finding that the phrase “more than two unrelated building trades” describes the structure involved in the general contractor’s principal business. CSLB argued that section 7057 requires that the construction work itself involve the use of more than two unrelated trades; “[t]hus the number of trades involved in the construction work is the deciding factor in the determination of who is a general building contractor” (emphasis original). CSLB contended that Judge Haden’s finding demonstrates his lack of appreciation for the classification scheme.

In its responsive brief, Home Depot argued—among other things—that section 834(b) is inconsistent with Business and Professions Code section 7057 and is therefore invalid; Home Depot contended that no state law restricts a general contractor to contracts involving three or more trades, and that in adopting section 834(b), CSLB “simply added a new and additional restriction.” In support of its contentions, Home Depot referred to a 1939 Attorney General Opinion, No. NS2182, in which the AG’s Office commented on CSLB’s proposal to classify contractors into three groups—general engineering contractors, general building contractors, and eight to ten specialty contractor classifications. Among other things, the AG’s Opinion stated that “the general plan of classification as outlined in your letter would limit general engineering contractors or general building contractors to engage in the field of specialty contracting only in connection with some particular job or project for which they have general contracts. We do not believe that general engineering contractors and general building contractors can be so limited by rule.”

The Fourth District Court of Appeal heard oral argument on December 7; at this writing, the court is expected to issue its decision in this matter in January.

- **RECENT MEETINGS**

At CSLB’s July 20 meeting, David Jones, a consumer, commented that CSLB should do more to protect consumers from incompetent and unlicensed contractors, and submitted a document entitled *The Homeowner’s New Bill of Rights* for the Board’s review and consideration. The *Bill of Rights* proposes that CSLB establish a recovery fund to help compensate defrauded consumers; raise all surety bond limits to $10,000; establish a “three strikes and you’re out” rule requiring revocation of a license of a contractor who is involved in three major complaints which result in felony or misdemeanor convictions; eliminate the provisions of the California’s Mechanics Lien law as it pertains to homeowners; establish a “We-Tip Hotline” for consumers to report unlicensed contractors; and establish stringent testing procedures and develop in-depth, substantive examination questions, especially in the area of seismic issues, that test an applicant’s knowledge of the various situations which typical California contractors confront.

Also in July, CSLB elected officers for 1995–96. The Board selected David Lucchetti as its new chair and Nina Tate as vice-chair.

At its October 26 meeting, CSLB reviewed staff’s report on the consumer satisfaction survey conducted on 1994 complaint closures. According to the report, consumer satisfaction in every area assessed has improved over the 1993 benchmark survey. The report also stated that CSLB-sponsored arbitration programs “continue to be a positive resolution for complainants.”

Also at CSLB’s October 26 meeting, Registrar Gail Jesswein reported that CSLB is the first state agency to respond to requests via electronic mail on the Internet; Internet users are able to electronically request license status information and receive a response from CSLB through the use of the electronic mail system. According to the Registrar, approximately 35 license status requests were received on the e-mail system during the first week of operation.

- **FUTURE MEETINGS**

January 25 in Los Angeles.
April 24–25 in Sacramento.
July 24–25 in Oakland.

- **COURT REPORTERS BOARD OF CALIFORNIA**

Executive Officer: Richard Black
(916) 263-3660

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.
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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.

In late 1995, Governor Wilson appointed Los Angeles attorney John Hilbert to the Board as a public member.

MAJOR PROJECTS

CRB Faces Sunset Review. SB 2036 (McCurogoula) (Chapter 908, Statutes of 1994) established a "sunset" review process which requires consumer protection boards within the Department of Consumer Affairs (DCA) to justify their existence and document effective performance or face elimination. [14:4 CCLR 20, 99] Under SB 2036, the statute creating each board is scheduled to terminate on a specified date, and each board is required to submit a report to the Joint Legislative Sunset Review Committee (JLSRC) approximately eighteen months prior to that date. This report must include, among other things, an analysis of the need for regulation of the particular industry or profession, documentation of the board's effectiveness in protecting the public welfare, detailed complaint and enforcement information, fiscal information, and a description of the board's licensing process. Because SB 2036 imposes an initial "sunset" date of July 1, 1997 on CRB, the Board devoted the vast majority of its time during the past six months to preparing its sunset review report, which it submitted to the JLSRC on September 29.

CRB's report cited "universal agreement" supporting continued regulation of CSRs, but conceded that this conclusion was based on a "small, unscientific survey." According to the report, Executive Officer Rick Black interviewed a couple of attorneys and judges in order to gauge consumer opinions on the utility of CSR regulation. The report recommended that the current level of regulation over CSRs be maintained, and that non-CSR court reporting agency owners be required to participate in a registration program; however, the report provided no details about the nature of this agency owner registration program.

CRB's report offered four options designed to implement its primary recommendation of retaining the current level of regulatory oversight: (1) eliminate CRB and let the court reporting industry self-regulate; (2) maintain CRB's structure but improve disciplinary procedures, case tracking, communication with the public, and testing methods; (3) turn the regulatory process over to the profession for self-regulation; or (4) merge the Board's function into DCA. The report noted certain drawbacks associated with the first, third, and fourth alternatives.

The report justified CRB's existing regulatory scheme based on the perceived success of its preventive model of regulation. The report noted that only 2% of the 7,500 CSRs are the subject of formal written complaints each year, and concluded that this low rate of consumer complaints is a sign that CRB's examination and licensing programs provide effective consumer protection. The report asserted that the preventive model of regulation, embodied by rigorous testing and licensing procedures, is necessary and efficient because the risk of harm posed to consumers by incompetent court reporters is high; for example, an inaccurate transcript may deny a litigant due process in the judicial system. Additionally, this type of harm may not be recognizable until years after the original reporting was performed, and disciplinary actions or monetary damages may not adequately compensate an injured consumer. Thus, the report concluded, CRB's stringent testing and licensing requirements serve the public welfare.

The report concluded that the economic cost of regulating the court reporting industry is slight. CRB itself is funded entirely by license fees; its licensing costs and exam fees are low compared to other states, and compared to the relatively large investment court reporters must make in equipment. According to the report, the costs to consumers of court reporting services have increased 6% since 1990, while the state's inflation rate was 18% during the same period. The report stressed that there has been minimal government intervention in the marketplace, and opined that the marketplace remains highly competitive.

CRB's report also contained complaint and enforcement information, fiscal information, and an analysis of the Board's licensing process as required by SB 2036. CRB cited the "unwieldy, unfriendly, expensive, and tedious" adjudication procedures of the Administrative Procedure Act as the most significant obstacle it encountered in attempting to resolve consumer complaints.

On November 28, the JLSRC held a public hearing to receive testimony from CRB, the Judicial Council, the court reporting industry, and the public. CRB member Carolyn Gregor and Executive Officer Rick Black represented CRB at the hearing. Questions and comments from JLSRC members primarily focused on the lack of meaningful enforcement activity by CRB. For example, JLSRC Chair Senator Ruben Ayala and Assemblymember Jackie Speier both noted that CRB has taken very few disciplinary actions in the past four years, and that nearly all the complaints received by CRB concern failure to produce a transcript in a timely manner—which generally prompt a reminder letter and informal action by the Board. Speier asked, "What relevance is there in having a board when the number one issue is getting a transcript in a timely fashion, but if you don't, all you're going to get is a letter? Why do we need a board to regulate? We should let the marketplace handle this." Joint Committee members were also concerned that CRB has never defined the term "timely." Senator Maurice Johannessen questioned CRB's lack of jurisdiction over emerging audio/video technology which is substituting for court reporters in some courtrooms, and its similar lack of authority over non-CSR owners of shorthand reporting firms.

Carrie Cornwell from the Judicial Council testified that the Council had not taken a formal position on the proposed alternative of placing regulatory responsibility for court reporters under the Council, and noted two potential problems with this proposal. First, only a minority of CSRs work in the courts; if the Judicial Council served as a regulatory body, the licensing of freelance (deposition) reporters would not be within the Council's statutory or constitutional mandate. Second, there has been tension, historically, between the Judicial Council and the court reporting industry, evidenced most recently by litigation over experiments with electronic recording of court proceedings (see LITIGATION).

Representatives from the California Court Reporters Association, the Los Angeles Municipal Court Reporters Association, and the Association of Reporter Training Schools testified in support of the current CRB structure, as did the managing reporter for the San Francisco Superior Court.

Representing the Center for Public Interest Law, Julianne D'Angelo Fellmeth recommended that CRB and its licensing requirement be abolished. Regarding the necessity of state licensure of CSRs, she argued that CRB's 54-page sunset report contains little evidence of actual irreparable harm flowing from an incompetent CSR; she acknowledged that permanent loss of a CSR's notes from a court hearing may serve to deprive a litigant of legal rights, but stated, "That rarely if ever happens." According to CRB's report, the Board receives only 100 complaints per year, and
75% of them pertain to failure to produce a transcript on time—a problem which, according to D’Angelo Fellmeth, would be remedied by increased supply of court reporters (which the absence of CRB and its licensing requirement would produce). She also observed that the “consumers” of the services of CSRs are courts and attorneys, and argued that both of these “consumers” are sophisticated and completely capable of judging the competence of a CSR through other marketplace certifications—primarily through passage of the national exam and their own experience with CSRs. D’Angelo Fellmeth contended that the “repeat business” dynamic of the normal marketplace has considerable force; no court or attorney would rehire a CSR who is incompetent, and that CSR will quickly go out of business. D’Angelo Fellmeth argued that the Board’s licensing requirement serves as a barrier to entry that protects existing members of the profession from competition, but does not serve public protection or public choice in the marketplace. She criticized CRB for failing to establish standards of conduct for the court reporting profession, failing to establish a rigorous enforcement program, and failing to take a leadership role in several critical issues of major public interest (e.g., direct contracting, incentive gift-giving, release of unedited transcripts, and technological issues). [15:1 CCLR 50-51] D’Angelo Fellmeth argued that CRB addressed some of these issues, they would not now be clogging both the courts (see LITIGATION) and the legislature (see LEGISLATION).

At this writing, the Joint Committee is scheduled to report its findings to DCA by January 16; the Department then has 60 days in which to forward its findings and recommendations on the fate of CRB to the legislature. Unless the legislature affirmatively acts, CRB will become inactive on July 1, 1997, and its powers and duties will revert to DCA.

LEGISLATION

SB 795 (Boatwright), as amended July 6, would require all providers of shorthand reporting services to either hold a CSR certificate from the Board or be a shorthand reporting corporation in good standing as authorized by Business and Professions Code section 8040 et seq. to render professional services in compliance with the Moscone-Knox Professional Corporations Act. This bill would also provide that a CSR certificate may 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 prohibit CSRs and providers of shorthand reporting services from failing to maintain a published rate schedule, discriminating in the types of reporting or incidental services offered in any action, failing to notify contemporaneously all parties attending any proceeding of the availability of a transcript or other writing, failing to disclose a conflict of interest, failing to comply with a court order, 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 and relationships 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. [A. Jud]

SB 795—which is sponsored by the California Court Reporters Association (CCRA)—has been controversial from the moment it was proposed [15:2&3 CCLR 52–53], and literally divided the industry during the past few months. On July 10, Senator Boatwright pulled the bill from the Assembly Judiciary Committee and declared it a two-year bill. According to Karen Klein, vice-president of the Los Angeles General Shorthand Reporters Association (LAGSRA) and an ardent supporter of the bill, a primary impetus for Boatwright’s withdrawal of the bill was a July 7 letter from the Service Employees International Union Local 660 (SEIU) to Assemblymember Phil Isenberg, chair of the Assembly Judiciary Committee, formally opposing the bill. SEIU represents the Los Angeles County Court Reporters Association, comprised of official (as opposed to general or freelance) CSRs in Los Angeles County. According to Klein, Gary Cramer, CCRA’s appointed legislative advisor, is also on the board of SEIU and was instrumental in SEIU’s decision to oppose the bill; Cramer’s wife is a non-CSR agency owner. Frank Murphy, CCRA’s lobbyist, is also employed as a lobbyist by SEIU. Outraged by these perceived conflicts of interest which were discovered after withdrawal of the bill, LAGSRA and numerous other associations of general court reporters appealed to CCRA for the dismissal of both Cramer and Murphy. On August 13, CCRA’s board and officers voted unanimously to rescind Cramer’s appointment as legislative advisor. The vote on a similar motion to dismiss Murphy was postponed until CCRA’s October meeting; at that meeting, the motion was narrowly defeated. On October 27, and partially in response to this vote, a group of freelance reporters decided to establish the Deposition Reporters Association of California to represent the interests of reporters working in the deposition field.

AB 1289 (Weggeland), as introduced February 23, 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 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

In California Court Reporters Association v. Judicial Council of California, 39 Cal. App. 4th 15 (1995), CCRA challenged the legality of California Rule of Court 980.3, the Judicial Council’s rule 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. The trial court held that the Judicial Council acted within its constitutionally-mandated authority in adopting the rule. [15:1 CCLR 53; 14:2&3 CCLR 106–08; 14:1 CCLR 83] On October 17, the First District Court of Appeal reversed the trial court’s holding. Preliminarily, the First District held that when evaluating whether a rule of court is “not inconsistent with statute” within the meaning of the California Con-

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situation, a court must determine the legis-
lature’s intent behind the statutory scheme
that the rule is intended to implement and
measure the rule’s consistency with that
intent. Thus, the First District held that the
trial court erred by finding a rule of court
inconsistent with statute only if it is im-
possible to give both concurrent effect.
The First District went on to find that a
review of the applicable statutes “satisfies
us that the legislature intended to autho-
rize electronic recording to create an offi-
cial record in certain circumstances, but
not in superior courts at the present time.”
The court stated that until the legisla-
tion amends applicable statutory provis-
ions to permit electronic recording to cre-
ate an official record, the normal practice
in California superior courts is for an offi-
cial shorthand reporter to create the offi-
cial record. Because the challenged rule
permits an official record of superior court
proceedings to be made by electronic re-
cording and imposes fees for recording
services, the First District held that it is
“inconsistent with statute” because it can-
not be squared with the existing legislative
scheme requiring official shorthand re-
porting of superior court proceedings.
The court concluded that the Judicial Council
exceeded its constitutional authority by
promulgating an inconsistent rule which is,
thus, invalid, and that Alameda County
local rules permitting electronic recording
are also invalid.
The Judicial Council has filed a peti-
tion for review with the California Supreme
Court.

Saunders v. California Reporting Al-
liance, et al., No. BC0272147, a case chal-
enging the practice of direct contracting
by CSRs, is still pending in Los Angeles
County Superior Court. In Saunders,
several independent CSRs sued two insur-
ance companies, the Court Reporting Al-
liance (CRA), and the CRA member CSRs
who directly contracted with the insurance
companies, claiming that the defendants
deployed in unfair business practices, inter-
ference with contract, and intentional in-
terference with prospective economic busi-
ness advantage. [15:2&3 CRLR 53; 15:1
CRLR 52; 14:4 CRLR 100] At this writing,
the Saunders case is pending in the dis-
covery stage.

RECENT MEETINGS

CRB’s June 10 meeting in Burbank
was canceled.

CRB’s August 17 meeting in Burling-

game consisted of a strategic planning ses-
sion organized by consultant Kate McGuire
designed to solicit input for the Board’s
sunset review report (see MAJOR PRO-
JECTS). CRB’s September 19 meeting in

Burlingame also focused on the sunset
review report. Executive Officer Rick Black
sent a draft version of the report to Board
members prior to the meeting and discus-
sion at the meeting centered on the appro-
riate additions and deletions to the draft
report.

On November 9, CRB held a meeting
in Los Angeles in conjunction with its
recertification exam. At the meeting, the
Board formally adopted its sunset review
report. CRB also discussed a proposed
school visitation manual, to be used to
analyze school compliance with Board
regulations, and a proposed “capstone cur-
riculum.” The Board also directed staff to
work with a consultant to develop a draft
style manual for its approval; the style
manual would be used to clarify the
Board’s grading policies on the examina-

Also at the November meeting, the
Board discussed proposed 1996 legisla-
tion. Under the sunset process, the legisla-
ture must affirmatively reestablish CRB or
it will be eliminated. After considerable
discussion, the Board decided to move
forward with legislation that differs only
in minor respects from its current enabling
legislation in Business and Professions
Code section 8000 et seq. Some Board
members advocated legislation that would
greatly expand CRB’s power over unli-
censed agency owners and address issues
such as direct contracting, incentive gift-
giving, and other professional conduct
concerns. Ultimately, however, CRB de-

cided that these issues are too controver-
sial; Board members were also concerned
that legislation expanding the power of the
Board would have little chance of passage
in the current political climate. CRB de-
ferred a final decision on this issue to its
January meeting.

FUTURE MEETINGS

January 6 in Burlingame.
March 9 in Los Angeles.
May 9 in San Francisco.

BOARD OF DENTAL
EXAMINERS

Executive Officer:
Georgetta Coleman
(916) 263-2300

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 train-

facilities, licensing dental applicants
who successfully pass the examination ad-
ministered by the Board, and establishing
guidelines for continuing education re-
quirements of dentists and dental auxilia-
aries. The Board is also responsible for
ensuring that dentists and dental auxilia-

aries maintain a level of competency ade-
quately to protect the consumer from negli-
gent, unethical, and incompetent practice.
The Board’s regulations are located in Di-
vision 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 as-
sistant. One of the Committee’s primary

tasks is to create a career ladder, permit-
ing continual advancement of dental aux-
iliaries 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. BDE’s
current members are Joel Strom, DDS,

president; Peter Hartmann, DDS, vice-pres-
ident; Victoria Camilli, public member,

secretary; John Berry, DDS; Stephen Yuen,
DDS; Genevieve Klugman, RDH; Robert
Christofferson, DDS; Kit Neacy, DDS;
Roger Simonian, DDS; Linda Lucks, pub-
lic member; and Richard Benveniste, DDS.

MAJOR PROJECTS

BDE Expands RDA Functions. Ex-
isting law authorizes BDE, upon COMDA’s
recommendation, to adopt regulations re-
lating to the functions which may be per-
formed by RDAs under the direct or gen-
eral supervision of a licensed dentist.
Existing regulations do not allow RDAs
to take bite registrations for diagnostic mod-
els under the direct supervision of a li-
censed dentist. After a recent occupa-
tional analysis of the RDA profession, how-

however, BDE found that bite registrations could be
taken by an RDA without harm to patients.
[14:4 CRLR 55] Additionally, BDE con-
tends that allowing an RDA to perform
this procedure would further legislative
intend to establish a career ladder permit-
ing continual advancement of persons to
higher levels of training without repeated
training for skills already required. On
July 7, BDE published notice of its intent
to amend section 1086, Title 16 of the
CCR, to authorize RDAs to take bite reg-

registrations for diagnostic models under the
direct supervision of a licensed dentist.

On August 24, BDE held a public hearing
on this proposal: following the hearing, the