# JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE FINDINGS AND RECOMMENDATIONS

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## Review and Evaluation of the Court Reporters Board

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**Report to the**
**Department of Consumer Affairs**

**FEBRUARY 1996**

# JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

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# SUMMARY OF FINDINGS AND RECOMMENDATIONS

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| ISSUE #1: | Should the Court Reporters Board be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs? |

**RECOMMENDATION:**

***The board should be continued as a separate agency but the sunset date should be extended for only two years until the next sunset review. (The board will be reviewed once again in 1997.)***

**FINDINGS:**

**A. General Responsibilities, Duties and Powers of the Board**

**1.** ***The board has specified its mission, vision and goals. It has also been involved in strategic planning sessions and has implemented total quality management practices.***

**2.** ***The board has not established professional standards for its licensees, nor specific codes of professional ethics or conduct, but there are other organizations which provide a "Code of Professional Responsibility" for CSRs. However, legislation has been introduced which would allow the board to improve its standard-setting for the profession. The board also proposes to adopt a "Code of Ethics."***

**B. Funding and Organization of the Board and Staff**

**1.** ***The board has spent, on average, about 51 percent of its budget on enforcement activity over the past four years. Other boards have spent, on average, about 66 percent.***

**2.** ***The board is seeking an increase in its examination fee to provide more frequent and convenient testing of applicants, and decrease the large number of applicants who sit for the exam.***

**3.** ***The board plans to adopt some of the "Performance Based Budgeting" methods of DCA.***

**C. Licensing and Application Process**

**1.** ***The education and experience requirements are not excessive when compared with other states, and are necessary to assure that practitioners are competent.***

**2.** ***The board does <u>not</u> provide automatic reciprocity for those applicants already licensed in another state or country.***

**D. Continuing Education and Review of Professional Competence**

**1.** ***The board has been instrumental in attempting to provide leadership in the area of continuing education for this profession.***

**E. Examination Process**

**1.** ***The exam given by the board has a low passage rate.***

**2.** ***It has been argued that the examination requirement is an artificial barrier to entry into this profession and may be testing more than the minimum standards of competence necessary for an entry-level CSR.***

**3.** ***The CSR exam is validated every five years.***

**F. Complaint Process**

**1.** ***There are very few formal complaints filed against the 7500 licensed CSRs, but the board handles more "informal" complaints which are mediated.***

**2.** ***There is no indication of delays in the complaint process. Most are handled within 60 days unless forwarded to the Department for investigation.***

**G. Enforcement Process**

**<u>Unlicensed Activity</u>**

**1.** ***The board makes very little use of its "cite and fine" authority against unlicensed practice because of the temporary nature of the court reporters work, and because there is no workable method of detecting unlicensed activity.***

**2.** ***There is some question as to what amounts to unlicensed activity under particular circumstances.***

## Investigations

1. ***The board has had few investigations over the past four years.***

2. ***There were no extreme delays in the investigation of cases.***

## Disciplinary Action

1. ***The board has had few accusations filed over the past four years.***

2. ***The board attempts to provide for restitution to the consumer but its authority is limited.***

## Disciplinary Case Aging Data

1. ***There were no extreme delays in completing enforcement cases.***

## Enforcement Costs

1. ***The board's expenditure for all enforcement costs is below the average for other consumer boards, but the board has steadily spent more over the past four years.***

2. ***The board has sought cost recovery to a very limited extent, pursuant to authority granted under Section 125.9 of the Business and Professions Code.***

**H. Efforts to Improve the Current Regulatory Process**

## Operational Improvements

1. ***The board is making some effort to overcome current impediments to its regulatory mission.***

## Legislative Efforts

1. ***Legislative efforts by the board have made some improvements in the current regulatory program.***

## Recommended Improvements

1. ***The board's proposed administrative, regulatory and legislative changes address some of the basic problems which are identified in this report. However, some are not reflective of the findings made by the JLSRC.***

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| ISSUE #2: | Should the State continue with the licensing and regulation of court reporters, and if not, should some other alternative form of regulation be recommended? |

**RECOMMENDATION:**

***The State should continue with the licensing and regulation of the practice of shorthand (Court) reporting.***

**FINDINGS:**

**1.** ***There is some evidence that the unregulated practice of shorthand (Court) reporting could endanger the safety and welfare of the public and cause significant public harm.***

**2.** ***There appears to be significant public demand, and an expectation by other professional groups who rely on CSRs, for the regulation and licensing of the practice of shorthand (Court) reporting.***

**3.** ***The current regulatory program appears to provide some evidence that significant harm could result if the shorthand (Court) reporting profession was deregulated.***

**4.** ***There is a high degree of skill required for competence of shorthand reporters, who are not subject to supervision during the performance of their services.***

**5.** ***There is a significant demand for the services of CSRs; the ability of the consumer of CSR services (generally an attorney or court) to independently determine competence is limited in advance of obtaining their services.***

**6.** ***There is a generally accepted core of knowledge, skill and ability required to protect the consumer in the shorthand (Court) reporting profession which are measurable by objective, written standards.***

**7.** ***There are other public agencies with possible regulatory overlap, though not formal licensure, of CSRs.***

**8.** ***There are 25 other states that also regulate (license) shorthand (Court) reporters.***

**9.** ***There are similar occupations that currently are not licensed in California.***

**10.** ***There does not appear to be any substantial savings to the consumer (agencies or businesses) if the practice of shorthand (Court) reporting was deregulated.***

**11.** ***There does not appear to be any viable alternative to the current regulatory program which would provide the same degree of, or increased, consumer protection.***

| ISSUE #3: If the board is to continue as a separate agency, what changes should be made to its operation and programs to improve its effectiveness and efficiency? |
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**RECOMMENDATIONS:**

**1.** ***The board should implement all recommendations contained in its report submitted to the JLSRC, insofar as they are consistent with the following recommendations.***

**2.** ***The board should adopt professional standards for its licensees, and its own "Code of Professional Conduct," and review and revise its regulations to clarify what conduct may violate the Shorthand Reporters Act, or what may be "ethically" required by a CSR.***

**3.** ***If SB 795 (Boatwright) is unsuccessful, the board should attempt to pass regulations which would ban particular practices which amount to unprofessional conduct.***

**4.** ***The board should spend more than 51 percent of its budget on the enforcement program.***

**5.** ***The board should provide better justification to the Legislature before they seek an increase in its examination fee to provide more frequent and convenient testing of applicants, and to decrease the large number of applicants who sit for the exam.***

**6.** ***The board should adopt some of the "performance based budgeting" methods being used by DCA.***

**7.** ***The board should attempt to improve the passage rate of its examination by either adopting the National Court Reporters Association examination, or performing an independent psychometric evaluation and "task analysis" of the current exam.***

**8.** ***The board should clarify what amounts to unlicensed practice, and make more use of its "cite and fine" authority, and take a more proactive role in its enforcement program.***

**9.** ***The board should take a more proactive role in assuring competence by establishing a "Continuing Competency Program" whereby random samples of reports produced by court reporters are reviewed.***

**10.** ***The board should seek additional restitution authority so a consumer could be compensated for any expenditures which may be incurred because of the untimely production of a transcript, or the failure to produce a transcript.***

**11.** ***The board should make more use of its cost recovery authority.***

**12.** ***The board should review with the Post Secondary Education Commission what additional authority would be appropriate over shorthand reporting schools.***

# OVERALL APPROACH TO THE SUNSET REVIEW

## CURRENT APPROACH TO REVIEW

Legislation enacted in 1994 (Chapter 908/94, SB 2036, McCorquodale), put in place a procedure and schedule for the Legislature to assess the effectiveness of, or need for, state involvement in the 32 occupational areas currently regulated by various boards. ("Board," as used in this document, refers to a "commission," "committee," "examining committee," or "organization" that has the ultimate responsibility for administration of a regulatory program as required under provisions of the Business and Professions Code.)

Pursuant to this new law, independent boards become inoperative, according to a specified schedule, on July 1 of either 1997, 1998, or 1999. The respective statutes are then repealed six months later, on January 1 of either 1998, 1999, or 2000. Thus, the boards and their regulatory authorities "sunset" unless the Legislature passes laws to either reinstate the board or extend its sunset date.

Chapter 908/94 creates the Joint Legislative Sunset Review Committee (JLSRC) to review and analyze the effectiveness of and need for each of the boards. Each board, with the assistance of the Department of Consumer Affairs (DCA), is required to submit to the JLSRC -- 15 months before January 1, of the year its authorizing legislation becomes operative -- an analysis of its regulatory functions and reasons to continue regulatory activities. (Reports from the boards scheduled to sunset in 1997 were, therefore, due by October 1, 1995.)

The JLSRC must hold public hearings during the interim study recess to solicit testimony from the director of the Department of Consumer Affairs, the boards scheduled to sunset, the public, and the regulated industries/occupations. During those hearings, the committee members must evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation based on the factors and minimum standards of performance listed below:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.
(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personal matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

The JLSRC must also consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

The JLSRC must then report its findings and recommendations to the DCA for its review. The DCA must then prepare a final report including its own findings and recommendations and those of JLSRC. This final report must then be submitted to the Legislature within 60 days, and shall include whether each board scheduled for repeal should be terminated, continued, or re-established, and whether its functions should be revised. If the JLSRC or DCA deems it advisable, the report may include proposed bills to carry out these recommendations.

## REQUEST FOR INFORMATION AND BOARD REPORT

As indicated, all boards are required to prepare an analysis and submit a report to the JLSRC "no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative." (October 1, 1995, was the deadline for those boards which sunset in 1997.)

The analysis and report must include, at a minimum, all of the following:

(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.

(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and pre-accusation cases at the Attorney General's office.

(c) The board's fund conditions, sources of revenue, and expenditure categories of the last four fiscal years by program component.

(d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, and passage rate and areas of examination.

(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

In an attempt to reconcile this requirement for information, along with those considerations and factors which the JLSRC must make during its deliberations, a request for information was prepared by JLSRC staff and sent to all boards on July 3, 1995.

The request asked a number of questions about the board's operations and programs, about the continued need to regulate the particular occupation, and about the efforts which the board has made, or should make, to improve its overall efficiency and effectiveness. There was also a specific request for information dealing with the board's funding, licensing, examination, complaint and enforcement process for the past four years.

Staff then continued to meet with boards, as needed, to assist them in compiling this information and completing the report.

The report submitted by each board was broken down into three parts. The first part, provided background information dealing with each aspect of the board's current regulatory program. This included the board's powers, duties and responsibilities, its funding and organization, the licensing, examination, continuing education, and enforcement activities of the board for the past four years.

The second part of the report, addressed the issue of whether there is still a need to regulate this particular occupation. The questions addressed by the board were basically those which are asked during any "sunrise review" process, i.e., the current process used by the Legislature to evaluate the need for regulation.

The third part of the report, discusses any regulatory or legislative efforts the board has made, or are needed, to improve its current operation and protection of the consumer.

There are some appendices which were included as part of their report.
There are also appendices (attachments) which, because of their length, or because they were not essential to the overall information contained in the original report, were not provided with the report. They were, however, available to members of the JLSRC upon request.

## JLSRC REPORT OF FINDINGS AND RECOMMENDATIONS

The JLSRC must provide to DCA a report of its findings and recommendations after hearings are completed. This document has been prepared in an attempt to meet that mandate.

The findings and recommendations in this report are based on information and testimony received during the hearings conducted by the JLSRC on November 27th, 28th and December 5th. It also reflects information which was provided in the board's report, information provided by the Department of Consumer Affairs, a review of the current literature dealing with occupational licensing issues, and a comparative analysis of occupational licensing in other states performed by the Senate Office of Research.

The document begins with a short summary of the current regulatory program and discusses the creation of the licensing act, the board's budget, revenue and fees collected, an overview of licensing activity and the required examination, and disciplinary/enforcement actions.

Part one, provides an overall evaluation of the board's operations and programs. This section includes everything from a review of the general responsibilities and duties of the board, to the licensing, examination and enforcement process based on criteria developed by the JLSRC. There are findings made about each function and activity of the board.

Part two of this document, is a review of the need to regulate this particular occupation. The issues are those which are addressed during the current "sunrise review" process, and those which must be considered by the JLSRC under the current law.

## SUMMARY OF CURRENT REGULATION

**Background**

- The Court Reporters Board of California (formerly the Certified Shorthand Reporters Board) was established in 1951. The board comprises five members: two licensed shorthand reporters appointed by the Governor; and three public members - one each appointed by the Governor, the Speaker of the Assembly and the Senate Rules Committee. The board licenses ("certifies") approximately 7500 court reporters (CSRs or Certified Shorthand Reporters). About two-thirds of CSRs (5000) work as private independent contractors through a court reporting agency or in solo practice, 125 CSRs are state hearing reporters, and the remainder (app. 2400) are directly employed by the courts. The board also administers the Transcript Reimbursement Fund (TRF) which is funded from board revenues and is used to pay the transcription costs for indigent civil litigants. (The TRF authorization statute independently sunsets on June 30, 1996, absent renewal - as has been the case several times since its creation in 1981. The board usually meets six times a year.

- The act regulates both the practice of shorthand reporting, the use of the title "certified shorthand reporter" and the abbreviation "CSR," or similar words or symbols. The practice of shorthand reporting is defined in the court reporter law (hereinafter referred to as the Court Reporters Act or act) as "the making by means of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceeding, deposition, or proceedings before any grand jury, referee, or court commissioner and the accurate transcription thereof." Thus the act prohibits the practice of shorthand reporting as defined by non-licensed persons - but exempts salaried full-time employees of district attorneys, or state agencies if they are employed as hearing reporters. The primary consumers of a CSR's services are attorneys. Violations of the act are misdemeanors.

- The act states it is designed to establish and maintain a standard of competency for those engaged in shorthand reporting, for the protection of the public, and the protection of litigants whose rights are affected by the competency of shorthand reporters, and to extend court and general reporting services to the public otherwise unable to afford such services (B&P 8015).

- According to the board, 25 states have mandatory regulation of the court reporting profession with 16 requiring a license and nine requiring certification. The board notes that according to the National Court Reporters Association report, another ten states are considering some form of regulation.

**Budget**

- The board's budget for the current fiscal year (FY 1995/96) is $550,000. In FY 1994/95, the board expended $569,827 of which $287,661 was the net expenditure for all enforcement costs (51.14% of the total expenditures). The board is authorized for 4.5 staff positions including: an executive officer (exempt) two Office Assistants, one office technician and one Staff Services Analyst. Total personnel expenditures in 1994/95 were $235,127. The board received $886,000 in FY 1994/95, derived primarily from license fees (approximately $755,000), and is a special fund agency. A portion of the board's revenues also are transferred to the TRF to fund its operation and payments for transcripts for indigents ($300,000 in 1994/95). TRF expenditures in 1994/95 were $255,140. Board members receive a per diem of $100 and up to $116/day travel/expense reimbursement while actually engaged on board business ($4550.55 for 1993/94 - the only year broken out by the board's report).

**Fees**

- The board's license for a CSR is good for one year. The board's fee structure is currently: License application/exam fee - $40; Initial license - $100; License renewal - $100; Delinquent license renewal - $50. The board states that an application fee increase may be sought during 1996 in order to enable the board to offer its CSR examination more frequently and in more locations via participation in the Department of Consumer Affairs' computerized testing system.

**Licenses and Examinations**

- To be licensed as a CSR an applicant must be at least 18 years of age, have a high school education, and pass California's three-part CSR examination. In order to qualify to take the examination, an applicant must either have one year of shorthand reporter experience, complete a prescribed course in a board-recognized school, passage of the California State Hearing Reporters examination, possess a certificate of proficiency or merit from the National Court Reporters Association, or have a valid CSR license from another state with equivalent standards as California. California does not grant reciprocity to shorthand reporters coming from out-of-state, but requires everyone to pass the California CSR exam. A typical CSR curriculum in a board approved school takes about 3 1/2 years of full time study including some apprenticeship experience.

- The California CSR is a three-part exam: 1 1/2 hour written exam on English; 1 1/2 hour written exam on legal and medical terminology, and legal procedures; and a practical demonstration of dictation and transcription skills.

**Discipline/Enforcement**

- The board reports that nearly all of the complaints it receives regarding licensees involve either the failure of a CSR to produce a transcript, untimely production of a transcript, or unprofessional conduct. The latter includes acts contrary to professional standards regarding confidentiality, impartiality, filing and retention of notes, notifications, availability, delivery, execution and certification of transcripts, and any provision of law substantially related to the duties of a CSR. Grounds for license revocation or

suspension include: repeated failure to transcribe notes; unprofessional conduct, incompetence, gross negligence, fraud, dishonesty corruption or willful violation of duty; conviction of a crime related to CSR profession, and loss of stenographic notes due to negligence.

- The board received a total of 409 complaints in the past four fiscal years: 101 complaints in 1994/95, 77 in 1993/94, 64 in 1992/93, and 167 in 1991/92. For those same four years the board referred 63 cases for formal investigation by the Division of Investigation (D of I) of the Department of Consumer Affairs: 17, 11, 7, & 28 respectively. The average cost of such D of I investigations (@ $89.45/hr.) is $6500. If possible, the board will attempt to informally mediate complaints, and reports that from June through September of 1995, it has mediated an average of six complaints a month resulting in consumers obtaining transcripts faster and less expensively than would have been the case if formal disciplinary action had been taken. The board adopted a citation and fine program in 1991 but reports that only four citations with fines of $1001 have been issued. Data provided by the Department of Consumer Affairs indicates that during FY 1994/95, the board revoked five licenses, revoked but stayed revocation of four more licenses, suspended but stayed the suspension of one license, and accepted the voluntary surrender of one license.

# 1.

# EVALUATION OF BOARD'S OPERATIONS AND PROGRAMS

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| ISSUE: Should the Court Reporters Board be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs? |

**RECOMMENDATION:**

***The board should be continued as a separate agency, but the sunset date should be extended for only two years until the next sunset review. (The board will be reviewed once again in 1997.)***

**FINDINGS:**

**A. General Responsibilities, Duties and Powers of the Board**

**1. *The board has specified its mission, vision and goals. It has also been involved in strategic planning sessions and has implemented total quality management practices.***

- The mission of the board is to provide users of the juridical system consumer protection through quality assurance in the qualifications, performance, and ethical behavior of CSRs.

- The vision of the board is for juridical system consumers to be free from concerns relating to the accuracy and timely delivery of transcripts. The board is committed to maintaining the highest standards of excellence through demonstration of competence through validated testing of diversified applicants, timely issuance of licenses to qualified applicants, licensees advancing self-knowledge with changes in technology and law, impartially investigating and promptly resolving violations of regulations or law, and incorporating changes in technology into our regulatory program after those changes have been fairly assessed and determined to be in the best interest of the consumer.

- The goals of the board are outlined in a recent strategic plan which was developed by an outside consultant. There are specific goals, and strategies for implementation, stated for the following areas: examinations, school oversight, disciplinary authority, public communications/advocacy, regulation of video/audio recorders, continuing education,

real time reporting, board/policy update. There are also goals and objectives being developed by each of the board's six committees. The committees were supposed to have reported to the Board by the end of December, 1995.

- Numerous Total Quality Management techniques have been implemented at the staff level as a result of the Executive Officer's participation on the DCA Leadership team during Department-wide strategic planning sessions.

**2. *The board has not established professional standards for its licensees, nor specific codes of professional ethics or conduct, but there are other organizations which provide a "Code of Professional Responsibility" for CSRs. However, legislation has been introduced which would allow the board to improve its standard-setting for the profession. The board also proposes to adopt a "Code of Ethics."***

- "Codes of Professional Responsibility" have been adopted by the National Court Reporters Association and the California Court Reporters Association, and they are made available to licensees. The board has also stated as one of its goals, to establish a "Code of Ethics" for the profession.

- It has been argued by the Center for Public Interest Law (CPIL), that the board does literally no standard-setting for the practice of shorthand reporting and that regulations have not been adopted to deal with some of the unethical practices which have become pervasive in the court reporting industry. These practices include:

  ⇒ "Direct Contracting" -- this 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 the 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 may also limit competition in that the contracts restrict large consumers of CSR services to utilize a single CSR agency or organization; other CSRs simply may not compete for that business. It is argued 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."

  ⇒ "Incentive Gift-Giving" -- this refers to something of value given to an attorney or secretary as an inducement to schedule depositions with a particular court reporting firm. It has been argued that "incentive gifts" are nothing more than kickbacks, the cost of which is then passed on to the client. "The ability to offer incentive gifts seriously diminishes the credibility of the court reporting profession, and the practice should be prohibited."

⇒ "Dirty ASCII's" -- this the term used for the rough draft of an official record, or an unedited computerized transcript, which is sometimes released by a CSR. It has been argued that a board which administers a test requiring 97.5% accuracy should not condone the release of a transcript with 10%, 30%, or 50% accuracy, so long as it is labeled "dirty."

- It is questionable whether the board has clear statutory authority to deal with these practices and to take the appropriate action. However, legislation was introduced by Senator Boatwright during the 1995-96 Legislative Session (SB 795). It primarily deals with all of these practices (and several others) by defining them as unprofessional conduct, and provides the board with the authority to take disciplinary action against any CSR involved in such activity. [SB 795 is currently in the Assembly.]

## B. Funding and Organization of the Board and Staff

**1. *The board has spent, on average, about 51 percent of its budget on enforcement activity over the past four years. Other boards have spent, on average, about 66 percent.***

**2. *The board is seeking an increase in its examination fee to provide more frequent and convenient testing of applicants, and decrease the large number of applicants who sit for the exam.***

- In order to provide more frequent licensing examinations, the board is seeking an increase in the current $40 exam fee, which is the lowest in the nation. Examinations are conducted semi-annually at one location in Southern California and one in Northern California. Nearly 600 applicants take the test on each occasion, which, the board claims, "significantly increases the stress level and reduces the pass rate of the applicants." A fee increase, as the board argues, would provide the board with enough funds to participate in the DCA's private contractor administered computerized testing system. Under the system, applicants could take the test more frequently and at various locations throughout the state. The board believes smaller, more frequent, more convenient testing would reduce the stress and increase the current 30 percent pass rate among applicants.

**3. *The board plans to adopt some of the "Performance Based Budgeting" methods of DCA.***

- The board is eagerly anticipating the outcome of the Performance Based Budgeting experiment being conducted by the DCA, and hopes to adopt it when it is practical to do so. Such budgeting options would provide the board with numerous creative opportunities to implement new strategies. As an example, during fiscal year 1994-95, using prudent management policies, the board was able to save nearly $20,000. Under the Performance Based Budget method, those funds could have been used for consumer education, but instead were required to be reverted.

## C. Licensing and Application Process

**1. *The education and experience requirements are not excessive when compared with other states, and are necessary to assure that practitioners are competent.***

- The board has licensing requirements that are similar to other states, and it does not appear to have unique or more restrictive requirements for this profession.

**2. *The board does <u>not</u> provide automatic reciprocity for those applicants already licensed in another state or country.***

- The board does not grant automatic reciprocity to out-of-state applicants, or those from another country. All applicants outside of California are required to take and pass the California exam before being licensed. However, applicants from another state can qualify to take the California exam by having one year or more of experience, as required for in-state applicants, or a license from another state. There are no other requirements for these applicants.

## D. Continuing Education and Review of Professional Competence

**1. *The board has been instrumental in attempting to provide leadership in the area of continuing education for this profession.***

- At the present time, the board has no continuing education requirements for the licensees in the court reporting profession. While there has been much discussion about the pros and cons of such requirements, the board deleted these provisions from its 1994 legislation when it was learned that the Governor would not approve them.

- The board argues, that many in the profession believe that the board's pre-license testing system keeps the standard of entry at an appropriate level, and the intensity demanded in the day-to-day requirements in this occupation drives the individual licensees to seek and find the educational training requirements necessary on their own initiative. However, others believe that the use of electronic information processing and the speed with which technologies are changing, are putting more pressure on the profession to keep the standard of performance at its highest level.

- The board is concerned that it has no legal authority to compel licensees to take some form of education or remedial action to assure competency.

## E. Examination Process

### 1. *The exam given by the board has a low passage rate.*

- The passage rates for first time examinees over the past four fiscal years range between 38.8% in FY 1991/92, to 26.5% in FY 1994/95.

- One of the reasons given for the low passage rate, is the stressful conditions under which applicants must test in such large groups of 500 or more. Another reason may have to do with the training being provided by the court reporting schools in California. Since these schools are profit making ventures, their goal is to attract and train students and to make a profit doing so, not on the quality of education those students are getting.
  For this reason, the board provides the necessary checks and balances for the consumer to assure that applicants are qualified to practice.

### 2. *It has been argued that the examination requirement is an artificial barrier to entry into this profession and may be testing more than the minimum standards of competence necessary for an entry-level CSR.*

- CPIL has argued, that the California test is duplicative of the examination given by the National Court Reporters Association (NCRA), and questions why a CSR who has already passed the national exam should also have to take a California test.

- The board argues, that if the exam is eliminated as a prerequisite for licensure, no minimum standard of competency and no protection for consumers would exist. As it is, the board believes its tough testing system is extremely effective as a preventative consumer protection model rather than a curative model. "It very effectively 'weeds out' the least qualified and competent in the court reporting profession." The result of this preventative approach is that there are relatively few consumer complaints against members of the court reporting profession. Therefore, the board believes the [California] test is the truest and best form of protection the consumer has and is the absolute bedrock of the program.

- The board points out, that while some states use and rely on the NCRA test to screen and qualify court reporters, only the state of Utah uses it exclusively. Fifteen others grant at least temporary reciprocity to those who have passed the national test, but require a state test within a certain time frame. Moreover, the NCRA test is significantly lower than California's, since it contains no question on California law, and the quality of the administration of the test is in decline. In addition, some knowledgeable NCRA test committee writers have recently been replaced allegedly by lesser qualified appointees, who are more politically aligned with a certain faction within the organization. For these reasons, the NCRA tests would fail to provide the consistent quality California needs in its court system, and related judicial proceedings.

**3. *The CSR exam is validated every five years.***

- The exam is validated every five years with the help of the DCA's Examination Resources Unit, and was validated in FY 1994/95. The board was expected to adopt the validation report at its November meeting.

- The board works with the Examination Resources Unit to conduct an "occupational analysis" on the knowledge, skills and abilities required by the shorthand reporting profession. Based on the outcome of this analysis, the board develops examination validation studies and reports which are then used to design the examination plan.

## F. Complaint Process

**1. *There are very few formal complaints filed against the 7500 licensed CSRs, but the board handles more "informal" complaints which are mediated.***

- The board received a total of 409 complaints in the past four fiscal years: 101 in FY 1994/95, 77 in FY 1993/94, 64 in FY 1992/93, and 167 in FY 1991/92. Out of those, 63 were referred for formal investigation. Nearly all of the complaints made to the board involve just two types of violations: failure to produce a transcript or untimely production of a transcript, and unprofessional conduct. Until recently, the board did not track inquiries of informal complaints (received by telephone rather than submitted in writing) which were mediated. But, according to a newly instituted tracking system, the board has received and informally mediated 25 complaints in just the last five months, and all but two were failures to produce transcripts. This has resulted in consumers being able to get an accurate transcript more rapidly and less expensively than having to go through the entire disciplinary process.

**2. *There is no indication of delays in the complaint process. Most are handled within 60 days unless forwarded to the Department for investigation.***

## G. Enforcement Process

### Unlicensed Activity

**1. *The board makes very little use of its "cite and fine" authority against unlicensed practice because of the temporary nature of the court reporters work, and because there is no workable method of detecting unlicensed activity.***

- In 1991, the board adopted citation and fine regulations. This authority is being used in some instances, but because of the temporary nature of the work performed by CSRs, it is sometimes difficult to apply. Without an informant in every agency or deposition location, the board has no method to detect unlicensed activity. Virtually all cases of unlicensed activity referred to the board, have been the result of reports by licensed

CSRs working primarily in the courts. There have been only three such cases reported within the last 11 years.

**2. *There is some question as to what amounts to unlicensed activity under particular circumstances.***

- The board points out, that there is some debate about whether corporations owned by unlicensed persons can render court reporting services even if they employ or contract with licensed CSRs. Another issue under debate is whether hearings and arbitrations should be considered oral court proceedings, which would require CSR services.

## Investigations

**1. *The board has had few investigations over the past four years.***

- The board referred 6 cases to the Division of Investigation in FY 1991/92, 7 cases in FY 1992/93, 11 cases in FY 1993/94, and 17 cases in FY 1994/95.

**2. *There were no extreme delays in the investigation of cases.***

- Most investigations were completed within one year, and only a few took up to two years. There were no cases under investigation for over two years.

## Disciplinary Action

**1. *The board has had few accusations filed over the past four years.***

- DCA shows that only 5 accusations were filed in FY 1994/95, 11 filed in FY 1993/94, 8 cases filed in 1992/93, and 10 cases filed in 1991/92.

**2. *The board attempts to provide for restitution to the consumer but its authority is limited.***

- In cases where a CSR has collected a fee but failed to deliver a transcript, the board has requested restitution during the licensee's probationary period. However, the board has not adopted regulations specifying these circumstances, but it has listed restitution as a standard term of probation where applicable in its disciplinary guidelines. The board should consider requesting additional restitution authority that would apply when a consumer has incurred additional financial expenditures, such as attorney's fees, as a result of the untimely production of a transcript.

- Another method suggested by the board, for purposes of providing restitution to the consumer, would be to impose treble damages on reporters who fail to produce transcripts, similar to the penalty imposed on writers of bad checks. Consumers could

also be encouraged to use Small Claims Court to collect the damages, since most transcripts are less than the Small Claims Court limits of $5,000.

## Disciplinary Case Aging Data

**1. *There were no extreme delays in completing enforcement cases.***

- Most of the accusations filed were closed within one year. There were few which took longer than one year, and only two which took more than two years. The only delays appear to be those which are attributed to the Division of Investigation or the Attorney General's Office.

## Enforcement Costs

**1. *The board's expenditure for all enforcement costs is below the average for other consumer boards, but the board has steadily spent more over the past four years.***

In the FY 1994/95, enforcement costs accounted for 51.14 percent of the board's budget, the highest in four years. By comparison, the board spent 43.80 percent of its budget in FY 1993/94, 37.57 percent in FY 1992/93, and 39.62 percent in FY 1991/92. Expenditures for the enforcement program are still below the average spent by other boards.

**2. *The board has sought cost recovery to a very limited extent, pursuant to authority granted under Section 125.9 of the Business and Professions Code.***

- Recovery of costs for investigation and prosecution of the cases has been pursued by the board in a limited number of cases. While the average cost to refer a case to the Attorney General over the past four years has cost the board $7,651 (for a total cost of $175,904), the board has only requested about $9,200 in costs, and only recouped a small percentage of those costs requested.

## H. Efforts to Improve the Current Regulatory Process

## Operational Improvements

**1. *The board is making some effort to overcome current impediments to its regulatory mission.***

- The board notes the following areas that it believes impedes its ability to carry out its role to protect users of CSR services: (a) Lack of authority over ownership and non-licensed owners of court reporting agencies, electronic tape operators and video-graphers, transcript formats, disciplinary histories of licensees from other states and information regarding criminal convictions; (b) need for more frequent and convenient testing; (c) limited authority over court reporting schools (currently only curricula approval); and (d) the unwieldy, unfriendly, expensive, and tedious Administrative Procedures Act.

- The board has adopted a "strategic plan" that includes ongoing efforts regarding these and other issues. The board's ongoing efforts are aimed at improving its examination security and scoring procedures, obtaining oversight of schools to establish qualifications for shorthand reporting instructors and expand the curriculum, obtain disciplinary authority over schools and rewrite its regulations for delinquent transcript fines, and improve its public outreach with the legal community and by updating its consumer information pamphlet.

## Legislative Efforts

**1. *Legislative efforts by the board have made some improvements in the current regulatory program.***

- Over the past four years the board has proposed legislation to require continuing education, provide the board with authority over school curricula and instruction, and to establish policies and controls over unlicensed shorthand reporter agency owners.

- While the board has not proposed licensure expansion for any new occupational categories, it does believe that such licensure and testing for electronic tape operators, video-graphers and agency owners should be considered.

- The board has planned the following for legislative enactment during 1996: (a) establish a standardized transcript format (number of lines and characters per page); (b) require bonding of licensees for failure to perform (e.g., provide timely transcripts); (c) require CSRs to notify the board regarding criminal convictions and disciplinary actions by other states; and (d) increase the $40 examination fee to allow for more frequent and convenient testing through the use of an outside contractor.

## Recommended Improvements

**1. *The board's proposed administrative, regulatory and legislative changes address some of the basic problems which are identified in this report. However, some are not reflective of the findings made by the JLSRC.***

The following recommendations seem to address some of the basic problems which are addressed in this report. Others, however, are not reflective of the findings of the JLSRC, and have been revised or changed in this report.

⇒ Maintain a board structure, but require improvements such as: precise case tracking; enhanced communication with the profession, the courts and consumers; implementation of performance based budgeting; participation in the new DCA computerized testing system; and, exploration of on-line electronic communication possibilities.

## 2.

# REVIEW OF NEED FOR STATE LICENSING AND REGULATION OF THE PRACTICE OF SHORTHAND (COURT) REPORTING

ISSUE: Should the State continue with the licensing and regulation of the practice of shorthand (Court) reporting, and if not, should some other alternative form of regulation be recommended?

**RECOMMENDATION:**

***The State should continue with the licensing and regulation of the practice of shorthand (Court) reporting.***

**FINDINGS:**

**1. *There is some evidence that the unregulated practice of shorthand (Court) reporting could endanger the safety and welfare of the public and cause significant public harm.***

- According to the board, the services of certified shorthand reporters are critical to the viability of the juridical process, protecting the integrity of the court system and the rights of parties involved in legal actions. The board notes that verbatim reporting is a legal requirement and that the timely, sometimes rapid, production of an accurate transcript is critical to the preservation of the legal rights of parties to a case.

- "Moreover, all judicial system consumers including plaintiffs and defendants have a legal right to appeal a conviction or judgment against them. Without an accurate and timely transcript, an appeal is impossible, and convictions and judgments would be overturned." In such an event, courts are required to release from custody those convicted individuals, no matter what the crime or other circumstances, since retrial after conviction would constitute double jeopardy, which, the board claims, has happened.

- The board states that more than 75 percent of the complaints against shorthand reporters are for failure to produce transcripts or failure to produce them within the time required. However, accuracy is also a major concern since testimony is critical to the adjudication of litigated issues. A misplaced or incorrect word used in a transcript could mean the difference between an admission of guilt or innocence, the consequences of which could be grave for the individual involved as well as society at large.

- Some experts argue that a lack of regulation would diminish the profession, since no testing or education would be required. In addition, the quality of the official court record would be reduced and lead to retrials, and possible mistrials or dismissals, due to errors in transcripts. Those would be costly consequences for both the courts and the litigants. Furthermore, the harm caused to the unaware consumer may not be known until well after it has occurred since it may take years before a case goes to trial and a transcript is required to be produced.

- As the board points out, even with regulations, the consequences of the failure to perform in this occupation range from minor errors that would have little impact on a court proceeding to the most dire -- a convicted, extremely dangerous felon who could pose an extremely high risk to public safety, being released into the community. And, while the harm to the consumer when the shorthand reporter fails to produce a transcript may not have a monetary value of great consequence, the attendant harm that denies a defendant due process and the public its safety, weighs heavily on the side of regulation.

- In conclusion, the harm to individuals and the threat to public safety and welfare can be extreme whether it affects wrongful sentencing, loss of property or property rights, award of damages or wrongful character attacks, or dismissal of cases and release of dangerous convicted felons.

**2. *There appears to be significant public demand, and an expectation by other professional groups who rely on CSRs, for the regulation and licensing of the practice of shorthand (Court) reporting.***

- The board indicates, that after numerous group discussions with members of the court reporting profession, court administrators, court reporting school administrators, as well as interviews with judges and attorneys who are the primary consumers of shorthand reporting services, there was universal agreement that continued regulation of this profession is vital.

- Consumers interviewed by the board believe it is virtually important that CSRs, who are officers of the court, meet minimum qualifications before they report in court or in depositions where accuracy is imperative. They also said accuracy and efficacy is important to the viability of the courtroom, and protects the integrity of the court system and the interests of the parties involved. Without testing and licensing, there is no way to determine the CSR's ability to handle the job.

**3. *The current regulatory program appears to provide some evidence that significant harm could result if the shorthand (Court) reporting profession was deregulated.***

- The first part of this document provides findings on every aspect of the board's operation and programs. Based on this evaluation, the board's enforcement program statistics and case information provided speak to this issue.

**4.** ***There is a high degree of skill required for competence of shorthand reporters, who are not subject to supervision during the performance of their services.***

- Shorthand reporters must be able to take dictation and transcribe extensively with a high degree of accuracy. They must also be able to do so using automatic transcription machines. Two thirds of CSRs are independent contractors who perform their dictation and transcription services without any supervision. They are usually retained by attorneys, on behalf of their clients, to perform shorthand dictation and transcription services in legal cases. At times, particularly during a trial of a case, the CSR must be able to immediately prepare and transmit a transcript to the attorneys involved for their review.

**5.** ***There is a significant demand for the services of CSRs; the ability of the consumer of CSR services (generally an attorney or court) to independently determine competence is limited in advance of obtaining their services.***

- The board reports that according to the Judicial Council, there were 1,722,657 civil and 7,347,596 criminal filings in California in FY 1994/95, with 32% of the civil and 5% of the criminal cases going to trial. Using an estimate of a minimum of two attorneys per trial, the board estimates the exposure to CSR services at 3 million "consumers." At the same time, this does not take into account the number of depositions, arbitrations, and hearings that did not go to trial or other court proceedings during which consumers were required to use members of this profession.

- Courts and attorneys, on behalf of their clients, are the primary purchasers of shorthand reporting services. The majority of CSRs, about two-thirds of the approximately 7,500 currently licensed, are independent contractors who work through a court reporting agency or market themselves directly to the legal community. The other one-third are directly employed in official court reporting positions and are municipal, or civil service employees; 125 are state hearing reporters.

- Attorneys needing court reporting services have the option of hiring a reporter through an agency or by selecting a free-lancer. Court reporters are used repeatedly and frequently for pretrial depositions as well for official court record proceedings. Because the majority of court reporters are free-lancers who are employed briefly -- often just for a day or a few hours -- competence cannot readily be determined by the consumer of these services. The only method for ascertaining competence, outside of reliance on a CSR's meeting state licensing standards, generally would be after the fact. And given the fact that at times a CSR is not required to actually transcribe their dictation until later (sometimes years after the dictation was taken), incompetence would not be revealed until a much later date.

**6.** ***There is a generally accepted core of knowledge, skill and ability required to protect the consumer in the shorthand (Court) reporting profession which are measurable by objective, written standards.***

- CSRs must have a high level of knowledge of English, including spelling, grammar, punctuation and usage, as well as technical terms related to a wide variety of occupations, including legal and medical, and the laws and rules governing shorthand reporters. In addition, they must have the skill and ability to accurately operate a shorthand writing machine on which they can write unfamiliar 4-voice material with a minimum of 97.5 percent accuracy. From the dictation they are then required to produce a transcript.

- Knowledge of transcript formatting is also required including the placement of information on the cover page, appearance page, certificate page and pagination of the overall transcript. As new technology has developed around this profession, shorthand reporters have also been required to develop computer skills and software applications that enhance the final product.

- Currently, all of the requisite knowledge, skills and abilities required are tested by the board through use of its current examination.

**7. *There are other public agencies with possible regulatory overlap, though not formal licensure, of CSRs.***

- The board points out that one-third of CSRs (2500) are employed by the state's courts while 125 are employed by the State as State Hearing Reporters. Since 1983, reporters who are newly employed by the courts must first be licensed by the board. State hearing reporters are exempt from licensure by the board, but take a different state hearing reporters examination. The board notes that its three-part examination is a key element in its ability to determine competence. Passage of the state hearing reporters examination does not substitute for the board's CSR examination, but is only a prerequisite for those state reporters seeking to obtain licensure (for work outside state service).

**8. *There are 25 other states that also regulate (license) shorthand (Court) reporters.***

- There are 25 other states that have mandatory regulation of court reporters: 16 have licensure and nine require certification. The regulation in those other states is administered by a variety of agencies, including a separate state board as in California, the state's court system, or a state department (similar to a bureau in the DCA). In some cases the state's board is housed within that state's Judicial Council, Supreme Court, or a licensing department such as California's DCA.

**9. *There are similar occupations that currently are not licensed in California.***

- Two similar occupations, tape recording operators and video-graphers are currently not regulated in California. Members of those occupations audio or video record depositions and oral court proceedings. Subsequently, the tapes are passed on to a transcriber who produces the transcript. The board states that there are no standards established for the

performance of any of these individuals, and that the transcriber is not held accountable in the event of a defective or inaccurate transcript.

**10.** ***There does not appear to be any substantial savings to the consumer (agencies or businesses) if the practice of shorthand (Court) reporting was deregulated.***

- There is evidence that the regulation of this industry has provided a net benefit to the California consumer, and the economy, as well as to the industry. While the board's testing and licensing program does restrict the number of persons who practice shorthand reporting, to those that are the most competent, it has not reduced the supply of practitioners. This is a highly competitive profession in California with more than 1,200 applicants undergoing testing every year.

- Also, the cost of shorthand reporting services has been declining for more than five years. Technology, skill level, and timeliness affect the cost of transcripts more than any other factors, according to CSRs. Using the latest technology, CSRs can now handle much more work since they can write and edit at the same time. However, technology has also increased the cost to enter the profession and requires reporters to purchase new computers approximately every two years. Billing rates vary according to region and generally include a per page cost, as well as an appearance fee, according to interviews by the board with working reporters. Prices fluctuate according to the supply and demand for reporters. For several years in the late 1980s, the state experienced a shortage of qualified reporters and the price for their services began to rise, but since then, it has been declining slowly.

- In Northern and Central California, a typical pricing structure would include costs based on the current range of $3.10 to $4 per page for an original and one copy of a transcript. In addition, some agencies charge up to an additional $20 per hour for the CSR's time, half of which goes to the reporter. The Southern California market works somewhat differently in that the transcripts are more expensive with fewer words on each page, and no hourly or per diem charges. Part of the reason for the higher per page price is that attorneys usually do not buy copies. Depending on the difficulty of the testimony being taken, the range per page has been between a high of $5.95 to a low of $4.50 per page and in some locations $3.50 per page. Recently, due to the competitiveness in the market, the pricing for some freelancers have been changed to a flat rate of $4.50 per page for an original and one copy. The board also points out, that because of the fluctuating price structure in this profession, the rate of inflation for court reporting services is around 6 percent, versus 18 percent inflation for California over the past five years.

**11.** ***There does not appear to be any viable alternative to the current regulatory program which would provide the same degree of, or increased, consumer protection.***

- **Transfer to another agency.** While there are no similar boards within the DCA with which this board could be merged, there have previously been suggestions that this board be moved to Judicial Council. The Council currently has jurisdiction over court

language interpreters, and indirectly address the employment of the approximately 1,200 official court reporters who work directly for the court systems in each county. However, the Council argues against transferring authority of the board to their agency. It points out that, although shorthand reporters are often referred to as court reporters, they in fact serve in many capacities outside the state courts, including administrative agencies, hearings before local government boards, and other similar forums. Even within the judicial system, a large portion of the work of certified shorthand reporters is in deposition work where they are not directly employed by a court [but in most instances an attorney]. In addition, they work in both the federal and state courts. These factors would make the Council's oversight of shorthand reporting standards and certification inconsistent with the other duties of the council that are focused upon state trial and appellate judicial functions. Another issue arises, because the Council has taken the position that shorthand and other methods of keeping the record in trial courts, should be more broadly competitive than at present, leading to some tension -- including a court case currently under review by the Supreme Court -- between reporters and the Council.

- **Transfer to DCA.** Eliminating the board, forming a bureau, and folding it into the Department could be a viable option since DCA already has all the tools to conduct the current semi-annual court reporter test, and issue the licenses, as well as refer cases to the Division of Investigation and follow through with the disciplinary process. An estimated $19,000 currently spent annually to conduct board meetings, could be saved if the five-member board is eliminated. However, the value of expert advice provided at no cost by the board members, which is estimated to be $40,000 annually, would be lost, as would the service provided by the members of the various committees that provide problem solving, research and expert advice. In addition, the board provides guidance to reporters, reporting firm owners and consumers about many aspects of the reporting profession, most of which is not written in law or regulation. The board and staff provide clarifications, explanations and interpretations of the duties and responsibilities of court reporters. Beyond the small savings identified, it is difficult to determine any significant cost benefit or improvement in consumer protection that might result if the board's authority was transferred to DCA. In a comparison of other states, there is also no evidence that a bureau under the control of a centralized agency would provide any better services or protections to the consumer than an independent court reporters board.

- **Voluntary Private or Public Certification.** While certification does set some standard for the industry, it is essentially title protection for the court reporter, and would, in and of itself, provide little protection to the ultimate consumer of the shorthand reporting services. There is also little incentive for a shorthand reporter to seek certification. Certification may also be confusing to the public who believes it provides some special protection for them, while it merely sets a standard for the industry and no recourse for them. The profession is also divided on various issues such as ownership of court reporting services, electronic recordings, and third party contracting. Under such circumstances, it would be difficult for one organization, or a public certification program, to assure the current level of competence within the profession.