tees except the Examination and Finance committees.

FUTURE MEETINGS

November 17–18 in Sacramento.
February 2–3, 1995 in Ontario/Riverside.
April 6–7, 1995 in Oakland.
June 8–9, 1995 in San Diego.

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

Board Rejects Permanent Examination Reciprocity With Idaho. For the past several months, CRB has been tackling the issue of examination reciprocity with other states. In determining whether it should permit a CSR licensee from another state to sit for the California exam, CRB requires either that the licensee have passed the national Registered Professional Reporter (RPR) exam or that the licensing requirements of and the exam administered by the other state be "substantially the same" as those of California. Staff considers the following three criteria to determine whether another state's exam is substantially the same as California's exam: whether the examination has a written knowledge test; the speed of the machine portion of the test; and the percentage of accuracy required to pass the examination.

At its November 1993 meeting, CRB concurred with staff's recommendation that Idaho's test meets the criteria established by the Board in order to be accepted as a satisfactory method of qualification for admission to California's exam. However, at CRB's December 1993 meeting, staff reported that the Idaho exam was approved based upon representations by Idaho officials that they would be increasing both the percentage of accuracy required to pass the test and the speed requirements; by the time of CRB's December meeting, however, those changes had not been implemented by the Idaho officials. Therefore, CRB agreed to discontinue accepting the Idaho test as a satisfactory means to qualify for the California exam; however, the Board agreed that applicants who passed the Idaho exam between January 1, 1992 and September 30, 1993 would still be able to use it as a method of qualifying for the California CSR exam. *[14:1 CRLR 82–83]* Additionally, at a January 1994 special meeting, CRB agreed to also accept the Idaho exam as a satisfactory method of qualifying for the May 1994 California exam; thereafter, the Board agreed to withhold further approval until it conducts a comprehensive review of each state's examination and licensing requirements. *[14:2&3 CRLR 105]*

At CRB's July 23 meeting, however, Executive Officer Richard Black reported that his staff had been erroneously informing inquiring callers that successful completion of the Idaho exam would qualify applicants to sit for future administrations of the California CSR exam, despite CRB's decision not to grant it reciprocity beyond the May 1994 administration of California's exam. As a result, staff believed that several people had registered for and were preparing to take the Idaho exam under the mistaken belief that passing it would qualify them to sit for California's exam. Following discussion, CRB directed staff to contact everyone who had registered to take the Idaho exam and inform them that successful completion of that test will no longer enable them to sit for the California exam.

CRB Adopts One-Time Policy for Exam Errors. At its July 23 meeting, staff reported that licensure applicants had apparently received contradictory information from Board staff regarding the proper way to identify speakers in their transcripts, whether certain words are to be capitalized, and how many points will be deducted from their exams for mistakes in these areas. Accordingly, CRB adopted a one-time policy dealing with the deduction of points for speaker identification and capitalization errors on its last exam only. The Board then directed its Examination Committee to find a suitable style manual which it could permanently adopt and enforce.

LEGISLATION

Future Legislation. At its July 23 meeting, CRB agreed to pursue future legislation which would require each licensee, during license renewal, to inform the Board of any criminal convictions he/she has suffered; and to require licensees to pay all accrued and due licensing fees, when renewing a delinquent but not revoked license.

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 105–06:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1998 for CRB; creates a Joint Legislative Sunset Review Committee which will review CRB's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which CRB's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether CRB should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case CRB would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 3670 (Horcher), as amended August 26, requires CRB to establish an inactive category of licensure; adds as a cause for suspension, revocation, or denial of CSR certification the loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript, due to negligence of the licensee; and requires court reporting schools intending to offer a court reporting program to notify CRB, as specified, with respect to approval and recognition.

Existing law provides that CRB may grant recognition to a provisionally recognized court reporting school that has been in continuous operation for no less than three, and no more than five, consecutive years from the date provisional recognition was granted, and requires the Board to deny recognition after the five-year pe-

riod, as provided. This bill provides instead that CRB may recognize a provisionally recognized court reporting school in continuous operation for no less than three years, as specified, and would permit CRB to extend the three-year period for not more than one year, as provided. The bill also requires recognized and provisionally recognized schools to include specified information in school or course catalogs concerning minimum requirements that a court reporting program must meet in order to be recognized.

The bill also, with respect to oral depositions, revises certain requirements as to qualifications of the deposition officer and transcription of transcripts. This bill was signed by the Governor on September 19 (Chapter 660, Statutes of 1994).

AB 721 (Horcher). Under existing law, in all superior court departments not selected to participate in a specified demonstration project relating to the use of audio or video recording, and in all superior court departments selected to participate in the demonstration project, and in all municipal and justice courts, in addition to any other trial court fee required in civil cases, a prescribed fee is required to be charged to the parties for the services of an official reporter or official reporting service. As amended August 11, this bill would have specified that these provisions apply in all superior court departments in which the services of an official reporter are utilized, all superior court departments in which audio or video reporting is utilized, and in all municipal and justice courts. This bill died in committee.

AB 3657 (Weggeland), as amended August 12, would have, with respect to court reporters and persons taking, recording, transcribing, or preparing a deposition, prohibited the offering, delivering, receiving, or acceptance of any gift or gratuity, whether in the form of money or otherwise, from any party to any legal or administrative action, any attorney of that party, or any entity or employee or agent thereof that insures or indemnifies any party in that action. It would have provided 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. This bill died in committee.

AB 1392 (Speier), as amended August 17, is no longer relevant to CRB.

LITIGATION

A major lawsuit which may result in a judicial ruling on the issue of exclusive contracting by CSRs has been reinstated and is, at this writing, proceeding to trial. In ***Saunders v. Superior Court of Los Angeles County (California Reporting Alliance, Real Party in Interest)***, 27 Cal. App. 4th 832 (Aug. 16, 1994), plaintiffs—several independent court reporters—filed suit against two insurance companies and the California Reporting Alliance (CRA), a group of certified shorthand reporters, for unfair business practices, interference with contract, and interference with prospective economic advantage. The trial court sustained the demurrers of all defendants to all causes of action without leave to amend. The Second District Court of Appeal issued an alternative writ of mandate to review this ruling, and determined that the trial court erred in sustaining the demurrers.

This case arises out of the practice of "direct contracting," 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. In 1992–93, a CRB task force 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. *[13:2&3 CRLR 109; 13:1 CRLR 68]*

Plaintiffs' complaint alleged that the CRA members have agreed that they will provide reporting services to the insurance company defendants pursuant to rates, terms, and conditions set by CRA. The defendant insurance companies have entered into contracts with CRA which provide that all attorneys representing their policyholders must use CRA members for reporting services and the companies will not pay for reporting services unless those services were obtained from a CRA reporter. CRA will bill the insurance companies directly, at agreed-upon rates, for all reporting services furnished to attorneys representing policyholders. Plaintiffs further alleged that pursuant to the agreements between CRA and the insurance companies, the companies instructed the attorneys representing their policyholders to sever all existing contracts with other reporters and to use exclusively the services of CRA reporters; these instructions were enforced by means of threats by the companies that services performed by non-CRA reporters would not be paid for.

Plaintiffs did not contend that direct contracting is illegal per se; rather, they argued that direct contracting as practiced by CRA constitutes an unfair business practice under section 17200. According to plaintiffs, the contract provisions at issue (which, in addition to reporting depositions, call for CRA reporters to train and evaluate the attorney taking the deposition and comment on the substance of the sworn testimony, according to plaintiff) are unlawful and unfair because they compromise the impartiality of CRA reporters, provide CRA reporters with a financial interest in the outcome of the litigation, and constitute an unreasonable restraint of trade. According to the Second District, whether such conduct on the part of a CSR is contrary to professional standards concerning impartiality will have to await expert testimony at trial, since a demurrer tests only the legal sufficiency of the allegations, and not their truth, the plaintiffs' ability to prove them, or the possible difficulty in making such proof. Further, the court found that whether CRA's contracts and practices advance efforts to contain litigation costs, foster competition, and are legal and fair is not a matter that can be decided at the demurrer stage. Instead, the court held that because the pleading states a prima facie case of harm, having its genesis in an apparently unfair business practice, CRA should be made to present its side of the story.

Plaintiffs further alleged that in order to provide a reduced rate to the insurance companies for reporting and transcribing the deposition, CRA members charge the other parties higher than the normal market rate for copies of the deposition and that the public and the other litigants are not informed of this practice. According to the Second District, the practice of providing a discount to the party who notices the deposition while increasing the cost to the parties requesting copies of the deposition appears, on its face, to violate the mandate of impartiality contained in Business and Professions Code section 8025. The court further commented that if one party is being charged higher costs for a deposition without being informed it is paying for its adversary's discount, CRA may be violating Business and Professions Code section 17405, which prohibits the secret payment or allowance of unearned discounts.

For these and other reasons, the Second District directed the trial court to vacate its order sustaining defendants' demurrers to plaintiffs' second amended complaint and to issue a new order overruling the demurrers.

In a companion case, ***Wilcox v. Superior Court of Los Angeles (Ronald J. Peters, et al., Real Parties in Interest)***, 27 Cal. App. 4th 809 (Aug. 16, 1994), Sondra Wilcox, a cross-defendant in the *Saunders* proceeding, challenged the ruling of the trial court denying her motion to strike CRA's cross-complaint against her for

damages and injunctive relief based on restraint of trade and defamation. Wilcox's motion to strike was based on California's anti-SLAPP (strategic lawsuits against public participation) suit statute, Code of Civil Procedure section 425.16; in very general terms, a SLAPP suit is a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights. CRA filed a cross-complaint against the plaintiffs in the *Saunders* action, as well as other individuals (including Wilcox and her reporting agency), for defamation and conspiracy to unlawfully restrain trade through a boycott of CRA's reporting services. The first amended cross-complaint alleged Wilcox distributed a memorandum to various other CSRs which stated, among other things, that many shorthand reporting agencies were banding together "to 'permanently put the Alliance to rest once and for all'"; reporters were suing CRA and its members for extortion and racketeering; and reporters should tell attorneys representing insurance companies and their policyholders about this litigation so that the "threat" might be enough to make the insurers "back off" from entering into direct contracting agreements with CRA. The memorandum asked CSRs to contribute $100 each to the *Saunders* lawsuit against CRA. The cross-complaint also alleged that Wilcox told CRA members she would no longer refer them any work or network with them because they were affiliated with CRA.

Characterizing the cross-complaint as a SLAPP suit, Wilcox filed a motion to strike it as to her and her reporting agency pursuant to Code of Civil Procedure section 425.16. The trial court denied the motion, finding that CRA proffered sufficient evidence in opposition to the motion to establish the probability it would prevail on its claims.

According to the Second District, section 425.16 requires the defendant to make a prima facie showing the plaintiff's suit arises "from any act of [defendant] in furtherance of [defendant's] right of petition or free speech under the United States or California Constitution in connection with a public issue." The defendant may meet this burden by showing that the act which forms the basis for the plaintiff's cause of action was a written or oral statement made before a legislative, executive, or judicial proceeding; or such a statement in connection with an issue under consideration or review by a legislative, executive, or judicial body; or such a statement was made in a place open to the public or a public forum in connection with an issue of public interest. Here, the Second District found that Wilcox's alleged defamatory statements were clearly made in connection with the underlying judicial challenge to direct contracting; the court found that the statements were made in the context of exhorting CSRs to contribute to the cost of pursing that litigation. Thus, the Second District found that there is a strong showing those statements are rationally connected to the litigation itself.

For these and other reasons, the Second District directed the trial court to vacate its order denying Wilcox's motion to strike and to enter a new and different order striking the cross-complaint in its entirety as to cross-defendants Sondra Wilcox and Sondra K. Wilcox & Associates, Inc.

RECENT MEETINGS

At CRB's July 23 meeting, the Board's Code of Conduct Committee announced that it is considering changes to the CCR regarding a CSR's duties in relation to rough drafts and certified transcripts; for example, the Committee may propose regulatory language defining what a certified copy must look like, and requiring that a rough draft include a disclaimer on the first page thereof and in a footer throughout identifying it as a rough draft. The Committee added that CRB should more clearly define a reporter's responsibilities regarding these and other issues.

Also at the July 23 meeting, CRB's Public Relations/Advocacy Committee reported that the cost of publishing a licensee newsletter would be $26,000 per year; the Committee is currently working on a budget change proposal to accommodate the added expense. The Committee also recommended that the Board add a user-friendly index to its lawbook, and noted that it is considering the addition of a "recommended practices" section to the lawbook; this section would be distinctly separated from the mandatory sections of the book and would offer practical advice to practitioners on the handling of various situations.

Also at its July 23 meeting, the Board agreed that it should not pursue the regulation of audio/video recorders, unless it can demonstrate a specific need; at this time, staff does not believe it can make such a showing, although it encouraged people to provide it with examples of abuses in that industry, if they exist. *[12:4 CRLR 126]*

FUTURE MEETINGS

October 14 in Ontario.
November 10 in Los Angeles.

STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira
(916) 263-2540 or
(800)-PEST-188

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs (DCA). SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application, and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.