

**BACKGROUND PAPER FOR THE
Court Reporters Board
(Oversight Hearing, March 12, 2012, Senate Committee on
Business, Professions and Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE COURT REPORTERS BOARD**

**BRIEF OVERVIEW OF THE
COURT REPORTERS BOARD**

Established in 1951, the Certified Shorthand Reporters Board, now known as the Court Reporters Board of California (CRB), regulates the court reporting profession through testing, licensing, and disciplining court reporters. In California, court reporters use the title Certified Shorthand Reporter (CSR), which is a designation restricted by statute to those individuals who have a Board-issued license.

In California, a person can be licensed to work as a court reporter employed by state courts (official reporter) or to act as a deposition officer (freelance reporter). Freelance reporters can be hired as individual contractors or can be hired by court reporting firms which, in turn, are hired by law firms or lawyers to provide services in depositions. The laws governing deposition/freelance reporters can be found in the Code of Civil Procedure Section 2025, et seq. As of January 1, 2012, there are 7,316 licensed CSRs in California.

According to the CRB, licensing of CSRs is critical to the proper functioning of the courts. An accurate written record of who said what in court is essential if the outcome of judicial proceeding is to be accepted by the litigants and the public as non-arbitrary, fair, and credible. In criminal cases, for example, courts of appeal rely exclusively upon a written briefs and a written transcript to adjudicate the lawfulness of what occurred at trial. A conviction, and thus, in some instances the life or death of an accused, can stand or fall based entirely upon what a witness said, what a lawyer said, what a juror said, or what a judge said, as solely reflected in the written transcript. In civil cases, millions of dollars, life-long careers, and the fate of whole business' enterprises can hinge on what was said or what was not said in a deposition or at trial.

Moreover, as indicated by the CRB, the testimony in civil and criminal cases is often thick with technical jargon. A medical malpractice case, where experts from both sides contradict one another, can involve complex technical medical terminology; criminal cases can involve scientific language related to DNA identification; anti-trust cases can involve diction from economic theory, and so on. No matter how obscure or technical, such jargon must be accurate to-the-word and be reflected in the written transcript. Court reporters are highly trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation and in related proceedings such as depositions.

The CRB also has oversight of court reporting schools in addition to having oversight over CSRs. Although CRB “recognizes” schools, there is no statutory authority for licensure. Even so, only court reporting schools “recognized” by the CRB can certify students to qualify for the CSR examination. The CRB can also issue citations, and fine schools not in compliance with their rules. Also in 1972, the CRB’s authority was expanded to give them the ability to recognize court reporting schools and to set minimum curriculum standards for court reporting programs. Additional authorization to cite and fine schools was passed by the Legislature in 2002 (Business and Professions Code (BPC) Section 8027.5). The CRB can discipline schools up to and including removing recognition. There are currently 16 schools of court reporting recognized by the CRB; 8 public schools and 8 private schools. Since the last Sunset Review, one school has closed.

Until the 1960s, the CRB allowed only CSRs to own and operate companies offering court reporting services. However, when no statutory authority supporting that prohibition could be found, the practice ceased, and in 1972, CRB began registering reporting corporations. That process was rescinded by Assembly Bill 2743 (Chapter 1289, Statutes of 1992) when the CRB decided that the registration duplicated the filing required by the Secretary of State’s Office, provided no additional benefit or consumer protection, and was an unnecessary expense for businesses.

The CRB's average annual operating budget over the past four years has been approximately \$787,000. Of that, each year by statute, \$300,000 is assigned to the Transcript Reimbursement Fund (TRF); a fund designated to reimburse transcript costs incurred by indigent litigants. The greatest expenditure for the CRB is its enforcement program, which on average represents 38% of expenditures. The second highest expenditure is the examination at 30% of expenditures.

The CRB is funded almost completely by examination and licensing fees collected from applicants and licensees. License renewal is the CRB's largest source of revenue, accounting for approximately 91% of the operating fund. Another 3% comes from examination and license application fees, and just under 3% is comprised of payments of citations/fines. The remaining, just over 3%, is miscellaneous revenue including delinquent fees and investment income. The CRB receives no federal funding and no revenue from the State's General Fund. There is no statutory mandatory reserve level for the CRB.

A restructure of the examination fees has been undertaken through the rulemaking process. The regulation package was approved by the Office Administrative Law and became effective November 9, 2011. Previously the CRB charged a \$40 license examination application fee, which covered all three parts of the exam. In the event of a re-examination, the candidate would pay the \$40 application fee again. Beginning March 1, 2012, all candidates will pay a \$40 application fee, which would cover the three years the candidate has to pass all three portions of the license exam. Additionally, the candidate will have to pay \$25 per portion of the exam. No additional change to fees is anticipated. The annual license renewal fee is \$125.

The rates charged by freelance reporters and the businesses that employ them are not fixed by statute. That was not the case in the past but in a compromise package with the profession, the Legislature and the Governor, eliminated rate regulation in 1981 and created the Transcript Reimbursement Fund (TRF), a special fund paid for by a portion of the court reporters’ licensing fees.

The purpose of TRF is to reimburse litigants or directly compensate CSRs for transcripts produced for indigent litigants in civil cases. To create TRF, licensing fees were initially increased from \$40 every two years to \$125 the first year, and \$60 the second year. Subsequently, the fees were increased to \$80 and then to the current annual fee of \$125. Under the program, the CRB has paid more than \$7.2

million from the fund. By law, TRF must begin each fiscal year (July 1) with a minimum balance of \$300,000.

Prior to January 1, 1983, state courts had been allowed to use noncertified reporters if they could demonstrate that a certified reporter was not available. BPC Section 8016 now requires all state court reporters to be licensed as CSRs. Court reporters hired prior to 1983 can still maintain an exemption to the licensing requirement.

The CRB is composed of five members, two of whom are licensed CSRs and three of whom are public members. Any licensee who has been practicing for a minimum of five years is eligible to be appointed to the CRB, but public members are prohibited from having had any involvement in the profession within five years preceding their appointment. The Governor appoints the two-licensed members and one public member. These three appointments require Senate confirmation. Of the two remaining public members, one is appointed by the Speaker of the Assembly and the second is appointed by the Senate Rules Committee. All serve four-year terms. The Governor's appointees may serve up to a 60-day grace period at the end of their term; the other appointments can serve up to a one-year grace period at the end of their term. There is a maximum of two consecutive terms for appointments. There are no vacancies on the CRB.

Board Member	Year Appointed	Term Expiration	Appointing Authority
Toni O'Neil, Chair, Professional Member Ms. O'Neil was appointed by the Governor to the CRB on August, 2010. For the last 20 years, Ms. O'Neill has been employed by the Riverside Superior Court as an official court reporter, and she currently holds the position of supervising court reporter.	2010	June 1, 2013	Governor
Gregory Finch, Vice Chair, Public Member Mr. Finch was appointed by the Governor in 2002 and was reappointed to a second term expiring June 1, 2012. Mr. Finch served as Chair of the CRB in 2008. He is a principal in Signature Law Group LLP in Sacramento.	2006	June 1, 2012	Governor
Lori Gualco, Public Member Ms. Gualco was appointed by the Speaker of the Assembly in 2007. Ms. Gualco is principal attorney at the Law Office of Lori J. Gualco. She was previously an attorney at the Trainor and Robertson law firm in Sacramento.	2007	June 1, 2015	Assembly Speaker
Elizabeth Lasenky, Public Member For the past 20 years Elizabeth Lasensky has been an administrator at Stanford University, where Elizabeth currently works for the Vice Provost and Dean of Research. Ms. Lasensky also is serving on Menlo Park's "Green Ribbon" Citizens Committee for Global Warming and is a charter member of Hometown Peninsula.	2007	June 1, 2015	Senate Rules
Reagan Evans, Professional Member Ms. Evans is a registered merit reporter from Ontario and is the President of Olympic Reporting and Video Inc. She has been working as a freelance deposition reporter in California since January 1988, and specializes in technical work and interactive real-time reporting.	2010	June 1, 2013	Governor

The current Executive Officer of CRB is Yvonne K. Fenner who was selected by the CRB to serve as executive officer beginning January 2009. Ms.Fenner had previously served as a licensee Member of the CRB, having been appointed by Governor Schwarzenegger in 2006.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The CRB was last reviewed by the Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee) in 2005. Several questions were raised during the last sunset hearing including the CRB's relevance, fiscal surplus concerns, continuing education requirements, instructional quality at public court reporting schools, examination passage rates and enforcement authority in regards to releasing public documents.

Continuing education has been an issue as far back as in the 1996 Sunset Review Report and again in the 2005 review. Accordingly, in 2008, the CRB sponsored a mandatory continuing education bill, AB 2189 (Karnette), which ultimately was vetoed by the Governor. In 2011, SB 671 (Price), a similar mandatory continuing education bill, was also vetoed. The CRB remains committed to this consumer protection aim. While the Legislature has twice passed such legislation, the CRB states that it will continue to work with the Administration to address its concerns.

The Joint Committee made the following recommendations in the last review:

- The CRB should seek statutory clarification regarding fraudulent acts that may amount to unprofessional conduct by the court reporter. The CRB has continued oversight of the profession as recommended, putting protection of the consumer at the forefront of all activities. In response to this issue the CRB sought clarification in the enactment of Title 16, California Code of Regulations (CCR) § 2475.
- The statute should be changed to make it explicit that the CRB should disclose letters of reprimand. In response to this issue, the CRB now publishes all action taken on the CRB's Website and published in the CRB's biannual newsletter. The mere fact that a complaint has been received is kept confidential, however, pending outcome of the investigation.
- The Joint Committee recommended that the court reporter profession should continue to be regulated and that a board structure be maintained.

CURRENT SUNSET REVIEW ISSUES

ISSUE # 1: Should the licensing and regulation of court reporters be continued, and should the profession continue to be regulated by the CRB?

Background: The health, safety and welfare of the public is better protected by a well-regulated court reporter profession. Court reporters provide an invaluable service to the legal community. They are highly trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation-related proceedings such as depositions. The CRB continues to be an effective mechanism for licensure and oversight of court reporters and should be

continued. The CRB has shown over the years a strong commitment to improving the effectiveness and efficiency of the board's operation and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. The CRB should be continued with a four-year extension of its sunset date so that the Committee may review once again whether the issues and recommendations in this Paper and others of the Committee have been addressed.

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

ISSUE # 2: Should an extension be granted to continue to fund the Transcript Reimbursement Fund (TRF) indigent litigants?

Background: The TRF (BPC Sections 8030.2. through 8030.8) was established by the Legislature in 1981, and is funded by annual license renewal fees. The TRF is a special fund and does not rely on any General Fund monies for its operation. The purpose of TRF is to provide transcript reimbursement costs in civil cases where an indigent litigant needs a copy of a transcript. Essentially, the criteria to qualify for reimbursement are:

- The litigant must be indigent and must be represented by legal counsel.
- The applicant must be a qualified legal services project, qualified support center or other qualified project.
- The case cannot be fee-generating.
- The applicant must certify to refund the full amount of all reimbursements from TRF from any award of court costs or attorney fees.
- TRF provides reimbursement for costs as outlined in BPC 8030.6

Under the program, the CRB has paid more than \$7.2 million from the TRF to provide transcript costs to indigent litigants. By law, the TRF must begin each fiscal year (July 1) with a minimum balance of \$300,000, made up from the CRB's fund.

Since its inception in 1981, the TRF was established with a sunset date, which has been extended on an ongoing basis by legislation until the current time. The TRF is currently scheduled to be repealed on January 1, 2013, and unless legislation is passed extending that date, all unencumbered funds remaining in the TRF, as of that date, will be transferred to the Court Reporters Fund.

The TRF is a valued program serving the indigent community and it is vital for the court process to have an extension of the program. Committee staff recommends extending the sunset date for the TRF four years to correspond with the sunset date for the CRB.

SB 1181 (Cedillo, Chapter 518, Statutes of 2010) authorized a two-year pilot project, expanding TRF to pro se litigants who are indigent. Historically, TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified nonprofit entities, so this pilot project was implemented in order to maximize the benefits of TRF; expanding access to justice to those most in need. The pilot project runs for two calendar years, January 1, 2011, through January 1, 2013. The project is capped at \$30,000 per calendar year and each case is capped at \$1,500. The chart on the next page represents the TRF expenditures so far approved and allocated pursuant to this pilot project.

Transcript Reimbursement Fund (Pro Se Pilot Project)				
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11*
No. of Requests for Reimbursement Received	N/A	N/A	N/A	134
No. of Requests Approved	N/A	N/A	N/A	90
No. of Requests Denied	N/A	N/A	N/A	29
Amount of Funds Allocations (Provisional Approval)	N/A	N/A	N/A	\$25,893.33
Amount of Funds Disbursed	N/A	N/A	N/A	\$5,814.70
Amount of Funds Recovered by Judicial Award of Costs	N/A	N/A	N/A	\$0

Staff Recommendation: *The sunset date for the TRF should be extended four years in order to ensure that indigent individuals are able to access justice.*

ISSUE # 3: Are professional corporations owned by non-CSRs asserting lack of Board jurisdiction over their activities?

Background: In response to complaints about unethical gift giving (violation of CCR Section 2475(a)(8)) and violations of the minimum transcript format standards (CCR Section 2473), a task force was appointed by the CRB in 2007, to study the issue of firm oversight. The members of the task force included small, medium and large-firm owners. Ultimately the task force arrived at language which was included in AB 1461 (Ruskin).

In 2010, via AB 1461 (Ruskin), the CRB sought legislative clarification to Section 8046 of the BPC as it relates to firms providing court reporting services. AB 1461 sought to clarify that in addition to corporations, a firm, partnership, sole proprietorship or other business entity providing or arranging for shorthand reporting services (any entity offering or providing the services of a shorthand reporter) was barred from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. The bill died on Suspense in Assembly Appropriations Committee.

Since that time, the CRB has issued a citation and fine against a non-CSR-owned court reporting corporation that allegedly violated the gift-giving regulations embraced in the Professional Standards of Practice. As the corporation has refused to pay the fine, a request for declaratory relief has been filed in Santa Clara County, seeking judicial clarification.

Not only does the statute affirm that corporations providing court reporting services are subject to the jurisdiction and rules of CRB, it is also counterintuitive to have the activities of corporately owned firms offering court reporting services be outside the jurisdiction of CRB. The ultimate consumer of the transcript is the litigant, and their need to have transcripts that are lawful, honestly

and accurately prepared is the same regardless of the corporate form of the entity that arranged for the proceeding.

If an attorney hires a firm because of a large gift, a direct violation of Section 2475(a)(8), rather than competitive rates or quality of service, the consumer, the lawyer, and the litigant are the unknowing potential victims. Similarly, if there is a violation of Section 2473, the minimum transcript format standards, the litigant could end up paying hundreds or even thousands of dollars more for transcripts.

It is noteworthy that the Corporations Code that exempts professional corporations from having to register with the CRB is the same Code that provides they are subject to its jurisdiction. If a corporation is not a professional corporation subject to the CRB's jurisdiction, then they may have to indeed register with the CRB.

To clarify the CRB's jurisdiction over any entity offering shorthand reporter services, the CRB recommends that Section 8046 of the Business and Professions Code be amended to read:

8046. ~~A corporation, firm, partnership, sole proprietorship, or other business entity providing or arranging for shorthand reporting services shall not do or fail to do any act~~ Any entity offering or providing the services of a shorthand reporter shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice these entities shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.

Committee staff concurs with the CRB's recommendation to clarify that any entity offering shorthand reporter services must comply with the laws governing persons licensed by the CRB.

Staff Recommendation: *BPC Section 8046 should be amended to clarify that any entity offering or providing shorthand reporter services must comply with the laws governing licensees of the CRB.*

ISSUE # 4: Is the Transcript Reimbursement Fund Pro Se Pilot Project underfunded to meet the demands placed upon it?

Background: As indicated, in 2010, SB 1181 (Cedillo, Chapter 518, Statutes of 2010) authorized a two-year pilot project, expanding TRF to pro se litigants who are indigent. Historically TRF has been underutilized by indigent litigants represented by pro bono attorneys or qualified nonprofit entities, so this pilot project was implemented in order to maximize the benefits of TRF, expanding access to justice to those most in need. A cap of \$30,000 per each calendar year was set aside for this project, with a case cap of \$1,500.

The entire \$30,000 cap was reached after processing an application received July 15, 2011. Staff continues to process applications as previously encumbered money becomes available, but clearly demand exceeds resources.

According to the CRB, no legislative action is actually needed at this point; however, CRB wants the Legislature to be aware there is a potential issue. There could be staffing issues if the pilot project were to become permanent or if the \$30,000 cap were to be increased.

An additional consideration is the increasing move toward privatization of the courts. Some counties have decided not to provide court reporters in civil matters, requiring litigants to provide their own reporter. This additional cost to the litigant may bring increased demand for assistance with costs associated with obtaining a transcript.

Staff Recommendation: *In agreement with the CRB's recommendation, no legislative changes need to be made at this point. However, the CRB should notify the Committee if conditions occur which necessitate changes related to the TRF Pilot Project.*

ISSUE # 5: Should CRB continue to explore the possibilities of establishing a continuing education requirement for licensed CSRs?

Background: The profession of court reporting allows the CSR to either work in courts as “official reporters” or work for lawyers as “deposition reporters” or “freelance reporters.” According to the CRB, currently only official reporters are required by the Judicial Council to take continuing education, which is intended to ensure 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. There is no such requirement for freelance reporters, which the CRB states creates an inequity in the skill levels and professional standards of the licensee, which has unintentionally resulted in disservice to the public.

Despite the CRB’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 CRB’s attempts at uniformity of knowledge and requirements within the field. The CRB contends that mandatory continuing education for all court reporters would ensure that a minimum level of competency is achieved, and would ensure that consumers are protected in all judicial venues of California, not simply the courts, thereby enhancing public protection.

As previously indicated, continuing education has been an issue as far back as in the 1996 Sunset Review Report and again in the 2005 review. The Joint Committee noted that the CRB had been instrumental in attempting to provide leadership in the area of continuing education for the profession. At that time, there had been much discussion about the pros and cons of such requirements. The CRB had deleted a continuing education proposal from its 1994 legislation when it learned that the Governor would not approve it. In 2008, the CRB sponsored a mandatory continuing education bill, AB 2189 (Karnette), which ultimately was vetoed by the Governor.

In 2011, SB 671 (Price), a similar mandatory continuing education bill, was also vetoed. In the veto message, Governor Brown stated: “The whole idea of legally mandated ‘continuing education’ is suspect in my mind. Professionals already are motivated to hone their skills or risk not getting business. Requiring them to pay fees to ‘continuing education providers’ is an unwarranted burden.”

The CRB remains committed to this consumer protection aim. While the Legislature has twice passed such legislation, the CRB states that it will continue to work with the Administration to address its concerns.

Committee staff concurs that the CRB should continue to work with the Administration regarding the issue of continuing education for court reporters.

Staff recommendation: *The CRB should continue to monitor this issue and continue to work with the Administration on the issue of continuing education for all licensed court reporters. The CRB should report back to the Committee the results of any guidance received from the Administration.*

ISSUE # 6: Are discretionary travel restrictions negatively impacting outreach?

Background: The CRB seeks to take a proactive stance with regards to enforcement by educating licensees, schools and students at every opportunity. Historically the CRB has spoken to students at court reporting schools across the state and has given seminars at state and local association meetings. As important as outreach is to the success of consumer protection by the CRB, it clearly is not mission critical as defined in the Governor's Executive Order B-06-11, which prohibited discretionary travel and required all in-state non-discretionary travel to be approved by Agency Secretaries or Department Directors

The CRB understands the need to do more with less in the present economic conditions and is working to come up with creative solutions. Additionally, the CRB is exploring the possibility of producing informational seminars to be posted on the CRB's Website. The efficacy of this method of education remains to be seen.

The CRB recommends that as soon as economic conditions allow, the restrictions on travel should be lifted.

Staff Recommendation: *In agreement with the CRB's recommendation, travel restrictions should be lifted once economic conditions allow.*

ISSUE # 7: Why has CRB's Fund reserves decreased over the last 5 years?

Background: The CRB is funded almost completely by examination and licensing fees collected from applicants and licensees. The CRB receives no federal funding and no revenue from the State's General Fund. License renewal is the CRB's largest source of revenue, accounting for approximately 91% of the operating fund. Another 3% comes from examination and license application fees, and just under 3% is comprised of payments of citations/fines. The remaining just over 3% is miscellaneous revenue including delinquent fees and investment income. For fiscal year 2010-11, the CRB has a projection of 16.2 months in reserve. There is no statutory mandatory reserve level for the CRB.

Table 4. Fund Condition						
(Dollars in Thousands)	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Beginning Balance	1957	1808	1521	1201	1045	862
Revenues and Transfers	658	565	485	592	593	592
Total Revenue	958	865	785	892	893	892
Budget Authority	2624	2374	2001	1793	1638	1454
Expenditures	815	852	800	747	772	787
Fund Balance	1808	1521	1201	1045	862	667

Staff Recommendation: *The CRB should discuss with the Committee the CRB's fund condition, and identify any unusual expenditures or shortfalls that are contributing to the diminishing fund reserves. The CRB should also identify appropriate solutions, including raising fees, controlling spending, or other steps that might be taken in order to ensure a stable reserve level for the Court Reporters Fund.*

ISSUE # 8: Technical Correction Needed to Licensing Act.

Background: On January 1, 2007, the Bureau for Private Postsecondary and Vocational Education was allowed to sunset. In 2009 AB 48 (Portantino, Chapter 310, Statutes of 2009) established the Bureau for Private Postsecondary Education.

Staff notes a technical correction needed in BPC Section 8027 (a) to correctly reference the name of the Bureau:

- (a) As used in this section, "school means a court reporter training program or an institution that provides a course of instruction approved by the CRB and the Bureau for Private Postsecondary ~~and Vocational~~ Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

Staff Recommendation: *A technical amendment should be made to correct the name of the Bureau for Private Postsecondary Education in BPC Section 8027 (a).*