

MINUTES

THE LOUISIANA BOARD OF EXAMINERS OF
CERTIFIED SHORTHAND REPORTERS
REGULAR BOARD MEETING

Friday, February 19, 2010

Pursuant to notice, the meeting was called to order at approximately 2:05 p.m. on Friday, February 19, 2010. The meeting took place at the Twenty-Fourth JDC, 200 Derbigny Street, Division D - 5th Floor, Suite 5600, Gretna, Louisiana.

PRESENT BOARD MEMBERS:

Judge Robert M. Murphy
Gail Freese
Vincent Borrello, Jr.
Milton Donegan, Jr.
May Dunn
Philip Kaufman
Suzette Magee
Laura Putnam
Dion Young

Administrator:
Tonya R.Armentor

CALL TO ORDER BY THE CHAIRMAN, JUDGE MURPHY
ROLL CALL WAS TAKEN BY THE ADMINISTRATOR, WITH ALL MEMBERS BEING PRESENT

APPROVAL OF MINUTES OF THE JANUARY 15, 2010 MEETING:

Motion to accept minutes as written was made by Mr. Kaufman, seconded, and the motion carried.

STATEMENT BY JUDGE MURPHY:

Judge Murphy invited and welcomed everyone in attendance to remain, at the conclusion of the regular meeting, for an explanation session by the 24th Judicial District Court's Assistant Judicial Administrator, John Andresson, on their court reporting system. Judge Murphy expressed his hope that court reporters would ask and answer any questions regarding the operation of their digital recording system.

REPORT OF THE FINANCE COMMITTEE: Chairman Milton Donegan reported as follows: The committee held a meeting on February 15, 2010 in Walker, Louisiana.

NEW BUSINESS:

BANK ACCOUNTS:

Operating Account: \$38,700 Available
CD's/Investment Account: 70,000
Since CDs are no longer paying interest, the funds would be switched to an investment account earning 3 1/4% interest

Financial Report Included Activity Since January 15, 2009, with a listing of all deposits and disbursements attached

Income	\$ 2,645.00
Disbursements	14,197.36

Checking Account Balance	33,426.88	(as of February 19, 2010)
Interest Account - 36410	32,218.51	(Rate .75%)
Certificate of Deposit	38,107.86	#1241859287
Grand Total Assest	\$103,753.25	

Motion was made by Mr. Donegan that the Financial Report be accepted. There was a second and the motion carried.

The Committee proposed promulgation of rule changes to Title 46, Chapter 9, Fees:

Proposed fee to be increased to \$125 plus \$20 per stamp for issuance of a reciprocal certificate of registration without Board examination

The fee to be increased to \$125 plus \$20 per stamp upon issuance and renewal of certificates of registration with examination and renewals every year. Current language is \$90 with one stamp, \$105 with two stamps and \$120 with three stamps for both. The Board would realize an estimated \$50,000 increase per year from this recommended rule change. A motion was made by Mr. Donegan to accept that proposed rule change, there was a second, and the motion carried unanimously.

Proposed Deletion:

To remove the following language in its entirety: "The fee to be paid for the purchase a list of current reporters is \$25." Due to confidential information and the manual work involved in deleting the confidential information, the Committee recommended that the Board no longer furnish a listing. After discussion, this topic was referred back to Committee.

Proposed New Language:

Regarding fees to be paid for NSF checks issued to the Board: Current NSF charges are limited to \$15 per check, with banks now charging in excess of that amount. Proposed new language is: "The fee to be charged for NSF checks is the current bank charge." Motion to accept recommendation of Committee made by Mr. Donegan received a second and carried.

Legislative Action/Rule Change Needed for Reinstatement of Suspended or Revoked Certificates:

RS 37:2558 limits delinquent fees to \$25 for up to one year, \$100 up to two years; and \$200 for two or more years.

Board's Title 46, Chapter 9 (Fees) Rule A (4) Limits the fee for reinstatement of suspended or revoked certificates to \$15 plus delinquent renewal fees.

Proposed language for both Revised Statute and Rule Change is as follows: "The fee for reinstatement of a suspended or revoked certificate shall not exceed \$100 for a certificate delinquent for a period of up to one year, \$200 for a certificate delinquent up to two years, and \$250 for a certificate delinquent two years or more, and shall be in addition to the payment of all delinquent renewal fees." Mr. Donegan moved to accept the Committee's recommendation, there was a second, and the motion carried.

The Committee recommended that the full Board address legal fees in some fashion. By way of discussion: Judge Murphy suggested that the Board adopt a system whereby an attorney not be hired unless a committee chair makes the request, which request is to then be cleared by the Board Chairman. For the Board Chairman to do so, the committee chair must get involved, as opposed to individual members. Mr. Borrello so moved. Mr. Donegan amended that motion to include that the committee chairman discuss the matter with his committee before bringing it to the Board Chairman. The motion was so amended, seconded and the motion carried.

REPORT OF THE ETHICS COMMITTEE: Dion Young, Chairman of the Ethics Committee, reported. The Committee met on February 10, 2010, at the CSR Board Office.

In the matter of Ms. Linda Stockman and concerning fees charged, as the Board does not deal with financial matters the Committee found no rules to be violated and no disciplinary action to be taken. The Committee voted to send Ms. Stockman a letter.

On the matter of Nationwide's deposition being posted online for purchase, the Committee heard from the owners of Nationwide and their attorney, Mr. Michael Monistere. The issue for online depositions was tabled until a determination may be made as to whether any rule or statute has been violated.

Discussion by the full Board was had regarding possible violation of ethics rules. Questions put forth in Board discussion was concerning the right the firm had to disclose/give confidential information to the person posting the depositions online. Mr. Donegan expressed a possible duty of the Board to address the confidentiality issue involved. Judge Murphy suggested if, in fact, our rules do not now address incompetent behavior on the part of a reporting firm, perhaps they should. Mr. Young suggested that if the full Board votes there is a disciplinary problem, it should be placed on the agenda and have that person report before the Board. Mr. Young addressed the issue of whether our mandate goes to people who are not actually licensed. Judge Murphy suggested referring the broad topic back to Committee, stating that quite possibly any judge may decline jurisdiction, thus referring it back to our State Board. Mr. Donegan addressed that referring this particular matter back to Committee would not prohibit the Board from taking action against the court reporter involved.

On an AG opinion on contracting versus networking, Mr. Young reported that the Attorney General's opinion was not yet received.

NEW BUSINESS:

Regarding Ms. Ortego/Ms. LeBlanc, the Committee voted to send the matter to the Tier II, for recommendation to the full Board.

Regarding Ms. Burch, the Committee voted to send this item to Tier II, as well.

Mr. Kaufman moved for the Board to approve recommendations by the committees on these issues. There was a second and the motion carried.

Judge Murphy recommended that decisions made by the Committee come before the full Board, as opposed to any individual committee taking unilateral action.

Mr. Donegan offered that in the past it was understood that a complaint regarding a non-licensed individual was to be filed with the District Attorney's Office. Judge Murphy again offered that the Board has misdemeanor jurisdiction, as so stated by the State legislature, and he believes that the Board should address the matter of non-licensed individuals' actions affecting the profession, as we have been ordered to protect.

THE BOARD CHAIR THANKED ALL COMMITTEES FOR THEIR WORK IN PLANNING AND HOLDING MEETINGS IN ADVANCE, AND SUBMITTING MINUTES IN ADVANCE OF THE FULL BOARD MEETING.

REPORT OF THE EDUCATION COMMITTEE: Committee Chairman, Vincent Borrello, reported that the Committee met on February 9, 2010 at the office of Gail Freese Court Reporting in Metairie, Louisiana. The Committee met again on February 19, at the location of and prior to the full Board meeting, to discuss recently received requests for CE credits on seminars.

Motion was made by Mr. Borrello for the Board to accept the report of the Education Committee. The motion received a second and the motion carried.

OLD BUSINESS:

Exam Fee Rule Change: The Examination Committee proposes that the Board increase the fee

for the Written Knowledge portion of the examination to \$140 and the Skills portion to \$125., comparable to the NCRA fees. This passed last October and awaits promulgation. Committee to submit an economic impact statement to Ms. Armentor within 30 days of this meeting date. This item will be on the agenda for the next Committee meeting.

Mr. Borrello offered this topic in globo in the form of both old and new business: Mr. Borrello and Mr. Marcello had negotiated with LSU, and an agreement has been reached with LSU for a payment, final and in full, in the amount of \$4,000 to be paid to LSU before February. LSU has agreed to return all documents. Motion by Mr. Borrello that the Board make payment in the amount of \$4,000 to LSU for full and final payment. The motion received a second and it carried.

NEW BUSINESS:

The next examination will be held on April 24, 2010 at the Claiborne State Building in Baton Rouge, with this information to be posted on the internet.

Examination rules:

The Committee recommends that all language dealing with the LSU facility be deleted in the Rules for Certification Testing Form.

The Committee proposed to the Board the following changes:

Language under the "General Rules" to read: "No materials will be allowed during the examination, with the exception of a dictionary. "

Also, to be added to the General Rules is: "All test applicants are responsible for understanding the rules for certification testing prior to the examination."

There was a motion by Mr. Borrello that the above changes be accepted, there was a second and the motion carried.

The Committee instructed Ms. Armentor that the Rules for Certification Testing Form be included in every applicant's registration form, regardless of how many times the applicant registers for the CSR examination, as opposed to past practice where an applicant was sent the rules only once. The rules, once changes are made, are to be posted on the Board's website.

In the matter of re-grading the examination of Rachael Varner, the Committee recommended that the Board allow Ms. Varner to appear at the Board's office to transcribe her voice tapes, which are in the possession of the Board, in particular those two pages in question wherein page 14 of the Q&A was printed over Page 4 of Literary. She will be allowed 1 hour and 20 minutes to complete said portion. Ms. Armentor is to contact Ms. Varner, informing her. Mr. Borrello made a motion for Board approval, there was a second and the motion carried.

In the matter of C.E. Ethics credits: Because court reporters were not officially notified until the middle of the 2009-2010 C.E. cycle that ethics credits were required, and after conferring with David Marcello on the matter, the Board's counsel, the Committee comes to the Board with the recommendation that, in all fairness, no disciplinary action be taken against any reporter not obtaining the ethics credits within the 2009-2010 cycle. However, the requirement will be in full force and effect for the 2011-2012 C.E. cycle. A motion was made by Mr. Borrello to accept the Committee's recommendation in this regard, there was a second and the motion carried.

Ms. Michelle Cosse Buras' letter addressed the fact that she had paid for a seminar, obtained all of her C.E. credits in April of 2009, midway through the 2009-2010 C.E. cycle, then was informed of the requirement to obtain ethics credits. Mr. Borrello advised that he would contact Ms. Buras to advise her of the full Board's decision at this meeting; that being that no disciplinary action will be taken for the failure to acquire ethics credits for the 2009-2010. Mr. Borrello so moved, there was a second and the motion carried.

Seminar Requests:

Ms. Reno's request to approve seminar on Excel Basics and Microsoft Basics. The curriculum does not meet the requirements for C.E. Credits.

Committee recommends denial. Motion to deny by Mr. Borrello was seconded and carried.

Ms. Steward's request to approve Fred Prior Seminar: Managing Multiple Priorities, Projects and Deadlines - As the curriculum is not specific to the profession of court reporting the Committee recommended denial of the request. Motion to deny by Mr. Borrello was seconded and the motion carried.

The next seminar request for approval was submitted by Ms. Heaphy. She attended the NCRA Convention in Washington D.C. in August of 2009, a CMRS Modules II and III, as well as submitting an NCRA Continuing Education Transcript Report. On the Committee's recommendation, Mr. Borrello moved in favor of Ms. Heaphy's request for seminar approval, there was a second and the motion carried.

REPORT OF THE AD HOC COMMITTEE TO PROMOTE EFFICIENCY IN COURT AND GENERAL REPORTING: The Ad Hoc Committee meeting was held on February 17, 2010 at the Lafayette Parish Courthouse, and again on February 19, 2010 at the location of and prior to the full Board meeting. The report was presented by the Committee Chair, Laura Putnam.

OLD BUSINESS:

Underserved courts: The Committee recommended that the Board pursue introduction of the same or similar language that was introduced as HB 599, with some variation. Also the Committee recommends that the Board members contact and work with judges and courts in an effort to assist or guide them in getting staff certified; including informing judges of available schools, both online and in State.

The Committee recommended that Representatives need notification of our meetings. Also recommended is the addition of Reps. Chandler and Wilson to the letter for roundtable discussion, seeking their input on the underserved courts issue, getting dates of their availability to set the next meeting with these individuals. It was further recommended that a letter be sent to those not responding, with that letter to include three dates to be determined by the Board.

Discussion had: Judge Murphy stated that the Supreme Court is very interested in the subject, as is the Chief Justice, who is ill and not available, and that the Supreme Court is not going to act without the Chief Justice's input on this subject. Judge Murphy feels it would be impossible to pull something together prior to this legislative session, having no bill prepared at present. Ms. Putnam asked if a representative of the Supreme Court might meet with our Board on this matter. Judge Murphy agreed that could happen, but stated there would be no decisions until the Chief Justice was able to address the matter herself. Mr. Borrello raised the question of what stance the Board will take if the same bills as last year are filed. Judge Murphy suggested the Board's position be that we are the body in charge of court reporting, and until we've had opportunity to talk to the various constituencies and become fully informed in order to make a recommendation, the Board is opposed to any piecemeal legislation that might usurp the authority of this Board.

A motion was made by Ms. Putnam that we continue to seek dialogue with all interested stakeholders, addressing all interests and concerns, first and foremost being that of Louisiana Supreme Court, and to do so as soon as possible. Mr. Kaufman amended to include "within our earliest capabilities." There was a second and the motion carried.

On Intergovernmental Agreements, the Committee voted and a motion was made by Ms. Putnam to wait until the end of the legislative session to make any decisions on existing Intergovernmental

Agreements. There was a second and the motion carried.

In a matter of a complaint regarding two Evangeline Parish reporters, Ms. Ortego (certified) and Ms. LeBlanc (not a certified reporter), the Ad Hoc Committee voted to have the Chair of the Ethics Committee send a letter to Ms. LeBlanc to cease and desist practicing as a reporter. Ms. LeBlanc was granted an emergency permit which expired, but did act as an official reporter in a succession proceeding. Judge Murphy agreed, as done earlier, to consulting legal counsel addressing the Board's authority over non-licensed reporters, but stated the Board absolutely has misdemeanor jurisdiction.

A motion was made by Mr. Young that he send a letter to the AG's Office asking for their thoughts regarding the Board's authority regarding non-CCRs. Discussion had: Judge Murphy suggested that we take a month to study the subject as well as consult with Board's attorney before requesting their opinion. Mr. Young requested permission to discuss with Mr. Marcello. Judge Murphy agreed if the Board is in favor, and suggested that the matter be referred back to Committee.

FOLLOWING A RECESS THE REPORT OF THE AD HOC COMMITTEE CONTINUED....with Chair Laura Putnam reporting:

NEW BUSINESS:

A motion carried in Committee, with a vote of three to one, that someone with knowledge of digital recording be invited to explain to and inform the Board on how it encompasses the role of a Louisiana Certified Court Reporter in Louisiana courts of record. The Committee voted to table any further discussion of the digital recording matter until July 2010. That motion carried. A motion was made by Ms. Putnam that, in addition to what was being offered at this meeting, that further education be brought to the Board on the matter of digital recording. The motion was seconded and carried.

OLD BUSINESS (Continued):

The final issue addressed in Committee was digital signatures: Discussed at length was the February 10, 2010 letter to the Board written by Mr. Scott Kaiser on behalf of the court reporting firms he represents. The recommendations in that letter led the Committee to seek the advice of Mr. Marcello, Board counsel. with the permission of the Board's Chairman, Judge Murphy. Mr. Marcello gave his opinion and responded paragraph by paragraph. Mr. Marcello's three conclusions were: 1) Any change needs to be taken by legislature, and not by Board rule; 2) We need examples from other states where court reporting boards have authorized use of digital signatures, how it's operating, limits, who's entitled to receive the transcripts and what's accepted by digital signature; and 3) that we get the approval and acceptance of the Supreme Court on any legislation the Board promulgates. Motions were made in Committee meeting in response to Mr. Marcello's opinions: That we seek and/or work with legislators this session to author a bill that will revise Code of Civil Procedure Article 1446-E, use of secure electronic signature, using the language suggested by Mr. Kaiser. There was a vote of two to two in Committee.

Mr. Kaufman requested that the same motion be put before the entire Board for vote: That for this legislative session, by March 15th, we seek to communicate with legislators, a senator and representative, to author a bill revising Article 1446-E to add "A court reporter may sign and certify a deposition transcript through the use of secure electronic digital signature." The motion received a second. In discussion, Mr. Kaufman mentioned that is it no longer a question of whether the Board should or will, but that on February 27, 2009 the Board voted unanimously to pursue digital signatures through legislation. Mr. Borrello took exception, stating it was a committee meeting vote, not a vote of the entire Board. Board Chairman requested that the business of the Board proceed; that we now have a new Board, and suggested that discussing old votes would not be useful; that the matter should be dealt with now per the Committee's suggestions. Mr. Kaufman suggested that the proposed legislation should be presented to the members of the Supreme Court and perhaps a few other entities to get the ball rolling. Mr. Borrello agreed with the statement that it needs to go to the Supreme Court before going to the legislature.

Mr. Kaiser was heard on the matter and stated that the issue of digital signatures has been before the Board since November of 2008. He suggested if the ball was to get rolling this year, the legislative process had to get started; otherwise the matter is dead for this year. Judge Murphy offered that the concept of this Board being able to pass rules without going to the legislature on this subject is interesting; but that he is not ready to give an opinion as to whether or not this Board has authority to weigh in on this subject; however, he noted that the Board's counsel says we do not have that authority. While Judge Murphy states that he is ready to look at the question of the Board's authority on several issues, he quoted Mr. Marcello's opinions, and states that it's too much, too fast. We need to put an effort into studying certain subjects. Going forward too fast would doom us to failure. Judge Murphy stated that the Chief Justice wants to weigh in on the subject of digital signatures, look at it from the appellate standpoint and know that what is in the deposition transcript will stand. Judge Murphy suggested that we perhaps consider a pilot program before going to the entire State. The Supreme Court must be on board. Mr. Kaufman suggested a submission to them; with communication in advance of the submission.

There was a motion made by Mr. Kaufman that the Board communicate with legislators to develop introduction of a bill revising Article 1446-E to add the sentence, "A court reporter may sign and certify a depo transcript through the use of secure electronic digital signatures." The motion received a second. Mr. Borrello offered a friendly amendment that it go to the Supreme Court before going before anyone else. Mr. Kaufman agreed that it needs to go to the Supreme Court, but suggested that we begin going to the legislators and, as a separate motion, that it must be submitted to the Supreme Court for it to be supported before going before the legislators. Mr. Borrello stated he has no problem as long as it goes to the Supreme Court first. Mr. Kaufman said David Marcello could be asked for other language which should be included. Mr. Kaufman suggested that his motion is about getting it kicked off with the legislators and then present it to the Supreme Court. Judge Murphy asked if it was Mr. Kaufman's suggestion that a bill be drawn up, presented to the legislators without the Board weighing in. Mr. Kaufman answered no, but that he was going to request that the Board meet again very soon.

Judge Murphy was asked by Mr. Kaiser if it was the Judge's opinion that this matter would be just "dead in the water" until Justice Kimball returns, to which Judge Murphy replied in the affirmative. Judge Murphy stated that Justice Kimball plainly expressed her desire to weigh in on this subject herself; and that that, together with the fact that at least two members of this Board never having sat in on discussions on this subject, having no bill to date, we would be creating an environment where we would fail. Judge Murphy stated that the Board is creating a vehicle to discuss several matters, and that the subject of digital signatures is one of the matters that should be discussed in that manner, giving everyone a chance to weigh in and then take the Board's decision to the Supreme Court. Mr. Borrello added that the Supreme Court could, without legislation, give the Board or court reporters the power.

A vote was then taken on Mr. Kaufman's motion. The motion failed. Mr. Kaufman requested a hand count. There was a roll call vote as follows: Mr. Borrello, nay; Ms. Dunn, aye; Ms. Freese, nay; Ms. Magee, aye; Ms. Putnam, nay; Mr. Kaufman, aye; Mr. Donegan, nay; Mr. Young, nay. Receiving a vote of five nay, three aye, the motion failed. The Chairman referred the matter to the Ad Hoc Committee for study, requesting that the Committee report back to the Board as soon as possible with a suggestion as to the various constituents who might be invited to participate.

Continuing with the report of the Ad Hoc Committee, Ms. Putnam reported a recommendation to seek Mr. Marcello's advice on the issue of digital signatures in addition to the ones previously brought up in the Code of Civil Procedure and Title 9. Judge Murphy agreed that the Committee get whatever legal backup needed to address those issues.

Ms. Putnam reported that, in accordance with Mr. Marcello's recommendations, the Committee recommends we seek out information from someone who can brief us on examples of where court reporting boards of other states have addressed the issue of digital signatures. Mr. Kaufman added not only boards in other states but actual people utilizing it; firms and reporters. Judge Murphy added that we need facts as to accepted software, what a board needs to do to create rules to be followed, as well as acceptable vendors.

NEW BUSINESS:

Reinstatement Request of Elena Caldas - Ms. Caldas appeared. Mr. Borrello made a motion that Ms. Caldas be reinstated as a Louisiana Certified Court Reporter pending payment of appropriate fees from 2006 present. Mr. Kaufman amended to include documentation from Mississippi CSR Board as to status there. Following discussion there was a second, and motion carried.

Reinstatement of April Lombardina - Ms. Lombardina appeared. Mr. Borrello's motion was that Ms. Lombardino be reinstated in the State of Louisiana upon payment of appropriate fees. There was a second, the motion carried.

Reinstatement of Sherri Murphy - Ms. Murphy appeared. Mr. Borrello moved to reinstate in the State of Louisiana pending appropriate fees since August of 2007. Mr. Kaufman amended to include receipt of documentation from the Texas CSR Board to show status. There was a second, motion carried.

Reciprocal License Confirmation: Mark Smith and Leita Seaborn have submittals in order per Ms. Armentor. Mr. Borrello moved in globo that Mr. Smith and Ms. Seaborn be admitted through reciprocal licensing to practice in the State of Louisiana. There was a second and the motion carried.

Ms. Armentor presented a list of reporters for approval of renewal since last meeting. Mr. Borrello moved to approve the list of renewals. The motion received a second, the motion carried.

Mr. Kaufman moved to add an item of new business to the agenda. Mr. Kaufman moved that the Board go into executive session. After consideration, it was decided that the matter would be directed to the Finance Committee. Judge Murphy asked Mr. Kaufman to get a letter to the Finance Committee asking them to address the issue, and if appropriate it can be brought before the Board at the next meeting.

Judge Murphy asked if there was any additional new business. Hearing none, the Chairman announced that the next Board meeting would be held on April 16, 2010, at 200 Derbigny Street, Division D, 5th Floor, Suite 5600, Gretna, Louisiana.

SECRETARY

DATE APPROVED

CHAIRMAN

DATE APPROVED

