Ms. Hurt agreed, stating that SB 270 is listed as just one avenue to reach a goal.

Mr. Hernandez requested the Board summarize the key areas that need to be fine-tuned so he could begin working on it immediately. Although it may not be all-inclusive of the entire discussion, Ms. Fenner stated that the Board wanted to expand the corporations definition specifically so that it would include all entities, tie a licensee to the firm as a registered managing employee or some other role, add penalties up to and including revocation, add fees to register or the ability for the Board to set fees, change the effective date in BPC 8030(b)(2), and solve the issue of "billed wholly inside of this state" in BPC 8030(b)(3). She added that research needs to be conducted of the language used by other states for the arranging for services aspect.

Ms. Hurt noted that a new level of work for Board staff would be created by the passage of SB 270.

Ms. Kramm expressed that the issue was raised in the Sunset Review, evidencing the Legislature's concern. The Board's efforts and discussion should be included in the response to the issue.

Mr. Heppler summarized that the Board expressed its policy concerns related to SB 270 and is going to examine amendments at a future meeting date. Ms. Hurt added that the Board hopes to have another meeting in May before the bill goes to hearing.

The Board took a break at 12:58 p.m. Upon returning to open session at 1:36 p.m., the Board moved back to Agenda Item VI – Update on Sunset Review.

VI. UPDATE ON SUNSET REVIEW (continued)

Issue 4 – Is the Board able to enforce court reporting statutes against foreign court reporting corporations? (continued)

Ms. O'Neill commented that after having a robust discussion regarding SB 270, she believed the language is fine for this response. Ms. Hurt and Ms. Kramm agreed. Ms. Hurt added that SB 270 is listed as just one avenue that the Board is exploring and asked if anyone wanted to add any substantive avenues. Ms. Kramm suggested the response be kept general.

Mr. Heppler asked if the Board wished to memorialize what happened at the meeting within the response. Ms. Hurt responded that she did not want to hinder SB 270 by stating too much. She stated that the Board meeting minutes would memorialize the discussion, which could be used by the sponsor.

Ms. Hurt reiterated Ms. Lasensky's edit given during the morning session.

Issue 5 – How can the Board address the pending shortage of court reporters?

Ms. Kramm asked if the Board wanted to include the fact that online testing is being explored to provide more opportunities for candidates to pass the license examination. Ms. Fenner stated that since it is still in the concept stage, she would not recommend including it.

Ms. Bruning suggested changing the word "clearly" to "closely" in the last paragraph of the issue. The Board agreed.

Issue 6 – How can the Board best address issues relating to examination development?

No comments or edits were provided.

Issue 7 – What is the status of BreEZe implementation by the Board?

Ms. Fenner stated that there is a blank space in the first line of page 105 where staff was awaiting information from DCA Budgets. That sentence will be changed to: "The year to date figure will be unavailable until fiscal year 2015-16 ends, but the projected figure is \$65,305." She stated that she is seeking to confirm with the budget analyst that the \$65,305 is from the inception of the BreEZe project and not just the fiscal year.

Ms. Hurt requested the removal of the extra "t" at the end of the Staff Recommendation on page 104.

Issue 8 – How is the Board and the profession affected by technological advancements?

Ms. O'Neill stated that she believed the Board's response to be perfect since technology changes so quickly.

The Board agreed to remove the word "however" in the fourth line of the first paragraph of the Board Response on page 105. Ms. Hurt requested that a comma be added after "In the past 30 years alone" in the same paragraph.

Mr. Chan-You indicated that it appears the word "and" is missing in the title of the issue. Ms. Fenner said she would check the title as it was given to the Board by the Sunset Committee.

Issues 9 – Are there technical changes to the practice act that may improve the Board's operations?

No comments or edits were provided.

Issue 10 – Should the licensing and regulation of CSRs be continued and be regulated by the current Board membership?

Ms. Hurt requested the addition of "for protection of California consumers" to the end of the last sentence on page 106.

Ms. Hurt accepted Ms. O'Neill's offer to review the document for additional grammatical and spelling errors and to make non-substantive edits.

Ms. Lasensky moved to adopt the Board Response to Sunset Review Issues as amended, and to give the executive officer authority to make non-substantive corrections to the final report. Second by Ms. Kramm. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: Mr. Liu

Abstain: None

Recusal: None

MOTION CARRIED.

VII. LEGISLATION

A. Update on licensee fee cap increase

As reported during Agenda Item VI – Update on Sunset Review, Ms. Fenner stated that she and others continue to work on language for the fee cap. She reiterated that final language that will be amended into AB 2192, which is the Board's sunset bill. She is in the process of responding to the budget background questionnaire.

B. Status of bills relevant to the Board

Ms. Fenner stated that most of the report is informational, with the bills that affect court reporter highlighted by three asterisks.

AB 1834

Ms. Fenner reported that AB 1834 (Wagner) was brought before the Assembly Judiciary Committee. Chair Mark Stone indicated that he would vote "no" on this bill unless it was amended to include funding for court reporters in family law matters. As a courtesy, the bill is being held in the committee since the co-chair is the author. It is essentially dead at this point.

The Board decided to not take a position on the bill because it could be gutted and used for another purpose.

AB 2192

Ms. Fenner related that AB 2192 (Bonilla) is the sunset bill that would extend the Board to January 1, 2021. The Board directed Ms. Fenner to draft a letter of support for the chair's signature.

Mr. Hernandez stated that CCRA supports the bill extending the Board.

SB 270

(taken out of order, see page 14)

SB 1007

Ms. Kramm asked if this bill would affect binding arbitrations. Mr. Howard responded that it would apply to all arbitrations, especially binding arbitrations.

Ms. Hurt indicated that she applauds the effort and direction it is going, but she is not ready to write a letter in support or against.

Mr. Hernandez offered to answer questions regarding AB 2629 (Hernandez), which was sponsored by CCRA. Ms. Fenner said she did not have language for this bill.

Mr. Hernandez said the language was put into print on March 18, 2016, which was two days after the Board's report was created. He indicated that the bill is seeking an increase in the statutory rates for court transcripts and is scheduled for hearing before the Assembly Judiciary Committee on April 19, 2016.

VIII. STATUS OF SCOPE OF PRACTICE REGULATION

Title 16, California Code of Regulations, section 2403(b)(3)

Ms. Fenner reported that the regulation was sent to the Office of Administrative Law on March 30, 2016, who has 30 working days to perform their review.

IX. BURD v. BARKLEY COURT REPORTERS, INC.

Consideration of request for amicus curiae brief on behalf of Plaintiff

Ms. Kramm recused herself from the discussion and voting on the amicus curiae brief request consideration due to a potential conflict of interest.

Jim Patterson, plaintiff's attorney in the case, approached the Board. He stated since the last Board meeting in October, a ruling against the plaintiff had been made by the trial court. The court recognized that the issue would be best suited for the Court of Appeals to rule on. The trial court ruled that the statutory fee caps found in the Government Code do not apply to reporters that are sworn and reporting official court proceedings as official court reporters pro tempore (pro tem). As a result, he stated the plaintiff needed the Board to reiterate its 20-year position in a more official manner.

Mr. Patterson asserted that the Government Codes that set forth the fees do not mention either official reporters or official reporter pro tem, but that the legislative history of the statutory fees refers to both official and pro tem reporters in almost all instances. He added that there are instances in the Government Code before and after Government Code section 69950 where official reporter pro tem or both are mentioned, but not always. He stated that Government Code section 69942 requires reporters to have a license, but it only specifies officials and not pro tem reporters. If the same logic of the trial court ruling were applied pro tem reporters would not need a license.

With the case going to appeal, he urged the Board to weigh in on the issue in the form of an amicus brief. He said the defendant and two special interest groups will argue that the

statutory fees do not apply to private reporters. He added that CalDRA and CCRA already attempted to file amicus briefs with the trial court, which he had never seen done before. The court did consider those briefs. He anticipated both associations would file amicus briefs with the Court of Appeal as well. He stated his belief that it is important that the Court of Appeal is aware of the Board's ongoing interpretation of the statutes, as well as the reasons behind it.

Mr. Patterson stated that without the statutory caps, indigent litigants and litigants of lesser means are at a huge disadvantage. He asserted that wealthy litigants would be able to hire a reporter for a hearing where the litigant of lesser means may not be able to afford a copy of the transcript if the rates are not regulated.

Ms. Fenner asked about the timeline for the appeal. Mr. Patterson responded that the notice of appeal will be filed in the next week, and then a briefing schedule will be generated. He believed it would be nine months to a year before any hearings are scheduled.

Ms. Hurt inquired as to what was presented to the trial court in regards to the Board's position and what would be the difference with the Court of Appeal. Mr. Patterson stated that the last time there were time constraints, so the Board reissued a 2012 letter that referenced a 1999 letter and essentially said the Board had not changed its position. The reissued letter was presented to the trial court. Ultimately, the trial judge asserted that she would deal with the situations on a case-by-case basis and order that a copy of the transcript be given to the indigent party. He indicated that parties should not have to rely on the judge to order the other party to provide a copy.

Mr. Patterson stated that an amicus brief from the Board would carry more weight on behalf of itself to defend its long-standing positions.

Ms. Lasensky indicated that the Board has relayed its position on several letters at this point, and nothing has changed. She stated that she is not comfortable with going to the next step.

Mr. Patterson stated that the difference at this point is that the Board is not being asked to restate its position, but to state its position and the reason behind it via the amicus brief.

Ms. O'Neill interpreted the issue to be the judge's definition of pro tem reporter. She said the Board cannot address that issue. She did not read anything in the ruling that indicated the statutory fees can be ignored. Mr. Patterson said the issue is whether the statutory fees apply to people sitting pro tempore and not whether you are a pro tem reporter or not.

Ms. Hurt quoted from a section of the ruling found on page 121 of the Board agenda packet, "The Court is not bound by the Court Reporters Board of California's interpretation." She questioned how much weight the brief would have based on that information. She expressed that the Board does want justice to be fair and equal for all folks, whether they have money or not. Ms. Hurt stated that the Board has held the same position and did not see a reason to change that, but did note that the statutory fees are outdated. Ms. Hurt continued that the Board's mission is to protect all consumers, indigent and wealthy alike.

At the request of Ms. Hurt, Ms. Fenner explained the process for filing an amicus brief. She stated that if the Board found consumer harm and would like to grant the request, the first step would be to work with staff counsel to write a letter to the Governor's Office asking for permission to write the brief. The turnaround time for this part of the process is approximately 60 to 90 days. If the Governor grants the petition, it would then go to the AG's office for evaluation. If the AG's office grants the request, they would write and submit the brief on behalf of the Board.

Ms. Lasensky asked if the Board would be creating any harm by producing an amicus brief. Ms. Hurt responded that she did not see any way it could, but it could address consumer harm.

Ms. Hurt advocated for granting the request for amicus brief. She stated that the Board has held the same position for many years, and it is related to consumer harm and access to justice.

Joe Tabrisky, representing Defendant Barkley Court Reporters, approached the Board. He started by remarking on Ms. O'Neill's comments from the October 30, 2015 Board meeting that the Court would have to be the interpreter of the Government Code. He stated that the hearing was a basic application of the legislative analysis by the Court in terms of interpreting Article 9. The Court also reviewed the use of the terms pro tem and official court reporter by the Legislature throughout the section.

He continued, stating that the Court made it clear from their analysis that the failure of the Legislature to use pro tem when it was applying the fees in Government Code section 69950 was a critical, and the Court determined that Government Code section 69950 only applied to official court reporters. He stated that the inclusion of official court reporters and the exclusion of pro tem reporters in Government Code section 69947 made it clear to the Court that the Legislature did not intend statutory fees to apply to private court reporters hired by either the court or the individual litigants.

Ms. Hurt inquired if Mr. Tabrisky was suggesting that the Board rethink its position of supporting the statutory rate for reporters in court. Mr. Tabrisky responded that such a matter would be beyond the purview of his interest. On behalf of Barkley Court Reporters, he asserted that the Board would be extending itself by getting into an interpretive dispute with the courts as to that language and what that means. He stated that the request for amicus brief is asking the Board to do more than reiterate its position. The amicus brief would essentially be taking a position with regard to litigants on behalf of the plaintiff. Ms. Hurt recognized that the amicus brief is a step up to advocating a policy of leveling the playing field. Mr. Tabrisky disputed the view of leveling the playing field, stating that both parties are paying for the court reporters. The court is faced with the interpretation of the act and the definition of pro tem and why pro tem is used in some sections and not in others. The Court stated and has the authority under Code of Civil Procedure section 128 to order one side or the other pay the fees on a case-by-case basis. Other options are also available to the parties.

Ms. Hurt inquired if pro tem reporters were around when the legislation was written. Mr. Tabrisky stated that as they are used presently, the answer is no, except in small counties in terms of being retained by the courts. He added that the judge acknowledged

that the statute was not intended to address the changes to the way courts operate as a result of the recession. A legislative change would have to occur to address that issue.

Mr. Tabrisky stated that contrary to what Mr. Patterson indicated, the judge clearly stated that she did not consider either brief filed by the associations. She viewed the matter to be an interpretation of the language which she was capable of doing. He doubted even the Court of Appeal would consider an amicus brief filed by the Board.

He reiterated the position of the judge with regards to litigants being stacked against each other monetarily. The judge found no indication or evidence that non-wealthy litigants were unable to obtain transcripts based on a wealthy litigant hiring the court reporter. In addition, the judge found it confusing that consideration of raising that statutory rate, given the argument that some litigants could not afford transcripts at the current rate. The judge also found it questionable to impose a statutory fee onto a private agreement when other professional licenses do not hold out statutory rates for private contracts.

Mr. Howard, on behalf of CalDRA, stated that the Board was not being asked to reexamine its passion and dedication to protecting consumers or access to justice. However, he requested the Board reexamine its interpretation of what the law currently provides based on the fact that for 20 years the Board's legal position omitted an analysis of the pivotal statute. Addressing Ms. Lasensky, he stated that she asked at the October 30, 2015 meeting how CalDRA supposedly got it wrong by agreeing with the Board's position for many years. He stated that CalDRA changed its position based upon looking at the Board's analysis which omitted Government Code section 69947. He also pointed out that the judge quoted from Government Code section 69947 in the ruling, which can be found on page 120 of the Board agenda packet. In addition, the judge included the six Government Code sections that specifically mention the official reporter or pro tem.

Ms. Hurt asked where Mr. Howard sees the analysis of the Board's policy. He stated that it was in the letter that was reissued and submitted to the Court. He added that the Court looked at it and stated in its ruling that because the Board's letter merely expresses an agency's interpretation of a statute, they are entitled to a lesser degree of judicial deference. It goes on to say that the Court finds the plain language of the statute fails to embrace pro tem reporters, and the Court is not persuaded otherwise by the Board's letter. He stated that the Board's letter cited statute when stating the law, and he is not aware of any analysis done by the Board that looks at Government Code section 69947, which excludes pro tem reporters.

Mr. Howard suggested the Board task its counsel with looking at its prior analysis with consideration of Government Code section 69947 prior to pursuing an amicus brief. Mr. Tabrisky added that it would be helpful to include a review of Government Code section 69941, 69944, and 69946 in terms of how the Legislature used both "official reporters" and "pro tempore reporters".

Mr. Heppler stated that it would be at the Board's discretion whether it would like to initiate the process of commencing an amicus brief. He shared that the case is not a writ of administrative mandamus where someone is challenging the sufficiency of a board disciplinary decision. It is a pure statutory construction issue, which is what the Board is being asked to weigh in on.

Mr. Heppler added that for most DCA boards, the essential functions are licensing qualified applicants, providing regulatory oversight, and disciplining those who violate their statutes and regulations. The Board may wish to reevaluate its statutory obligations and immerse itself in that endeavor.

While the Board's staff counsel does not give opinions or re-litigate the matter, he indicated that its role is to give advice to the Board. He suggested that the Board closely examine the nature of the case, which is a statutory construction issue, and determine how that squares with its consumer protection obligations set forth in the statutes, then determine if moving ahead is both prudent and judicious. Ms. Hurt asked if an evaluation by staff counsel can be completed by May. Mr. Heppler affirmed that it was possible and added that the Board can direct staff counsel to prepare its own opinion. Regardless of the results of the opinion, it may be important for the Board to hear what its own counsel thinks of the issue. Mr. Chan-You stated it would be attorney-client privileged.

Ms. Mathias stated that she contacted the Board upon receiving the May 2012 letter regarding statutory rates. She understood staff to say that pro tem reporters could make up the difference in their fees through per diem since the code is silent on per diem. She questioned how the consumer was being protected if the pro tem reporter charges a high per diem for just a few pages because their pay is not subsidized the way official reporters are. She asserted that charging as an independent contractor establishes in advance what charges the client is faced with based on the page rate being adequate to cover the reporter's time and expenses. She stated that attorneys are not being asked to waive their fees and neither should court reporters.

Mr. Patterson stated that he does not disagree that the fees are currently too low and that it should be addressed. However, the analysis is far more complicated than just looking at how much it is going to cost for a reporter to report the hearing. He added that one of the most important factors is that the statutory rate caps the amount that can be charged for the copy. Therefore, if the other party hires a private reporter, the statutory rate would make the copy reasonable.

He stated that there is no perfect solution, but that the Board needs to choose one side or the other. He added that the associations will file amicus briefs with the Court of Appeal based on policy arguments. He further stated that the Court of Appeal welcomes and encourages public comment and amicus briefs, and he believes would want to hear what this Board has to say.

Ms. Hurt indicated that the Board is considering a meeting in May, and would like to have staff counsel evaluate the matter further, understanding the Board is interested in supporting access to justice for indigent litigants. She would then suggest the Board reconsider the matter at a May meeting. Ms. O'Neill said she was more comfortable taking this route. Ms. Lasensky agreed that more information was needed. Ms. Hurt stated that she leans toward writing the amicus brief based on the policy of equal access to justice to indigent clients. Ms. Lasensky said the Board's policy should be as clear and complete as possible.

Ms. O'Neill moved to direct staff counsel to provide an analysis of the Board's position on the applicability of statutory rates. Second by Ms. Lasensky.

Ms. Hurt called for public comment.

Mr. Patterson requested that staff counsel look at the legislative history while conducting their analysis, which he found references officials and pro tem reporters within the same sections. He also asked that they review Government Code section 69942.

Ms. Mathias clarified that the rich company is not always the one that brings the court reporter. The litigants can shop around for better prices and bring their own reporter to court.

Ms. Pulone added that the TRF is available to indigent litigants as another option.

A vote was conducted by roll call.

For: Ms. Lasensky, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: Mr. Liu

Abstain: None

Recusal: Ms. Kramm

MOTION CARRIED.

Mr. Heppler stated that one way or the other, the Board will get an answer. He indicated that the reach of the applicable statutes will be determined by the Court upon appeal. It would be up to the Board whether they want to shape that decision.

Mr. Howard understood the motion to be directing staff counsel to look at the law. Ms. Hurt responded that counsel would express to the Board what its policy should be based on its review, but that does not preclude the Board from holding a different policy.

X. CLOSED SESSION

This item was deferred.

XI. DISCUSSION REGARDING SOUTHERN CALIFORNIA STIPULATION

Ms. Fenner stated that at the direction of the Board at its October 30, 2015 meeting, staff set up town hall meetings to gain input from all interested stakeholders regarding the Southern California stipulation (So Cal stip). Ms. Bruning added that the meetings were held on February 6, 2016, in Sacramento, and on March 10, 2016, in Los Angeles.

Ms. Bruning continued, stating that the invitation was sent via e-mail to the Board's subscriber list on January 7, 2016. On the same date, the invitation was sent to the Judicial Council. Unfortunately, they were not able to send it to their list of presiding judges; therefore, staff contacted many counties around the state that may be interested in the matter. The invitation was sent to 12 presiding judges or court executive officers for distribution at their courts. The State Bar included the invitation in their weekly newsletter to their members. The notice was also posted to the Board's Web site.

Ms. Hurt stated that the matter started with a petition to the Board. The town hall meetings were established with a goal of gathering opinions from judges, attorneys, and court reporters as an array of stakeholders to evaluate the long-standing tradition. She stated that the meetings were both great, bringing together the members of the community who shared their stories and experiences related to the issue. It was noticeable that the majority of those that attended were court reporters, with approximately three attorneys attending the Sacramento meeting. No attorneys or judges attended the Los Angeles meeting.

Ms. Hurt asked if there were any new public comments to be made. No comments were offered.

Ms. Kramm stated the court reporters in Northern California made amazing arguments, as did the Southern California reporters, albeit with a different perspective. She stated that as a San Diego court reporter and firm owner, she has lived the So Cal stip for 30 years. She understands it and the attorneys' confusion, as well as ramifications that concern court reporters. She wanted to understand as a Board member the ramifications of what the Board conclusion might be. She researched the matter by speaking to a professor of law at the University of San Diego about the California Code of Civil Procedures (CCP) section 2025. The professor was familiar with the So Cal stip and considers it to be stealing when an attorney provides a copy to another attorney. He did not believe, however, the court reporter could decline to enter into the So Cal stip if the attorneys want to. This was partially because judges allow it in Southern California. She added that many judges do not even want paper, and paper transcripts may be done away with in the next two or three years as the courts move to digital copies.

Ms. Kramm shared that she had a deposition in Los Angeles recently where she told the attorneys that the So Cal stip was old fashioned and is not something people do anymore. The attorneys expressed a concern that the witness would have to travel to her office, which she informed them that CCP 2025 no longer requires that. She also told them that it concerns court reporters when the transcripts are torn apart. The attorneys agreed to follow the code, but share the pdf copy. She believed that it did not solve the problem, but made it worse because the attorneys are so confused about what the code is.

She expressed that she believed that attorneys need education about the code, as do court reporters. She suggested a vignette be created.

Ms. Kramm said a court reporter refusing to enter into the So Cal stip may be faced with losing jobs to reporters who do. In addition, if the Board were to determine that entering into the So Cal stip constituted a violation, every reporter would lose their license. That would be the only way to level the playing field that would give the reporter in the field the power to stipulate away the original. As a Board member, she would not advocate the revocation of licenses because attorneys entered into a stipulation.

Ms. O'Neill reiterated the Board's charge to protect consumers. In her years reporting depositions in Southern California, she heard very little harm happening. She did not see where the harm was to undertake the task of enforcing the code.

Ms. Lasensky stated that the Board heard a lot of public comment, but she did not hear anything substantive that showed harm.

Ms. Kramm asserted that the court reporters should know CCP 2025 and should know what they are saying in the field, but many do not.

Ms. Hurt stated that, as she understood it, attorneys have the right to control the procedural aspects of their litigation through tactics and strategies. One of those aspects may be stipulating. She stated that the two main questions may be what can be stipulated away and have they exceeded their authority to stipulate away a neutral entity's duties under the CCP. She then indicated that the California Code of Regulations 2475 prohibits a reporter from entering into, arranging, or participating in a relationship that compromises the impartiality of the certified shorthand reporter. She then considered how the So Cal stip compromises the impartiality of the court reporters. Ms. Hurt added that the California Discovery Act allows parties to modify their discovery procedures, one of which being stipulations.

She did not see a solution reached by court reporters turning each other in to the Board or angering attorneys and judges. She indicated that she previously questioned what the industry did to educate the Bar, and contact had not been made. She believed reaching out to the Bar for education purposes is the next step, and she suggested that understanding e-filing implications is needed.

Ms. Pulone said that as a Northern California reporter, she is infrequently exposed to the So Cal stip; however, she has seen consumer harm when pages are out of order or are missing from the transcript. She asserted that the issue is not about copy sales, but about keeping the original safe and intact. Ms. Pulone restated the questions brought to the Board by CalDRA at its October 30, 2015 meeting, asking if the court reporter would be sanctioned by Board for entering into the So Cal stip.

Ms. Fenner stated that the Board can never issue a blanket statement. Each complaint is considered on a case-by-case basis. She added that if the stipulation is on the record and the court reporter agrees to do it, then it is non-actionable. Ms. Kramm stated that reporters should have the entire stipulation on the record.

Ms. Pulone agreed with the idea of educating the Bar and licensees.

Ms. Mathias thanked the Board for agreeing to take part in educating the Bar. She shared concerns for the original transcript and asserted that the Board's mission also includes protecting the integrity of the record.

Ms. Bruning suggested the Board create an educational handout that could be sent to the Bar and also printed by court reporters to bring to depositions. Ms. Hurt added that she could also speak with her contacts at the State Bar.

The Board directed staff to work with the chair to determine what education pieces will be prepared to disseminate its position.

XII. PRESENTATION ON HOLDING OF NORTH CAROLINA CASE

This item was deferred.

The Board heard Agenda Item XIV – Public Comment prior to Agenda Item XIII – Future Meeting Dates.

XIV. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA (out of order)

Ms. Mathias stated that a Southern California practice of leaving a blank in the transcript is making its way to Northern California. She could not find anything in the code to address it and would like it added to the best practice pointers. Ms. Hurt stated that there will be additional practice pointers created, and the suggestion is now on record.

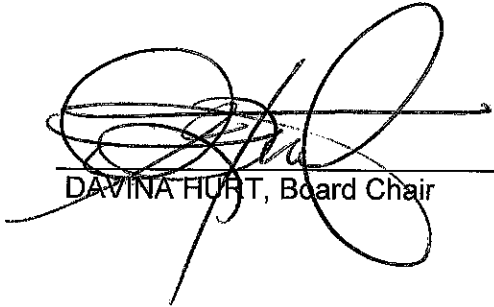
XIII. FUTURE MEETING DATES

Ms. Hurt asked if any members had conflicts in May. Ms. O'Neill indicated she would need to check with her office before making a commitment. She would recommend against Friday, May 27, as it precedes a holiday weekend.

The Board directed staff to coordinate dates with the members.

XV. ADJOURNMENT

Ms. Hurt adjourned the meeting at 3:44 p.m.



DAVINA HURT, Board Chair

5/26/16
DATE



YVONNE K. FENNER, Executive Officer

5-26-16
DATE

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03/22/16 03:09 PM
RN 15 22741 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 270
AS AMENDED IN ASSEMBLY JUNE 23, 2015

Amendment 1

In the title, in line 1, after the first "to" insert:

amend Section 8040 of, and to

Amendment 2

In the title, in line 1, strike out the second "to" and insert:

to,

Amendment 3

On page 2, before line 1, insert:

SECTION 1. Section 8040 of the Business and Professions Code is amended to read:

8040. (a) A shorthand reporting corporation is a corporation which ~~that~~ is authorized to render professional services, as defined in Section 13401 of the Corporations Code, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its officers. With respect to a shorthand reporting corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Court Reporters Board of California.

(b) (1) Notwithstanding subdivision (a) of this section and subdivision (b) of Section 13401, any professional corporation or foreign professional corporation is authorized to render professional services of shorthand reporting without compliance with the requirements of Section 8044, if that professional corporation or foreign professional corporation is registered as a shorthand reporting corporation with the Court Reporters Board of California prior to rendering those services.

(2) Not later than July 1, 2016, the board shall implement a shorthand reporting corporation registration process.

(3) Any statute or regulation applicable to a licensee is also applicable to a professional corporation or a foreign professional corporation for any services produced and billed wholly inside of this state.

(4) Nothing in this section shall be construed to authorize a person without a license issued pursuant to this chapter to practice shorthand reporting as defined in Section 8017.

(c) For purposes of this section, all of the following definitions shall apply:



RN1522741

(1) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of providing shorthand reporting services.

(2) "Professional corporation" means a corporation organized under the General Corporation Law that is engaged in rendering shorthand reporting services.

(3) "Professional services" has the same meaning as that term is defined in subdivision (a) of Section 13401 of the Corporations Code, that is the service of shorthand reporting lawfully rendered pursuant to this chapter.

Amendment 4

On page 2, in line 1, strike out "SECTION 1." and insert:

SEC. 2.

Amendment 5

On page 3, in line 4, strike out "state." and insert:

state pursuant to Section 8040.

Amendment 6

On page 4, below line 12, insert:

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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April 6, 2016

Ms. Davina Hurt, Chair
Court Reporters Board of California
2535 Capitol Oaks Drive, Suite 230
Sacramento, CA 95833

***Re: Possible Amendments to Senate Bill 270 (Mendoza) and Court
Reporters Board Position***

Dear Chairwoman Hurt:

We represent Holly Moose, a California certified shorthand reporter, in her pending lawsuit against U.S. Legal Support, Inc. (*Holly Moose, an individual, d/b/a Holly Moose & Associates v. U.S. Legal Support, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-cv-258886). Over the last several years litigating this case, we have developed expertise in the laws regulating court reporting in California and, more generally, in how corporations providing licensed services are treated under California law and elsewhere across the country.

It recently has come to our attention that there may be a legislative effort afoot that would dramatically change the way that corporations providing shorthand reporting services are held accountable in California and, in the process, would seriously undermine—or even moot—our client’s efforts to enforce the State’s existing laws regarding corporate practice of shorthand reporting. As we discuss below, because the possible amendments would seriously impair the ability of the Court Reporters Board of California to protect consumers and permit an unprecedented role for corporations of all kinds in California and nationwide to provide licensed services without any licensee accountability, we respectfully urge the Board to oppose this effort if it were formally introduced.

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In her pending lawsuit, Ms. Moose alleges, as a private attorney general, that U.S. Legal Support, a Texas corporation, has violated the California Unfair Competition Law by (1) rendering professional shorthand reporting services in California as a foreign professional corporation without being authorized to do so by California law, and (2) rendering professional services without having its owners and officers be licensees, *i.e.* CSRs, as is required by California law. In defense, U.S. Legal Support makes the same argument in court as we understand that it has in the Legislature: that because it independently contracts with court reporters rather than employs them directly, it is not a professional corporation and, thus, need not abide by any laws regulating the profession.

On February 22, 2016, Santa Clara County Superior Court Judge Carrie Zepeda heard arguments on the merits in *Moose v. U.S. Legal Support*, and we are currently awaiting her final decision. If Judge Zepeda were to rule in our client's favor, her decision or a subsequent final decision in the Court of Appeal likely would prevent foreign professional corporations, like U.S. Legal Support, from continuing to unlawfully render court reporting services in California unless and until such corporations comply with all provisions of the Moscone-Knox Professional Corporations Act and the Business and Professions Code, including the essential provision that professional corporations be wholly owned by licensees—a requirement that is commonplace, and enforced, in other California licensed professions.

Indeed, from what we can tell, only in the profession of court reporting in California have these corporate practice laws not been enforced such that corporations with no relationship to California licensees now enjoy a significant share of the market. Law firms cannot, for example, be owned by regular, *i.e.* non-professional, corporations in California, and no such corporations exist. The same is true with doctors, CPAs, and the like. Yet, in the shorthand reporting profession, corporations, like U.S. Legal Support, continue to grow their market share without having to adhere to the myriad regulations affecting licensed CSRs.

As we understand it, there may be a legislative push afoot that purports, but ultimately fails, to address this untenable reality. Specifically, Senate Bill 270 (Mendoza), as it might be amended, would allow foreign corporations, like U.S. Legal Support, to lawfully render professional shorthand reporting services in California merely by registering with the Board. The proposed legislation, however, does not also require that such foreign corporations be wholly owned, or even partially owned, by CSRs. Nor, *critically*, does the proposed legislation expressly define “professional corporation” or “professional services” in a way that would ensure that the business operations of entities like U.S. Legal Support would constitute the rendering of professional shorthand reporting services. Together, these two serious flaws would render the proposed legislation harmful to consumers while not positively addressing

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the problem of unregulated professional practice by foreign corporations like U.S. Legal Support.

First, as we have argued in *Moose v. U.S. Legal Support*, the requirement that professional corporations be wholly owned by licensees is an integral and foundational judgment that the California Legislature made when it decided to allow professional corporations to operate in this State. By requiring licensee ownership of professional corporations, the Legislature ensured that corporations are held to the same professional and ethical standards as individual licensees. Thus, when a licensee-owned corporation commits an act of professional misconduct, state regulatory bodies, such as the CRB, can take disciplinary action against the licenses of that corporation's owners, including fines, suspensions, or revocations. If the licensee ownership requirement were removed, as it might be under SB 270, with no licensee on the hook for professional misconduct, this long-standing principle of individual professional accountability would fall by the wayside in the shorthand reporting profession—and only that profession. The Board should vigorously resist any legislative effort that would result in this outcome.

To repeat, we are aware of no other licensed profession under the Department of Consumer Affairs where corporations would be entirely free to operate in this State without any licensee involvement or accountability. Even in Nevada, for example, where there is firm registration, there is also a requirement that an individual licensee be accountable for the corporation's operations. See NAC § 656.280 ("Each firm must have at least one owner who is a court reporter or a designated representative of the court reporting firm to whom a certificate of completion has been issued . . .").

By way of further example, Texas—the home state of U.S. Legal Support—has laws that likewise illustrate how dramatically SB 270's prospective amendments depart from court reporting licensing customs nationwide. There, even though no individual licensee is on the hook in for corporate professional misconduct, Texas specifically allows its regulator to take action against corporate shorthand reporting firms based upon the individual acts of non-licensee directors. See Texas Gov't Code Sec. 154.111(3) ("[C]onduct on the part of an officer, director, or managerial employee of the shorthand reporting firm . . . violates this subtitle.").

Second, SB 270, if it were amended in such a fashion, falls far short of ensuring that foreign corporations like U.S. Legal Support would even be compelled to register with the Board in the first place. The possible amendments to SB 270 only require "professional corporations" to register. As noted above, however, U.S. Legal Support maintains that it is not a "professional corporation" at all because it independently contracts, rather than directly employs, CSRs to transcribe proceedings. U.S. Legal Support maintains that professional shorthand reporting services are limited to the

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actual transcription of legal proceedings—a task which U.S. Legal Support claims is done only by its independently contracted CSRs—while U.S. Legal Support acts only as a type of “middleman” that performs certain “ancillary” tasks like printing and delivering transcripts. While we believe U.S. Legal Support’s claim lacks merit, we fully anticipate that it and other corporations currently operating outside the law would again raise this claim as a basis for refusing to register with the CRB under the provisions of an amended SB 270.¹ In that very likely event, the Board would be left with the choice of (a) allowing corporations like U.S. Legal Support to continue operating in this State in violation of clear statutes or (b) having to initiate costly and prolonged litigation over whether the language of SB 270 applies to purported “middlemen” like U.S. Legal Support, which is exactly the challenge confronting the Board under current law.

In sum, if SB 270 is amended as described above, then consumers would lose the legal accountability of there being a licensed professional on the hook for corporate performance and misconduct, our client’s longstanding lawsuit that might bring resolution to many of these issues for the Board may be placed in doubt, and the Board would be not any closer to being able to enforce its laws against court reporting firms who claim they are not “professional corporations.” For these reasons, the above-discussed amendments to SB 270 would be an extremely ill-advised and harmful attempt to address a serious problem in the California shorthand reporting profession, and the Board should reject any attempts to amend SB 270 in such a way.²

¹ Notably, Texas has enacted laws to prevent a corporation from arguing that its use of independent contractors shields it from regulation as a “professional corporation.” See Texas Gov’t Code Sec. 154.001(b)(3) (defining “shorthand reporting firm” to mean, *inter alia*, an entity in which “the firm or affiliate office contracts with a resident of [Texas] by mail or otherwise and either party is to perform court reporting services, shorthand reporting services, or other related services wholly or partly in this state”). While we believe that California common law already forecloses corporations, like U.S. Legal Support, from hiding behind independent contractors to escape regulation as a professional corporation, we also believe that the CRB, if it so desired, could adopt by regulation an identical, enforcement-easing definition of “professional corporation.” See *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.

² Underscoring that the author and sponsor may not be intimately familiar with freelance corporate operations, the possible amendments provide in subpart (b)(3) that the new law would apply “for any services produced and billed wholly inside of [California].” It is common, however, for national court reporting corporations to handle production and billing *outside* California, including in their out-of-state corporate headquarters. By its own terms, then, SB 270 likely would not apply to the corporations it intends to reach, and, even if it

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Thank you for your time and attention to our thoughts on this important topic. Please do not hesitate to contact us by phone at (202) 842-2600 or by email at ldayan@bredhoff.com or zista@bredhoff.com if you wish to discuss this matter further.

Sincerely,

/s/Leon Dayan, Esq. (SBN 153162)
/s/Zachary Ista, Esq. (admitted pro hac vice)
Attorneys for Holly Moose

did, the corporations could legally avoid registration with the Board simply by moving production or billing outside California.