sified as a general building contractor—licensed as a B-general building contractor—shall not take a prime contract (excluding framing or 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 "we install what we sell" installation program under which Home Depot—a B-general building contractor—hires specialty contractors to perform all installation work as violative of section 834(b). Judge Haden found that regulatory section 834(b) is inconsistent with section 7057, stating 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." Thus, Judge Haden ruled that section 834(b) is invalid and dismissed CSLB's citations against Home Depot.

On September 23, CSLB filed notices with the superior court to prepare the reporter's and clerk's transcripts; at this writing, the appeal process is continuing. According to CSLB Registrar Gail Jesswein, until the matter is resolved by the appellate court, CSLB will continue to enforce sections 834(b) and 7057 in the same manner as before Judge Haden's ruling; Jesswein advised local building departments to consult with their attorneys before issuing building permits to general contractors for work that involves fewer than three separate trades.

RECENT MEETINGS

At its October meeting, CSLB heard strong opposition to the passage of AB 3001 (Conroy) (Chapter 783, Statutes of 1994). *[14:4 CRLR 50]* AB 3001 requires a home improvement contractor to disclose disciplinary actions and/or judgments to customers if the contractor has had two or more disciplinary actions within a ten-year period; the disclosure must be provided in a written document prior to entering into a contract to perform work on residential property. In addition, the Board's toll-free complaint hotline number must be included in the contract with the consumer, as well as information on the hazards of dealing with unlicensed contractors.

Some of the opposition to AB 3001 arises out of the ten-year tracking period for the two or more actions and bill's failure to define the term "disciplinary actions." After listening to criticism of the new law by Phil Vermulen of the Sheet Metal Air Conditioning Contractors Association and Bob Harder of the North Coast Builders Exchange, some Board members generally agreed that the ten-year tracking period is too long a period of time given the minor nature of some violations. Board Chair Robert Laurie also voiced concern about the lack of clarity in defining which disciplinary actions and judgments must be disclosed; CSLB staff explained that only complaints which result in disciplinary action must be disclosed.

Registrar Gail Jesswein stated that disciplinary action against a licensee is currently available on the Board's toll-free number, thus perhaps negating the need for AB 3001's written disclosure requirement. However, Ann Armstrong of the Contractors Referral Network pointed out that the public is no longer able to access a contractor's complaint record through CSLB's toll-free number; Armstrong asserted that AB 3001 was enacted with consumer protection in mind, and the Board should not lose sight of the benefits and goals of the bill. Armstrong noted that if given the disclosed information, consumers are better able to judge the qualifications of a contractor and make informed employment decisions. CSLB referred the matter to its Enforcement Committee for further consideration.

Also at its October meeting, CSLB discussed the use of translators on licensing examinations. Chair Robert Laurie stated that the Board has asked Department of Consumer Affairs legal counsel Dan Buntjer to clarify the Board's role and responsibility regarding the use of translators. Buntjer explained that there are several federal and state laws which must be analyzed before such a recommendation could be made. Licensing Deputy Linda Brooks stated that the Board currently has a process by which an examinee can request a translator on licensing examinations; Brooks explained that there are specific requirements which ensure that a translator is needed and staff closely monitors the exam to ensure that the translator only translates the exam. However, CSLB member Douglas Barnhart questioned how a person who cannot read or speak English could follow contracting plans and specifications and adhere to building codes; Barnhart felt the issue requires closer scrutiny. CSLB is expected to continue this discussion at its next meeting, at which time Buntjer will present his findings.

FUTURE MEETINGS

January 19–20 in San Diego.
April 20–21 in Sacramento.
July 20–21 in Orange County.

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.

MAJOR PROJECTS

Group Proposes Court Reporters' Reform Act. At its October 14 meeting, CRB reviewed a lengthy request to sponsor legislation submitted by a group calling itself the "Reform Coalition"; the Coalition, claiming to represent most local freelance reporting agencies, termed the proposed legislation the "Court Reporters' Reform Act."

Among other things, the proposed Reform Act addresses the issue of direct contracting, or third-party contracting, which has grown into a fairly controversial issue within the industry (*see* LITIGATION). *[14:4 CRLR 100–01]* Direct contracting is an exclusive dealing arrangement under which a CSR or association of reporters contracts with a major consumer of reporter services, such as an insurance company, for the exclusive right to report depositions taken by attorneys representing that consumer. Critics of direct contracting argue that CSRs should avoid any business arrangement which aligns them with one party to litigation, and contend that—in order to provide a discounted rate

to the insurance companies for reporting and transcribing depositions—CSRs who engage in direct contracting charge the other parties higher than the normal market rate for copies of the deposition without informing them of this fact. The practice also may also limit competition in that the contracts restrict large consumers of CSR services to utilizing a single CSR agency or organization; other CSRs simply may not compete for that business. The Coalition emphasizes the court reporter's role as an officer of the court, and argues that "any arrangement by which any private entity gains leverage over any officer of the court is irreconcilable with the precept of equal justice for all." In 1992–93, a CRB task force studied the issue and recommended that the Board sponsor legislation regulating and requiring disclosure by CSRs of exclusive contracting arrangements, but the Board failed to find a legislator willing to author the bill. *[14:4 CRLR 100; 13:2&3 CRLR 109; 13:1 CRLR 68]* The Coalition contends that, in order to preserve the integrity of the civil discovery process and ensure equal access to the courts, it is necessary to enact statutory protections to ensure that the independence and impartiality of the CSR are not compromised.

Additionally, the Coalition urged CRB to sponsor legislation regarding the following issues:

• According to the Coalition, the term "incentive gift-giving" refers to something of value given to an attorney or secretary as an inducement to schedule depositions with a particular court reporting firm; the Coalition considers "incentive gifts" to be kickbacks, the cost of which is then passed on to the client. According to the Coalition, the ability to offer incentive gifts seriously diminishes the credibility of the court reporting profession, and the practice should be prohibited.

• According to the Coalition, some court reporting agencies perform for their clients the service of summarizing depositions, such as a paralegal might do. According to the Coalition, summarizing a deposition renders a court reporter and/or the reporting agency a "team player" aligned with whichever party is utilizing this service; the Coalition contends that this practice impairs a reporter's ability to maintain the impression of impartiality.

• California Code of Civil Procedure section 2025(k) prohibits the taking of depositions by a court reporter who is employed by or related to any of the attorneys involved or who is financially interested in the action; however, the Coalition contends that "many depositions are reported by court reporters whose services are engaged by deposition agencies owned in whole or in part by persons who are relatives of the attorneys who actually take the deposition or are members of the law firms whose attorneys take these depositions." According to the Coalition, section 2025(k) should be extended to include the reporting agency involved or, at the very least, amended to require disclosure of the relationship by the CSR.

• According to the Coalition, current laws do not provide CRB with jurisdiction to discipline or regulate a non-CSR who owns a court reporting agency; the Coalition contends that such authority is necessary in order to protect consumers.

• The Coalition also urged CRB to adopt a standardized page format for California depositions; the Coalition contends that such a requirement would allow for fair competition among reporters and firms and would enable consumers (who are charged per page) to make informed choices based on like products and quality of service.

• The Coalition also opposes the practice of releasing rough drafts of an official record, or unedited computerized transcripts known as "dirty ASCIIs." The Coalition argues that a board which administers a test requiring 97.5% accuracy should not be willing to condone 10%, 30%, or 50% accuracy as long as it is labeled "dirty," and urged the Board to prohibit the release of rough drafts and dirty ASCIIs.

• Finally, the Coalition is opposed to court reporting agencies engaging in the practice of "deposition databanking" (the electronic collection and distribution of deposition transcripts to third parties), claiming that Code of Civil Procedure section 2025(p) prohibits a reporter from selling or providing a copy of a transcript—by any means—to anyone other than the parties to that particular action.

CRB discussed the Coalition's requests at its October 14 and November 10 meetings; following discussion at its November meeting, CRB agreed to hold an informational hearing on the proposals at its January meeting in Burlingame.

LEGISLATION

Proposed Legislation. In addition to the legislative proposals submitted by the Reform Coalition (*see above*), CRB may pursue the following proposals during the 1995 legislative session:

• Proposed amendments to Business and Professions Code section 8024 would provide that in order to renew an unexpired certificate, the certificate holder shall, on or before each of the dates on which it would otherwise expire, apply for renewal on a form provided by the Board and pay the prescribed renewal fee; notify CRB whether he/she has been convicted of any misdemeanor or felony subsequent to the licensee's previous renewal or application, whichever is more recent *[14:4 CRLR 99]*; and complete all continuing education required by CRB. The Board is not currently authorized to require continuing education.

• Proposed amendments to Business and Professions Code section 8024.2 would provide that an expired certificate may be renewed if the holder pays all accrued and unpaid renewal fees; notifies CRB whether he/she has been convicted of any misdemeanor or felony subsequent to the licensee's previous renewal; and completes all continuing education required by CRB.

• Proposed amendments to Business and Professions Code section 8024.4 would provide that a revoked certificate, if it is reinstated after its expiration, may be reinstated if the holder pays a reinstatement fee in an amount equal to all accrued and unpaid renewal fees; pays the delinquency fee, if any, accrued at the time of its revocation; and notifies CRB whether he/she has been convicted of any misdemeanor or felony subsequent to the license revocation.

• Proposed amendments to Business and Professions Code section 8025 would provide that a certificate may be suspended, revoked, or denied for failure to notify the Board of any convictions in accordance with sections 8024, 8024.2, and 8024.4; failure to pay any fines imposed for failing to produce transcripts; and for providing copies of deposition transcripts to any person or party who was not a party to the original action in which the deposition was taken, unless so ordered by a court of law.

• Proposed amendments to Business and Professions Code section 8031 would provide that the fee for taking or retaking the written or practical examinations shall be amounts fixed by CRB which are equal to the actual cost of preparing, administering, grading, and analyzing the examinations. The amendments would also increase the maximum duplicate certificate fee from $5 to $10 and the penalty for failure to notify CRB of a change of address from $20 to $50.

• Proposed amendments to Code of Civil Procedure section 2025(p) would require that depositions be transcribed within 45 days of the date the reporter reports the deposition and is requested by any party to prepare and make available the transcript; provide that any court, party, or person who has purchased a transcript may, without paying a further fee to

the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person; and clarify that the deposition reporter is entitled to a copy of any audiotape or videotape which might be made by another party at a deposition.

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 (*see* MAJOR PROJECTS). *[14:4 CRLR 100–01]* The plaintiffs, led by Frank Andrews and Robert Lando, are a class of litigants who were parties to actions in which the other parties directly contracted with CSRs who are members of an organization called the California Reporting Alliance (CRA). Defendants include CRA, its CSR members, and an insurance company with which CRA contracted. Plaintiffs contend that as a result of the direct contracting, they and other members of their class have been charged or compelled to pay excessive fees for court reporting services. Plaintiffs allege 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. Plaintiffs seek injunctive relief, actual damages in an amount exceeding $100,000 for each cause of action, and exemplary, punitive, and treble damages, as well as attorneys' fees. The case went to trial on January 10; at this writing, no decision has been reached.

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 court reporters sued two insurance companies, CRA, and the CRA member CSRs who entered into an exclusive contract with the companies for 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. *[14:4 CRLR 100]*

In ***Los Angeles County Court Reporters Association, et al., v. Superior Court of Los Angeles County***, 31 Cal. App. 4th 403 (Jan. 6, 1995), the Los Angeles County Court Reporters Association and the Los Angeles County Employees Association, Local 660 (collectively the "Association") challenged the court's practice of using electronic recording devices rather than CSRs to make a record of general civil proceedings where neither the assigned judge nor the parties requested that an official shorthand reporter record the proceedings; the Association sought an order compelling the court to cease using such electronic recording in those Los Angeles County courtrooms which were not among the 35 courtrooms included in the then-existing "demonstration project" authorized by Code of Civil Procedure section 270. The Association alleged that the use of electronic recording in lieu of CSRs violated numerous statutory provisions.

In response, the court asserted that its policy was not in violation of any law because Code of Civil Procedure section 269 requires the use of a CSR only when requested by the judge or a litigant, and because it has the inherent power to utilize electronic recording when necessary for the orderly and efficient operation of the Los Angeles County Superior Courts. The court claimed its decision to use electronic recording was in part motivated by the inadequate number of court reporters and in part by the cost-effectiveness and efficiency of using electronic reporting. The court also requested that the Judicial Council of California appoint a judge from another county to preside in the matter. Ultimately, the case was transferred to Kern County Superior Court, which ruled that Code of Civil Procedure section 269 does not provide for the use of electronic recording in lieu of a CSR and that, absent legislative authority, only an official reporter can transcribe superior court proceedings. However, the court found that nothing in the statutes suggests that the required use of a court reporter cannot be waived and the parties may stipulate to the use of electronic recording. Accordingly, the court held that Los Angeles County Superior Court should not be prohibited from using electronic recording where the parties do not request a court reporter and, with the approval of the court, stipulate to the use of electronic recording.

Both the court and the Association appealed this decision. Relying on section 269, the court claimed that because it is not obliged to maintain any record of general civil matters unless the court or a party requests an official reporter, it is free in the absence of such a request to elect to make an electronic record of these proceedings. The court therefore contended that the trial court's order is erroneous to the extent it conditions the court's utilization of electronic recording upon the existence of a court-approved stipulation of the parties.

In its cross-appeal, the Association contended that the trial court's order is erroneous because it permits electronic reporting under any circumstance. According to the Association, the provisions of a variety of related statutes demand the conclusion that "the legislature has indicated its intent that only shorthand court reporters...be used in Superior Court courtrooms unless otherwise expressly authorized by the legislature." Thus, the Association claimed that the use of electronic recording is absolutely prohibited in superior courts, irrespective of any stipulation of the parties, because the legislature has not yet expressly sanctioned electronic recording as a means of making a record of any superior court proceedings. In other words, the Association argued that if a superior court decides for whatever reason or purpose to take a verbatim record of a general civil proceeding where no section 269 request has been made, the court must use an official certified shorthand reporter.

On appeal, the Fifth District initially noted that section 269 provides that "[t]he official court reporter of a superior court... shall, at the request of either party, or of the court in a civil action or proceeding, and on the order of the court, the district attorney, or the attorney for the defendant in a criminal action or proceeding, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge." Following a review of other applicable laws, the Fifth District held that nothing in section 269 condemns the policy implemented by the court, noting that "[t]he statute does not mandate that the official reporter report all the listed events. It requires instead that the official reporter 'take down' civil proceedings only if requested by either party or the judge; the official reporter need not 'take down' a record when no request is made." Regarding the Association's claim that the use of electronic recording is absolutely prohibited in superior courts because the legislature has not yet expressly sanctioned electronic recording as a means of making a record of any superior court proceedings, the Fifth District stated that nothing in section 269 "directly or inferentially requires that, in the absence of a request for an official reporter, civil proceedings in superior courts must be recorded stenographically if a verbatim record is made for any reason."

The Fifth District concluded by reiterating its "very narrow" holding: The court is not prohibited, by any explicit or implicit legislative command contained in those specific statutes cited by the Association, from choosing to maintain a record of general civil proceedings by means of electronic recording devices where neither the court nor any party requests that a verbatim record be taken by an official shorthand reporter pursuant to the provisions of section 269. Accordingly, the Fifth District reversed the judgment and directed the trial court to enter an order denying the Association's petition for writ of mandate and to enter judgment for the court.

The Fifth District's holding did not address the broader issue still pending in ***California Court Reporters Association v. Judicial Council of California***, No. A066471 (First District Court of Appeal). In that matter, 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." Following vigorous litigation in Alameda County Superior Court just prior to the rule's effective date of January 1, 1994, retired Fourth District Court of Appeal Justice Robert Staniforth (who presided because the entire Alameda County court system recused itself from hearing the case) ruled that the Council acted within its constitutionally-mandated authority in adopting the rule. Justice Staniforth found that applicable statutes do not specifically require that court reporters be the "sole means" for making verbatim records of superior court proceedings. *[14:2&3 CRLR 106–07; 14:1 CRLR 83]* CCRA appealed, and the case is still pending in the First District.

RECENT MEETINGS

At its October 14 meeting, CRB discussed the disclosure of citations and fines; staff is currently seeking direction on when to make public the fact that the Board has issued a citation or fine against a licensee. Some boards make this information immediately available to the public, while others wait until the appeal process has been concluded. The Board instructed its legal counsel to research the matter and report back at a future meeting. At its November 10 meeting, CRB was advised that it should disclose citations and fines once they are issued and time for appeal has elapsed; the Board asked staff to draft a policy for consideration at its next meeting.

Also at its October 14 meeting, CRB discussed the issue of informal conferences regarding citations and fines. Three main questions exist: whether legal counsel should be present with the Executive Officer at the informal conference; whether the conference should be recorded; and whether the licensee should be informed that anything said may be used against him/her in the future. The Board generally agreed that since the conference is informal, it should not be recorded, nothing should be used against the licensee, and the Executive Officer should have legal counsel present only if the licensee does.

Also on October 14, Executive Officer Richard Black urged CRB to specify the criteria to be used in determining whether a state exam is comparable to the California exam; Black suggested that CRB require that the other state have a written knowledge test and that the speed and level of proficiency required to pass the machine exam meet or exceed California requirements. CRB also heard from a member of the Idaho CSR board, who stressed recent improvements to the Idaho exam and requested acceptance of the Idaho license as qualification for taking the California exam. *[14:4 CRLR 99]* The Board decided to review all material available on other state exams and licenses for future consideration of examination reciprocity.

At CRB's November 10 meeting, staff presented the Board with possible criteria for granting exam reciprocity. For example, CRB could require that there be a written examination of at least 50 items; for the machine portion of the test, the national RPR speeds and accuracy rate must be used; and there must be at least one ten-minute, two-voice dictation at 200 words per minute with a score of 97.5% accuracy required, or three five-minute sessions at speeds slower than 160 words per minute, and which must contain one five-minute, two-voice test of at least 200 words per minute with 97.5% accuracy required on all segments. Based on these criteria, staff recommended that CRB grant reciprocity to Georgia (A certificate only), Hawaii, Idaho, Michigan, Missouri, Nevada, Mexico, Texas, and Utah; CRB directed staff to draft regulatory changes to implement this policy.

Successful completion of the State Hearing Reporter Exam administered for stenographers/reporters who work in non-legal settings is currently accepted as qualification for the CSR exam. At its October 14 meeting, the Board responded to a public request to eliminate this means of qualification due to the lack of a written portion and the extremely high pass rate (95%). Executive Officer Richard Black urged the Board not to take action on the request due to a probable lack of legislative support; no action was taken by the Board.

CRB also addressed the issue of suspected exam subversion, noting that the most likely way to cheat on a CSR exam would be to tape record it; enforcement of any policy would probably involve complex Fourth Amendment issues related to search and seizure. CRB directed its legal counsel to research the matter for future discussion.

FUTURE MEETINGS

January 27 in Burlingame.
February 25 in Newport Beach.
March 11 in Los Angeles.
May 11 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. On Sep-