

**BACKGROUND PAPER FOR THE
COURT REPORTERS BOARD**

Joint Oversight Hearing, March 5, 2019

**Senate Committee on Business, Professions and Economic Development
and
Assembly Committee on Business and Professions**

**BRIEF OVERVIEW OF THE
COURT REPORTERS BOARD OF CALIFORNIA**

Court reporters are highly trained professionals who stenographically preserve the words spoken in a wide variety of official legal settings such as court hearings, trials, and other pretrial litigation-related proceedings, namely depositions. Court reporters work in courtrooms as official reporters or in the private sector as freelance reporters who provide deposition services. Court reporters are officers of the court and their competence, impartiality, and professionalism must be beyond question. A complete and accurate transcript of the proceedings made by an impartial third party is the cornerstone for all appeal rights. These transcripts, which include testimony given under oath, are relied upon by the consumer as an accurate source of information. The Court Reporters Board of California was last reviewed in 2016.

Courts of appeal, particularly for criminal cases, rely exclusively upon written briefs and written transcripts of court proceedings to determine whether there were errors in the trial's procedure or errors in the judge's interpretation of the law. A conviction can stand or fall based entirely upon what was said by a witness, a lawyer, a juror or a judge—testimony that is solely reflected in the written transcript. In civil cases, millions of dollars, lifelong careers, or the fate of business enterprises can hinge on what was said or not said in a deposition or at trial. Furthermore, the testimony in civil and criminal cases is often filled with technical terminology. No matter how obscure or technical, such jargon must be verbatim in the written transcript and court reporters ensure its accuracy. Additionally, the practice of court reporting is dictated by many statutes and regulations. In the private sector, freelance court reporters are faced with numerous and complex ethical issues as these licensees seek to maintain their strict neutrality while working in settings that frequently involve contentious, high-stakes litigation.

The Certified Shorthand Reporters Board, now known as the Court Reporters Board of California (Board), was established in 1951 by the Legislature to protect consumers from incompetent practitioners. The mission of the Board is to protect the public's health, safety and welfare by ensuring the integrity of judicial records through oversight of the court reporting profession. The Board carries out this mission by testing, licensing, and disciplining court reporters who use the title Certified Shorthand Reporter (CSR), and by recognizing the schools of court reporting that meet state curriculum standards. By statute, the use of the acronym CSR is restricted to those individuals who have a Board-issued license. In California, a person must be licensed to work as a court reporter in state courts (official reporter) or to act as a deposition officer (freelance reporter). Freelance reporters provide services as individual contractors and/or through court reporting firms.

Codes governing the Board and the licensure of CSRs can be found in the Business and Professions Code Section 8000 et seq. Codes governing deposition/freelance reporter practices in the legal system can be found in the Code of Civil Procedure Section 2025 et seq.

In fiscal year 2017-18, there were 7,661 licensed CSRs in California, of which 5,886 CSRs are active and in good standing.

The Board also has oversight over schools offering court reporting education. Although the Board “recognizes” schools, there is no statutory authority for licensure of the schools. Business and Professions Code 8027 requires court reporting schools to be approved by the Board and the Bureau for Private Postsecondary Education, be a California public school, or be accredited by the Western Association of Schools and Colleges. Any school intending to offer a program in court reporting must notify the Board within 30 days of the date on which it provides notice to or seeks approval from the California Department of Education, Bureau for Private Postsecondary Education, the Chancellor’s Office of the California Community Colleges, or Western Association of Schools and Colleges. The Board then reviews the proposed curriculum and provides the school tentative approval or denial within 60 days. With an approval, the school then applies for provisional recognition by the Board. Once granted, the school must operate continuously for no less than three years during which time the school must have at least one person successfully complete the course and pass the CSR examination. Upon completion of those provisions, the school may be granted full recognition. The Board can discipline schools up to and including removing recognition. The Board can also issue citations and fines to schools not in compliance with Board rules.

Only court reporting schools recognized by the Board can certify students to sit for the CSR license examination. There are nine schools of court reporting recognized by the Board—seven public schools and two private schools. Since the Board’s last review in 2016, four private schools have closed.

The Board oversees the Transcript Reimbursement Fund (TRF), a special fund fully financed by a portion of court reporters' licensing fees. The TRF consists of a Pro Bono program (used to reimburse costs incurred by attorneys representing litigants at no cost to the litigant) and a Pro Per Program (used to reimburse costs for litigants representing themselves), both of which ensure indigent litigants have access to court reporting transcripts for civil cases. Historically, TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified non-profit entities, and so the Pro Per Program was implemented in order to maximize the benefits of the TRF and expand access to justice to those most in need. The Pro Per Program is capped at \$75,000 per calendar year and each case is capped at \$1,500.

The current Board mission statement, as stated in its 2019-2023 Strategic Plan, is as follows:

The Board’s mandate is to protect the consumers of the state. It does this by: 1) administering a minimum level of competency test to determine entry level abilities, 2) regulating the minimum curriculum which court reporting schools and programs must offer, and 3) disciplining licensees when necessary.

Board Membership and Committees

The Board is comprised of five members; two licensed members and three public members. Three of the members are appointed by the Governor, two of which is are licensed. One public member is appointed by the Senate Committee on Rules and one member is appointed by the Speaker of the Assembly. All members serve four-year terms. The members appointed by the Governor may serve up to a 60-day grace period at the end of their term. The members appointed by the Speaker of the Assembly and the Senate Rules Committee have up to a one-year grace period at the end of their term. There is a maximum of two consecutive full terms for appointments. There is currently one licensee vacancy.

Board members receive a \$100-a-day per diem for Board meetings. The Board meets three to four times per year. All Committee meetings are subject to the Bagley-Keene Open Meetings Act.

The following is a listing of the current Board members and their background:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
<p>Davina Hurt, Board Chair, Public Member Ms. Hurt has practiced law in California since 2005 with a focus on property and corporate law in her private practice subsequent to working for Heller Ehrman White and Mcauliffie, L.L.P. She earned her J.D. at Santa Clara University School of Law with a specialization in International law and has a B.A. in History and Political Science with a minor in Biology from Baylor University. Ms. Hurt served as a judicial extern to the Honorable Judge James Ware for the United States District Court for the Northern District of California in San Jose. Ms. Hurt was elected to serve on the City Council of Belmont in 2015 after serving as vice chair of the planning commission. Ms. Hurt is honored to be a member of the board of directors for the Samaritan House, the Peninsula Traffic Congestion Relief Alliance, San Mateo County Emergency Services Council, Notre Dame de Namur University Advisory Board, Audit Committee for the City of Belmont and South Bayside Waste Management Authority.</p>	7/9/2015	6/1/2019	Speaker of the Assembly
<p>Toni O'Neill, Vice Chair, licensed member Toni O'Neill was appointed by the Governor to the Court Reporters Board as a licensee member on August 7, 2010. She was reappointed to a four-year term expiring June 1, 2021. She had previously been a licensee member of the Court Reporters Board from 2006 to 2009.</p>	7/27/2017	6/1/2021	Governor

<p>Ms. O'Neill is currently a freelance reporter focusing on pro tem work for the courts. Prior to this, she worked in the positions of official reporter, senior reporter, and supervising reporter during her 27-year tenure with Riverside Superior Court. Ms. O'Neill is one of the first official reporters in the state of California to provide realtime services for use by judges and attorneys during courtroom proceedings and is using that experience to now provide training to both official and freelance reporters. Prior to 1990, Ms. O'Neill worked as a freelance court reporter, which included being an owner/partner of a deposition agency for seven years in the Riverside area. O'Neill is a member of the National Court Reporters Association and past president of the California Court Reporters Association and has served on various committees for both professional associations. Ms. O'Neill is a registered Democrat.</p>			
<p>Elizabeth Lasensky, Public Member Elizabeth Lasensky was appointed to the Board by the Senate Rules Committee in 2007 to a term which expired June 1, 2015. She was reappointed to a term expiring June 1, 2019. Ms. Lasensky has a BA in English and a Masters in Library Science. After more than 20 years as an administrator at Stanford University, Elizabeth retired and moved to Davis in 2013. She is active with Yolo MoveOn, Yolano Climate Action, the University Farm Circle, is a member of the Davis Odd Fellows Lodge, and serves on the board and Advocacy Committee for the Yolo County Healthy Aging Alliance. Ms. Lasensky is a Democrat.</p>	3/9/2016	6/1/2019	Senate Rules Committee
<p>Carrie Nocella, Public Member Ms. Nocella has been director of government relations at the Disneyland Resort in Anaheim since 2007. She was an attorney at the Placer County Public Defender's Office from 2005 to 2007, at Murphy, Pearson, Bradley and Feeney from 2004 to 2005, and at Kershaw, Cutter and Ratinoff LLP from 2002 to 2004. Ms. Nocella earned a Juris Doctor degree from the University of the Pacific, McGeorge School of Law. Ms. Nocella is a Democrat.</p>	6/117/2016	6/1/2020	Governor
<p>Vacancy, Licensed Member</p>			Governor

The Board has no active standing committees. All committees of the Board are formed as needed and its members are appointed by the Board Chair. The Board has not had any meetings that had to be canceled due to a lack of a quorum in the last three years.

Staffing Levels

The Board's Executive Officer (EO) is appointed by the Board. The current EO, Yvonne Fenner, has served as the EO for over nine years. For FY 2018-19, the Board has 4.5 authorized positions and 1.5 temporary help positions: in addition to the EO, one and half persons are dedicated to Administrative, Board and Committee Outreach, School Compliance, and the Transcript Reimbursement Fund; one staff person is dedicated to Enforcement; one and a half staff persons are dedicated to Licensing and Exams; and two temporary help positions to help proctor examinations. These proctors are typically hired 12-14 hours per year and are not counted towards the 4.5 authorized positions.

Fiscal and Fund Analysis

The Board is completely funded by examination and licensing fees collected from applicants and licensees. The Board receives no revenue from the State's General Fund. License renewal is the Board's largest source of revenue, accounting for 93% of the operating fund. Another 3% comes from examination and licensing application fees. An additional 1% is comprised of payments of citations and fines and a final 2% is from delinquent fees.

The Board's license renewal fee was previously set at the prior statutory cap of \$125, which was established when the Board was created in 1951. The Board has recently adopted a regulation doubling the license renewal fee to \$225, effective January 1, 2019, pursuant to legislation raising the statutory fee cap (AB 2192, Salas, Statutes of 2016). In the proposed regulation to increase the license renewal fee, the Board also proposed to raise the fee examination fees to \$75 per section (there are three sections to the examination). However, the Office of Administrative Law rejected that portion of the regulatory package, because it interprets statute to only allow two examination fees – one for the written examination and one for the practical examination – whereas the Board proposed to charge a \$75 fee for each of the two written examinations (English proficiency and professional practices) and a \$75 fee for the practical examination.

In 1981, freelance reporter rates were deregulated, and as part of that deal, the profession initiated legislation that created the Transcript Reimbursement Fund (TRF) to fund payment of court transcripts for indigent litigants in civil matters. By law, a minimum of \$300,000 of the Board's total revenue must go to the TRF each July 1, unless the Board has less than six months of reserves. The Board typically does not use the full \$300,000 allotment for the TRF as soon as it is made available. Instead of transferring the full amount, only to return unused funds later, the Board chooses to transfer \$100,000 at a time to maintain the greatest flexibility in funding.

The total resources, including beginning balance and all revenues, anticipated by the Board is \$1.3 million for Fiscal Year (FY) 2018-19 and \$1.6 million for 2019-20. However, excluding the beginning balance, anticipated revenue is \$873,000 for FY 2018-19 and \$1.5 million for 2019-20. Operating costs have steadily increased each year and, as a result, the Board has experienced a structural deficit which will lead to a decreasing reserve. In 2017-18 the Board had a reserve equal to 4.3 months of expenditures, whereas this decreased to 0.8 months in 2018-19. Due to the recently adopted increase in

the license renewal fee, the Board projects significantly increased revenues in 2019-20 and a reserve increasing from 3.9 months in that year to 6.6 months by 2021-22.

There is no mandated reserve level for the Board; however, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to

Fee Schedule and Revenue (Revenues in thousands)							
Note: This schedule does not reflect the recently adopted increase in the License Renewal Fee							
Fee	Current Fee Amount	Statutory Limit	FY 2014/15 Revenue	FY 2015/16 Revenue	FY 2016/17 Revenue	FY 2017/18 Revenue	% of Total Revenue
Change of Address	\$20	\$50					0.00%
Duplicate License Certificate	\$5	\$10					0.00%
Duplicate Wall Certificate	\$5						0.00%
Citations and Fines	Various		\$10	\$12	\$14	\$11	1.26%
Application for Examination	\$40	\$40	\$6	\$6	\$5	\$3	0.56%
Initial License Fee	\$125		\$10	\$8	\$7	\$8	0.88%
Dictation Exam Fee	\$25	\$75	\$10	\$11	\$15	\$9	1.23%
English Exam Fee	\$25	\$75	\$7	\$7	\$6	\$4	0.64%
Professional Practice Exam Fee	\$25	\$75	\$5	\$6	\$6	\$3	0.57%
Initial License Fee ½	\$63				\$1	\$1	0.07%
Annual Renewal Fee	\$125	\$125	\$880	\$865	\$847	\$826	92.90%
Delinquent Renewal Fee	\$63		\$19	\$17	\$16	\$17	1.85%
Cost Recovery	Various						0.00%
Dishonored Check	\$25						0.04%
DOJ – Fingerprints	\$32						0.00%
FBI – Fingerprints	\$17						0.00%
Total			\$947	\$932	\$917	\$883	100%

six months of reserve. Maintaining an adequate reserve of at least six months provides for a reasonable contingency fund so that the Board has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

Fund Condition (in thousands)						
<i>Note: This schedule does not reflect the recently adopted license fee increases.</i>						
	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
Beginning Balance	\$1,136	\$1,141	\$1,125	\$604	\$329	\$22
Revenues and Transfers	\$951	\$938	\$629	\$886	\$885	\$885
Total Revenue	\$2,087	\$2,079	\$1,754	\$1,490	\$1,214	\$907
Budget Authority	\$950	\$1,117	\$1,092	\$1,083	\$1,098	\$1,098
Expenditures	\$953	\$944	\$1,150	\$1,161	\$1,192	\$1,214
Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Accrued Interest, Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Loans Repaid From General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Fund Balance	\$1,134	\$1,134	\$604	\$329	\$22	\$-307
Months in Reserve	14.4	11.8	6.2	3.3	0.2	-3.0

For the last four fiscal years, the Board has expended approximately 21% of its budget on enforcement, 22% on examinations, 14% on licensing, 26% on administration, and 17% on DCA pro rata. These amounts do not include transfers to the TRF.

The Board seeks cost recovery under Business and Professions Code Section 125.3. The Board also has authority to seek cost recovery as a term and condition of probation. In revocation cases, where cost recovery is ordered, but not collected, the Board will transmit the case to the Franchise Tax Board for collection.

Licensing, Qualifications, and Examinations

The primary objective of licensing court reporters is to ensure that consumers receive accurate and timely service from court reporters who, through examination, have demonstrated a minimum level of competency. The Board provides public protection by ensuring licenses or registrations are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial. In FY 2017-18, the Board issued 87 new licenses and processed 6,436 license renewals. Licenses are renewed annually and are due on the last day of the licensee's birth month. The Board is currently processing all applications and renewals within two to five business days.

All applicants for licensure must pass the CSR examination. The vast majority of applicants qualify to take the CSR examination by completing a training program through a recognized California court reporting school. If qualifying through a court reporting school, the applicant must also have passed one speed examination, known as a qualifier.

A variety of basic information is required to be submitted by examination applicants, including the nature and length of any work experience that can be used to establish the minimum one year (1,400 hours) of qualifying work experience. The Board considers work experience from the military as an acceptable form of work experience for the license application. However, no applicants have listed military education, training, or experience on their license applications during the period since the last sunset review. The Board accepts military experience to qualify for licensure and has waived fees for one licensee pursuant to Business and Professions Code Section 114.3.

Level and location of educational background is also requested, as is information regarding court reporting certificates from other organizations or states and any criminal convictions. The Board requires primary source documentation. Supporting documentation via copies of certificates is required, and work experience must be verified on the official letterhead of the employer. The Board also uses fingerprints to check the Department of Justice database for prior criminal history. If applicants are or have been licensed in another state, history of disciplinary actions is checked by contacting the licensing agency of that state. There are no differences in the requirements for out-of-state and out-of-country applicants. All applicants must complete the same requirements in order to obtain licensure.

Applicants must pass all parts of a three-part examination consisting of two written portions and one practical or skills portion. The first written portion is Professional Practice, a 100-item multiple choice examination which tests knowledge of medical and legal terminology, ethics and code requirements. The second written portion is English, which is another 100-item multiple choice examination which tests minimum competency in grammar, spelling and punctuation. Both written portions are administered via a computer-based testing vendor. In 2002, the Board began offering the license examination three times each year in California. Approximately 300-400 applicants take the examination each year (although this includes individuals repeating failed portions of the exam). The Board is experiencing no issues affecting the processing of applications or administration of examinations.

Applicants must qualify to sit for the examination through one of five methods:

1. One year of experience (a minimum of 1,400 hours) in making verbatim records of depositions, arbitrations, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records. Applicants can gain these hours as a hearing reporter.
2. A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the Board contained in Title 16 of the California Code of Regulations (CCR) Section 2420.
3. A certificate from the National Court Reporters Association (NCRA) demonstrating proficiency in machine shorthand reporting.
4. A passing grade on the California state hearing reporter's examination.

5. A valid certified shorthand reporter's certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

Applicants have three years to pass all three parts of the examination before they are required to take the entire examination package again. They may take or retake the failed portions up to three times per year. The Executive Officer has the delegated authority to extend the three-year pass requirement for up to one additional year for good cause. Out-of-state applicants may qualify for the examination by holding a certificate from the NCRA, which requires passing a national examination, but are still required to take the California examination.

School Approvals

Business and Professions Code Section 8027 requires court reporting schools to be approved by the Bureau for Private Postsecondary Education, be it a California public school, or accredited by the Western Association of Schools and Colleges. Any school intending to offer a program in court reporting has to notify the Board within 30 days of the date on which it provides notice to or seeks approval from the California Department of Education, the Bureau for Private Postsecondary Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges. The Board then reviews the proposed curriculum and provides the school tentative approval or denial within 60 days. The school then applies for provisional recognition by the Board. Once granted, the school must operate continuously for no less than three years during which time the school must have at least one person successfully complete the course and pass the CSR examination. Upon completion of those provisions, the school may be granted full recognition.

There are nine schools offering court reporting programs in the state of California. Schools are asked to send written materials to the Board annually as part of the ongoing review process. In previous years, approximately four onsite compliance reviews are conducted per year, resulting in a visit to each school from the Board approximately once every four years. The onsite reviews allow Board staff to confirm the veracity of the written materials submitted annually by looking at the files maintained by the schools. Additionally, the Board can verify that records are being kept per statutory requirements. Spot checks of the student and faculty records are conducted, as well as student interviews. No onsite visits have been conducted since the last sunset review period, due to budgetary constraints.

Four schools have closed since the last sunset review report, all of them private. In December of 2016, the U.S. Department of Education ceased recognition of the Accrediting Council for Independent Colleges and Schools as an agency that can provide accreditation for private schools. Without this recognition by the Department of Education, schools accredited by the Accrediting Council for Independent Colleges and Schools were no longer able to offer financial aid. The schools that closed were unable to find an alternate accrediting body, resulting in a subsequent closure.

Continuing Education

Continuing education is intended to ensure that the reporter maintains a high level of professionalism, including technical skills and knowledge of ever-changing legal statutory codes, thereby protecting the consumers' interests in the judicial setting. Currently only official reporters are required by the Judicial Council to take continuing education. There is no such requirement for freelance reporters. Despite the Board's attempt to inform all court reporters of changing laws and regulations, reporters are oftentimes

too busy with their work to stay up to date on changes in the field. In addition, the advent of new and emerging technologies has allowed freelance reporters to work in virtual isolation, further complicating the Board's attempts at uniformity of knowledge and requirements within the field. The Board contends that mandatory continuing education for all court reporters would ensure that a minimum level of competency is achieved and that consumers are protected in all judicial venues of California, not simply the courts, thereby enhancing public protection. However, attempts to require continuing education have historically been vetoed, including AB 2189 (Karnette) of 2008, SB 671 (Price) of 2011, and most recently, AB 804 (Hernandez) of 2015, which would have required mandatory continuing education for renewal of a court reporting license. The Board continues to support efforts to require continuing education.

Enforcement

The Board is staffed with one full-time enforcement analyst performing all enforcement activities. The Board receives roughly 100 complaints per year. The majority of complaints requiring additional investigation involve a question of the accuracy of a transcript of legal proceedings or untimeliness of transcript delivery. Additionally, the Board places a great deal of emphasis on prevention of complaints through outreach to licensees through newsletters and on the Board's website, seminars for licensees and students, and responding to inquiries regarding the complaint process, license status, and the laws and regulations relating to the practice of court reporting. When appropriate, enforcement staff resolves cases through informal mediation. The Board has found that not only does this quicker resolution save time and money for both parties, but it allows the licensee to continue practicing while the issue is resolved. Most licensees are cooperative once the Board outlines the penalties for noncompliance. The Board has a target of 60 days for intake and investigation, with an average time of five days to assign a complaint to an investigator. This target is being met by Board staff. The Board has a target of 540 days for formal discipline, the average number of days for completion of the entire enforcement process for cases resulting in formal discipline. The Board's average number of days for formal discipline is 662, meeting the target 29% of the time.

The Board notes that the timeline to close these cases is heavily dependent on the Attorney General's Office. The Board has seen the number of complaints remain relatively stable. However, the type of cases have been more complicated, thus increasing the average time to close as more in-depth investigation is necessary. Most complaints come from members of the public, while additional complaints come from governmental agencies and other licensees or professional groups. The number of cases remains small. The low number is attributed to two factors: first, court reporters work in the legal arena and are more aware of the law and the consequences for acting outside the law; second, the license test is quite difficult, and most licensees are very careful to protect their license and keep it in good standing. The Board uses the complaint prioritization guidelines from the DCA. Under this model, enforcement staff reviews complaints upon receipt to determine the best course of action based on the priority assigned. The only mandatory reporting requirement is on the license renewal form on which licensees are required to self-report any convictions. The Board does not have a statute of limitations with regards to enforcement.

The Board continues to receive complaints regarding non-licensee owned firms, including out-of-state firms. The complaints include transcripts being reformatted outside the minimum transcript format standards, overbilling for court transcripts, delivering transcripts to one side before the other, providing rough draft or expedited transcripts to one side without notifying the opposing counsel, and violations of the gift-giving regulations.

Newly enacted legislation, AB 2084 (Kalra, Statutes of 2018) extends a prohibition on certain practices regarding transcripts to non-licensed entities. Specifically, this law prohibits unlicensed individuals or entities providing court reporting services from requesting compensation for a transcript that is not in compliance with the minimum transcript format standards, requesting compensation for a certified court transcript using fees not set in statute, providing a transcript in advance to one party over another, or failing to notify a party of a request to prepare any portion of a transcript including rough drafts and expedites. A violation is punishable by civil fine not to exceed \$10,000 per violation.

Cite and Fine

Many factors go into the decision of whether to issue a citation or fine, including the violation itself, mitigating circumstances, and prior issues. The Board has not increased its maximum fines to the \$5,000 statutory limit. Cite and fine is used to gain compliance with the statutes and regulations governing court reporting, not as a form of punishment. The average fine pre-appeal is \$1,223. Upon appeal, the average drops to \$1,160. The most common violations are untimely delivery of transcripts, failure to produce a transcript, working without a license (e.g. failing to renew on time) and unprofessional conduct. The types of violations under unprofessional conduct include violations of the minimum transcript format standards, acting without impartiality or with bias toward one party, and gross negligence or incompetence. All disciplinary actions are public, including citations and fines, on the Board website.

Cost Recovery and Restitution

The Board's policy is to request cost recovery in every instance where the case merits recovery and is ordered by the administrative law judge. Typically, the amount ordered in a cost recovery encumbers costs for the Attorney General's Office only. The Board is generally successful in collecting these amounts. To obtain cost recovery, the Board works with probationers to set up a payment plan over time, rather than demanding the payment in full at the time of the decision. Cost recovery is always initially requested, but on a very rare occasion the Board will abandon the request as part of a stipulated settlement. The Board does not use the Franchise Tax Board's intercepts to collect cost recovery. There is no statutory authority for Board-ordered restitution. However, the Board has maintained a proactive stance in assisting consumers in receiving money owed to them. Claims are based on fees charged by official court reporters for transcripts, which are regulated by law in Government Code Section 69950. There are no statutory fee requirements for work performed in a deposition or hearing setting by a freelance reporter.

The Board has participated in updating and standardizing its enforcement reporting as a part of the Consumer Protection Enforcement Initiative. As demonstrated in the Board's performance measures, enforcement targets have been set and progress is monitored to ensure goals are achieved.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions in 2016. During the previous sunset review, the Committee staff raised 10 issues and provided recommendations. Below are actions which have been taken over the last two years to address the issues. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under the *Current Sunset Review Issues* section.

Issue #1: Are current license fees sufficient to maintain the Board’s long-term fiscal solvency?

Staff Recommendation: The Committees may wish to consider amending BPC Section 8031 to increase the statutory fee cap for license fees from \$125 to \$250, in order to ensure that the Board retains its solvency and can meet its statutory duties, including funding the TRF. In addition, the Board should explain to the Committees if it is considering raising other fees, such as examination fees, that are not currently at their statutory caps.

Board Response: *The Board is currently pursuing an increase to license and examination fees via the regulatory process. A regulatory package that would increase license renewal fees from \$125 to \$225 and examination fees from \$25 to \$50 for each portion of the three-part exam was submitted to the Office of Administrative Law (OAL) in April of 2018. The Board voted on the final regulatory package at its July 2018 meeting, and the final package was submitted to the OAL for review in October. It is anticipated the increase will be effective by January 1, 2019.*

(Staff notes that the Office of Administrative Law rejected one portion of the proposed regulation, to increase the examination fee, but approved the rest of the regulatory package.)

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

Staff Recommendation: The Committees may wish to consider amending the Pro Bono Program to allow for a review at the end of the Pro Bono Program’s fiscal year, June 30th, to see if there are unspent funds in the Pro Bono Program from that year and authorize the Board to transfer leftover funds to the Pro Per Program, which runs on a calendar year. The Legislature could also consider raising the Pro Per Program’s statutory cap of \$30,000 per year in order to accommodate more flexibility in how the TRF funds are disbursed. In addition, the Committees should consider whether the Board should be able to transfer less than \$300,000 to the TRF at the beginning of the fiscal year, depending on the TRF fund balance in order to provide the Board with greater flexibility. Lastly, the Committees may wish to require the Board to establish a review program to verify the financial status of applicants, and should explore ways to ensure that recipients of TRF Pro Per funds are deserving of those funds. For example, the Board could consider ways to limit access to certain types of litigants, such as vexatious litigants who are identified by courts as bringing frivolous lawsuits.

Board Response: *The Board believes the current level of \$300,000, \$75,000 of which is earmarked exclusively for the Pro Per Program, is the appropriate funding level. The program is currently closed because the Board’s fund reserves fell to below six months beginning with the current fiscal year.*

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

Staff Recommendation: The Committees may wish to consider deleting the sunset date for the Pro Per Program if the funding issues can be resolved to ensure the program’s solvency. The TRF is a valued program serving the indigent community and that it is vital for the court process to have an extension of the program, thereby increasing access to justice for California’s most vulnerable citizens. Has the Board considered developing an alternative funding source that is not statutorily tied to the license renewal fees?

Board Response: *The Board believes the Pro Per Program is one way to help ensure access to justice. However, the funding remains an issue.*

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

Staff Recommendation: The Board should continue to monitor the progress of SB 270, which was granted reconsideration to be heard by the Assembly Committee on Business and Profession, and inform the Committees of any issues as the bill moves forward. The Board should explain to the committee if it has considered any solutions to the issues of foreign corporations operating in California without Board oversight.

Board Response: *The Board sponsored legislation in 2017, AB 1660 (Kalra) to implement firm registration. This bill was vetoed by the Governor. The Board sponsored similar legislation in 2018, AB 2084 (Kalra), which was amended to take a more narrow approach to enforcement vis-à-vis out-of-state corporations. It targets laws pertaining to the handling of the transcript and prohibits specific acts that compromise the integrity of the transcript. Specifically, this law prohibits unlicensed individuals or entities providing court reporting services from requesting compensation for a transcript that is not in compliance with the minimum transcript format standards, requesting compensation for a certified court transcript using fees not set in statute, providing a transcript in advance to one party over another, or failing to notify a party of a request to prepare any portion of a transcript including rough drafts and expedites. A violation is punishable by civil fine not to exceed \$10,000 per violation. This bill was chaptered September 21, 2018.*

The passage of AB 2084 (Kalra) will allow the Board to accept complaints for violations by out-of-state firms, a very important step forward for consumer protection. It is hoped that these laws will be followed now that the Legislature has made it clear that they apply to all providers of court reporting services, but if not, the consumer has some recourse.

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

Staff Recommendation: The Board should continue to monitor the issue of workforce shortages, inform the Committees of the biggest obstacles to ensuring an adequate court reporter workforce, and how best to overcome these obstacles. The Committee recommends that the DCA work with the Board to develop content for the website in addition to developing a communications plan.

Board Response: *Some parts of the U.S. are experiencing a shortage of court reporters, including some parts of California. Some deposition firms here are having so much trouble covering their daily calendars of scheduled depositions that they are paying bonuses to reporters to take their jobs. Some are even forced to turn to videotaping a deposition without a court reporter being present at all.*

The Board is exploring the possibility of licensing voice writers, which would increase the workforce. The Board also considered but rejected eliminating the requirement to pass California's license exam for those holding a national certification or a license in another state. It is the Board's belief that with the size and complexity of California's judicial system, the current license exam is needed for ensuring entry-level skills.

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

Staff Recommendation: The Board should keep the Committees informed about its request to conduct an Occupational Analysis, and continue to explore ways to reduce and recover its costs for examination development, including, for example, by increasing examination fees which are currently only \$25 per examination. Has the Board considered moving towards a nationally recognized examination provider, which may help reduce Board costs and increase the accessibility of reciprocity for licensed court reporters?

Board Response: *The Board has conducted an occupational analysis for the two written portions of the exam as well as conducted a survey regarding working speeds for the skills portion of the exam. The Board believes the license exam is truly entry level.*

The current fee increase regulation package does include raising the examination fees from \$25 per portion to \$50 per portion, in order to help offset the cost of developing and administering the license exam.

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

Staff Recommendation: The Board should update the Committees about its plan and procedures for the transition to a new system. In addition, the Board should inform the Committees about any costs it has incurred as a result of the original BreEZe project. Does the Board have any updates on potential release dates for a new system? The Board should also inform the Committees about any administrative or fiscal challenges facing the Board as a result of its current database system.

Board Response: *The Board is in the process of mapping out its business services to determine if BreEZe's services or the services of an outside vendor would better meet the Board's needs. The process is expected to be completed in the fall of 2018.*

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

Staff Recommendation: The Board should continue to monitor this issue and inform the Committees about the need for any potential statutory changes to clarify issues relating to online practices.

Board Response: *The newest technological developments involve the growth of remote communication capabilities. As quality and dependability of videoconferencing and web interfaces improve, court reporting is changing to allow parties to participate from multiple locations. Electronic and digital signatures allow for easier deponent review of deposition transcripts.*

The Board will continue to monitor changes for the purpose of proposing any legislative changes that may be required in the future.

Issue #9: Are there technical changes to the practice act that may improve the Board's operations?

Staff Recommendation: The Board should submit their proposal for any technical changes to its practice act to the Senate PB&ED Committee for possible inclusion in one of its annual committee omnibus bills. A technical amendment should be made to correct the name of the Bureau for Private

Postsecondary Education in BPC Section 8027(a) and amend DPC 8027 et seq. to correct outdated timeframes. The Committees should also consider repealing BPC Sections 8027(p); 8027.5(ac) and (ad); 8030.2(b); and, 8030.5(c) and (d), which are no longer applicable.

Board Response: *Technical changes pertaining to licensing voice writers may be required.*

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

Staff Recommendation: The court reporting profession should continue to be regulated by the current Board in order to protect the interests of the public and be reviewed once again in four years.

Board Response: *Faced with ever-advancing technology and an increasing possibility of a shortage of licensed court reporters, some deposition firms seem willing to push the statutory/regulatory envelope to skirt the law and regulations governing the court reporter industry. It is more important than ever that the consumer continue to have a governmental entity to which they can turn for assistance in the case of a violation of the laws pertaining to the practice of court reporting.*

Major changes since the last sunset review

- The Board conducted an occupational analysis of the profession, with the assistance of the Office of Professional Examination Services, within the Department of Consumer Affairs. The purpose of this analysis is to review the tasks and knowledge necessary for a CSR to practice the profession competently. The Board uses this information to evaluate the license examination to ensure that those who pass the examination are competent to practice the profession. As part of this effort, the Board surveyed practicing CSRs to determine the speed at which entry level CSRs need to be able to transcribe oral testimony to be minimally competent. Based on this review, the Board determined that the current standard of 200 words per minute is the appropriate minimum standard. This is the standard required to pass the practical examination.
- An Online Testing Policy and Procedures Task Force established by the Board completed its work in 2017 and the Board adopted a new policy for online testing. Board staff is currently working to establish an online skills examination with a third-party vendor.
- The Board sponsored legislation, AB 2084 (Kalra, Statutes of 2018) which authorizes the Board, the Attorney General, a city attorney, or a district attorney to bring a civil action against any entity that engages in four specified business practices relating to shorthand reporting services. The intent of this legislation is to allow the Board to take enforcement action against unlicensed professional corporations who arrange shorthand reporting services, but are not licensed by the Board.
- The Board has worked with the Department of Consumer Affairs to perform a business modernization project. This will assist the Board and the Department in documenting and reviewing all of the Board's business practices in preparation for a replacement of the Board's existing licensing information technology system. This project is currently underway.

CURRENT SUNSET REVIEW ISSUES FOR THE COURT REPORTERS BOARD

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: What is the status of the Transcript Reimbursement Fund?

Background: The Board oversees the Transcript Reimbursement Fund (TRF), a special fund fully financed by a portion of the court reporters' licensing fees. The TRF consists of a Pro Bono program (used to reimburse costs incurred by attorneys representing litigants at no cost to the litigant) and a Pro Per Program (used to reimburse costs for litigants representing themselves), both of which ensure indigent litigants have access to court reporting transcripts for civil cases. Historically, TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified non-profit entities, and so the Pro Per Program was implemented in order to maximize the benefits of the TRF and expand access to justice to those most in need. The Pro Per Program is capped at \$75,000 per calendar year and each case is capped at \$1,500.

The TRF is funded from license fees paid by CSRs. Under current law, the Board is required to transfer \$300,000 per year from the Court Reporters' Fund (the Board's main special fund) to the TRF, provided that the transfer does not result in the Board's reserve falling below six months' operating budget.

In recent years, the Board has been operating with a structural deficit, in which expenditures have exceeded revenues and the Board's fund balance has declined. According to the projected fund balance provided by the Board (but not reflective of the recently adopted fee increases), the Board's reserve declined from 14 months in 2014-15 to a negative reserve projected for the current year. Because current law only allows a transfer to the TRF when the Board has a sufficient fund balance, the Board last made a transfer to the TRF in 2016-17. The Board paid claims received through July 6, 2017. Since that time, the Board has returned any applications for funding (299 Pro Bono applications and 188 Pro Per applications) to the applicant and notified the applicant that the programs are closed until funding is available.

Due to the recently adopted fee increases, the Board's structural deficit is projected to close and the Board recently projected its reserve will grow to six months operational funding by 2020-21. The Board projects that it will institute the next transfer to the TRF in 2021-22.

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.*

LICENSING ISSUES

ISSUE #2: *Should certified shorthand reporters be allowed to use “voice writing” systems?*

Background: To date, under law and practice in California, certified shorthand reporters working in the state have exclusively made use of the traditional stenographic system. Initially, CSRs would type on a stenographic machine analogous to a typewriter that would create a paper stenographic record. After a court hearing or deposition, the CSR would then use that paper record to create a plain-English transcription. In recent years, stenographic machines have been integrated into computers, allowing the stenographic record to be recorded directly into a laptop.

There is another method of recording speech in real-time referred to as “voice writing”. Using a voice writing system, a court reporter speaks into a stenomask which is connected to a computer. The computer runs a type of voice recognition software to create a record of the proceedings, as voiced by the reporter. A voice writer uses a combination of natural language and specialized abbreviations and shortcuts to streamline the verbalization of the proceeding being transcribed.

To date, voice writing has not been used in California courts or depositions. (However, voice writing has been used for some time in the military judicial system.)

One apparent advantage to voice writing is that it appears to be significantly faster and easier to become proficient in voice writing than traditional stenography. In order to train as a traditional stenographer, it usually takes two to four years of training and completion rates may be as low as 10% of those students who initially enroll in a program. This seems to be due to the technical difficulty of recording spoken conversation at the 200 words per minute standard that is required for certification in California. Simply put, most people who begin training in this area will never attain the necessary speed to become certified. Voice writing, on the other hand, typically requires around 9 to 18 months and the completion rate may be as high as 90%. It appears to be the case that a much higher percent of the population can be trained to transcribe a conversation using voice writing than traditional stenography.

The Board has set the standard for passage of the practical examination necessary for certification at a level that it believes ensures that a newly certified CSR can transcribe a proceeding at the performance standard that is necessary in practice (200 words per minute).

Under the Business and Professions Code, Section 8017, the practice of shorthand reporting is defined as: “the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof”. The Board has recently determined that neither the definition of shorthand reporting, nor any other provision of the Business and Professions code, precludes the use of voice writing by a certified shorthand reporter. According to the Board, voice writing is simply a different method of making a verbatim record by using abbreviations in machine shorthand writing. Therefore, the Board believes that, under current law, CSRs can use voice writing systems. The Board also indicates that it intends to begin allowing applicants for certification to use voice writing systems to take the practical examination beginning in March 2019.

The issue of voice writing raises two issues for legislative consideration: 1) should CSRs be allowed to use voice writing systems? And, if so, 2) how should voice writing be integrated into the system for certifying shorthand reporters?

The current system for ensuring that CSRs provide an accurate transcript of a proceeding relies on CSRs demonstrating their competence through a practical examination at initial certification. If an applicant for certification can demonstrate that the applicant can meet the performance standard established by the Board using voice writing equipment, there does not seem to be a reason to prohibit the use of this technology.

If voice writing were to be allowed by certified shorthand reporters, the next issue for consideration is how to integrate the use of voice writing into the current licensing system. The Board recently moved to allow voice writing to be used by CSRs and to allow its use in the next practical examination. (Technically, the Board voted make no change to existing law or regulation, therefore allowing, by default, the use of voice writing.)

Staff believes that the default approach taken by the Board may not provide sufficient protection to the public. Under the Board's interpretation of the law and its recent action, a currently licensed CSR could switch from using the traditional stenographic equipment the CSR had previously demonstrated competency with, for a voice writing system without demonstrating competence with voice writing. In order to protect the public by ensuring CSRs are competent with the system they plan to use in practice, staff believes that it is appropriate to require CSRs to only use the technology that they have demonstrated competence with through the practical examination. Further, in order to track with which technology (or both) a CSR has demonstrated competence, an endorsement system could be used as a part of the certification process. Under such a system, the Board would issue one type of license, but with a notation of which (or both) systems the CSR was certified to use. The Board indicates that such a system could be implemented within the existing licensing system used by the Board and that all the currently registered CSRs could be "grandfathered" in as having an endorsement for stenographic equipment.

Staff Recommendation: *The Business and 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.*

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

Background: According to the Board, there has been a long-term trend in the shorthand reporting industry towards firms that employ, or more commonly contract with, shorthand reporters having a more distant relationship with the shorthand reporters they use. A combination of changing business models and technological innovation has resulted in shorthand reporters acting more like true freelancers than de facto employees. One result of this trend is that shorthand reporters receive less ongoing training from the firms they contract with. According to the Board, this may result in shorthand reporters no longer being aware of current requirements on the profession.

The Board has supported previous efforts to impose a continuing education requirement on certified shorthand reporters (AB 2189, Karnette, 2008; SB 671, Price, 2011; AB 804, Hernández, 2015). None of those bills were enacted.

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 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.*

ISSUE #4: *What is the Board’s plan for implementing an online skills examination?*

Background: In order to be certified as a shorthand reporter, an applicant must pass a three-part examination. The examination consists of two computer-based portions, covering English proficiency and professional practice, and one practical portion. The practical portion tests an applicant’s dictation and transcription skills. Applicants are required to report and transcribe a ten-minute simulated judicial proceeding, with four participants speaking at an average of 200 words per minute. Applicants have three hours after the simulated proceeding to prepare a transcript, meeting Board standards, with a 97.5% accuracy rate. The practical examination is offered, in person, three times per year.

In 2016, the Board created an ad-hoc Online Skills Examination Policy and Procedures Task Force, to evaluate the potential to offer the practical skills examination online. The Task Force reported back to the Board in 2017 and the Board adopted a policy to allow online testing and directed Board staff to move forward with implementing the system.

Staff Recommendation: *The Board should report to the committees on its efforts to implement online testing, including the timeframe 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.*

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?*

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity’s business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the “ABC test,” the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent

contractors. Occupations regulated by entities under the Department of Consumer Affairs are no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine whether the rights and obligations of employees must now be incorporated.

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.*

ENFORCEMENT ISSUES

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

Background: Business and Professions Code Section 8044 specifies that each director, shareholder, and officer of a shorthand reporting corporation must be a licensed shorthand reporter. Business models for shorthand reporting corporations and other service providers vary throughout the state and country. While there are a number of licensee-owned corporations in California, there are also a number of businesses that provide litigation services but are not currently under the jurisdiction of the Board. The Board does not register or certify corporations in California. The Board has statutory authority over licensee-owned shorthand reporting corporations incorporated in California. However, the Board does not have explicit jurisdiction over corporations which have no license to discipline.

In 2010, the Board received a complaint that U.S. Legal, a Texas-based corporation, was violating gift-giving provisions under California Code of Regulations Section 22475(b)(8). After investigation, the Board issued a citation and fine, but U.S. Legal denied the Board’s jurisdiction to issue the citation. In April of 2011, the Board brought suit against U.S. Legal for declaratory relief (*Court Reporters Board v. U.S. Legal*). After a hearing, the Court ruled in an unpublished opinion that, even if U.S. Legal was rendering court reporting services in California and was in violation of gift-giving regulations, the Board is not authorized to impose citations or fines against U.S. Legal because U.S. Legal was not a “professional corporation” but instead a “foreign professional corporation” as defined under the Corporations Code. Corporations Code Section 13401(c) provides that, “‘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 a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.”

Following this case, the Board sought statutory authority to require court reporting firms to register with the Board. The first bill intended to implement this requirement (AB 1660, Kalra, 2017) was vetoed by Governor Brown. The second attempt to require firm registration (AB 2084, Kalra, Statutes of 2018) was amended to remove the firm registration requirement. Instead, the chaptered version of AB 2084 prohibits any person or entity who provides or contracts to provide shorthand reporting services from engaging in four specified business practices, with specified civil penalties.

Concurrently with the Board’s efforts to establish firm registration, there was an ongoing court case brought by a CSR against an out-of-state firm alleging unfair competition (*Holly Moose & Associates*

v. U.S. Legal Support, Inc.). In that case, the plaintiff alleged that the defendant was engaged in unfair competition, as the defendant was “rendering” shorthand reporting services, even though all of its shareholders are not licensed by the Board and that the defendant was violating specified regulatory requirements on the practice of shorthand reporting.

In June 2016, the trial court found in favor of the defendant, U.S. Legal Support, Inc. because the trial court found that the defendant (1) was not engaged in the practice of shorthand reporting and therefore is not required to comply with the Moscone-Knox Professional Corporations Act and (2) the plaintiff had not shown that she had suffered economic loss due to the defendant’s business practices.

Upon appeal, the Court of Appeal for the State of California, Sixth Appellate District, affirmed the trial court’s finding in favor of the defendant. The Appellate Court upheld the trial court’s finding that the plaintiff failed to meet the burden of proof for establishing economic harm. However, despite the Appellate Court’s finding in favor of the defendant, the Appellate Court wrote of the defendant’s argument that it is not subject to the laws and regulations governing certified shorthand reporters and shorthand reporting corporations: “Such circular reasoning to evade this state’s laws and regulations is, at minimum, unpersuasive”.

Because the appellate court found for the plaintiff and the court’s decision was “unpublished”, the decision did not establish precedent finding that out-of-state corporations that arrange shorthand reporting services are subject to the jurisdiction of the Board. However, the appellate court’s ruling does indicate that, under a different set of facts, the court would likely make that ruling.

Given the recent court ruling, the Committees may wish to consider whether it would be appropriate to revisit the issue of requiring out-of-state firms to register with the Board if they are engaged in arranging for shorthand reporting services.

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.*

TECHNOLOGY ISSUES

ISSUE #7: *What is the status of BreEZe implementation by the Board?*

Background: The BreEZe Project was intended to provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. BreEZe was intended to replace the existing outdated legacy systems and multiple “work around” systems with an integrated solution based on updated technology. Implementation was divided into three phases. The Court Reporters Board is in the phase three group. Through fiscal year 2017-18, the Board contributed roughly \$220,000 to the shared cost of developing BreEze.

Significant issues and delays with the first two phases resulted in DCA suspending the rollout of BreEZe before reaching the phase three boards. At the time, it was unclear what would happen to the funds the phase three boards paid into the project.

After an investigation into the issues, the California State Auditor noted that the problems were in part due to a failure to adequately identify the business needs of each entity. Before moving forward with BreEZe for the phase three boards, the State Auditor recommended that the DCA work with the California Department of Technology to analyze the costs and benefits of switching for each of the remaining boards. To that end, the DCA is working with the Department of Technology to utilize the Project Approval Lifecycle process to determine whether BreEZe is the correct solution for each of the remaining boards. The DCA has also updated and expanded its Organizational Change Management process, currently called the Business Modernization Plan, which is performed through its Strategic Organization, Leadership, and Individual Development (SOLID) unit. The intent of the Business Modernization Plan process is to provide comprehensive business analyses, which is the first step of the Project Approval Lifecycle.

Whether moving forward with BreEZe or another IT solution, the Business Modernization Plan should help provide the Board with planning and training to improve operational and administrative issues going forward.

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

TECHNICAL CLEANUP

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

Background: When the Transcript Reimbursement Fund was established, transfers into the fund were required to be made on a fiscal year basis. The larger Pro Bono program therefore operates on a fiscal year basis. However, when the Pro Per program was established as a pilot program, the \$75,000 in funding was established on an annual basis. The Board has interpreted the implementing language as requiring the Pro Per program to be operated on a calendar year basis.

In order to be certified by the Board, applicants must take a three part examination. The examination includes a two-part written examination evaluating (1) professional practice (such as laws governing the profession) and (2) English-language proficiency and a practical examination of the applicant's shorthand reporting skills. The licensing examination has been provided in this format for a number of years and the Board has charged a fee for each of the three portions of the examination. Previously, the Board charged applicants \$25 for each of the three portions of the examination. During the last sunset review of the Board, statute was amended to allow the board to raise the license examination fee to \$75 per portion (amongst other authorized fee increases). When the Board submitted its proposed regulatory package to raise the examination fees to the Office of Administrative Law, the Office rejected the portion of the regulatory packaged that contained the increases in the examination fees. According to the Office, Business and Professions Code Section 8031(b) allows a \$75 fee for the "written or practical part of the examination". The Office interprets this language as limiting the Board's authority to charge \$75 for the practical examination and a combined \$75 for both of the written portions.

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.

**CONTINUED REGULATION OF SHORTHAND REPORTERS BY THE
COURT REPORTERS BOARD**

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

Background: The welfare of consumers is protected by the presence of a strong licensing and regulatory Board with oversight over shorthand reporters.

The Board should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

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.*