



DEPARTMENT OF CONSUMER AFFAIRS

COURT REPORTERS BOARD

OF CALIFORNIA

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Memo

Date: April 2, 2019**To:** Senate Committee on Business, Professions and Economic Development
Assembly Committee on Business and Professions**From:** Yvonne K. Fenner, Executive Officer**Re:** Court Reporters Board Response to Sunset Review Issues

Message

The Court Reporters Board of California provides the following responses to the issues raised by the Committees:

Issue #1: What is the status of the Transcript Reimbursement fund?

Staff Recommendation: *The Board should report at the hearing on the most recent revenue and expenditure projections for the Court Reporters Fund and when transfers to the TRF will resume.*

Board Response: Funded completely from court reporter license fees, the TRF was set up to assist qualified indigent litigants with transcript costs. The fund has two programs. The main fund, or Pro Bono Program, was set up in 1981 and requires indigent litigants to have a pro bono attorney handling the case. In 2011, a two-year pilot project was developed to allow pro per litigants, litigants representing themselves, access to the fund. The pilot project was a success and is now a permanent part of the TRF as the Pro Per Program. Business and Professions Code (BPC) 8030.2 authorizes the Board to transfer funds to the TRF in increments of \$100,000 for a total of \$300,000 annually.

During the Board's last sunset review, the cap for the Pro Per Program was raised from \$30,000 to \$75,000. This became effective January 1, 2017, and the Board was able to process twice the number of claims as in prior years. The Pro Bono Program receives \$225,000 from the total amount transferred.

Another change as a result of the last sunset review was the exclusion of vexatious litigants from the TRF beginning January 1, 2017. As a result of that change, 36 applications were returned, allowing approximately \$9,600 to be distributed to 25 non-vexatious claimants.

BPC 8030.2(a) provides that a transfer to the TRF shall not be made by the Board if the transfer will result in the reduction of the balance of the Court Reporters Fund to an amount less than six months' operating expenses. The Board was unable to transfer funds to the TRF beginning in fiscal year

2017-18. The Board was able to continue to process applications received through July 6, 2017, with the remaining funds previously transferred to the TRF. At the time the TRF ran out of money, the Board's fee increase regulations package was still under Department and Agency review and had not yet been submitted to OAL for review. Therefore, it was deemed prudent to send the remaining applications back to the claimants with information on how to resubmit when the fund re-opened.

The license fee increase portion of the regulations package was approved and became effective January 1, 2019. The latest revenue and expenditure projections indicate that a transfer can be made in July 2020. The Board is working with DCA Budgets to closely follow revenue projections monthly as the license fee increase goes through its first year of implementation. By February of 2020, we will have a full year of data with the increase in place, which will allow us to better project when a transfer could be made. The intention is to transfer \$100,000 as soon as the Board is able to do so without compromising the required six months' operating expenses reserve.

Issue #2: Should certified shorthand reporters be allowed to use "voice writing" systems?

Staff Recommendation: *The Business & Professions Code should be amended to clarify that voice writing is authorized as a method of shorthand reporting. Further, the Business and Professions Code should be amended to require a certified shorthand reporter to demonstrate competence, through the practical examination, in whichever or both forms of shorthand reporting that the reporter would then be authorized to use under the certification.*

Board Response: At its July 2018 meeting, the Board was able to view a demonstration of voice writing realtime technology. It became apparent to the Board that voice writing and steno writing are the same skill but using differing technologies to capture the shorthand. Because of the similarity, voice writers will be able to take the exact same examination in order to become certified.

The Board originally proposed testing current licensees who want to switch from steno writing to voice writing but discovered it does not have legislative authority to do so. Legislative staff recommends demonstrating competency in either or both methods, grandfathering in all current licensees as steno writers. A legislative change will be needed to affirm that current certificate holders will have to retest the skills portion of the exam if they wish to change reporting methodologies.

The Board is happy to place the legislative staff recommendations on the next meeting agenda for consideration.

Issue #3: Should the Board require certified shorthand reporters to meet new continuing education requirements?

Staff Recommendation: *The Board should report to the committees on what information it believes should be included in a continuing education requirement, who would provide such continuing education, at what cost [to] certified shorthand reporters, and whether there are any other means available to the Board to assist certified shorthand reporters in keeping apprised of changes in law or regulation.*

Board Response: A continuing education requirement of 30 hours over a three-year period, which is similar to the requirements to maintain national certification, is the Board's recommendation. Additionally, 10 of those hours should be ethics courses. The Board suggests a mandate from the Legislature requiring proof of completion be sent to the Board as a condition of license renewal. The Board will track the continuing education with existing staff.

Because there is already a requirement for continuing education for national certification as well as for official court reporters in California, there are many companies providing classes offered for continuing education credit. The cost for continuing education courses varies from conference/seminar registration for state and/or national events, to free tests given on material provided by the national association. In addition to allowing for a discretionary hardship waiver, the Board would work with SOLID, DCA's training unit, to develop testing materials on Board publications such as their newsletter or website.

The Board keeps its website updated with all changes to laws and regulations as well as publishing a newsletter twice a year with such changes. The Board also distributes news of law and regulation changes via its email subscription list. All of these alternate methods of education are voluntary and already in place, suggesting the mandatory component would be necessary to ensure all licensees are up-to-date.

Issue #4: What is the Board's plan for implementing an online skills examination?

Staff Recommendation: *The Board should report to the committees on its efforts to implement online testing, including the time frame for implementation, projected costs/cost savings, the procedures that will be used to ensure that the online test is secure, and protections that will be used to prevent fraudulent test taking.*

Board Response: The Board is finalizing the contract to implement online skills testing and should be able to offer an online option to candidates beginning with the July 2019 testing cycle. This is the culmination of work done by a task force made up of educators and court reporters from across the state. The Board reviewed their findings and adopted a plan to move forward at their July 2017 meeting. Extensive vetting was done with the testing vendor to ensure that the test will be secure. In addition to the current methods used to verify candidate identification, the online test will be monitored by a live proctor. Candidates will need a webcam that can pan the room to ensure only the candidate is present. Once that and the identification is verified, the webcam will be placed to show the candidate's hands. Candidates will have a set amount of time to upload their notes after reporting the examination, after which they will complete the editing process and upload a final transcript. As is the current practice, candidates that pass the exam will have their notes reviewed.

The Board will save between \$50,000 and \$75,000 per year by moving the skills portion to an online format. That represents the cost of the hotel contract as well as staff travel costs. There will also be a cost savings to the candidates who will not have travel and hotel expenses.

Issue #5: Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any potential implications for licensees working in the shorthand reporting profession as independent contractors?

Staff Recommendation: *The Board should inform the committees of any discussions it has had about whether the Dynamex decision may somehow impact the current practice of shorthand reporting.*

Board Response: The Board has not discussed the Dynamex decision. The current business practice in the freelance arena is for court reporting firms to hire court reporters as independent contractors, and the Dynamex decision will have an impact on that business model. However, the Board has no jurisdiction over whether a firm hires court reporters as employees or as independent contractors.

Issue #6: Is the Board able to enforce court reporting statutes against foreign court reporting corporations?

Staff Recommendation: *The Board should advise the Committees as to whether the Board believes that the unpublished appellate ruling in the Holly Moose case indicates that the courts would revisit the Board's authority over out-of-state corporations that arrange shorthand reporting services and whether the Board intends to begin taking disciplinary action against out-of-state corporations for unlicensed practice.*

Board Response: No, the Board is not able to enforce the entirety of court reporting statutes against foreign court reporting corporations, but it can now bring a civil action against them in some instances. Due to the successful passage of Board-sponsored AB 2084 (Kalra), BPC section 8050 was added to the Board's practice act. BPC section 8050 lists those, to include non-licensee-owned firms, that shall not charge for a transcript formatted in violation of the Minimum Transcript Format Standards, which are defined in regulation. Nor may they charge any fees for court transcripts other than the fees set out in the Government Code. Additionally, all transcripts must be made available to all parties at the same time, and all parties must be notified of a request for preparation of all or any portion of a transcript, including excerpts and expedites.

While the remedy for these violations is civil litigation rather than an administrative action directly from the Board, it is now clear that the requirements of this section apply to out-of-state corporations, and there is a civil remedy for violation. As with all enforcement decisions, the Board would investigate and evaluate each complaint individually.

As far as being able to enforce the remaining body of law that pertains to court reporting against foreign court reporting corporations, the Board currently lacks jurisdiction to enforce its laws against foreign corporations because the BPC does not currently authorize "foreign professional corporations" to perform court reporting services (*Court Reporters Board of California v. U.S. Legal Support*, Corrected Final Statement of Decision, 111CV197817, pp 5-6, June 21, 2012).

The Board is currently in a powerless position where it cannot enforce court reporting statutes against foreign court reporting corporations because they do not meet the definition of "foreign

professional corporation” as set out in Corporations Code section 13401(c), yet the Board cannot cite them for unlicensed activity either because there is no requirement for businesses to be licensed with the Board.

The Board cannot speculate based solely upon the unpublished appellate ruling in *Moose v. U.S. Legal* whether the courts would revisit the Board’s authority over out-of-state corporations. The Board would rather obtain clarity from the Legislature than use its scarce resources to fund another lawsuit in an unpredictable attempt to clarify jurisdiction. To enforce all court reporting laws universally, the Board would need a statute specifically authorizing foreign professional corporations to perform court reporting services.

Some members of the industry have attempted to characterize the Board’s lack of jurisdiction as a lack of willingness to take action against out-of-state corporations for unlicensed practice. Current law is not specific enough for the Board to successfully pursue such an action. Existing law is silent as to foreign professional corporations, neither restricting them from practice nor granting them authority to do so.

To enable the Board to enforce its court reporting statutes and regulations against foreign court reporting corporations, the Board needs a statute added to Article 5, “Shorthand Reporting Corporations” of Chapter 13, of Division 3 of the BPC authorizing “foreign professional corporations” to perform court reporting services. Clarification of jurisdiction from the Legislature would greatly benefit the California consumer, who would then be able to turn to the Board for problems if needed.

Issue #7: What is the status of BreZE implementation by the Board?

Staff Recommendation: *The Board should update the Committees about the current status of its Organization Change Management Process and the most-recent timelines for replacing its existing information technology system.*

Board Response: Facilitated by SOLID, DCA’s training unit, the Board has completed all of the mapping of its business processes. In the next step, DCA will be using the business mapping to identify the Board’s business requirements. The required Project Approval Lifecycle (PAL) approval process for all technology projects is underway. The Board and DCA have begun drafting the Stage 1 documentation on schedule as of February 2019. As the PAL process moves forward, the Board looks to join other boards to gain efficiencies in the procurement process and identify cost sharing opportunities. The current schedule is as follows:

PAL Stage 1 – Begins 2/2019

PAL Stage 2 – Begins 5/2019

PAL Stage 3 – Begins 9/2019

PAL Stage 4 – Begins 12/2019

Project/Development Begins – 6/2020

Issue #8: Necessary technical changes to Chapter 13 of the Business and Professions Code (Section 8000 et seq.)

Staff Recommendation: *In order to simplify the administration of the TRF, Section 8030.6 of the Business and Professions Code should be amended to clarify that the Pro Per program should also operate on a fiscal year basis.*

In order to clarify the Board's authority to impose a separate fee for each portion of the examination, Business and Professions Code Section 8031(b) should be amended to clarify the current format of the examination.

Board Response: The Board is in agreement with the staff recommendations.

Issue #9: Should the licensing and regulation of shorthand reporters be continued and be regulated by the Board?

Staff Recommendation: *Recommend that the licensing and regulation of shorthand reporters continue to be regulated by the Board in order to protect the interests of the public and be reviewed once again in four years.*

Board Response: Court reporters play an essential role in our judicial system as a neutral third party who creates verbatim transcripts of proceedings in a timely fashion, thus ensuring the appeal rights of all litigants. Under the watchful eye of the Board, court reporters do their best work, and, should any fall short, the Board is available to step in and correct the issue and work to ensure it does not happen again.

The Board embraces its consumer protection mission and has worked hard to parlay scarce and limited resources into the most effective operation possible. The Board works hard to balance the multiple consumer interests that would otherwise be left to the entity with the deepest pockets and strongest power, despite a right or wrong position. The current Board members are actively engaged in their policy-setting duties as well as the enforcement matters that rise to their level. The current Board should continue its dedicated oversight of the court reporting industry for the protection of California consumers.