

**COURT REPORTERS BOARD****OF CALIFORNIA**

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**COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
JULY 6, 2017**

CALL TO ORDER

Ms. Davina Hurt, chair, called the meeting to order at 9:04 a.m. at DoubleTree Ontario Airport, 222 North Vineyard Avenue, Ontario, California.

ROLL CALL**Board Members Present:**

Davina Hurt, Public Member, Chair
Rosalie Kramm, Licensee Member, Vice Chair
Elizabeth Lasensky, Public Member
Carrie Nocella, Public Member
Toni O'Neill, Licensee Member

Staff Members Present:

Yvonne K. Fenner, Executive Officer
Shela Barker, Senior Staff Counsel
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

I. APPROVAL OF MEETING MINUTES

- A. December 7, 2016
- B. January 27, 2017

Ms. Lasensky moved to approve the minutes of both the December 7, 2016 Board meeting and January 27, 2017 Board meeting. Ms. Nocella seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

II. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner referred to the expenditure projection on page 23 of the Board agenda packet and offered to answer any questions. She then directed attention to page 24 of the Board agenda packet for the Board's fund condition. She commented that the fund condition is remarkably different than the one presented at the January 27, 2017 Board meeting where the Board discussed a fee increase. Ms. Fenner explained that the January reports provided by the Department of Consumer Affairs (DCA) Budget Office did not include any transfers to the Transcript Reimbursement Fund (TRF). At the previous meeting, the Board's fund condition did not fall below six months in reserve until fiscal year 2017-18, but the new analysis shows the drop below six months for fiscal year 2016-17. Ms. Fenner stated that a representative from the DCA Budget Office would be arriving to the meeting to discuss this further under Agenda Item III – License Fee Increase.

Ms. Fenner referred to page 25 of the Board agenda packet regarding the TRF Fund Condition. She then asked Ms. Bruning to provide an update on the TRF.

B. Transcript Reimbursement Fund

Ms. Bruning reported that there are 20 applications for the Pro Per Program awaiting additional information or approval. Ms. Davis has approved 161 applications in the current calendar year totaling \$46,000. She has denied 24 applications.

Ms. Bruning indicated that there is a backlog for the Pro Bono Program. She stated that there has been an increase in the number of applications received compared to prior years, reporting that 501 invoices were received in fiscal year 2016-17 compared to 205 for the prior fiscal year.

Ms. Kramm stated that she is on the Board for the San Diego Volunteer Lawyer Program which has had to create more programs due to government budget shortfalls and they are looking to the court reporters to help with the transcripts. She suggested that it may be a reason for the increase in applications.

Ms. Nocella asked for the reasons applications are denied for the Pro Per Program. Ms. Bruning responded that applications are denied for being incomplete or not including a court-approved fee waiver. Additionally, criminal cases and vexatious litigants are not eligible for the program.

C. Occupational Analysis

Ms. Fenner stated that the Office of Examination Services (OPES) is in the process of finalizing the verification and then will create the examination plan. They expect to have the March 2018 exams tied to the new occupational analysis. She stated that a new occupational analysis is recommended every five to seven years.

Ms. Fenner shared that to create an occupational analysis, OPES convenes a group of various court reporters who act as subject matter experts to develop a survey for

licensed California court reporters. The survey is then sent to approximately 2,500 CSRs. The survey results are then analyzed by OPES to determine what skills are necessary for entry level in the industry. The examination plan is used at exam development workshops to ensure the questions being written are relevant to new reporters. She added that the current question bank will be compared to the new examination plan to see which ones can still be used and which ones need to be updated or discarded.

Ms. O'Neill inquired if the examination plan will be shared with the schools. Ms. Fenner responded that it will be shared and included in the PSI candidate handbook as is already the practice. Ms. O'Neill suggested the Board consider placing it on its Web site as well to clear up any misinformation.

D. Update on Amicus Brief in re Burd v. Barkley

Ms. Fenner stated that the request for an amicus brief in the Burd v. Barkley matter was turned down by the Business, Consumer Services and Housing Agency.

E. Enforcement

Ms. Fenner referred to the enforcement statistics found on pages 26 and 27 of the Board agenda packet. There were no notable trends.

Ms. Hurt inquired what was needed to move forward with the 31 pending investigations. Ms. Fenner stated that as with any investigation there is an element of due process involved where respondents have time to respond. She stated that there is a small backlog but staff works diligently to keep the process moving.

F. School Update

Ms. Fenner shared that Sierra Valley College of Court Reporting closed its doors effective March 24, 2017. She indicated that Bryan University is no longer enrolling students in their brick and mortar campus and is now an entirely online program. Ms. Fenner stated that Golden State College of Court Reporting is cautiously hopeful that they will be approved by a new accreditor. There are currently four recognized private schools and seven recognized public schools.

Ms. Bruning reported that as of July 1, 2017, out-of-state schools must register with the Bureau of Private Postsecondary Education (BPPE) if they are offering classes to California residents. Previously, BPPE's law required all private schools to have a brick and mortar location in California to be approved by them. This new law could allow online schools to then apply to the Board for recognition of their court reporting program if they are approved by BPPE. Currently, many of the students who attend out-of-state online programs qualify for the California test by obtaining their RPR certificate.

Ms. Hurt inquired if there was anything the Board could do to promote online classes for the already recognized programs. Ms. Bruning reported that Humphreys University is working with Bryan University to offer classes online and has been using the classes as a transition for the students of the recently closed programs. Ms. Hurt suggested that the Board promote these programs with the University of California extensions.

G. BreEZe

Ms. Fenner reported that she will be meeting with DCA Office of Information Services on July 12, 2017, to discuss what the Board's options are with regards to either going on BreEZe or with other vendors. Some of the other smaller DCA boards that were also scheduled to be in Release III of BreEZe have been considering their options and may go into a program together.

The Board deferred Agenda Item III – License Fee Increase and moved to Agenda Item IV – Legislation.

IV. LEGISLATION

A. Non-Licensee-Owned Firms Subcommittee Report Including Update on AB 1660 (Kalra) – court reporter providers

Ms. Hurt reported that the bill, sponsored by the Board and co-sponsored by the California Court Reporters Association (CCRA) and Deposition Reporters Association of California (CalDRA), is moving forward with one opponent. The bill passed through the Assembly and through Senate Business, Professions and Economic Development Committee and is on its way to the Senate Appropriations Committee. Ms. Hurt thanked Assemblymember Kalra and the co-sponsors. Ms. Nocella added her expression of appreciation to Ms. Hurt and Ms. Fenner.

Ms. Kramm moved to accept and file the recommendations and report of the subcommittee and to adopt the redocumentation and actions of the subcommittee as their own. Ms. Lasensky seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

B. Consideration of Positions on Legislation

Ms. Fenner stated that there are many bills being tracked by the Board, which is common at the beginning of the legislative cycle. She stated that the information was provided for each in the Board agenda packet, but then focused the Board's attention to those marked with three asterisks as they pertain directly to the Board or court reporting.

AB 701 (Gallagher) – Ms. Fenner reported that this bill, sponsored by CCRA, would require the Board to license CART providers. The bill is currently in suspense awaiting the beginning the second year of the legislative cycle. The sponsor can spend that time attempting to cure whatever is holding the bill in suspense. There may be concerns regarding the costs involved for both the Board and Judicial Council.

Jennifer Esquivel, CCRA District D Director, stated that the bill aims to provide assistance in court to the hearing-impaired community. She stated that it is her understanding that there is little opposition to the bill with the exception of the cost. She believed the bill was in suspense as a formality and would be pushed through at the end of the legislative cycle. She stated that Brooke Ryan, CCRA President, would have more information when she arrived.

Ms. Lasensky asked if the matter was an Americans with Disabilities Act (ADA) issue. Ms. O'Neill responded that it can be an ADA issue, but emphasized that it can also lead to legal issues when a sign language interpreter is not certified or a CART provider is inexperienced and not a licensed reporter. She relayed experiences where miscommunications during hearings caused arguments between judges and attorneys, and others where the problem may be the basis for appeal.

Ms. Hurt shared the Board's options regarding the bill with a view to consumer protection.

Ms. Esquivel stated that a key target of the bill is to ensure that the court reporter responsible for reporting the court proceedings is separate from the individual assigned to a litigant or party to provide interpretation. There is a difference between providing a verbatim record and providing a CART or captioning service. In order for the individual in need to receive a high-quality service, one reporter should not be relied on to perform both tasks.

Ana Costa, court reporting coach, shared that many of her students started providing CART at 180 words per minute. She stated that CART providers do not write verbatim records as court reporters do. They write in gist, self-correcting as they go. As a result, these students have gained a skill that has become a habit. Unfortunately, some have found they self-correct even at the dictation examination, which caused them to fail. She added that CART providers really need to be performing at 225 words per minute at minimum to keep up with litigants. She indicated that she has been advocating for the return of court reporters in family law matters.

Ms. Costa indicated that some students depend on CART work to make a living. Any certification may have an impact on their income.

Ms. Kramm shared that it was just announced that San Diego County will no longer provide court reporters for family law hearings.

Ms. O'Neill stated that she is supportive of the bill in concept. The Board agreed to take a "WATCH" position on the bill.

AB 1285 (Gipson) – Ms. Fenner reported that the Alcohol Beverage Control Appeals Board currently uses licensed court reporters to report their hearings. This bill would allow for an audio recording to be the official record.

Ms. O'Neill suggested the Board oppose the bill in an effort to protect consumers. Ms. Kramm agreed, adding that a certified shorthand reporter is always better to have as opposed to a recording. Ms. Hurt added that absence of a correct record can be very damaging in an appeal setting.

Ms. Lasensky moved that the Board write a letter in opposition to AB 1285. Ms. Kramm seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

AB1450 (Oberholte) – Ms. Fenner reported that this bill is sponsored by CCRA regarding electronic transcripts being filed in court. She stated that AB 976 (Berman) also has provisions for electronic filing; however, it is part of the Judicial Council's 20-page omnibus bill.

Ms. Kramm asked if the delivery of the transcripts in an electronic format would end the necessity of sealing of the original. Ms. Esquivel had the understanding that the transcript would be filed with the court by uploading the transcript through a vendor of the reporter's choice as opposed to a sealed paper copy.

Ms. Esquivel stated that the bill proposes the new process at the Superior Court level, but there is work on including the District Court of Appeal. The hope is that the new process would solidify the integrity of the original transcript.

Ms. Lasensky inquired if there was potential for hijacking of the electronic document. Ms. Esquivel responded that the vendor would provide a secure way to upload the information that would comply with confidentiality rules. She shared that CCRA has visited individual counties to present details to court reporters about the cost-saving and security benefits. There is not currently language that mandates reporters use a specific company. It is believed there will be minimal costs to the reporter to be able to upload the transcripts electronically.

Ms. Kramm suggested there is an opportunity for the bill to fix problems that will be contradictory to CCP 2025 in regard to review by the witness and sealing the original transcript.

Ms. Fenner stated that the bill had been rereferred to the Senate Appropriations Committee.

Ms. Nocella moved that the Board write a letter in support of AB 1450 and delegate power to the executive officer to remove support if there are substantive changes to the existing language. Ms. Kramm seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt
Opposed: None
Absent: None
Abstain: None
Recusal: None

MOTION CARRIED

The Board took a break at 10:07 a.m. and returned to open session at 10:23 a.m.

SB 76 (Nielsen) – Ms. Fenner stated that the bill would allow a party to hire certified shorthand reporters to create the record in certain Department of Human Resources grievances.

Ms. Kramm indicated that currently the arbitrator will have a tape recorder, and it is the official record even if parties hire a court reporter to create a record. The reporter then becomes a notetaker. She suggested the Board support the bill to give permission for the court reporter to become the official record.

Ms. Esquivel shared concern that an inferior transcript created from a tape recording would be the official record over a verbatim transcript from a licensed reporter present at the proceeding. Ms. Kramm added that the reporter is not allowed to provide or sell the transcript to the other party because it is not the official record.

Ms. O'Neill agreed with supporting the bill.

Ms. Kramm moved that the Board write a letter in support of SB 76 and delegate power to the executive officer to remove support if there are substantive changes to the existing language. Ms. O'Neill seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt
Opposed: None
Absent: None
Abstain: None
Recusal: None

MOTION CARRIED

(Further testimony related to Agenda Item IV - Legislation was provided after Agenda Item X – Future Meeting Dates.)

V. CONSIDERATION OF RETIRED LICENSE CATEGORY

Ms. Fenner indicated that Ms. Davis surveyed other states where court reporters are licensed. The results showed that of the few states that license court reporters, only a few of them have a retired category. Some states with a retired category allow the individual to return to active status if the fees and continuing education are current. Since the data is so limited, the statistics do not appear significant enough to influence the Board.

Ms. Hurt reported that the Board had two general areas of concern: general licensees and the Board's executive officer in consideration of the antitrust case.

Ms. Barker indicated legislation is being contemplated in regard to the antitrust issue. She added that the North Carolina antitrust case issues are evolving and case law is developing around the nation. She stated that there are 15 to 20 antitrust cases pending. She added that a retired status for the executive officer may or may not be sufficient. Ms. Barker stated that if the Board had a retired status, the recommendation would be for the executive officer to take the retired status. She added that if the primary reason for adding the status was for the executive officer, she would recommend against it at this time.

Ms. Hurt indicated that resources and staff time were already limited and was unsure the Board should take it on at this time.

Ms. O'Neill shared that there may be a benefit to retired official reporters so they would still be able to produce and certify transcripts. She then added that a very small percentage of licensees would be affected in comparison to the large workload it would take to make the change. She suggested the Board watch the development of the industry and licensee base as more reporters retire.

Ms. Barker indicated that the regulatory process must now start with getting preapproved by DCA, which can take three to six months. Then there are noticing requirements and review time for the Office of Administrative Law, which can take another three months if there are no changes based on comments from the public. Generally, the entire process takes approximately 6 to 12 months.

Ms. Kramm stated that of the retired reporters she knows, they do not need a status to inform the public. Entering the regulatory process would only cost the Board money and time. She agreed in taking a watch stance on the issue.

Ms. Fenner stated that the existing names of the license statuses are: current, delinquent, and cancelled. If a license is not renewed after three years, it is cancelled. Although the Board has the option to use the term "retired," regulations would be needed to define the category.

Ms. Costa shared that her license status is "cancelled." She would prefer her license be labeled "retired" or "inactive," due to the negative connotation association with "cancelled." Ms. Fenner sympathized, adding that many reporters do not want their license status to be "delinquent" because of the way it looks.

Ms. Barker stated that the retired status usually involves an election by the licensee. She stated that she would need to review how the statute was written that authorized retired status to determine if it would be broad enough for the Board to allow anyone with a current status of cancelled to apply for retired status.

Ms. Barker stated that there may be a way to add a differentiation of cancellation by operation of law versus a cancellation for disciplinary action.

The Board then moved to Agenda Item III – License Fee Increase.

III. LICENSE FEE INCREASE

Ms. Fenner indicated that the information the Board used to make their decision on the license fee increase at the January 27, 2017 Board meeting did not include transfers to the Transcript Reimbursement Fund. As a result, the Board would need to reconsider the amount and effective date of the license fee increase.

Ms. Fenner referred to Scenarios A, B, C, and D laid out in the Board agenda packet on pages 31 through 34. She stated that the most fiscally responsible option would be to increase the fee by \$100 as described in Scenario C. She added that the scenarios assume the Board will use its full appropriation; however, any funds not used will be reverted to the fund, adding to the months in reserve.

Marina O'Connor, budget manager from the DCA Budget Office, discussed the similarities between the four scenarios presented to the Board. She reiterated that they all assume the Board will use its full appropriation, adding that they all assume the fee increase will go into effect in fiscal year (FY) 2018-19 and that the Board will collect its entire projected revenue estimate. She indicated that the major difference between the scenarios presented at the January 27, 2017 Board meeting and this meeting is the ongoing transfer to the TRF. In January, the scenarios reflected a one-time transfer of \$100,000 in FY 2016-17, whereas the July scenarios show a varying amount of \$100,000 to \$300,000 being transferred over the years. She stated that fund condition is a point in time, and the information that was available in January was the Governor's Budget, which reflected the \$100,000 transfer for FY 2016-17. It does not show future transfers because it would have dropped the Board's funds in reserve below six months. Ms. O'Connor added that another difference is that the January fund condition scenarios reflect a cost for statewide pro rata for FY 2016-17 and FY 2017-18 only; however, the July fund condition scenarios show a deduction for the statewide pro rata ongoing to reflect a conservative condition.

Ms. Hurt indicated that she reviewed the Board's budget projections and fund condition reports for the past nine years and noticed that the full \$300,000 transfer to the TRF was reflected even when the fund would fall below six months in reserve. She asked why this time was different and asked how the Board can be confident that the numbers before them are valid. Ms. O'Connor responded that prior year data has the benefit of actual expenditures versus point in time projections.

Ms. Hurt stated that this Board takes its fiduciary duty very seriously and that many of the decisions made over the years are based on the projections and fund condition. She added that the TRF is a very important part of what the Board does and recounted the legislative process the Board went through to increase the license fee cap.

Ms. Kramm asked if the nine years of data reviewed by Ms. Hurt was in a different format than what is now presented to the Board. Ms. Hurt indicated that it appeared to be presented differently because the fund showed the transfer of the full \$300,000 to the TRF. Ms. Kramm urged the Budget Office to present the information consistently including the projected expenditure of \$300,000 so the Board can make educated decisions.

Ms. O'Connor stated that she spoke with Ms. Fenner about improving communication regarding the goal of future requests for information to prevent further discrepancies and confusion.

Ms. Hurt inquired if the Budget Office asks the executive officer each year about what is happening with the TRF and how much should be distributed. Ms. O'Connor responded that the Budget Office provides projections monthly for the Board's main budget. Also, there is an annual budget meeting with the executive officer to review the condition of the Board's funds. She stated that fund condition reports are provided on an as-needed basis for things such as board meetings or fee increases.

Ms. Bruning stated that the projection provided in January annotated a \$100,000 transfer to the TRF although the TRF expends an average of \$245,000 annually. She asked why there was not a flag raised if the Budget Office was only able to project a third of the allowed amount before the Board's budget would dip below six months in reserve.

Ms. O'Connor reiterated that the projections used were from the Governor's budget, which cannot show a negative fund balance. The information would have been presented at the annual budget meeting. Ms. Kramm indicated that the lack of consistency has created confusion and presented the Board with a very difficult decision.

Ms. O'Connor stated that there had not been any transfers the last couple of years and that \$300,000 is the maximum amount, which doesn't have to be transferred every year. She said it's at the Board's discretion and direction that the transfers take place. Ms. Barker inquired how claims were paid without transfers. Ms. O'Connor responded that there was money in the fund that carried over.

Ms. Hurt stated that she was not satisfied and requested that a solid way of moving forward be established. She stated that this Board cannot absorb this error based on its tight budget. Ms. Nocella agreed that the Board takes its fiduciary duty and responsibility to the consumers and profession very seriously. She asserted that the Budget Office committed an irresponsible and significant omission by not providing the Board with the information needed to consider the initial fee increase. Ms. O'Connor agreed that it is imperative to prevent this from happening again.

Ms. Fenner indicated that the Board voted at the January meeting to increase fees effective January 1, 2018; therefore, no increase has gone into effect yet. She added that she was informed that the Board would need to pursue a regulatory change to effectuate the fee increase, which will delay the matter. She proposed the Board accept the fund condition report numbers as accurate and she would report changes so that adjustments could be made.

Ms. Hurt indicated that Scenario C seemed the most fiscally appropriate. She added that the cost of business, including salaries and pro rata, have increased. Ms. Fenner agreed, adding that the Board's expenses have increased sharply whereas its revenue has been slowly decreasing as licensees retire. Ms. Lasensky commented that raising fees by \$100 is painful, but agreed Scenario C is the only one that works.

Ms. Barker stated that today's decision would trigger the first part of the regulatory process. She would work with the executive officer on the regulatory package, which would then go to the DCA Legislative and Regulatory Review Office and back to DCA Legal Affairs and then to the DCA Executive Office. After all of the DCA reviews, the package goes to Business, Consumer Services and Housing Agency. Ms. Hurt asked if an emergency label could be placed on the regulatory process. Ms. Barker responded that it would generally only be marked as an emergency regulation if there was a threat of the Board going insolvent;

however, she has already spoken with general counsel and he is aware that this is a complex and high-profile situation based upon on erroneous information provided to the Board. Internally, it will be treated as if it were an emergency and will move at an expedited pace.

Ms. Barker stated that some Boards can set their fees by resolution and not have to undergo the regulatory process. In order to do that, the Board's Practice Act must include language that says the Board can set fee by resolution and there must be language that says the Board is exempt for setting fees from the Administrative Procedures Act (APA). This Board does not have the APA exemption language. Ms. Barker estimated the Board could effectuate the increase in approximately one year, taking effect FY 2018-19.

Ms. O'Connor suggested the Board request that the fee increase go into effect upon approval of the regulation package. Ms. Barker responded that regulations go into effect quarterly, but she would be seeking an exemption at the beginning of the process.

Ms. Lasensky moved to adopt Scenario C to increase the license fee to \$225 effective as soon as possible and authorize the executive officer to commence the regulatory process. Ms. Kramm seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

The Board then moved to Agenda Item VIII – Strategic and Communication Plans.

VIII. STRATEGIC AND COMMUNICATION PLANS

Ms. Fenner stated that there have not been any changes or updates to the action plan since the January Board meeting. She indicated that it has been an extremely busy time at the office with a number of very time-consuming complainants and an extra dictation examination. She asserted that staff is back on track now and hopes to accomplish additional Strategic Plan initiatives. She is looking to accomplish the Web Site Task Force meeting and staff cross training. Ms. Hurt agreed with that plan.

Ms. Lasensky extended compliments and appreciation to the staff, acknowledging the pressure they have been under. Ms. Hurt added that staff is readily accessible and responsive. Ms. Fenner recognized that with such a small staff, so much is accomplished and with great attitudes.

IX. ELECTION OF OFFICERS

Ms. Hurt called for election of officers.

Ms. O'Neill nominated Ms. Hurt as chair. Ms. Kramm seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

Ms. Fenner reported that the Governor's Appointments Office is backlogged with boards who are facing quorum issues. As a result, Ms. O'Neill and Ms. Kramm are serving in a grace period awaiting reappointment. Therefore, it may not be in the best interests of the Board to elect members who may not be able to complete the year of duties.

Ms. Nocella nominated Ms. Lasensky as vice-chair. Ms. Kramm seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

The Board took a break at 11:36 p.m. and convened into closed session, Agenda Item XII, at 11:40 p.m.

XII. CLOSED SESSION

The Board convened into closed session pursuant to Government Code section 11126(C)(3).

The Board took a break at 12:00 p.m. and returned to open session at 1:05 p.m.,

Ms. Hurt reported that an action was taken during the closed session portion of the meeting.

The Board then moved to Agenda Item VI – Examination Pass Rates.

VI. EXAMINATION PASS RATES

Ms. Fenner stated that she generally reports on examination statistics during the report of the executive officer; however, due to the very low pass rates for the last three dictation examinations, she felt it was important to have a separate, focused discussion. She referred to the historical pass rates on pages 56 through 61 in the Board agenda packet.

Ms. Fenner explained the process for writing the dictation examinations. She indicated that working court reporters who have been trained by Board staff and the Office of Examination Services use actual court and deposition transcripts as the basis for each test. They ensure there is an interchange on each page to include the four voices and a syllabic density of 1.3 to 1.5 so there are not too many short or long words. After a test is written, it is given to another working court reporter who has been through the same test-writing training to recount the test and edit as needed. Once three tests have been through the review process, a group of newly licensed CSRs is convened to pretest the material. Their feedback is then used to develop the glossary, smooth out any parts that are difficult to follow, etc. Staff then finalizes the test to add it to the test bank.

Ms. Kramm asked how long the syllabic density has been in effect. Ms. Lasensky responded that the Board Policies indicate it was adopted in 1989.

Ms. Hurt noted the drop off of passing candidates from November 2016 and inquired if the test had changed in any way. Ms. Fenner commented that speaker order was rearranged at the November 2016 dictation examination, which threw the candidates off. She stated that since then, there have been no changes, and she is unsure what the reason would be for low pass rates. She indicated that there have been a couple of recent school closures which may leave candidates without a place to practice. Since the dictation examination is a physical event, candidates need to train and practice just like a marathon runner. She added that the test is not any harder or read any faster than it was in the past.

Ms. Nocella commented that passage rate for the January 2017 retest of the November 2016 dictation examination is disappointing, especially considering all the public testimony asking for another chance. She thanked the staff for the hard work administering another test on such short notice. Ms. Nocella then requested statistics on how each candidate qualified for the examination to determine where there might be a trend. Ms. Fenner indicated that she would disseminate those statistics.

Ms. Lasensky agreed about the January 2017 retest statistics, adding that she believed students were expecting an easy examination and potentially lowered their own standards. Ms. O'Neill reported that there were many social media discussions that displayed a mentality of entitlement by the candidates. Additionally, there was a sense that they view the Board as an entity trying to prohibit them from licensure. She asserted that the Board is here for the protection of the consumer, and candidates need to be able to pass the test to be eligible to work in court or depositions.

Ms. Hurt shared that the State Bar examination is a difficult test, and some candidates have to take it multiple times just like the CSR examination. However, to lower the standards just to get more people out could do more harm than good. She agreed that it is a consumer protection matter.

Ms. O'Neill shared that when she was in school, candidates who did not pass the dictation exam would immediately return to school and continue taking and transcribing practice tests. She wondered how to make the transition back to the mindset of practicing. She added that nerves are definitely a factor, but compared to the reality of actual jobs, the dictation exam is very easy.

Ms. Hurt contended that the Board's process for creating the test has not changed, but the numbers have dropped off. She opened the discussion for public comment.

Ms. Esquivel shared that CCRA held a mock CSR exam two weeks prior at Cypress College, an event held a couple times each year to support students. During the event, she reminded students that they cannot control the exam. Working reporters do not get to control where people sit, how they speak, or the words they use. She also suggested that the candidates welcome challenges.

Jesse Pickelsimer, deposition reporter and coordinator for the Tri-Community Adult Education court reporting program, emphasized that the test is both physically and mentally challenging. He stated that the bar for the CSR examination is set really high and needs to stay there. He said that he relates to his students that they have the skills necessary to pass the examination, they just need to get over their nerves.

Jocelyn Epperson, Downey Adult School Program Coordinator, requested a breakdown of the types of errors candidates are making, such as punctuation, drops, or gaps. She agreed with the nervousness factor and added that there can be a perpetuation of a negative reaction from one test to another. She stated that there is a problem with getting students to return to school after they take the test the first time. She suggested that schools may need to make the standard higher in school so the candidates are more prepared when they do get to the licensing examination.

Ms. Fenner responded to the request for information about the types of errors made. She said occasionally a candidate will fail because of punctuation, but typically punctuation is a small percentage of errors. She stated that each student would need to evaluate their own test to see what type of errors were made because there is not an overall trend.

Cheryl Haab, CalDRA President-Elect, and Monyeen Black, CalDRA President, approached the Board. Ms. Haab shared statistics regarding how many individuals were licensed on average from 1992 to 1994, 1994 to 2010, and 2010 to 2017. She suggested a diagnostic evaluation. She said CalDRA continually receives requests to solve this problem. She reported that the recently released Drucker Report shows 5,500 new job openings starting in 2018. She shared a concern that without licensed court reporters to fill the jobs, electronic recordings will take over. CalDRA wants to put together a Warren Commission-type committee to put together a list of concrete things that can be changed or entertained. Ms. Haab shared that the State Bar's recent pass rates of 30 to 40 percent were deemed abysmal, whereas the CSR pass rates are single digits.

Ms. Hurt clarified that the single-digit pass rates did not occur until November 2016, therefore, it is not a trend. She stated that the percentage of passing court reporters from the 1990s to now is skewed because there are fewer candidates. Ms. Fenner added that there are only 300 candidates each year compared to the candidate pool from 1994. She said that because the numbers are so small, one person passing the test can cause the percentage to jump 10 points. Ms. Haab stated that the low candidate pool is another point CalDRA would like to investigate.

Ms. Kramm suggested candidates stay in school and take the profession seriously. She also advocated for the suppression of negativity on social media by those who appreciate their profession.

Yolanda Krieger, Court Reporting Director at South Coast College, shared that enrolling students is a challenge, especially when they see the statistics. She stated that South Coast College recruits students by visiting high schools and attending events in Orange County. She reported that the school starts a new Theory class every six weeks. Unfortunately, they only enrolled two daytime students and four night-class students at the most recent start. Retention of students is also difficult. She feared for the industry if the school closes. She stated that about 80 percent of their students return to school after the dictation exam.

Ms. Hurt asked if the Board could help recruit students. Ms. Fenner responded that it is consumer protection to ensure the health of the workforce. The Board would not be able to recruit for a specific school, but could recruit for the industry.

Ms. Bruning suggested that recruitment start at a younger age. She added that many potential candidates are unable to pass the entrance examination to even become court reporting students. Ms. Hurt added that her daughter's middle school has career day and court reporting programs may want to consider starting recruitment at that level.

Brooke Ryan, CCRA President, stated that the association has been going to three to six county-wide middle school career fairs each year for three years. The fairs cost the association approximately \$1,800 each. She shared that another public relations approach they are working on is the family relation angle, such as mother and daughters.

Ms. Kramm reported that another pool of potential candidates is college graduates with a degree in English or political science that do not have a career goal.

David Striks, attorney and father of an examination candidate, stated that he was impressed by the concern and effort put forth by the Board. He stated that his daughter, who has a bachelor's degree in liberal studies, has taken the last three dictation examinations. He asserted that the Board, the schools, and the students need to be introspective regarding the low pass rates and consider both the fairness and humanity aspects. He stated that it is quite depressing for someone to go to school, spend years studying, and then see consecutive tests pass rates of 7 percent, 6 percent, and then 4 percent.

Ms. Kramm shared that she knows students go through agony getting through school and the exam. She knew entering school that only 10 percent would make it. She stated that she put her life on hold to go to school because she really wanted to become a court reporter. She suggested that students get rid of negativity and associate with like-minded, positive individuals. Mr. Striks agreed that there is no place for negativity, but argued that a 4, 6, or 7 percent pass rate is not acceptable in society.

Ms. Costa stated that part of the training she offers includes internships where the court reporting students are the reporter of record at mock depositions and trials. She said the experience of interrupting the testimony and marking exhibits leads to practical skills. She stated that she received 150 responses to a recent survey for which she published the results. The most notable response was that they are not receiving support. She stated that candidates need support even before enrolling in school to know what it takes to do this job and to know that they are going to fail more than they are going to pass. She shared that human beings are motivated by feelings and needs. Candidates have a need

for success, progress, and support. When their needs are not met, then emotions of worry, anger, sadness, and fear come up, causing them to react rather than state what they need. Students also need clarity about what is expected from them every step of the way.

Ms. Hurt responded that schools are really important in the role of support, along with the associations and individual reporters as mentors. Unfortunately, the Board is limited as a regulatory agency. Ms. Costa stated that both state associations have mentor programs.

Ms. Nocella reported that the State Bar examination was recently revamped from three days to two days, which required a lot of work and research. She agreed that lowering the standard is not the goal; however, she thought it was important to be introspective. Ms. Hurt added that gathering more data would be a good start to ensure the low pass rates were not just an anomaly.

Ms. Esquivel commented that marketing for this profession is difficult, stating that there is not a lot of publicity surrounding the industry. She indicated that she is concerned, however, when she sees marketing that declares a person can earn six figures without a college degree, because she feels it is misleading. She considers the profession to be challenging and urged recruiters to keep that in mind when marketing.

Ms. Hurt requested staff to bring more data and statistics to the next Board meeting to decide if a task force is the next step.

Ms. Kramm asked the school representatives to tell their students that the Board wants them to pass, but it is not willing to lower its standards.

Ms. Krieger requested the dictation examination readers be consistent so the candidates are not thrown off. Ms. Fenner stated that the readers do change but they are all experienced. Ms. Hurt added that a variation of readers can lend to what they can expect in the real-world situation.

The Board took a break at 2:12 p.m. and returned to open session at 2:21 p.m.

VII. ONLINE SKILLS EXAM TASK FORCE REPORT

Ms. Lasensky reported that the task force was comprised of licensees, school representatives, and students from both Northern and Southern California. In addition, Marybeth Everhart from myRealtimeCoach (RTC) provided a presentation on how the program works. Ms. Lasensky provided an overview of the process as presented in the Board agenda packet starting on page 63.

Ms. O'Neill stated that the National Court Reporters Association (NCRA) has been using RTC for their testing and, therefore, has already worked out the challenges. She then provided an overview of the recommendations from the task force as found starting on page 65 of the Board agenda packet.

Ms. Fenner indicated that OPES advised the Board to align the online and onsite examinations as closely as possible.

Ms. Barker questioned the Board's ability to do a sole-source contract with RTC. Ms. Fenner responded that she already consulted with the DCA Contracts and Office of Information Services Units. The recommendations of the task force are not to go forward naming a specific vendor; however, the task force worked exclusively with the only vendor available to develop the recommendations.

Ms. O'Neill stated that the task force is making the recommendation to the Board to go forward with online testing under the recommendations for both onsite and online examinations.

Ms. Hurt asked how long ago NCRA began their testing of the online exam. Ms. O'Neill stated that when she was on the NCRA Board in 2011, they had already begun their alpha testing and were moving to beta testing. She said it took approximately two years to work through the problems.

Ms. Hurt asked what the differences will be between online testing and onsite testing and how that differs from what is currently being practiced. Ms. O'Neill stated that both online and onsite will both be allotted two and a half hours instead of the current three-hour timeframe since they both utilize the same software for production. Additionally, there will be no breaks.

Ms. Kramm asked if the Board offers a four-voice deposition test. Ms. Fenner responded that it does, and the current practice is to tell the candidates in advance whether it is going to be court or deposition. However, if the test goes online, that will no longer be practiced since the online test will be random.

Ms. Fenner indicated that these changes would take time to implement, which would in turn allow time for the schools to transition their students. Ms. O'Neill asked how long it would take to start the two-year pilot project. Ms. Fenner believed it could be started within a year.

Ms. Hurt asked if the goal of the pilot project was to move the testing to online exclusively. Ms. O'Neill affirmed that it is the goal. Ms. Hurt asked if the task force discussed options of utilizing testing centers. Ms. Fenner responded that it was discussed that schools may become testing centers as a convenience for students.

Ms. Hurt asked how Internet failures would affect the candidate. Ms. O'Neill responded that the task force proposed language for the examination policy and procedures to address Internet failures.

Ms. Hurt stated that if the Board moves forward with online skills exam testing, she would like the candidates to have the opportunity to take an onsite examination once a year. Ms. Lasensky stated that online testing offered many benefits to the candidates, including elimination of travel costs and completion in a comfortable setting. She also noted a cost and staff time savings with online testing.

Ms. Kramm believed that students will be accustomed to an online setting due to the way classes are being offered.

Ms. Hurt opened the discussion for public comments.

John Kolacinski, President Emeritus of Bryan University, reflected on the past seven years of transitioning the school's program to an online platform. He stated that students have done amazing when taking online tests. Candidates have reported being able to excel in the field when coming out of an online program because they are familiar with the technology. He shared that RTC was originally developed at Bryan University many years prior.

Monyeen Black, CalDRA President, stated that she recently took two NCRA online tests: the RPR and the CRR. She indicated that candidates do receive their test results immediately; however, there is not a breakdown of the errors. Ms. Fenner clarified that after the pilot project, candidates would receive a summary of the type of errors they made, but not a breakdown of all their specific errors. Ms. Black reported that she experienced issues taking the tests at home and would prefer that NCRA have an onsite location once a year because she performs better in that type of environment. She also conveyed that not every proctor watches to ensure the candidate deletes everything.

Kay Reindl, Department Chair for the court reporting program at Humphreys University, suggested the Board compare the NCRA pass rates from before and after going to an online testing platform. She indicated that using schools as testing centers would be challenging in a one-on-one situation. There may also be liability issues for the school if there is an interruption by another person. She also expressed concern that the test is a four-voice dictation wherein schools have not yet been successful in offering four-voice qualifiers online. Mr. Kolacinski clarified that Bryan University has been giving a four-voice qualifier since 2010.

Ms. Esquivel shared concerns she received from students at the CCRA mock CSR. One concern was that there would no longer be an appeal process since the tests will be reused. She asked how the Board would address concerns that the test was not graded appropriately. She shared in the concern about disruptions at school settings. She suggested that proctors have a clear understanding of the guidelines and process of taking a dictation examination.

Ms. Fenner responded that the elimination of the appeals process was thoroughly discussed. It was decided that the Board would regrade by hand any failed tests within a specific parameter at the beginning to ensure the computer grading is the standard that is acceptable. The task force recommended the development of training guidelines for proctors, which would be provided to the online testing vendor.

Ms. Kramm moved to adopt the recommendations of the task force to include the pilot program and retain the ability to return to physical location testing sites if the Board's reevaluation deems it necessary after two years.

Ms. Barker stated that hearing the context of the proposals brought her a better understanding of what the Board is trying to accomplish and indicated that some of the proposed changes will most likely require regulatory changes, such as: requirements for equipment or software that is not currently standard for the exam, a fee amount or fee structure change, elimination of the appeal process, and specification of what constitutes an exam failure. She stated that the changes can be done collectively as one regulatory package. The first step would be for her to gather the documentation. She recommended the Board include the change to the exam fee in the regulatory package that will be

submitted to increase the license fee since they are in the same code section. She stated that the proposals presented were not in the format for the Board to adopt it as regulatory language, but the Board could begin the regulatory process.

The Board took a break at 3:21 p.m. and returned to open session at 3:39 p.m.

Ms. Kramm withdrew her motion.

Ms. Hurt suggested the Board decide first if they want to consider online skills testing and then decide each policy and procedure.

Ms. Kramm moved to go forward with online skills examination. Ms. Lasensky seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

Ms. Hurt clarified that she would like there to continue to be an opportunity for both online and onsite testing.

Ms. Hurt called for review of the recommended policies and procedure proposed for adoption July 2017. The executive officer and legal staff will then meet to decipher which items can be policy and which ones need to go through the regulatory process.

Amendments to "Online Skills Examination Policy and Procedures – DRAFT" are as follows:

EQUIPMENT NEEDED

1. Writer – electronic interface required and to be provided by the test taker. Manual paper writer is not supported.
4. External webcam equipped with a microphone – must be able to be positioned to the side of the candidate during the exam to show candidate and the steno writer simultaneously.
5. Headphones – must be wired. Bluetooth not permitted. Recommend over-the-ear as opposed to earbuds. There should not be a battery needed for operation of the headphones.

SOFTWARE

- * include provisions for Apple operating system
- * consider removing specific vendor name for Web site

DISQUALIFICATION

- 3) (online) ~~The door to the testing are is opened~~ There is a breach of the confined space in which the test taker is in by any other person.
- 5) (online) Ear buds in ears after dictation. Computer speakers off.

TEST EXAM SUBVERSION

Test *Exam* subversion of any type is a misdemeanor pursuant to Business and Professions Code section 123. The candidate will sign an affidavit agreeing not to save the file in any format or location, nor share the content in any manner.

Ms. Fenner commented that previously there was an assortment of grading and punctuation policies; therefore, a compilation of the policies was created and reviewed by an expert in the industry. Ms. Kramm suggested the updated grading policies be added to the Board's Web site once adopted.

Ms. Kramm moved to accept the amended and recommended policies and procedures related to the dictation exam, and to have the executive officer and legal staff identify what is policy and what is regulatory and report back to the Board with final language for approval; and to incorporate an examination fee increase from \$25 to \$50 per segment with the licensing fee increase regulatory package. Ms. Lasensky seconded the motion.

Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. Nocella, and Ms. O'Neill.

Opposed: Ms. Hurt

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

The Board then moved to Agenda Item X – Future Meetings Dates.

X. FUTURE MEETING DATES

Ms. Hurt asked staff to poll Board members for the next Board meeting, potentially in October or November 2017 in Northern California.

The Board then moved back to Agenda Item IV – Legislation

IV. LEGISLATION

B. Consideration of Positions on Legislation

AB 701 (Gallagher)

Brooke Ryan, President of CCRA, shared that the bill is held in suspension. She clarified that CCRA put forth a recommendation to NCRA to have CART included under Medicare; however, they decided to not go forward with that.

AB 1285 (Gipson)

Ms. Ryan reported that all language related to electronic recording has been removed.

AB1450 (Obernolte)

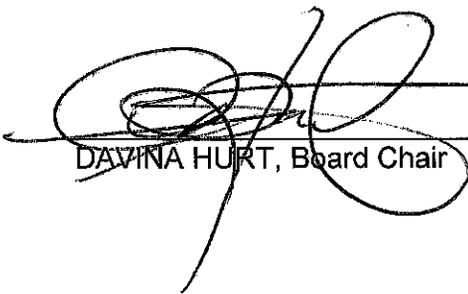
Ms. Ryan reported that final language is close as CCRA continues to work with the Judicial Council and SEIU. She clarified that the bill is specific to court proceedings and does not pertain to depositions.

XI. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Ms. Ryan suggested that the Board enter into reciprocity with other states who have a four-voice dictation exam to address the impending reporter shortage.

ADJOURNMENT

Ms. Hurt adjourned the meeting at 4:31 p.m.

	<u>10.27.17</u>		<u>10/27/17</u>
DAVINA HURT, Board Chair	DATE	YVONNE K. FENNER, Executive Officer	DATE