



interest but also a residual equitable interest in the cash deposit, which he would not have with a bond. Thus, the court held the cash deposit is part of the bankruptcy estate.

## RECENT MEETINGS

At its January 20 and April 20 meetings, CSLB discussed the implications of AB 3302 (Speier) (Chapter 1135, Statutes of 1994). [14:4 CRLR 49-50] Among other things, AB 3302 amends Business and Professions Code section 7091(b) to extend the statute of limitations for CSLB's filing of an accusation for a latent structural defect to ten years; AB 3302 also mandates CSLB to define the term "structural defect" by December 31, 1995. CSLB's Enforcement Committee is proposing that, for the purposes of Business and Professions Code section 7091(b), the term "structural defect" should be defined as a condition in the structure itself which constitutes a hazard to health or safety or which renders the structure not reasonably safe for the use for which it is intended; the term structure should be defined as that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. After hearing criticism of the proposed definition by Bruce Cook of the Institute of Heating and Air Conditioning Industry and Dalton James of the National Association of the Remodeling Industry, regarding the potentially broad application of the definition, several Board members agreed that the language is open-ended and could cover varying types of defects. At this writing, CSLB is continuing to develop a definition of the term.

## FUTURE MEETINGS

July 20-21 in Orange County.  
October 26 in Ontario.  
January 25, 1996 in Los Angeles.  
April 24-25, 1996 in Sacramento.  
July 24-25, 1996 in Oakland.

## COURT REPORTERS BOARD OF CALIFORNIA

*Executive Officer: Richard Black  
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The Court Reporters Board of California (CRB) is authorized pursuant to Business and Professions Code section 8000 *et seq.* The Board's regulations are found in Division 24, Title 16 of the California Code of Regulations (CCR).

CRB licenses and disciplines certified shorthand reporters (CSRs); recognizes

court reporting schools; and administers the Transcript Reimbursement Fund, which provides shorthand reporting services to low-income litigants otherwise unable to afford such services.

The Board consists of five members—three public and two from the industry—who serve four-year terms. The two industry members must have been actively engaged as shorthand reporters in California for at least five years immediately preceding their appointment. The Governor appoints one public member and the two industry members; the Senate Rules Committee and the Speaker of the Assembly each appoint one public member.

## MAJOR PROJECTS

**CRB Considers "Reform Coalition" Issues.** On January 28, CRB held a hearing to receive public comment on a number of controversial issues within the court reporting industry; a request to address these issues was submitted to the Board at its October 1994 meeting by a group calling itself the "Court Reporting Reform Coalition." The Coalition, claiming to represent most local freelance reporting agencies, urged the Board to sponsor legislation entitled "The Court Reporters Reform Act," to address deposition databanking, uncertified transcripts ("dirty ASCIIs"), incentive gift-giving, direct contracting, standardized format of deposition transcripts, ownership of CSR agencies by unlicensed individuals, and the duties of CSRs under California Code of Civil Procedure section 2025. [15:1 CRLR 50-51]

Following CRB's hearing, Senator Dan Boatwright introduced SB 795 (Boatwright), a major bill sponsored by the California Court Reporters Association (CCRA) and supported by the Court Reporting Reform Coalition (*see* LEGISLATION). The bill, which has generated considerable controversy within various factions of the court reporting industry (including the publication of a newsletter entitled *The SB 795 Gazette* by the Reform Coalition), would add several subsections to Business and Professions Code section 8025(c). These subsections would create numerous categories of prohibited conduct by CSRs—including bribes and gift-giving, discrimination in the type or price of services offered, and contracting practices generally known as "direct contracting" in the industry. Additionally, the bill would require CSRs to disclose to all parties and participants to a particular action the nature and price of all reporting and incidental services available in that action, and to further disclose any present or potential conflict of interest on the part of the CSR or his/her principal (including finan-

cial or contractual arrangements existing between the CSR, the CSR's principal, and any party or the employer, principal, insurer, or attorney for any party). At its March 11 meeting, CRB took a "support in concept" position on SB 795, and agreed to communicate some concerns about the gift-giving provision to CCRA and Senator Boatwright.

Another bill, AB 1289 (Weggeland), would similarly prohibit the practice of incentive gift-giving by CSRs (*see* LEGISLATION). At its March 11 meeting, CRB agreed to take a "watch" position on AB 1289.

Although SB 795 and AB 1289 address many of the issues raised by the Court Reporting Reform Coalition, neither prohibits or regulates the provision of so-called "dirty ASCIIs" by CSRs. The term "dirty ASCIIs" refers to the practice of CSRs releasing rough drafts (uncertified versions) of their transcripts. Those in favor of allowing the practice to continue claim that the efficiency gained by using "real time" computer programs to quickly translate transcripts is of great benefit and outweighs the possible inaccuracies which might occur because the reporter does not review the entire transcript as he/she would if certifying it; the reporter relies, rather, on computer software to translate the transcript. Proponents also cite the huge financial investments which CSR firms have invested in these computer systems, and the corresponding financial benefits to be gained. Opponents of this practice feel it jeopardizes the quality of the work produced by CSRs. They claim that CSRs work very hard and complete extensive and rigorous training to ensure their accuracy. To sacrifice this accuracy for speed or economic gain would be an injustice to the industry members and to the consuming public. [15:1 CRLR 51]

## LEGISLATION

**SB 795 (Boatwright).** Existing law specifies certain causes for suspension, revocation, or denial of a CSR certificate. As amended March 28, this bill would provide that a certificate may also be suspended or revoked upon failure to fulfill reasonable terms and conditions of probation; and include as a specified cause for disciplinary action any fraud or misrepresentation resorted to in attempting to obtain a certificate.

SB 795 would also expand the definition of unprofessional conduct by a CSR to include providing goods or services other than reporting services (except incidental services which are equally provided to all parties); contracting to provide services other than on a deposition-by-de-



position basis; providing reporting or other services as an employee, agent, or subcontractor of non-CSR-licensed persons or entities; making services available in an unequal manner; contracting for services in an action not yet pending or to the exclusion of another; contracting to be the exclusive provider of reporting services to any party; failing to publish a rate schedule; discriminating in pricing or reporting; failing to disclose to all parties the nature and price of services; failing to disclose a conflict of interest; offering any gift, kick-back, rebate, or refund other than promotional items; communicating nonpublic information; or engaging in unfair, deceptive, or unlawful practices or substantially incompatible conduct.

This bill would require a CSR, prior to the commencement of a deposition, to disclose on the record (a) all financial or other contractual arrangements between the reporter and any party or attorney, (b) all services being made available to any party or attorney in connection with the deposition, and (c) any conflict of interest between the reporter and any party or attorney. SB 795 is sponsored by CCRA, supported by the Court Reporting Reform Coalition, and supported in concept by CRB (see MAJOR PROJECTS). [A. Jud]

**AB 1289 (Weggeland).** Existing law prohibits various acts by a licensed court reporter, including acts of unprofessional conduct defined as including, but not limited to, impartiality. As introduced February 23, this bill would, with respect to court reporters and persons taking, recording, transcribing, or preparing a deposition, prohibit the offering, delivering, receiving, or accepting of any gift or gratuity, with specified exceptions, whether in the form of money or otherwise, from a party to a legal or administrative action, an attorney of that party, or an entity or employee or agent thereof that insures or indemnifies a party in that action, with specified exceptions. This bill would provide that a violation is a public offense subject to imprisonment in a county jail not to exceed one year, or by a maximum fine of \$10,000, or by both imprisonment and fine. [A. Jud]

**SB 413 (Beverly).** Under existing law, a person may not be admitted to the Board's examination without first presenting satisfactory evidence that, within the five years immediately preceding the date of application for a certificate, the applicant has achieved certain educational or certification requirements. As introduced February 15, this CCRA-sponsored bill would add obtaining a passing grade on CCRA's mock certified shorthand reporter examination, together with successful

completion of the nonmachine skill requirement established by the Board, as another manner in which a person may be admitted to CRB's examination. [A. Jud]

## ■ LITIGATION

**Andrews v. California Reporting Alliance, et al.,** No. 944636, a class action filed in San Francisco Superior Court in July 1992, involves the issue of direct contracting. [15:1 CRLR 52; 14:4 CRLR 100-01] The plaintiffs, led by Frank Andrews and Robert Lando, are a class of litigants who were parties in actions in which the other parties directly contracted with CSRs who are members of an organization called the California Reporting Alliance (CRA). Plaintiffs alleged that the defendants engaged in price fixing and price discrimination in violation of Business and Professions Code section 1670 and in unfair and deceptive business practices in violation of Business and Professions Code sections 17000 and 17200. The case went to trial on January 10. The jury reached no verdict on the first two claims, but found the defendants in violation of section 17200 for unfair business practices. No damages were awarded as the court anticipates having to relitigate the first two claims.

**Saunders v. California Reporting Alliance, et al.,** No. BC072147, another case challenging the practice of direct contracting, is still pending in Los Angeles County Superior Court. In *Saunders*, several independent CSRs sued two insurance companies, CRA, and the CRA member CSRs who directly contracted with the insurance companies, claiming that the defendants engaged in unfair business practices, interference with contract, and intentional interference with prospective economic business advantage. The trial court sustained the demurrers of all defendants to all causes of action, but the Second District Court of Appeal reversed and reinstated the action in August 1994. [15:1 CRLR 52; 14:4 CRLR 100]

On September 15, 1994, Truck Insurance Exchange—a real party in interest to the *Saunders* case—asked the California Supreme Court to depublish the Second District's decision; Truck claimed that the appellate court's opinion does not create a new rule of law, neither resolves nor creates an apparent conflict in the law, does not involve a legal issue of continuing public interest, does not make a significant contribution to legal literature by reviewing the development of a common law rule or legislation, and "is only a monument to the truism that it is hazardous for lawyers to file repeated demurrers to increasingly shrill and factually-unsupported amended

complaints." In his opposition to Truck's request, Mark Saunders contended—among other things—that the Second District's decision "does, most certainly, involve a legal issue of continuing public interest" in that the opinion addresses "the application of Business and Professions Code [sections] 17200 and 17045 to the conduct of court reporters and is a significant occurrence which impacts the public generally and the legal profession in particular." On February 2, the Supreme Court denied Truck's request.

In other action in the *Saunders* matter, on April 6 Los Angeles County Superior Court Judge David Workman granted Mark and Ann Saunders' motions to strike CRA's first amended cross-complaints against each of them. The Saunders' motions to strike were based on Code of Civil Procedure section 425.16, California's anti-SLAPP (strategic lawsuits against public participation) suit statute; generally, a SLAPP suit is a meritless action filed to chill the defendant's exercise of First Amendment rights. Judge Workman's decision marks the second time a CRA cross-complaint has been stricken as a SLAPP suit in the *Saunders* matter. [14:4 CRLR 100-101] At this writing, the *Saunders* case is pending in the discovery stage.

In **California Court Reporters Association v. Judicial Council of California**, No. A066471 (First District Court of Appeal), CCRA has challenged the legality of California Rule of Court 980.3, which allows jurisdictions to replace court reporters with tape recorders or video cameras when funds available for reporting services are insufficient to employ a qualified person at the prevailing wage. [15:1 CRLR 53] The trial court held that the Judicial Council acted within its constitutionally-mandated authority in adopting the rule. [15:1 CRLR 53; 14:2&3 CRLR 106-07; 14:1 CRLR 83] At this writing, the appeal is fully briefed, and oral argument is scheduled for September 26.

## ■ RECENT MEETINGS

At its January 27, February 25, March 11, and May 11 meetings, CRB discussed a proposed legislation package which it has been developing throughout the year for possible proposal; however, the Board could not find an author for the legislation and missed the state deadline for introduction of legislation. At its May 11 meeting, CRB decided to continue looking for an author for possible introduction in 1996. The proposed legislation deals with several issues, including mandatory continuing education requirements for CSRs, an extension of the Board's jurisdiction to include non-licensed owners of CSR firms (who are not currently subject to CRB's



jurisdiction); and amendments to section 8020 to clarify requirements for taking the CSR exam, define what qualifies as "substantially similar" to California equivalency, and require that previous reporting experience be in the legal profession. [15:1 CRLR 51-52]

At its January 27 meeting, CRB discussed its past attempts to clarify the requirements for out-of-state exam applicants; specifically, CRB has had difficulty deciding how it will determine whether another state's CSR exam is comparable to the California exam. [15:1 CRLR 53] CRB Executive Officer Rick Black stated that one alternative would be to require one year of experience in addition to an out-of-state license. CRB could also seek legislation to delete the term "substantially the same as those in California," or more clearly define its meaning in regulations. Following discussion, CRB created a committee to draft regulatory language to define the criteria used to determine whether a state exam is substantially the same as the California exam.

Also at its January 27 meeting, CRB discussed the growing incidence of individuals with experience as captioners for the hearing impaired or steno tutors attempting to use this experience to qualify for the CSR exam. CRB directed the committee developing the criteria for out-of-state licenses to also develop regulatory language to clarify this matter.

Also on January 27, the Board adopted a policy regarding the public disclosure of the issuance of citations and fines against CSRs. [15:1 CRLR 53] Under the policy, citations will be mailed to the licensee by certified and regular, first-class mail. A citation shall be deemed served upon the earlier of the following dates: (1) the date the Board receives the return receipt from the certified mailing, or (2) five working days after the date of mailing of the citation by regular, first-class mail. CRB will disclose information regarding a citation after service of the citation is complete. When providing information to the public regarding a citation, Board staff will also advise the public of the actual status of the citation, including whether a fine has been paid, the time for appeal has not yet run, the citation was contested and is being heard at an informal conference or appeal hearing, or an accusation has been filed.

At CRB's May 11 meeting, Executive Officer Rick Black asked Board members to aid staff in preparing the Board's "sunset" report, which is due on October 1. The comprehensive report must be delivered to the Joint Legislative Sunset Review Committee established under SB 2036 (McCorquodale) (Chapter 908, Statutes of

1994), which will review and determine whether agencies within the Department of Consumer Affairs, such as CRB, will be abolished. [14:4 CRLR 99]

## ■ FUTURE MEETINGS

June 10 in Burbank.  
July 23 in San Diego.  
August 17 in Burlingame.  
September 19 in Burlingame.  
November 9 in Los Angeles.

## BOARD OF DENTAL EXAMINERS

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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. In April, Governor Wilson appointed Richard Benveniste to BDE; Dr. Benveniste, a periodontist from Beverly Hills, fills the Board's professional member vacancy. The Governor also made two April appointments to COMDA: Wayne Del Carlo and Liza Karamardian, both dentists practicing in San Francisco.

## ■ MAJOR PROJECTS

**OAL Disapproves Fee Forfeiture Penalty for Cancelled Conscious Sedation Inspections.** On April 21, the Office of Administrative Law (OAL) disapproved BDE's adoption of new section 1043.5, Title 16 of the CCR. The Dental Practice Act authorizes BDE to require onsite inspection of conscious sedation/anesthesia permittees; the new regulation would have imposed a fee forfeiture on permittees after the second and third cancellations of a scheduled inspection, and allowed for automatic denial or revocation of a conscious sedation/anesthesia permit upon a third cancellation. [15:1 CRLR 54; 14:4 CRLR 53; 14:2&3 CRLR 53]

OAL found that the imposition of a fee forfeiture penalty is a legislative function, and the Board may not impose such a penalty unless specifically authorized to do so. The Dental Practice Act provides that BDE may deny or revoke a conscious sedation or anesthesia permit upon refusal to submit to an inspection, but the statute is silent on all other remedies, including penalty assessment.

OAL noted, however, that forfeiture of the fee for cancellation of an onsite inspection constitutes a penalty only to the extent that it exceeds costs reasonably attributable to the cancellation; the part of a regulatory fee that exceeds the reasonable cost attributable to the regulatory activity is unlawful and must be refunded. Regarding the costs reasonably related to the cancellation of onsite inspections and evaluations, OAL found that the rulemaking record contained only a statement to the effect that last-minute cancellations cause administrative problems for the Board, the Society of Oral and Maxillofacial Surgeons, and the evaluator team; OAL determined that this "bare statement" fails to demonstrate that the fees for cancellation are reasonably related to regulatory costs attributable to the cancellation. BDE has 120 days in which to correct this deficiency and resubmit the rulemaking file on proposed section 1043.5 to OAL.

**Remedial Education Regulations Approved.** On March 20, OAL approved BDE's adoption of new section 1039, Title 16 of the CCR, which defines the course of study required by Business and Professions Code section 1632.5 for dental licensure applicants who fail the skills examination three times; the section also outlines the method of demonstrating successful completion of the remedial education. [15:1 CRLR 54; 14:4 CRLR 54; 14:2&3 CRLR 53]

**New Rules for Dental Examination Adopted.** Following a January 26 public