carpentry) unless it requires at least three unrelated building trades or crafts, or unless he/she holds the required specialty license(s); section 834(b) also states that a general building contractor shall not take a subcontract (excluding framing or carpentry) involving less than three unrelated trades or crafts unless he/she holds the required specialty license(s). CSLB cited Home Depot for its advertisement and performance of work in a single trade or craft without holding a specialty license, in violation of section 834(b).

In contesting the citations, Home Depot argued that nothing in section 7057 precludes a B-general building contractor from accepting a contract in which two or fewer unrelated trades are involved, and that regulatory section 834(b) is thus inconsistent with the statute. Judge Haden agreed, noting that section 7057 "does not describe the contract a general contractor may take. 834(b) has simply added a new and additional restriction on the general building contractor not intended or apparently contemplated by the legislature in B&P section 7057. This additional restriction is not a reasonable interpretation of the legislative mandate." Judge Haden also found that section 834(b) does not square with the public protection mandate of the Contractors State License Law. Because section 7057 permits a general building contractor to "do or superintend the whole or any part thereof," Judge Haden noted that Home Depot could lawfully build an entire house with its B-general building contractor license, and found that "[t]here is no legitimate argument that a general building contractor is unqualified to do any aspect of work in connection with building a support, structure or enclosure." In this regard, Judge Haden opined that section 834(b) "was not adopted to protect the public but rather to restrain competition. It provides a monopoly to special license holders."

In its appellate brief, CSLB argued that Business and Professions Code sections 7057, 7058(a) and (b), and 7059(a) establish three separate construction classifications—the general engineering contractor, the general building contractor, and the specialty contractor—and specifically permit the Board to adopt regulations (such as section 834) to classify contractors and to limit the field and scope of the operations of a licensed contractor to those in which he or she is classified and qualified to engage. The Board contended that "the clear and unambiguous language of [section 7057] requires that a general building contractor take only construction contracts which require two or more unrelated trades to perform." In response to Judge Haden's 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 commented 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 the 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 exam 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

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 (McCorquodale) (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 CRLR 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 place the responsibility for regulating court reporters under the Judicial Council; (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 encounters 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 suggested 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 CRLR 50–51]* D'Angelo Fellmeth argued that had 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 inoperative 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 CRLR 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 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

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 CRLR 53; 14:2&3 CRLR 106–08; 14:1 CRLR 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-

stitution, a court must determine the legislature'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 impossible 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 authorize electronic recording to create an official record in certain circumstances, but not in superior courts at the present time."

The court stated that until the legislature amends applicable statutory provisions to permit electronic recording to create an official record, the normal practice in California superior courts is for an official shorthand reporter to create the official record. Because the challenged rule permits an official record of superior court proceedings to be made by electronic recording and imposes fees for recording services, the First District held that it is "inconsistent with statute" because it cannot be squared with the existing legislative scheme requiring official shorthand reporting 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 petition for review with the California Supreme Court.

Saunders v. California Reporting Alliance, et al., No. BC072147, a case challenging the practice of direct contracting by CSRs, is still pending in Los Angeles County Superior Court. In *Saunders*, several independent CSRs sued two insurance companies, the Court Reporting Alliance (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. *[15:2&3 CRLR 53; 15:1 CRLR 52; 14:4 CRLR 100]* At this writing, the *Saunders* case is pending in the discovery stage.

RECENT MEETINGS

CRB's June 10 meeting in Burbank was cancelled.

CRB's August 17 meeting in Burlingame consisted of a strategic planning session organized by consultant Kate McGuire designed to solicit input for the Board's sunset review report (*see* MAJOR PROJECTS). 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 discussion at the meeting centered on the appropriate additions and deletions to the draft report.

On November 9, CRB held a meeting in Los Angeles in conjunction with its certification 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 curriculum." 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 examination.

Also at the November meeting, the Board discussed proposed 1996 legislation. Under the sunset process, the legislature 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 unlicensed agency owners and address issues such as direct contracting, incentive gift-giving, and other professional conduct concerns. Ultimately, however, CRB decided that these issues are too controversial; 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 deferred 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 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. BDE's current members are Joel Strom, DDS, president; Peter Hartmann, DDS, vice-president; Victoria Camilli, public member, secretary; John Berry, DDS; Stephen Yuen, DDS; Genevieve Klugman, RDH; Robert Christoffersen, DDS; Kit Neacy, DDS; Roger Simonian, DDS; Linda Lucks, public member; and Richard Benveniste, DDS.

MAJOR PROJECTS

BDE Expands RDA Functions. Existing law authorizes BDE, upon COMDA's recommendation, to adopt regulations relating to the functions which may be performed by RDAs under the direct or general supervision of a licensed dentist. Existing regulations do not allow RDAs to take bite registrations for diagnostic models under the direct supervision of a licensed dentist. After a recent occupational analysis of the RDA profession, however, BDE found that bite registrations could be taken by an RDA without harm to patients. *[14:4 CRLR 55]* Additionally, BDE contends that allowing an RDA to perform this procedure would further legislative intent to establish a career ladder permitting 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 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