



## **COURT REPORTERS BOARD OF CALIFORNIA**

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### **COURT REPORTERS BOARD OF CALIFORNIA MINUTES OF OPEN SESSION OCTOBER 12, 2012**

#### CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 3:04 p.m. at the Department of Consumer Affairs, 1747 North Market Boulevard, 1<sup>st</sup> Floor Hearing Room, Sacramento, California.

#### ROLL CALL

##### Board Members Present:

Toni O'Neill, Licensee Member, Chair  
Gregory Finch, Public Member, Vice Chair  
Reagan Evans, Licensee Member  
Elizabeth Lasensky, Public Member

##### Staff Members Present:

Yvonne K. Fenner, Executive Officer  
Dianne R. Dobbs, Senior Staff Counsel  
Angelique Scott, Staff Counsel  
Paula Bruning, Executive Analyst  
Connie Conkle, Enforcement Analyst

A quorum was established, and the meeting continued.

Ms. O'Neill reminded the audience to approach the designated table to make public comment and speak clearly so as to be heard by all in attendance as well as by those viewing the meeting by webcast.

#### I. MINUTES OF THE APRIL 27, 2012 MEETING

Ms. Lasensky requested the removal of the word "the" in the third line of the third paragraph from the bottom of page 5 of the minutes. She also requested that the word "Boards" be made possessive in the first line of the third paragraph on page 6 of the minutes.

Ms. Dobbs requested the following two changes to page 3 of the minutes: 1) Replace "but" with "with" and remove the word "are" in the third line of the second paragraph; and 2) add the phrase, "If the exams were to be held at a school," to the beginning of the third sentence in the fifth paragraph.

Ms. Evans requested a correction to the spelling of the word "extension" in the title of Agenda Item VI on page 5 of the minutes.

Mr. Finch moved to approve the minutes as corrected. Second by Ms. Evans. **MOTION CARRIED.**

## II. BOARD AND STAFF APPEARANCES

Ms. Lasensky and Mr. Finch indicated that they have had discussions with staff.

Ms. O'Neill indicated that she attended the California Court Reporters Association (CCRA) convention the previous weekend. Although she was not in her official capacity as a Board member, she fielded many questions that pertained to the Board. As part of her duties with the board of directors of the National Court Reporters Association (NCRA), she visited state association meetings in Tennessee in May and Kansas in June, as well as the NCRA convention in Pennsylvania in August and a meeting in Wyoming in September. She noted how effective some of the smaller states are in their legislative efforts.

Ms. O'Neill reported that NCRA has the Technology Evaluation Committee, which assesses the pros and cons of the technology on the horizon. Currently the committee is reviewing the paperless environment issue, which freelance reporters are already experiencing. More courts are also going to a paperless environment; however, the budget-driven motive for going paperless has caused a need to react to issues that were not foreseen. Ms. O'Neill indicated that she pays close attention to the frequent updates sent out by the committee since their information may be a forecast of what will happen in California.

Ms. Evans shared that she also attended the CCRA convention over the past weekend. In June, she attended the Deposition Reporters Association (DRA) seminar. She will provide a Taking Realtime Awareness and Innovation Nationwide (TRAIN) presentation on Saturday, October 20, 2012. TRAIN is a program established by the NCRA. She mentioned that she has also communicated with staff and processed enforcement matters through the mail since the last meeting.

Ms. Fenner stated that in June she utilized her own funds to attend several events, including the DRA seminar in Burbank to head off enforcement issues regarding privatization of the courts. She added that she and Ms. Bruning staffed a booth at the non-profit resources fair at the Pathways to Justice Conference in San Francisco to provide outreach for the Transcript Reimbursement Fund. She reported that she provided a presentation for Sage College court reporting program, for which her travel was sponsored by the school. She and Ms. Bruning also attended the Reporters Association of Public Schools meeting in June, wherein a representative of the Chancellor's Office added to the members' discussion and understanding of problems surrounding repeatability of classes.

Ms. Fenner indicated that she participated in a CCRA webinar in July, which gave her hope for the Board's use of the same technology for future outreach. Ms. Fenner also attended an advisory meeting for the Argonaut Court Reporting Program in August.

Ms. Fenner shared that Ms. Bruning was one of the first four graduates of the Analyst Certification Training – a Department of Consumer Affairs (DCA) program designed to build analytical skills over a series of six classes and included a final oral presentation.

### III. REPORT OF THE EXECUTIVE OFFICER

#### A. CRB Budget Report

Ms. Fenner referred to the final 2011/12 fiscal year Budget Report on page 13 of the Board agenda packet. She then focused on the overall health of the fund on the Analysis of Fund Condition report on page 14 and the TRF Fund Condition on page 15.

#### B. Transcript Reimbursement Fund

Ms. Bruning reported that the Transcript Reimbursement Fund (TRF) 2011/12 fiscal year finished strong with over \$240,000 in payments on behalf of indigent litigants represented by pro bono attorneys. She indicated that \$96,000 has already been paid out in the current fiscal year.

Ms. Bruning indicated that the Pro Per Fund has been extended to January 1, 2017, as part of the sunset bill. The \$30,000 limit was fully allocated for 2012 after reviewing an application received April 2, 2012. There are already 72 acceptable applications which were received over the last six months, totaling over \$31,000, that are waiting for funding which will be available January 1, 2013. She added that all applications have been reviewed, and deficient or unacceptable applications have been returned.

Ms. O'Neill inquired if language could be developed to speed up the billing process from court reporters to the TRF. Ms. Bruning responded that funding is provisionally approved pending a final invoice from the court reporter after the transcript is prepared. Since the court system can sometimes cause a delay in the production of the transcript, such as ordering the transcript on appeal, timelines can be hard to predict. Therefore, staff doesn't have any control over how long it may take for a court reporter to bill.

#### C. Sunset Review

Ms. Fenner reported that the sunset bill (SB 1236) was chaptered, which extends the Board, the TRF, and the Pro Per Fund to January 1, 2017. Since an extension of the Pro Per Fund, formerly known as the Pro Per Pilot Project, was expected to cause a fiscal and workload impact on the Board, staff submitted a Budget Change Proposal (BCP) to the Department of Finance requesting a half-time Staff Services Analyst position. Ms. Fenner indicated that she is still awaiting a response regarding the BCP.

#### D. Exam

Ms. Fenner reported that the next CSR dictation examination is scheduled for November 2, 2012, in Sacramento at the DoubleTree Hotel. There is an expected 145 candidates, 40 of whom are taking the exam for the first time. This is a large examination for the Board, especially in Sacramento. Mr. Finch inquired if the increase in examination candidates was an indication of any trend. Ms. Fenner reported that the schools have reported an increase in enrollment; however, the industry is in flux with the layoffs in the courts. The demand for court reporters is not going away, but the delivery of the service is changing. Since the court reporting program takes some time to complete, the industry needs of a few years ago may have spurred some students to enroll who are just now to the point of taking the examination.

#### E. Exam Workshops

Ms. Fenner indicated that there were fewer examination development workshops this year due to the budget, which will continue to next year. There are still enough workshops to provide questions and validate the examinations three times each for the next year.

Ms. O'Neill inquired if the same constraints continue, if the Board will be able to continue to offer the examination three times each year. Ms. Fenner responded that the current setback is finding a venue in Southern California that will contract with the Board for the dictation examination. The hotel that has been used for many years is under new management and will not sign a contract more than 60 days from the event date due to the small size of the group. Staff is working with the DCA Budgets Office to find a state location. Ms. Fenner added that additional services would still be needed, such as electrical connections, security, and tables. Staff also continues to seek out hotels and brainstorm ideas for making the examination schedule viable.

#### F. School Updates

Ms. Bruning stated that staff initiated Phase I of the school oversight reviews by sending out requests for information to all the Board's recognized court reporting programs. The response date deadline was October 1, 2012, with many of the schools meeting that timeline and a few requesting extensions. The Phase I process includes a request of information from the schools to be reviewed by staff at the Board office.

Phase II, the on-site component of the school oversight, will be conducted as budget and travel restrictions allow in the coming years. Ms. Fenner added that in the last week DCA delegated some travel approval back to the boards and bureaus under certain criteria without having to go through the Department. Since school oversight is mission critical and mandated, the Board can approve travel for that as budget constraints allow.

#### G. CRB Today Newsletter, Fall 2012

Ms. Bruning referred to the latest edition of the CRB Today newsletter, which was made available at the meeting. The publication has been sent to the Internet team for electronic distribution.

Mr. Finch complimented the quality of the Frequently Asked Questions, which he finds on point.

#### H. BreZE

Ms. Fenner stated that the implementation of BreZE will include a revision to the renewal forms, which licensees will be able to complete online. It is hoped that the information being inputted will be easier for staff to read, including licensees' e-mail addresses. The e-mail addresses will be used to disseminate Board updates and newsletters electronically.

Ms. Fenner indicated that the Board has been moved from the third wave to the second wave of implementation in the BreEZe project, which is projected to take place in the spring of 2013. Many smaller boards were moved from the third to the second wave in an effort to even out the workflow. The first wave is being rolled out and is at the data conversion stage with issues being hammered out. Staff is seeing a lot of work upfront, but they are foreseeing the time-saving benefits coming in the near future.

#### IV. ENFORCEMENT REPORT

Ms. Conkle reported that as part of the Consumer Protection Enforcement Initiative, DCA continues to request each board provide monthly statistical information regarding enforcement activities. She referred to final fiscal year 2011/12 Enforcement Report on page 17 of the Board agenda packet, as well as the first quarter report for the current fiscal year on page 18. Ms. Evans noted that the number of complaints received in the first quarter of this year were significantly higher than in the same time period the previous year. Ms. Conkle commented that she was conducting more note reviews and was corresponding with incarcerated individuals more often. Ms. Fenner noted that a rumor had been circulating through the prison population that the Court Reporters Board will re-transcribe trial transcripts if a complaint is filed.

Ms. Lasensky complimented Ms. Conkle on the statistical reports and the enforcement matters that are sent to the Board members for review. Ms. O'Neill joined in, adding that the disciplinary packets are very clear and organized, which allows for a quick review.

Ms. Conkle shared that she can now refer cases to the Attorney General's office again since the beginning of the new fiscal year signals a refreshed funding allowance for their expenses.

#### V. UPDATE ON GIFT GIVING REGULATIONS

California Code of Regulations, Title 16, Section 2475 (a)(8) (sic)

Ms. Fenner reported that staff held a public hearing on October 1, 2012, regarding the proposed amendments to Section 2475. The written comments received were included in the Board agenda packet, and the proposed changes were incorporated into the language being presented to the Board on pages 21 and 22. The changes to the language under consideration are significant enough to require a 15-day public comment period.

Ed Howard, on behalf of DRA, expressed concerns with the changes that were made as a result of the public comment period. He suggested that the language be brought in line with the ruling of the Court in the US Legal decision. Corporations that are not owned by licensees can in fact be providers of shorthand reporting services. Mr. Howard's suggested additions to subdivision (b) are in bold:

(b) Every person under the jurisdiction of the Board who holds a license or certificate or temporary license or certificate or a business that renders professional services, namely **shorthand reporting services**, within the meaning of Corporations Code section 13401 shall comply with the following professional standards of practice:

Moving on to subsection (b)(8), Mr. Howard indicated that he sees two problems with the first change to the language presented in the Board agenda packet. First, the addition of

"by any reporter or any entity providing the reporting services of a licensed shorthand reporter" may cause confusion since it is redundant to subsection (b) where the definition is laid out for all eight provisions under subsection (b). In addition, the introduction of the term "licensed shorthand reporter" is different than the wording which describes licensees under subdivision (b). Therefore, Mr. Howard suggested the language in the first sentence of (b)(8) be reverted back to "for reporting services."

In the fourth line of subsection (b)(8), Mr. Howard objected to the addition of "and/or any entity providing reporting services." He reasoned that it may introduce a new element to the professional standards of care. He added that the aim of the regulation is to preserve the impartiality of the profession, not to regulate things such as the exchange of birthday gifts between firm owners and reporters, for example.

Mr. Howard indicated that DRA supports the concept of adding family members of attorneys to the language, but suggested minor changes to the wording so that it reads more clearly. He also added the concept of family members to that of employees of attorneys. He suggested the deletion of "attorneys of law firms," stating that it is redundant and confusing.

Skipping to the latter part of subsection (b)(8), Mr. Howard indicated that they would mirror the preceding language by adding family members of both attorneys and their employees. In addition, he requested the deletion of "a law firm" because that is handled in the phrase "a law firm as a single recipient."

Mr. Howard offered to present his comments in writing for the Board's records. His suggested additions to subdivision (b)(8) are in bold, and his suggested deletions are in double strikethrough:

(8) Other than the receipt of compensation ~~for reporting services~~ **for reporting services**, ~~by any reporter or any entity providing the reporting services of a licensed shorthand reporter,~~ neither directly or indirectly give nor receive any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported ~~and/or any entity providing reporting services.~~ Such persons or entities shall include, but are not limited to, **attorneys or an attorney's family members**, employees of attorneys **or an employee's family members**, ~~family members of attorneys,~~ law firms as single recipients, ~~attorneys of law firms,~~ clients, witnesses, insurers, underwriters, or any agents or representatives thereof. Exceptions to the foregoing restriction shall be as follows: (A) giving or receiving items that do not exceed \$100 (in the aggregate for any combination of items given and/or received) ~~per above-described person or entity per calendar year to or from an attorney~~ **or an attorney's family members,** ~~a law firm,~~ a law firm as a single recipient, an employee of an attorney or an employee's family members, a family member of an attorney, a client, a witness, an insurer, an underwriter, or any agent or representative thereof; or (B) providing services without charge for which the certified shorthand reporter reasonably expects to be reimbursed from the Transcript Reimbursement Fund, Sections 8030 et seq. of the Code, or otherwise for an "indigent person" as defined in Section 8030.4(f) of the Code.

Mr. Howard indicated that one letter received by the Board during the public comment period requested that as part of the rulemaking proceedings, the Board confirm it has jurisdiction over corporations. He objected to the request since making legal conclusions is

not a proper part of the regulatory proceeding. He added that the Board has already taken the matter to court in an effort to exercise its jurisdiction, thereby confirming its belief that it has jurisdiction.

He indicated that he and his client are confused by the Informative Digest and will include an explanation in their written comments. Mr. Howard thanked the Board for working so diligently on DRA's petition for rulemaking.

Ms. O'Neill inquired if the Board needed to approve language that day. Ms. Fenner responded that staff could not go forward with the regulatory process until the Board approves language. She indicated that staff could wordsmith the proposed language and bring it back to the next Board meeting, which would likely be in the spring.

Ms. O'Neill welcomed further discussion from the Board members and comments from the public. After hearing none, she indicated that she would like to see the proposed language as presented during the discussion. Mr. Finch and Ms. Lasensky agreed that they would like to revisit the information after the comments so that they are able to review the changes in writing.

Mr. Finch agreed with Mr. Howard and does not want to give mixed messages about definitions, so he would like to see the language cleaned up. Ms. Fenner reiterated that there is time to revisit the language provided the Board meets in the spring.

Ms. O'Neill directed staff to prepare a final version for the Board's review and discussion at the next meeting.

## VI. STRATEGIC PLAN UPDATE

Ms. Fenner stated that the 2012-2014 Strategic Plan was approved by the Board at its April 27, 2012, meeting. She referenced the list of action plan objectives in the Board agenda packet on pages 35 and 36. She indicated that staff is working toward meeting the goals, but is a little behind in meeting some target dates. Ms. Fenner asked the Board to let her know if there are any items they would like to see prioritized.

Mr. Finch requested more information on the Budget Change Proposal (BCP) that was listed as denied. Ms. Fenner responded that staff requested that funds be permanently appropriated from the Board's fund into its spending authority for examination development workshops. Unfortunately, the BCP didn't meet the criteria in the Department of Finance's budget letter. A new BCP will be submitted in another year.

Ms. Evans commented that she can see that staff is meeting some deadlines and is on track for the most part. She would like to continue moving forward on the objectives, but noted it is apparent that staff is managing everything well. Ms. O'Neill and Mr. Finch agreed.

## VII. REPORT ON LEGISLATION

Ms. Fenner reported that AB 2657 (Calderon) was chaptered on July 24, 2012. The Board supported this bill which requires transcribers to designate as inaudible or unintelligible any portions of proceedings recorded electronically.

She indicated that the language that pertained to the CRB within SB 1237 (Price), known as the "Sunset Bill", was transferred to SB 1236 (Price) and was chaptered on September 14, 2012. This bill extends the Board and the Transcript Reimbursement Fund to January 1, 2017.

Ms. Fenner shared that AB 2076 (Ma) was unsuccessful. This bill would have required a court reporter fee to be charged for each proceeding lasting less than an hour, and for the collecting court to retain the fee.

She reported that AB 2372 (Hill) was chaptered on July 13, 2012. This new law will be a significant help to the collection efforts of deposition reporters.

Ms. Fenner indicated that AB 1904 (Block, Butler and Cook) was signed into law on September 20, 2012, and gives special consideration to the spouses of active military personnel to have their licensing applications expedited if being stationed in California under official active duty military orders. Ms. O'Neill inquired what the practical application is for the Board and if there is a need to grant reciprocal licensing or develop criteria for doing such. Ms. Fenner responded that staff would be able to recognize the applicant's work experience as a court reporter or a license as a court reporter in a state that the Board recognizes as reciprocal. In either event, the applicant would still be required to take the Board's examination.

Holly Moose, DRA, inquired if the applicant would be allowed to work in California until the next examination was offered. Ms. Fenner responded that they would not be allowed to do so and that a provisional or temporary license would not be issued. Ms. Bruning added that this bill is not specific to the Court Reporters Board, but rather applies to all licensing entities under DCA.

## VIII. CORPORATIONS PRACTICING WITHOUT AUTHORIZATION

Ms. Fenner provided background information for the agenda item. She indicated that the item was before the Board as a follow-up to the litigation with US Legal. The Court found that because US Legal is incorporated in Texas, they are acting as a foreign domestic corporation; therefore, the Board was not able to enforce its citation. As a result of the Court's findings, it became apparent that a major problem exists in the industry with firms practicing in California without authorization to do business here. The Court also found that US Legal was rendering professional services without authorization, which means they are violating California law, but the Board doesn't have a clear means to enforce it.

Ms. Fenner also pointed out that when a firm violates the law, there is not a public record of it. This leaves the public without protection or the ability to make an informed decision as a consumer in the way that they would be able to do when inquiring about a licensee who had received a disciplinary action.

Ms. O'Neill outlined the six possible scenarios prepared by staff in an effort to address the issue that has been raised by the court case decision. The first is to seek legislation, which is a lengthy process. The second option would be to enforce Business and Professions (B&P) Code 8040, which governs how certified shorthand corporations are to be set up. She indicated the third option would be to draft regulations to implement, clarify and make specific B&P Code 8040 to state what constitutes professional services. Fourth, the Board could take action against the licensee by way of citation for the violations committed by the firm for which they work. The fifth option for consideration is that of turning over cases against corporations to the District Attorney or Attorney General for unfair business practices based on violations of the B&P Code or Corporations Code. Finally, the sixth option would be to pursue firm registration.

Ms. O'Neill opened the agenda item up for public comment, welcoming ideas in addition to what staff prepared.

Ed Howard, along with Antonia Pulone, thanked the Board on behalf of DRA and as a consumer for bringing this case. He stated that boards are supposed to be using their existing authority to seek vigorously to protect California consumers. The effort of this Board to protect consumers and to honor the importance of this profession by bringing this case is something that is extraordinarily noteworthy.

Mr. Howard indicated that the Court held that the remedy of citation and fine was not available for the Board to issue to a company that had no apparent statutory authorization to provide shorthand services in California. He interpreted that to mean that the Board did not have the ability to cite and fine unlicensed individuals for regulations that apply to licensees. Instead, the Board would need to use remedies available to it under statute for unlicensed practice. He added that the Board could use an injunction, or court order, to prevent the unlicensed individual from violating the law.

He stated that the Court held US Legal to be a corporation incorporated out-of-state. He added that the Moscone-Knox Professional Corporation Act requires foreign professional corporations to be "authorized" by the B&P Code to be doing business in California. Since no such authorization exists for US Legal, the Court elected to say you cannot treat them as if there was authorization by issuing a citation and fine. Further, the Court held for the first time that a corporation not owned by a licensee can render the very services that this Board regulates. The Court also ruled that US Legal renders professional services, namely shorthand reporting services, within the meaning of Corporations Code 13401. Corporations can never be providers of the services the Board regulates because they cannot sit for a licensing examination. The Court ruled that US Legal, based on the evidence at trial, is a provider of the services this Board regulates. This is extremely consequential when the Board is trying to figure out what remedies it has available in dealing with corporate providers of services. Mr. Howard believes this to be the primary reason the Board chose to pursue this action.

Mr. Howard indicated that although citation and fine are not available to the Board when dealing with foreign corporations for which there is not authorization, other remedies are available that do not involve legislation. The first option he discussed was that of injunction, as presented by staff, against the defendant in the case for providing the services that the Board regulates without apparent statutory authorization to do so. He added that this was the position taken by the Board's counsel in the case. Unlicensed

activity poses a risk to consumers; therefore, the Board needs to remedy its impairment to regulate those services.

Seeking an injunction against a company that a trial court has ruled is here without authorization of the B&P Code would build on what has been accomplished in court and the resources already expended. An injunction can be brought by the Board itself or by another public entity charged with enforcing the law, such as the District Attorney or City Attorney, under the Unfair Competition Law, B&P Code section 17200, et seq. Mr. Howard urged the Board to look at this option carefully.

Mr. Howard discussed his second suggestion of refining the Board's scope of practice by way of regulation. He mentioned that other boards, including the Board of Accountancy, the Board for Professional Engineers, Land Surveyors, and Geologists, and the Dental Board, had all done this to clear up the ambiguities with their professions.

Mr. Howard supported his suggestion by raising questions that orbit around unlicensed activity. For corporations not owned by a licensee to provide shorthand reporting services, there is likely somebody that is doing things for which a license is required. For example, US Legal was determined to be performing duties prescribed only to deposition officers. Under the Code of Civil Procedures 2025.520, deposition officers are prescribed as the entities that are tasked with the extremely sensitive task to ensure corrections are handled ethically, neutrally and lawfully.

Another example he shared was that of an attorney working as in-house counsel for a non-licensee owned firm or corporation. There would be some things they could instruct the attorney to do that would not be the practice of law; however, the line needs to be drawn when talking about a non-licensee directing a licensee, for example, how to write briefs or cross-examine a witness. For this reason, you do not see law firms owned by Fortune 500 companies. Mr. Howard stated that corporations were originally forbidden from having anything to do with providing professional services because corporations are not real people that can sit for an examination.

The real question of importance is how the Board is able to use its authority related to unlicensed practice and unlicensed activity. As discussed, the Board could seek an injunction under B&P Code 125.5. The Board could also make regulations to define B&P Section 8016, the scope of practice which says in part, "no person shall engage in the practice of shorthand reporting unless the person is holding a license." The statute isn't limited to individuals when it says person. Persons violating that law commit a misdemeanor, which is a criminal component to unlicensed activity. In addition, B&P Code 146 (c) and (d) indicate that a violation of B&P Code 8016 is an infraction. California Code of Regulation 2480 (f) allows the Executive Officer to issue citations and orders of abatement to "corporations that are performing or who have performed services for which a license is required, but do not possess a license." The Court's ruling that corporations not owned by licensees can be providers of reporting services suggests that there is unlicensed activity at least potentially going on there.

Mr. Howard indicated that he believes the regulatory process to be the fairest and best route. In this way, licensed versus unlicensed activity is spelled out by the Board in a thoughtful and deliberate way. Mr. Howard offered to provide a petition for rulemaking.

Mr. Finch indicated that the statute governing what a court reporter does provides more details than the attorneys' statute provides regarding their duties. He expressed his concern about developing regulations that may put in more lists of things when ample lists may already be available to make a decision.

Mr. Howard agreed with Mr. Finch's observation, indicating that the scope of practice is very functional. He argued, though, that it does not address the question of the control, supervision, or direction of licensees by non-licensees when the tasks rise to the level of practicing shorthand reporting.

Mr. Finch responded that the broad statement that the corporations are providing professional services concerns him. He indicated that he would explain further at a later point.

Mr. Howard shared his two-fold suggestion – one covering unlicensed corporations and the other covering unlicensed activity. In the first part, he believes there should be some leverage from the decision brought by the US Legal case. Since it has been established that one particular non-licensee-owned company on the basis of the evidence presented in that case has been determined to be providing the service this Board regulates, he suggested the Board enforce the Moscone-Knox Act, which makes professional corporations subject to all the rules of this Board. As an additional component or element of this profession, since it has been confirmed that corporations can be providers, he would suggest implementing regulations that cover unlicensed activity being conducted within the corporations.

Mr. Finch asked Mr. Howard if he had suggestions on how to go down the road of leveraging off the US Legal case. Mr. Howard confirmed that he did; however, both agreed that they did not want to discuss that any further at this time.

Ms. Evans asked Ms. Pulone if she had anything to add. Ms. Pulone shared that she believes there is a great deal of other activities conducted by firms, in many cases unlicensed firms, beyond just the issue of witness notification, the entire line of production, and the control of transcripts that should come under the supervision of a licensee. There are a variety of other issues in production and processing of transcripts that she believes are critical and that have to be considered in terms of how much supervision or even knowledge the licensee has about how things are being handled.

Mr. Howard added that addressing this issue generically by way of regulation is a beneficial, thoughtful and iterative process. The Board and staff are able to debate how far and where to go, what is wise and what is really needed. The consumers and licensees are benefitted, also, because they are provided with notice of the rules of the game. This is especially pertinent when talking about unlicensed activity as a possibly criminal liability. The Board may choose to focus on the straightforward issues to start and leave the more difficult questions for staff interpretation or for future judicial interpretation at a later date.

Mr. Finch asked Mr. Howard if he had any comment on option 6 as provided by staff regarding pursuit of firm registration. Mr. Howard indicated that he and his client would oppose that idea. He reiterated his frustration as a staff person in the Legislature seeing boards request a legislative fix instead of exercising their existing authority. He urged the Board to exercise its inherent authority to address these issues before going to the

Legislature. He also shared that he did not think such legislation would pass. Not only were there political reasons for his belief, but he also indicated that the Board just achieved a significant victory; therefore, the Legislature will expect the Board to go forward. Mr. Howard commended the Board for going after a difficult case instead of only going after the easy cases. Mr. Howard thanked the Board.

Ms. O'Neill called for any further comments. Ms. Dobbs suggested the Board clarify by regulation B&P Code 8017, which states, "the accurate transcription thereof." She stated that the Board could define those involved in that process and probably address a lot of these issues raised. Mr. Howard stated that her suggestion is brilliant.

Ms. O'Neill requested discussion by the Board. She stated that she believed it would be best to give staff a direction of what is desired since they will carry out the action.

Mr. Finch indicated that he desired to see the Board leverage off the US Legal case. He questioned what costs would be involved and requested an analysis of such. He also wanted to approach the issue from all angles including implementing regulations. He agreed with Ms. Dobb's suggestion to define the accuracy of the transcription.

Ms. Evans was also interested in clarifying B&P Code 8017, but also would like to refine the scope of practice. She further requested additional information as to what an injunction would entail.

Ms. O'Neill shared that the Tennessee Board of Court Reporting was recently wrestling with the same problems. As a new licensing state, the statutes had been changed to address the duties of a licensee. After seeing an influx in the last year of the big firms coming in, the licensees began pushing back, saying they could not send the transcript to the big firm because the state law says licensees have to supervise the production of the transcript. She added that the language is in some states already. Ms. O'Neill is interested in the outcome of their battle and would like to have staff and counsel put something together for the Board to talk about.

Ms. Fenner suggested the Board hold town hall meetings in both Northern and Southern California. She would try to get as much comment before spending time trying to wordsmith language that could be off base. Ms. O'Neill, Ms. Lasensky, and Mr. Finch agreed that was a good idea. Mr. Finch added that he does not want to see the Board get into a position that is just a response to the US Legal case. He desires to see language that illuminates from the licensees.

Ms. Lasensky requested further clarification as to the unlicensed activity. Mr. Finch offered assistance, stating that there are two different issues: One is a regulatory fix to define what it is to produce a transcript. The other issue is how to pursue legal action against unlicensed people. He noted the Board members are requesting that staff and the attorneys provide them with a report on the viability of that. Ms. Lasensky agreed that one without the other is not going to hit the necessary target.

Ms. Fenner indicated that she has clear direction to initiate the town hall meetings as a first step and also to work with counsel on a report so that the Board knows what an injunction would look like.

Mr. Finch inquired if licensees providing services for a corporation are liable for allowing a corporation to be responsible for the activities prescribed to the licensee. He asked if there was something the Board could do to stop the licensee for allowing that, which would ultimately put some leverage on the corporation to do something different. Ms. Fenner responded that option number 4 as presented to the Board was to take action against the licensee for just that. US Legal asserted in the lawsuit that they are just helping the court reporter. If the Board were to adopt that position, then the court reporter is ultimately responsible and they have to be on the hook for it. Mr. Finch requested that staff look into that further. He added that given the statute has some specificity already, a licensee may be in violation of the statute by allowing and/or supporting someone else doing something in contradiction to the statute. He requested an analysis of what effect staff believes that might have.

Mr. Howard offered to provide his verbal comments in writing. He believed it would be helpful to staff. He reiterated his request to spell out what constitutes unlicensed activity so that those who want to obey the law don't cross the line.

Ms. Evans indicated that she keeps going back to the question of how the Board got in this position when for so many years court reporting operations were by licensees only. Ms. Fenner responded that she reached out to former Executive Officer Rick Black to ask him that very question. His response was that he didn't remember. At the time when the large corporations started coming to the state, they determined that it was okay. She indicated that Mr. Black did not say who "they" were. The Board at the time may not have wanted to take it on or they may have not foreseen it as a problem. Unfortunately, he did not have any specifics as to why B&P Code 8040 was not enforced.

Ms. O'Neill called for any further comments. Based on the discussion, she turned over the task to the staff to begin the town hall meetings, work with counsel, and keep the Board members updated. Ms. Fenner stated that she has clear direction and thanked the Board for their input and direction.

## IX. ELECTION OF OFFICERS

Ms. Fenner reported that she was contacted by the Governor's Appointment Office inquiring if the Board needed assistance in filling any vacancies. She responded that the only vacancy the Board currently has is the position from the Speaker of the Assembly's office. She also indicated that the Mr. Finch was serving in the grace period of his second term as a Governor's appointee, but the Board is no hurry to see his position filled since he is such an excellent member. Ms. Fenner was then informed that Mr. Finch is permitted to serve two full terms, and since his first term was a partial term, he is eligible to reapply for another full term. Ms. Fenner gave Mr. Finch the information to consider prior to the meeting. She thought it might have some bearing on the election of officers.

Mr. Finch indicated that he is interested in reapplying for another term. He appreciates the support that he receives from the Board. He also identifies with the Board's transparency and integrity and enjoys contributing to that.

Ms. O'Neill opened up the discussion for nomination of officers. Ms. Lasensky asked Ms. O'Neill if she wanted to remain chair. Ms. O'Neill said that she would do whatever the other members wanted. Mr. Finch stated that he would like her to stay on as chair.

Ms. Evans agreed, stating that Ms. O'Neill's position with the NCRA brings a broad perspective and service to the Board.

Ms. Lasensky nominated Ms. O'Neill as chair. Second by Mr. Finch. **MOTION CARRIED.**

Ms. O'Neill called for nominations of vice-chair. Ms. Lasensky inquired if Mr. Finch would like to continue as vice-chair. Mr. Finch asked Ms. Evans if she was interested in serving as vice-chair. Ms. Evans responded that she believed it was good to have a public member serving as one of the officers. Mr. Finch indicated that he doesn't feel like he needs a title to be heard, but he would serve if that is what the other members want.

Ms. Lasensky nominated Mr. Finch as vice-chair. Second by Ms. Evans. **MOTION CARRIED.**

X. PUBLIC COMMENT

No comments were offered.

XI. FUTURE MEETING DATES

Ms. Fenner reiterated that the Board does not have a contract in place yet for the next dictation examination; however, it would likely take place in February or March 2013 in Southern California. The Board agreed to wait until a contract for the dictation examination was established before deciding on the next meeting date, at which time Ms. Fenner will poll the Board by e-mail to check their availability.

The Board took a short recess at 4:58 p.m. and returned at 5:03 p.m.

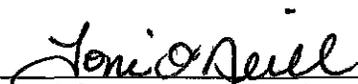
XII. CLOSED SESSION

The Board convened in to closed session pursuant to Government Code sections 11126(a) and 11126(e)(2)(A) at 5:03 p.m.

Upon returning to Open Session, Ms. O'Neill indicated that there was nothing to report from closed session.

XIII. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 5:10 p.m.

  
TONI O'NEILL, Board Chair

3-29-13  
DATE

  
YVONNE K. FENNER, Executive Officer

3-29-13  
DATE