

REGULATORY AGENCY ACTION



■ FUTURE MEETINGS

June 9–10 in Oakland.
September 22–23 in Los Angeles.
November 17–18 in Sacramento.

COURT REPORTERS BOARD OF CALIFORNIA

*Executive Officer: Richard Black
(916) 445-5101*

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.

On May 16, Governor Wilson appointed Sacramento attorney Peggy Cecil to CRB.

■ MAJOR PROJECTS

Board To Review Reciprocity Issue. 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 an 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, the Board 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 the percentage of accuracy required to pass the test from 95% to 97.5%, and that it would increase speed requirements to be similar to those on the RPR examination; currently, Idaho speed requirements are approximately 20 words per minute lower than RPR standards on each segment. Following discussion in December, CRB agreed to discontinue accepting the Idaho test as a satisfactory means to qualify for the California exam; however, 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]

However, at a special meeting on January 24, CRB agreed to also accept the Idaho exam as a satisfactory method of qualifying for the May California exam; thereafter, the Board will withhold further approval until it conducts a comprehensive review of each state's examination and licensing requirements. At this writing, CRB is scheduled to review those requirements and determine those states which it deems to have an examination which is "substantially the same" as California's exam at its July 23 meeting.

CRB Adopts Exam Certification and Appeals Program Policies. At its February 19 meeting, CRB considered and adopted policies regarding its examination certification process and its appeals program. Under CRB's examination certification policy, the Board will select nine licensed CSRs to serve, on a rotating basis, on a Certification Panel; the Panel will serve as a resource to the Executive Officer for the purpose of grading the written portions of the examination. Each Certification Panel will consist of two licensed court reporters and a staff member. Certification Panel members will attend a training workshop which will be conducted by the Department of Consumer Affairs' Office of Examination Resources (OER), the Board's Executive Officer, and Board staff. Once the written examinations are graded and analyzed by OER, the Executive Officer will call upon two of the Board-selected panel members (two persons per exam) to make determinations relative to any questionable items which result either from OER's analysis or from comments provided by examinees on the established "critique form." According to the policy, the recommendations made by the Certification Panel will be considered the final finding of the Board; the Executive Officer will implement the recommendations of the Certification Panel and regrade the written examinations as necessary.

Under CRB's appeals program policy, the Board will select nine licensed CSRs to serve, on a rotating basis, on an Appeals Panel, which will serve as a resource to the Executive Officer for the purpose of appeals on the dictation and/or transcription portion of the examination. Each Appeals Panel will consist of two CSR members, the Executive Officer, and one staff member. Appeals Panel members will attend a training workshop which will be conducted by the Board's Executive Officer. The recommendations of the Appeals Panel will be considered the final finding of the Board; the Executive Officer will implement the recommendations of the Appeals Panel.

■ LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1998 for CRB; create a Joint Legislative Sunset Review Committee within the legislature, which would review CRB's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which CRB's performance will be evaluated. Following review of the agency and a public hearing, the Committee would 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. (See agency report on DCA for related discussion of the "sunset" concept.) [S. *Appr*]

SB 2037 (McCorquodale), as amended April 5, would have transferred CRB from DCA to the Judicial Council; however, Senator McCorquodale agreed to delete that provision at the May 9 hearing of the Senate Business and Professions Committee, as it has not yet been the subject of a public hearing by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions. Thus, SB 2037 no longer pertains to CRB. [S. *Appr*]

AB 3657 (Weggeland). Existing law prohibits various acts by a licensed court reporter, including acts of unprofessional conduct defined as including, but not limited to, impartiality. As amended April 28, this bill would provide that the failure of a certified shorthand reporter to be impar-



REGULATORY AGENCY ACTION

tial shall include, but not be limited to, any gift, fee waiver, or rebate provided to one or more parties to a lawsuit by a court reporter or a court reporting firm, but not to another party or parties thereto, if financially motivated or part of an ongoing mutually beneficial relationship, made under circumstances indicating an attitude of bias or favoritism. [A. Floor]

AB 3670 (Horcher), as amended April 28, is sponsored by CRB and would impose mandatory continuing education requirements on CRB licensees, commencing July 1, 1996. It would authorize CRB to establish an inactive category of licensure, and require schools intending to offer a court reporting program to notify the Board with respect to approval and recognition. The bill would also, with respect to oral depositions, revise certain requirements as to qualifications of the deposition officer, transcription of transcripts, and provision of copies of deposition transcripts.

Existing law specifies certain causes for suspension, revocation, or denial of certification as a shorthand reporter. This bill would additionally provide as a cause for that action 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.

Existing law, with respect to the taking of an oral deposition, requires that unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. This bill would provide that the transcription shall be within 45 days of the date of request to transcribe and that a failure to do so is a violation of those provisions setting forth the bases for suspension, revocation, or denial of a certificate, as specified. [A. W&M]

H.R. 2814 (Hughes), as introduced July 30, 1993, is federal legislation which would amend Rule 30 of the Federal Rules of Civil Procedure to provide that, unless the court upon motion orders, or the parties agree in writing to use, sound or sound-and-visual means, depositions shall be recorded by stenographic means (*see* RECENT MEETINGS). This measure was approved by the House of Representatives on November 3; the Senate may consider the measure during the second session of the current congressional term.

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 83:

AB 1807 (Bronshvag), as amended March 23, changes the name of the Board to the Court Reporters Board of California.

Existing law allows the Board to grant provisional recognition to a school which has met specified requirements, and requires the Board to recognize a school after it has been in continuous operation for at least three years from the issuance of the provisional recognition, upon the fulfillment of certain requirements. This bill allows the Board to recognize a provisionally recognized school in operation from three to five years after the issuance of the provisional license, upon the school's fulfillment of those requirements. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1392 (Speier), as amended July 1, 1993, would—among other things—provide that CRB's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the DCA Director. [S. B&P]

AB 721 (Horcher). Under existing law, an official reporter of the superior court is required to take down in shorthand all testimony and proceedings at the request of either party or the court, in a civil action, and on the order of the court, the district attorney, or the attorney for the defendant in a criminal proceeding. As amended June 9, 1993, this California Court Reporters Association-sponsored bill would provide that in all proceedings in which a felony offense is alleged in a justice, municipal, or superior court, a stenographic court reporter who uses computer-aided transcription equipment shall be present, and all pretrial motions and trial proceedings in civil cases in superior court shall be conducted with a stenographic court reporter present who uses computer-aided transcription equipment. The bill would also provide that a nonstenographic method of recording may be utilized in all other civil proceedings in superior courts upon approval of the bench officer presiding over the proceedings; that no court reporter employed on the effective date of the bill shall have his/her hours of employment as a court reporter reduced as the result of the use of nonstenographic methods; and that, except as provided above, no stenographic court reporter employed on the effective date of the bill shall be prevented from reporting any civil or criminal proceedings as a result of not using computer-aided transcription equipment.

Existing law provides that when an official court reporter or a temporary court reporter is unavailable to report an action or proceeding in a municipal or justice court, the court may order the action or proceeding be electronically recorded, as specified, and requires the court to assign

available reporters first to report preliminary hearings and then to other proceedings. This bill would revise this provision to make it apply only to misdemeanor or civil proceedings in municipal or justice courts, and to delete the latter provision above regarding preliminary hearings. The bill would require a good faith effort to be made to secure a court reporter, and would provide that when a transcript is required, any transcript prepared from such an electronic recording shall be a stenographic transcript.

This bill would also change the penalty fee for failure to notify CRB of a change of address, from no greater than \$20, to no greater than \$100. [S. Jud]

AB 585 (Knight), which would have abolished CRB, repealed provisions pertaining to CRB, and enacted new provisions providing for the regulation of shorthand reporters by the Shorthand Reporters Program in DCA, to be administered by the DCA Director and a program administrator appointed by the Governor, died in committee.

■ LITIGATION

Last December, the 3200-member California Court Reporters Association (CCRA) filed suit in Alameda County Superior Court, seeking to enjoin the California Judicial Council from enforcing its Rule of Court 980.3, which was scheduled to take effect on January 1. The rule 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." In *California Court Reporters Association v. Judicial Council of California*, No. 728173-6, CCRA contends that the Council should not have approved the use of electronic equipment in courtrooms because the legislature recently rejected a bill extending a state pilot program on electronic recording; the state pilot program ended on January 1. CCRA also contended that the Judicial Council's rule is contrary to statute, which it says authorizes only official court reporters to prepare verbatim transcripts of superior court proceedings. [14:1 CRLR 83]

Because Alameda County Superior Court executive clerk Ron Overholt was named as a defendant along with the Judicial Council, Judge James Lambden disqualified himself and the entire Alameda County court system from hearing the lawsuit; accordingly, retired Fourth District Court of Appeal Justice Robert Staniforth was specially assigned to hear the case. In "a statement of intended decision" issued on March 25, Staniforth held that



the Council acted within its constitutionally-mandated authority in adopting the rule, finding that applicable statutes do not specifically require that court reporters be the "sole means" for making verbatim records of superior court proceedings. CCRA Executive Director Neil Ferstand characterized Staniforth's ruling as a "political decision"; at this writing, it is not known whether CCRA will appeal the decision or seek legislative changes.

In *U.S. v. Wilson*, No. 91-10308 (Feb. 16, 1994), the U.S. Ninth Circuit Court of Appeals held that a court reporter's failure to file an accurate, reliable, and timely record was grounds for reversing the conviction in the government's case against Dennis Wilson, who had been found guilty of ten counts of defrauding the government by providing worthless sureties for contractors on government projects. In reversing and remanding for a new trial, the Ninth Circuit concluded that Wilson made a substantial enough showing of judicial misconduct that it could not determine without reviewing the transcript whether he had been afforded a fair trial, and found that "[w]e cannot review the transcript because the court reporter has not prepared a usable transcript." Accordingly, the court held that the trial court's certification of the accuracy of the record was clearly erroneous, and that the absence of an accurate and reliable record indicates that Wilson's appeal has been impaired and, therefore, prejudiced by the delay that resulted in this inadequate record.

RECENT MEETINGS

At CRB's February 19 and May 12 meetings, the Board discussed the recent changes to Rule 30 of the Federal Rules of Civil Procedure; the revisions, which took effect on December 1, 1993, authorize parties to record deposition testimony by nonstenographic means without first having to obtain the permission of the court or an agreement from the other counsel. The Board noted that although legislation to amend Rule 30 has been introduced and passed by the House of Representatives (see LEGISLATION), no action was taken by the Senate before it adjourned. At the Board's May meeting, CCRA President Allen Edelist opined that a coalition of interested parties may succeed in urging the Senate to consider the proposal during the current congressional session.

At CRB's May 12 meeting, Board member Teri Jackson reported on the progress of CRB's Continuing Education Committee, noting that the Committee is developing a proposed core curriculum similar to what the National Court Reporters Association

has for the RPR program. Jackson reported that the Committee decided to draft a statement indicating the reasons for having continuing education; at this writing, the Committee is expected to present an updated report at CRB's July 23 meeting.

Also at its May meeting, CRB elected Teri Jackson to serve as Chair and Peggy Porter to serve as Vice-Chair.

FUTURE MEETINGS

July 23 in San Diego.

STRUCTURAL PEST CONTROL BOARD

Registrar: *Mary Lynn Ferreira*
(916) 263-2540

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. 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.

Licenses 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.

MAJOR PROJECTS

Board Takes Action on New Rule-making Package. On January 7, SPCB published notice of its intent to amend sections 1919, 1937.14, 1937.16, 1950.5(h), 1970, 1970.4, 1971, 1973, 1983, 1990, 1991, 1993, 1996, and 1998, repeal section 1999.1, and adopt new sections 1974, 1990.1, and 1991.1, Title 16 of the CCR. [14:1 CRLR 84-85] Following a February 25 public hearing, SPCB took the following actions on the rulemaking package:

-SPCB postponed action on its proposed amendments to section 1919, which would change the composition of its Research Advisory Panel by deleting the requirement that the public member of the Research Advisory Panel be a SPCB member; according to Department of Consumer Affairs (DCA) legal counsel Don Chang, Business and Professions Code section 8674 requires the Research Advisory Panel to include a SPCB member.

-SPCB adopted amendments to section 1937.14, which would require the quality of work completed by SPCB licensees or registered companies to comply with criteria listed in section 2516(c)(1)(2)(4)(6)(13), Title 24 of the CCR.

-SPCB adopted amendments to section 1937.16, which would require wood roof cleaning and treatment registered companies to issue a "Notice to Owner" form to inform property owners that a lien may be taken against their property if the registered company is not paid for the work performed.

-SPCB adopted amendments to section 1950.5, which would—among other things—decrease the number of continuing education (CE) credits obtainable for teaching Board-approved CE courses and publishing technical articles, and require an examination to be administered at the end of some CE courses; licensees must obtain a passing score of 70% or better in order to obtain a certificate of completion.

-SPCB adopted amendments to section 1970, which would make technical and grammatical changes to existing language regarding fumigation and pest control logs and records.