



COURT REPORTERS BOARD OF CALIFORNIA

2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
Fax (916) 263-3664 / www.courtreportersboard.ca.gov



COURT REPORTERS BOARD OF CALIFORNIA MINUTES OF OPEN SESSION MARCH 29, 2013

CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 10:35.m. at the Westin LAX, 5400 West Century Boulevard, Lindbergh Ballroom, Los Angeles, California.

ROLL CALL

Board Members Present: Toni O'Neill, Licensee Member, Chair
Reagan Evans, Licensee Member
Davina Hurt, Public Member
Elizabeth Lasensky, Public Member

Staff Members Present: Yvonne K. Fenner, Executive Officer
Angelique Scott, Staff Counsel
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

I. INTRODUCTION OF NEW BOARD MEMBER, DAVINA HURT

Ms. O'Neill introduced Davina Hurt, the Board's newest member, and highlighted her background. Ms. Hurt has been practicing law since 2005 and has a general law practice, which handles both criminal and civil cases. She has participated in various projects, including drafting documents for the International Criminal Tribunal of Rwanda. Ms. Hurt comes to the Board as an Assembly appointment. Ms. O'Neill stated her gratitude for having Ms. Hurt on the Board, specifically for the attorney's viewpoint.

Ms. Hurt expressed her excitement for being part of the Board and looks forward to supporting the consumers of California.

Ms. Hurt's term runs through June 1, 2015, and her full biography can be viewed on the Board's Web site.

II. MINUTES OF THE OCTOBER 12, 2012 MEETING

Ms. Hurt suggested a revision to the title of Agenda Item V on page 5 of the minutes to state section 2475 "(b)(8)" instead of "(a)(8)". Ms. Bruning indicated that staff had included the word "sic" next to the title because the item had been incorrectly listed as (a)(8) on the

agenda for that meeting. Ms. Scott recommended that the title be kept as it had been noticed on the agenda.

Ms. Lasensky moved to approve the minutes. Second by Ms. Evans. **MOTION CARRIED.**

III. BOARD AND STAFF APPEARANCES

Ms. Lasensky shared that she had completed the ethics training online.

Ms. Evans completed the sexual harassment prevention training and fielded phone calls. She is scheduled to meet with the Governor's Office on April 1, 2013, regarding her reappointment. She also indicated that she attended the Deposition Reporters Association (DRA) convention, but not in her official capacity as a Board member.

Ms. O'Neill completed the ethics training as well and is planning to take the sexual harassment prevention training course as required by her employer and the State. She attended a few National Court Reporters Association (NCRA) functions and maintained contact with Board staff.

Ms. Fenner participated in career day for a law academy at a local high school. The appearance included a mock deposition using realtime. She mentioned that outreach is limited to those things within driving distance due to the travel restrictions.

Ms. Hurt indicated that she has had many discussions with staff working to complete her hiring package and orientation with the Board's history, policies, and upcoming decisions.

Ms. O'Neill reiterated that the Board historically made more public appearances before the stringent travel restrictions were placed. She indicated that she finds herself answering questions outside of her official capacity due to the need of the industry. She refers licensees and consumers to the Board's Web site and staff when necessary. She hopes that outreach can be resumed once the economy recovers.

IV. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner referred to the Budget Report, fiscal month 7, on page 21 of the Board agenda packet. She pointed out that the Board is in the red as typical, but that adjustments would be made as the year progressed. Ms. O'Neill inquired if there were any trends being seen with the budget. Ms. Fenner responded that the numbers were typical. She shared that the hotel expenses for the exam are encumbered up front at the full contract rate of around \$20,000, but then adjustments are made when the Board is credited for sleeping rooms, bringing the actual cost down to an amount closer to \$4,000 - \$8,000.

Ms. O'Neill inquired if there were any Budget Change Proposals (BCPs) in the works. Ms. Fenner indicated that the Board has a Legislative BCP for a half-time position that has been approved by the Department of Finance. The BCP is now at the Legislature for approval. Staff attended a Senate Budget Committee pre-hearing, but were unable

to attend the Assembly hearing on the day before the Board meeting. Once the budget is signed, the BCP will become official.

Ms. Fenner reported that staff recently received a request for concept papers for the next round of BCPs. It is also time to send out the Occupational Analysis for the written examinations again.

Ms. Fenner then focused on the fund assets on the Analysis of Fund Condition report on page 22 and the TRF Fund Condition on page 23.

B. Transcript Reimbursement Fund

Ms. Bruning reported that the Transcript Reimbursement Fund (TRF) continues to be fiscally strong; however, the pro per program is again underfunded. Staff is processing applications received in 2012 with the money allocated to the fund in January 2013.

Ms. Fenner shared that staff was recently made aware that three sections of the Business and Professions (B&P) Code that governs the TRF were inadvertently repealed effective January 1, 2013. These include B&P Code sections 8030.4, 8030.6, 8030.8. The affected sections were mistakenly not included in the sunset bill, SB 1236, which was chaptered last year. These code sections contain definitions of qualified applicants, set out limits of payment, and requirements of applications. Since these items are crucial to the operation of the fund, staff has halted processing all applications received after January 1, 2013. Ms. Fenner indicated that she had been in contact with the consultant for the Senate Committee on Business Professions and Economic Development (BP&ED), as well as the Legislative Review division at the Department of Consumer Affairs. This issue requires a legislative remedy; therefore, BP&ED staff are looking at amending an emergency legislation bill to include the affected sections. Staff is preparing to notify the non-profit organizations, as well as post an advisement on the Board's Web site.

C. Exam

Ms. Fenner reported that there are 149 candidates at the examination being held concurrently with the Board meeting, 57 of which are taking the exam for the first time. Ms. Hurt had the pleasure of sitting in on one of the dictation sessions at the examination prior to the Board meeting.

Ms. Fenner referred to the historical examination pass rates included on pages 24 – 26 of the Board agenda packet. Ms. Lasensky expressed concern over the poor pass rates for first-time applicants taking the English examination. Ms. Fenner responded that students are coming into court reporting programs with increasingly poorer English base levels. The court reporting programs have much more to teach these students than they did in the past. Staff is working with the Office of Professional Exam Services (OPES), the Board's exam developer, to produce a sample test for teachers at the July examination development workshop. It is hoped that the sample exam, which will not contain actual test questions, will help to prepare the candidates. OPES has also suggested that candidates are checking answers quickly instead of taking the time to read and thoroughly analyze each question before answering.

Ms. Hurt inquired how many exam workshops are conducted annually. Ms. Fenner responded that it varies during the examination plan from two to four development workshops. For the current plan cycle there is now a large test bank, so there are two exam development workshops per exam cycle. The first workshop group of expert consultants picks the questions, and the second group takes the test and sets the passing score.

Ms. Lasensky commented that the pass rate figures in general are going down. Ms. Fenner agreed that they are slightly decreasing. She explained that a longer term timeline would be more helpful since the labor force, with its supply and demand, fluctuates. When there are a lot of licensed reporters in the field, school enrollment decreases. Of course the schools recruit more when the licensee base decreases; however, it may be a six-year delay before those students are ready for licensure. In addition, there are fewer first-time candidates; therefore, the percentages can be skewed, considering one or two students can make up the total number of candidates from any given program.

Ms. Evans commented that first-time candidates sometimes go through the process just to get over the jitters. Ms. Fenner concurred, stating that the test is only \$25.00, which is not much money to preview the test. Unfortunately, this reflects poorly on the schools' statistics, but no one can prevent the students from doing so.

D. School Updates

Ms. Fenner reported that Cerritos College notified staff that they will be closing their court reporting program. She introduced Vykki Morgan, Court Reporting Department Co-Chair at Cerritos College. Ms. Morgan has worked at Cerritos College for nearly 21 years. Previous to that she worked at South Coast College and was an official court reporter for 15 years in San Bernardino County.

Ms. Morgan shared some of the factors contributing to the closing of the court reporting program at Cerritos College. First, she mentioned the economy and the tight budgets of the schools. She stated that the lack of the ability for students to repeat classes as directed by the Chancellor's Office had impacted funding for students in the speed-building classes. Additionally, there were not enough students for a new theory class for the first time in her years at the school, which would result in a lack of full classes down the line for some time. Cerritos College has no tolerance for classes that are not full.

Ms. Morgan indicated that she is coordinating a "teach out" with two more semesters and two summer sessions. They will be working with students with a goal to get as many to graduation as possible. Additionally, the staff will be helping students to transfer to other programs. Ms. Morgan had developed a questionnaire that will be distributed to all the Board-recognized schools. The questionnaire will include topics such as financial aid, speed level requirements, acceptable transfer credits, type of instruction (online or on campus), and class times. Cerritos will hold a mini school fair in January 2014 to allow students to interact with the various schools for questions, since the court reporting program at Cerritos currently has 225 students, 90 of which are on campus. It is her goal to serve these students to the best of her ability.

Ms. Fenner addressed the lack of enrollment for the theory class at Cerritos. She asserted that layoffs in civil courtrooms do not mean the work has disappeared. There may not be state or county employment jobs; however, the services of court reporters are still needed, just in a different manner. Ms. Morgan added that the school administration did not understand that the needs of the industry have changed, but not vanished. Ms. O'Neill stated that the court reporters discharged from her court have been busier than ever due to the skills they acquired and used in court. Ms. Morgan indicated that more press is needed regarding the opportunities that are available.

Ms. Hurt suggested that the Board include an area on its Web site to dispel myths. Ms. Morgan indicated that statistics are not available for the court reporting profession, making it difficult to track trends, which school administrators rely on.

Ms. Fenner wrapped up the school report by acknowledging the Board had reached the end of Phase I of the school review process, having received responses from nearly all the schools.

E. CRB Today Newsletter, Spring 2013

Ms. Fenner referred to the latest edition of the CRB Today newsletter, which was made available at the meeting. She recently learned that the enforcement matters had not previously been compliant with the Americans with Disabilities Act with regards to font size. The publication was then revised to be in compliance, making it appear as if there are many more cases than in past issues. The publication has been sent to the internet team for electronic distribution.

Ms. Evans enjoyed the Student Spotlight, stating that the article was brilliant.

F. BreEZe

Ms. Fenner stated that the BreEZe implementation is slightly behind the original schedule. Fortunately, this project is set up so that there is no payment until it is functioning. The first group is scheduled to go live mid-May of this year; however, it will be close to the end of 2014 before the CRB will be switched from the current database system to the new BreEZe system.

V. ENFORCEMENT REPORT

Ms. Fenner referred to the statistics in the Board agenda packet, stating that there was nothing noteworthy.

VI. STRATEGIC PLAN UPDATE

Ms. Fenner referred the Board to the 2012- 2014 Action Plan Timeline on pages 31 and 32 in the Board agenda packet. She indicated that some items were moved out a year from the original target date. Staff initially guessed as to the target dates; however, workload demands have changed the allowable time to work on those items. She reassured the Board that staff still has the goal of completing these items; it will just be later than originally planned.

Ms. Fenner requested feedback from the Board on the two items with asterisks on the timeline. She believes these to be important, but it may take a year to do a good job on them. The problem lies with the limited staff and lack of budget. She requested the Board tell her which items to prioritize.

Ms. O'Neill reminded the audience they could provide public comment if they desired, but to do so they need to approach the designated table and speak clearly so as to be heard by all in attendance as well as by those viewing the meeting by webcast.

Ms. O'Neill inquired about the action item, "Establish an electronic records task force and identify legality of electronic signatures." She asked what the current position of staff is regarding this matter. Ms. Fenner indicated that staff responds to questions of signatures by referring to the current law wherein an original transcript requires an original or "wet" signature. As the transition to electronic records and signatures is made, the Board may propose the use of technology that contains encryption codes that will invalidate the signature if the content of the transcript is changed. Digital signatures, which are merely copies of signatures, are not recommended because they do not protect the product. These are just guidelines, and an official position has not yet been taken. As with the creation of the Best Practices for Backup Audio Media, a taskforce is needed to decide the Board's official position, create best practices, or initiate regulations. Ms. O'Neill asked if court reporters can create and send certified copies by merely typing their name on the transcript, for which Ms. Fenner responded that they could.

Ms. O'Neill noted that more scrutiny and development can be given to this matter; however, based on the budget issues and the fact that staff has guidelines for electronic transcripts and signatures that should suit what is needed in the world of officials, it doesn't appear to be vital that it be addressed immediately versus down the line when the budget improves. She confirmed that her court is already working with electronic filings; however, original copies of deposition transcripts are used at trial. Ms. Evans indicated that not many reporters or agencies require electronic originals so she doesn't see it as a hot issue in the freelance arena.

Ms. Evans asked if staff felt that completing one task over another would assist in making the office more efficient. Ms. Fenner indicated that having put the list together, staff is comfortable with the order; however, anything that interests the Board can be rearranged to the top.

Ms. Hurt inquired about the action item, "Research pledges from other professional licensing groups." Ms. Fenner responded that currently individuals receive their license and then just go to work. The pledge would mirror other professions with a pledge or oath to swear reporters in a more official manner, similar to what they do at the State Bar. This would be on a voluntary basis, but would start to be a practice that would be accepted and implemented within the industry. Ms. O'Neill stated that she was recently notified that there is a code that requires all reporters working in court to be sworn in when they first become officials, but nobody has been doing this.

Ms. Fenner reiterated that the Board could request to move the order of any items they thought were more urgent than others. Ms. Evans believed whatever tasks are taken on will cost money, which the Board doesn't have. Ms. Fenner noted that it may be difficult, but staff would have to be creative and take advantage of technology to accomplish the

mission-critical tasks. She indicated that the Board reinstated the Technology Task Force and Continuing Competency Task Force at its April 2012 Board meeting. Although both task forces have chairs, members have not been appointed to them because of the difficulty in meeting when faced with budget issues. However, if there is a need, staff will find a way to make it happen. She welcomed input at any time, noting that she did not need immediate direction. Ms. Evans stated that she felt good that progress was being made on the strategic plan items, even if it was a little at a time.

VII. CONSIDERATION OF RECOGNITION OF TAFT COLLEGE AT WESTEC COURT REPORTING PROGRAM

Ms. Fenner introduced Gary Shaw from the Taft College at WESTEC court reporting program. Ms. Evans recognized the accomplishments Taft College had completed and recommended the recognition of the college.

Ms. Lasensky moved to grant full recognition to Taft College at WESTEC Court Reporting Program. Second by Ms. Evans. **MOTION CARRIED.**

The Board congratulated Mr. Shaw and Taft College on their recognition.

VIII. REPORT ON LEGISLATION

Ms. Fenner apologized for the volume of legislative bills in the Board agenda packet; however, it is the beginning of the two-year legislative cycle. Due to the turbulent times in the court reporting industry, many bills pertain to the Board. Ms. Fenner indicated that she is tracking some bills because they affect all boards or bureaus, but may not require any action. She then proceeded to provide the background and status of some bills that require the Board's attention. The Board may take a position on the bills, including support, oppose, remain neutral, or watch.

Ms. Fenner reported that the full language of SB 705 (Block) – Electronic Court Reporting, is included in the agenda packet starting at page 41. The language has already been amended since it was introduced.

Ms. O'Neill called for comments from the public. Ms. Evans reiterated that this bill is calling for the allowance of a court to use the existing equipment for judicial notetaking.

Ms. O'Neill added that transcripts made from these recordings are not the official record. Ms. Hurt indicated that she is not opposed if it is unofficial. The Board decided to take a "watch" position on SB 705. Ms. Fenner confirmed she would keep the Board up to date on any changes.

Ms. Fenner referred to the language on page 56 of the agenda packet regarding AB 251 (Wagner) – Electronic Court Reporting. Ms. O'Neill noted that the language was amended. She also stated that she is against electronic recording in courts. She called for comments or questions and then asked the Board to take a position. Ms. Lasensky requested comments from the public.

Ed Howard, representing DRA, stated that it was his understanding that all the trade organizations would be taking an oppose position on this bill. He suggested that if the

Board wanted to take an oppose position they do it today since the bill is up for hearing in the Assembly Judiciary Committee on April 9, 2013.

Ms. O'Neill supported her opposition to the bill by stating that she sees the installation of electronic recording in court in lieu of a court reporter as harmful to the consumer.

Ms. Evans moved to oppose AB 251. Second by Ms. Hurt. **MOTION CARRIED.**

Ms. Fenner will work with Ms. O'Neill on language for a letter of opposition.

Ms. Fenner referred to AB 365 (Mullin) – Court Reporting. Mr. Howard stated the bill is under revision and distributed copies of the newly proposed language (see Attachment 1). He stated that the original intent of the bill was to reinforce the connection between a transcript to be used in a judicial proceeding and a licensed court reporter. He indicated that the original draft of the bill drew concern from DRA's sister organizations that it could be perceived that DRA was agreeing with electronic reporting. After considering the concerns of the valued organizations, the bill was redrafted as presented today. The bill would modestly amend Section 273 of the Code of Civil Procedures (CCP), which sets out the standard by which a transcript that is done by an official or an official pro tem is prima facie evidence. He indicated that his research revealed no definition of official or official pro tem in the CCP. The closest thing to a definition is found in the Government Code 69942. Therefore, this bill would bring the Government Code language into alignment with the CCP language.

Mr. Howard indicated that the language is currently under review by DRA's sister organizations and SEIU. Ms. O'Neill thanked Mr. Howard for his work on this language. Since the language is not yet final, the Board decided to take a "watch" position on AB 365.

Ms. Fenner referred to AB 566 (Wieckowski) – Courts: Personal Services Contracting, on page 47. She indicated that the bill would place a limit on what amount of contracts can be done for personal services without specific, measurable performance standards and audits. Ms. Lasensky expressed concerns over not knowing who would be providing the performance standards and audits. The Board decided to take a "watch" position on AB 566.

Ms. Fenner turned the attention of the Board to AB 648 (Jones-Sawyer) – Court Reporters. This bill would require each party to pay the required fee for court reporters for each separate proceeding, with the funds to be deposited in the Trial Court Trust Fund.

Mr. Howard stated that he believed both AB 566 and AB 648 were supported by SEIU. With AB 566, SEIU would hope that courts would have a consistent method of contracting out services if the official reporters were released. He added that AB 648 may be modeled after the program in Los Angeles County whereby the collected fees would be used to support official reporters. Ms. O'Neill said she was curious as to who administers the Trial Court Trust Fund.

The Board also considered AB 655 (Quirk-Silva) – Court Reporters: Salary Fund, and AB 679 (Fox) – Fees: Official Court Reporters. Ms. O'Neill indicated that Los Angeles County has in place a process for some of the funds collected from the reporter fees to go into a reporters salary fund. Although Riverside County is diligent in collecting reporter fees, the

funds get sent to the Administrative Office of the Courts, who in turn decides who receives the fees. Having a portion of those fees immediately go into the reporters salary fund would enable the court to have better use of the funds that they are diligently collecting.

Ms. Evans wondered about the difference between AB 648 and AB 655. Ms. O'Neill indicated that it is common to have two or three bills addressing the same issue with slight differences. Ms. Fenner said the Board would probably have stronger positions on bills as amendments are made.

The Board decided to take a "watch" position on AB 648, AB 655, and AB 679.

Ms. Fenner referred to AB 788 (Wagner) – Court Transcripts. Ms. O'Neill indicated that she needs more information regarding this bill before making a decision on it. The Board decided to take a "watch" position on AB 788.

The remainder of the bills pertain to boards in general, the Department of Consumer Affairs, or internal functions that do not require Board action.

The Board took a break at 12:00 p.m., returning to open session at 12:15 p.m.

IX. UPDATE ON GIFT GIVING REGULATIONS

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

Ms. Fenner provided a brief history of the regulatory change. Based on public comments received and direction given to her by the Board at the meeting on October 12, 2012, she worked with the industry associations to develop language everyone could agree on. The language was presented to the Board on pages 54 and 55 of the Board agenda packet.

Mr. Howard thanked the Board and staff for their work on this language. The Board showed appreciation to Ms. Fenner for her work in providing the full picture and history of the language modifications.

Ms. Fenner indicated that once the language is approved, it will go for a 15-day public comment period before moving on in the regulatory process.

Ms. Evans moved to approve the proposed modified text for a 15-day comment period and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. Second by Ms. Lasensky. **MOTION CARRIED.**

X. SCOPE OF PRACTICE REGULATION

Ms. Fenner reminded the Board that this proposed regulatory change is as a result of a discussion from the October 12, 2012, Board meeting regarding the difficulties with certain corporations asserting that the Board did not have jurisdiction over their actions. It is hoped that the proposed language will clarify the scope of practice.

Ms. Hurt inquired where the proposed scope of practice originated. Ms. Fenner indicated that the language is an attempt to make clear the original scope of practice found in Business and Professions Code 8017. Staff and counsel worked together to pull the additional duties that are a part of preparing and delivering the transcript to the consumer, some of which came from the CCP.

Mr. Howard indicated that DRA supports the Board voting to move forward with the regulatory package as proposed by staff. He pointed out, as noted on page 11 of the minutes from the October 12, 2012, Board meeting, that the court finding that a non-licensee owned firm could be a renderer of shorthand reporting services. The issue of how and to what extent does the control of a licensee by non-licensees potentially flow into the scope of practice of a licensee is not addressed in the proposed regulatory language. Mr. Howard indicated that additional detail and written comment would be made during the regulatory comment period.

Ms. Evans moved to approve the proposed or modified text for a 45-day comment period and delegate to the executive officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and also delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file. Second by Ms. Hurt. **MOTION CARRIED.**

XI. PUBLIC COMMENT

No comments were offered.

XII. FUTURE MEETING DATES

Ms. Fenner indicated that there are not currently any future meetings scheduled; however, the Board usually meets in conjunction with the dictation examination. The next Northern California examination is scheduled for November 15, 2013. If there is a need to meet prior to that, a meeting can be scheduled. The Board agreed they would wait to hear from Ms. Fenner as to the urgency of any matters that may arise.

XIII. CLOSED SESSION

The Board convened in to closed session pursuant to Government Code sections 11126(a) and 11126(e)(2)(A) at 12:29 p.m.

Upon returning to open session at 12:54 p.m., Ms. O'Neill indicated that there was nothing to report from closed session.

XIV. ADJOURNMENT

Ms. O'Neill adjourned the meeting at 12:55 p.m.


TONI O'NEILL, Board Chair

11-19-13
DATE


YVONNE K. FENNER, Executive Officer

11-19-13
DATE