

1 ED HOWARD, SBN 151936
Law Offices of Edward Howard
2 4700 Marlborough Way
Carmichael, CA 95608
3 (916) 844-5646
Eh4@sbcglobal.net
4 Attorney for Deposition Reporters Association of
California

5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 COURT REPORTERS BOARD OF
CALIFORNIA,

12 Plaintiff,

13 v.

14 U.S. LEGAL SUPPORT, INC. and
15 DOES 1 through 100,

16 Defendants.

CASE NO. 1-11-CV-197817

**BRIEF OF AMICUS CURIE DEPOSITION
REPORTERS ASSOCIATION OF
CALIFORNIA IN SUPPORT OF
COMPLAINT FOR DECLARATORY
RELIEF OF PLAINTIFF COURT
REPORTERS BOARD
OF CALIFORNIA**

Trial Date: January 17, 2012
Time: 8:47 a.m.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. SUMMARY OF ARGUMENT..... 1

II. ARGUMENT..... 2

 A. Why Deposition Reporters Are Licensed And The Profession Is Closely Regulated..... 2

 B. The Regulation At-Issue..... 4

 C. Defendant Is Subject To The Authority Of The Board.....5

 1. Defendant is a “professional corporation” providing services for which a license is required. By state law, such corporations are subject to the Board’s authority.....5

 2. It makes sense to make corporations that render licensed services subject to the rules that regulate the licensed profession.....7

 3. Defendant is “engaged in rendering” court reporting services.....9

 4. Defendant is also a shorthand reporting corporation and, as such, it cannot engage in unprofessional conduct.....11

 5. Just months ago, a legislative committee observed that the Board has jurisdiction over Defendant..... 12

 6. The Board also has broad and inherent powers to ensure it can successfully fulfill its public policy mandate.....12

 7. There is no express exemption for corporations such as the Defendant. Therefore, the Board’s statutory interpretation is owed deference..... 13

 8. With private deposition firms increasingly being hired by parties to report official proceedings in court, the regulation of the deposition reporting profession becomes even more important.....14

III. CONCLUSION..... 15

TABLE OF AUTHORITIES

Cases

Page No.

Austin v. Dept. of Motor Vehicles (1988)
203 Cal.App.3d 305, 309.....10

Bodinson Mfg. Co. v. Cal. E. Com. (1941)
17 Cal.2d 371, 325-26.....12

Dickey v. Raisin Proration Zone No. 1 (1944)
24 Cal. 2d 796, 810.....13

Rich Vision Ctrs., Inc. v. Bd. of Med. Exam’rs (1983)
144 Cal. App. 3d 110, 11.....13

Serrano v. Stefan Merli Plastering Co. (2011)
52 Cal.4th 1018..... 1,2

Statutes

Page No.

Business & Professions Code
8000-8047.....3
8016.....6
8040..... 11-12

C.C.P.
2025.570.....4

Cal. Code of Regs.
Tit. 16, Ar. 8, Sec. 2475.....4, 5, 13

Corporations Code
13400.....5
13401.....6, 8, 10, 11
13410(a)..... 6, 8

Other Authorities

Page No.

Assembly Appropriations Committee Analysis of AB 1121(Ruskin), p. 2 (2010)..... 12

Joint Committee on Boards, Commissions, Consumer Protection, *Sunset Review* (2005)..... 4

Resolution of the American Judges Association, unanimously adopted, (April 24, 1998).....3

9 Witkin, *Summary of California Law*, (10th ed. 2005) Corporations §26, pp. 804-
05..... 5

9 Witkin, *Summary of California Law*, (10th ed. 2005) Corporations §29, p. 807.....8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

SUMMARY OF ARGUMENT

This is an important case for the future of litigation in California. In *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4th 1018, the Supreme Court underscored the importance of licensed court reporters, the need for regulation of the profession, and thus the importance of this case, when it held that reporters who take depositions are “ministerial officers of the court” (*id.* at 1021), meaning officers charged with non-discretionary, *inherently judicial* duties.

As the Supreme Court recognized in *Serrano*, the need for strict regulation of the court reporting profession is obvious. Yet, in this case, the Defendant provider of such services -- U.S. Legal – argues that the California Court Reporters Board (“Board”) that oversees the profession has no jurisdiction over its corporate conduct at all.

As demonstrated below, this is not only wrong once, it is wrong several times over. In several different, freestanding ways, state statutes self-evidently vest the Board with the authority to cite and fine the Defendant for flagrantly violating the Board’s anti-kickback regulation and related statutes. To the extent there is ambiguity in this regard (and there is none), the Board’s interpretation of its own authority is owed deference, especially when the competing interpretation urged by Defendants would blow a gaping, illogical loophole in the State’s regulation of “ministerial officers of the court.”

Recent events have only made the need for enforcement of existing law even more urgent. Some courts (like those in San Francisco County) that have laid-off official court reporters now rely on private firms like Defendant to provide reporting services for judges and the parties at civil trials. Defendant here is promoting such trial services *while it is at the same time offering services to aid one side in a case.*

1 To avoid damaging the legal profession by adopting Defendant's exemption from all
2 oversight, all that is required is for the court here to apply black-letter law in the manner urged
3 upon it by the Board charged with interpreting that law to protect legal consumers and safeguard
4 the impartial administration of justice.

6 II.

7 ARGUMENT

8 A. Why Deposition Reporters Are Licensed And The Profession Is Closely Regulated.

9 It is difficult to overstate the importance of the court reporting profession (official and
10 deposition reporters) to the credible, just, and efficacious litigation and resolution of civil and
11 criminal disputes. "Deposition reporters ... perform a public service of considerable importance
12 to litigants and members of the public." *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4th
13 at 1021. One California legislative committee tried to capture the critical importance of the
14 profession this way:
15

16 An accurate written record of who said what in court is essential if the outcome of
17 a judicial proceeding is to be accepted by the litigants and the public as non-
arbitrary, fair, and credible.

18 In criminal cases, for example, courts of appeal rely exclusively upon [] written
19 briefs and a written transcript to adjudicate the lawfulness of what occurred at trial.
20 A conviction – and thus in some instances the life or death of an accused – can
stand or fall based entirely upon what a witness said, what a lawyer said, what a
21 juror said, or what a judge said, as solely reflected in the written transcript.

22 In civil cases, millions of dollars, life-long careers, and the fate of whole
23 business[] enterprises can hinge on what was said or what was not said in a
deposition or at trial.¹

24 *See also:* "[Deposition reporters] are officers of the court whose impartiality, as with
25 judges, must remain utterly beyond question in order to ensure the enduring confidence and faith

26
27 ¹ http://www.sen.ca.gov/ftp/SEN/COMMITTEE/JOINT/SUNSET_REVIEW/_home/pubs.htm

1 from which our judicial system derives its legitimacy,” *Resolution of the American Judges*
2 *Association*, unanimously adopted, (April 24, 1998).

3 Unlike other impartial judicial officers, court reporters in depositions must ensure the
4 integrity and accuracy of the record while working in a private commercial setting, and
5 notwithstanding that they are hired by one of the parties in often hotly contested litigation.
6

7 Moreover, and making this case even more important, the lines between so-called
8 “official” court reporters who work for judges in courtrooms and deposition reporters are
9 blurring. In many counties, budget-driven court personnel layoffs have resulted in private
10 deposition firms like Defendant competing to place court reporters in courtrooms, performing
11 tasks for sitting judges that used to be performed by full-time court reporters employed by the
12 courts. *See, e.g.,* Exhibit A, Notice from San Francisco Superior Court.²
13

14 Indeed, the Defendant here – which also gets paid for providing support services to
15 parties in litigation (e.g., “[w]e assist in determining the best way to present your evidence” see
16 Exhibit B) -- is simultaneously advertising that it will, for a fee, also provide the court reporter for
17 official courtroom proceedings as well, including trial. *See* Exhibit C.³

18 For all these reasons, court reporters must be and are closely regulated. In California,
19 like physicians, accountants, and engineers, the court reporting profession is tightly regulated by
20 the quasi-independent licensing Board housed within the executive branch’s Department of
21

22
23 ² “Effective October 3, 2011, the services of Official Court Reporters will not normally be
24 available during regular court hours in the civil departments listed below ... When the services of
25 an Official Court Reporter are not available for a hearing or trial in a civil case, a party may
26 arrange for the presence of a certified shorthand reporter to serve as an official pro tempore
reporter. It will be that party’s responsibility to pay the reporter’s fee for attendance at the
proceedings, but the expense may be recoverable as part of the costs, as provided by law [Rule
2.956(c), Cal. Rules of Court].”

27 ³ “In response to California’s budget crisis, many courts are no longer providing a court reporter
28 for proceedings in civil matters...As this growing trend continues across the State, **U.S. Legal
stands ready to deliver a seamless, cost effective and efficient solution to your trial needs.**”

1 Consumer Affairs. *See*, Business & Professions Code sections 8000-8047. The activities and
2 professional obligations of the court reporting profession are also deeply and widely regulated by
3 the Code of Civil Procedure. *See*, e.g., Cal. Code of Civ. Proc. Sec. 2025.570.

4 **B. The Regulation At-Issue.**

5 In 2005, a legislative committee urged the Board to promulgate a Code of Professional
6 Conduct. *See*, for e.g., Joint Committee on Boards, Commissions, Consumer Protection, *Sunset*
7 *Review* (2005), at 13.⁴ The Board by regulation did so and the regulations became effective in
8 February 2007. (Cal. Code of Regs. Tit. 16, Ar. 8, Sec. 2475, hereafter “Section 2475” or “the
9 Standards”).

10
11 The Board’s “Standards” as embraced in Section 2475 are essential to ensure the integrity
12 of the deposition reporting profession specifically and the judicial process generally. The
13 Standards exist to ensure that court reporters in depositions – ministerial extensions of the court
14 but operating in a commercial, private setting – have no stain or suspicion upon their complete
15 and total impartiality. In relevant part, and with emphasis supplied, Section 2475(b) provides that
16 “[e]very person under the jurisdiction of the Board who holds a license or certificate, or temporary
17 license or certificate, shall comply with the following professional standards of practice:
18

19 (8) Other than the receipt of compensation for reporting services, **neither**
20 **directly or indirectly give nor receive any gift, incentive, reward, or anything**
21 **of value to or from any person or entity associated with a proceeding being**
22 **reported. Such persons or entities shall include, but not limited to, attorneys,**
23 **employees of attorneys, clients, witnesses, insurers, underwriters, or any agents**
24 **or representatives thereof. Exceptions to the foregoing restriction shall be as**
25 **follows: (A) giving or receiving items that do not exceed \$100 (in the**
26 **aggregate for any combination of items given and/or received) per above-**
27 **described person or entity per calendar year[.]**

28 ⁴ www.senate.ca.gov/ftp/SEN/COMMITTEE/JOINT/SUNSET_REVIEW/_home/pubs.htm

1 More broadly, the Board's Section 2475(b)(8) restraining the giving of kick-backs or
2 "gifts" in excess of \$100 strives to ensure that the quality of the reporter's work is the premier
3 market force in hiring or not hiring deposition reporters, as opposed to kick-backs, commission-
4 like incentives, or gifts to the secretaries and assistants who often order depositions for lawyers.
5 In this fashion, the Standard seeks to ensure the overall quality of the deposition work-product, to
6 the benefit of the parties, the courts, and justice, even if it means fewer or less attractive items to
7 the law firm employees who order depositions.
8

9 **C. Defendant Is Subject To The Authority Of The Board.**

10 **1. Defendant is a "professional corporation" engaged in rendering services for**
11 **which a license is required. By state law, such corporations are subject to the**
12 **Board's authority.**

13 As the competence and integrity of corporations cannot be tested by a licensing exam,
14 the "traditional rule," according to Witkin, is that services provided by licensees cannot lawfully
15 be rendered through a corporation such as the Defendant at all.⁵ This is the starting point of the
16 legal analysis. However, this blanket prohibition has been qualified by statute. 9 Witkin,
17 *Summary of California Law* (10th ed. 2005), Corporations, §26, pp. 804-05. Specifically, in
18 California, corporations rendering services for which a license is required are only permitted to do
19 so pursuant to the Moscone-Knox Professional Corporation Act ("Act") (Corp.Code. sec. 13400
20 *et seq.*) *Ibid.*

21
22 Defendant is subject to the authority of the Board because under the Act Defendant is a
23 "professional corporation" engaged in rendering "professional services" and such corporations
24 are "subject to the applicable rules and regulations adopted by" the Board.

25
26 ⁵ "Before the enactment of the Moscone-Knox [Act] in 1968, practitioners of certain professions
27 were not permitted to incorporate...the prevailing case law being that a corporation, as an
28 artificial entity, could not 'practice' that profession. Today, with the passage of the [Act], a
corporation may be formed for the purposes of qualifying as a professional corporation and
rendering professional services." 15A Cal.Jur.3d, Corporations, §540.

1 More specifically, a “professional corporation” under Corporations Code section
2 13401(b) is defined as a corporation engaged in rendering “professional services”:

3 (b) ‘Professional corporation’ means a corporation ...**that is engaged in**
4 **rendering professional services ...**

5 (Emphasis added)

6 In turn, “professional services” (with emphasis supplied) is defined by Corporations
7 Code section 13401(a) as follows:

8 (a) ‘Professional services’ means any type of professional services that may be
9 lawfully rendered **only pursuant to a license**, certification, or registration
10 authorized by the Business and Professions Code ...

11 The reporting services for which Defendant receives compensation are services that
12 “may be lawfully rendered only pursuant to a license.” Business & Professions Code sec. 8016.⁶

13 Thus, because Defendant is a corporation “engaged in rendering professional services”
14 (services that can only be rendered pursuant to a license), it is under state law a “professional
15 corporation.”

16 Moreover, it does not matter whether the corporation was formed self-consciously as a
17 “professional corporation” or under “General Corporation law.” Corporations Code section
18 13401 (b) provides that a “[p]rofessional corporation’ means a corporation organized *under the*
19 *General Corporation Law or* pursuant to” the Act. (Emphasis added)

20
21 Thus, Defendant is a “professional corporation.” Corporations Code section 13410(a)
22 provides that “professional corporations” like Defendant have to abide by the same Board
23 authority as individual licensees. That statute provides:

24 (a) A professional corporation ... qualified to render professional services in this
25 state **shall be subject to the applicable rules and regulations adopted by, and**

26
27 ⁶ In relevant part, the statute reads: “No person shall engage in the practice of shorthand reporting
28 as defined in this chapter, unless that person is the holder of a certificate in full force and effect
issued by the board.”

1 all the disciplinary provisions of the Business and Professions Code expressly
2 governing the practice of the profession in this state, and to the powers of, the
3 governmental agency regulating the profession in which such corporation is
engaged...

4 (Emphasis added).

5 In sum, then, under this statute, Defendant is subject to the Board's jurisdiction

6 *in three distinct, freestanding ways:*

- 7 ○ a "professional corporation" like Defendant "shall be subject to the applicable
8 rules and regulations ... of the governmental agency regulating the profession";
9 here, the Board.
- 10 ○ a "professional corporation is" like Defendant also subject to "all the
11 disciplinary provisions of the Business & Professions Code expressly governing
12 the practice of the profession in this state[.]"
- 13 ○ a "professional corporation" like Defendant "shall be subject to...the powers
14 of[] the governmental agency regulating the profession in which such corporation
15 is involved." The governmental agency regulating deposition reporting is the
16 Board.
17
18

19 **2. It makes sense to make corporations that render licensed services subject to**
20 **the rules that regulate the licensed profession.**

21 The plan enacted by the legislature as reflected in the Corporations Code sections cited
22 above makes sense. Where corporations rendering licensed professional services are concerned,
23 the Corporations Code seeks to ensure that the important laws governing the integrity and
24 competence of licensed professionals like the officers of the court here are not frustrated or
25 loopholed merely by a corporation rendering the licensed service to clients instead of the licensee
26 providing the service to clients directly, outside the aegis and formality of a corporation. This is
27 the condition upon which corporations are allowed to render licensed services at all.
28

1 Indeed, Defendant enjoys a significant benefit over licensees from being a “professional
2 corporation.” Because it is a “professional corporation,” the Defendant does not have to register
3 with the Board. The general rule is that “a corporation must possess a certificate of registration in
4 order to render professional services. Certificates are issued by the governmental agency
5 regulating the profession.” 9 Witkin, *Summary of California Law*, (10th ed. 2005), Corporations
6 §29, p. 807. But, there is an exception, codified at Corporations Code section 13401(b):
7

8 However, any professional corporation or foreign professional corporation
9 rendering professional services by persons duly licensed by the Medical Board
10 [other Boards omitted]... **the Court Reporters Board of California ...shall not
11 be required to obtain a certificate of registration in order to render those
12 professional services**

11 (Emphasis supplied).

12 There are two things that are important about this registration statute.

13 **First**, by specifically mentioning the “Court Reporters Board of California,” it is self-
14 evident the legislature intended the definition of “professional corporation” to embrace
15 corporations like the Defendant; if not, then there is no reason to exempt such businesses from
16 having to register with the “Court Reporters Board.”
17

18 **Second**, as just shown, if Defendant is exempt from having to register with the Board, that
19 is because by operation of law, as a “professional corporation,” Defendant under Corporations
20 Code section 13410(a) is subject to the Board’s authority as if it were itself a licensee (“... shall
21 be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of
22 the Business and Professions Code expressly governing the practice of the profession in this state,
23 and to the powers of, the governmental agency regulating the profession in which such
24 corporation is engaged...”).
25

26 Here, because Defendant does not have to register with the Board, the most that the Board
27 can do is issue orders and cite and fine the Defendant – a significant benefit for the Defendant
28

1 when it comes to avoiding registration which, if revoked, would entirely ban the Defendant from
2 rendering deposition reporting services in California.⁷ But, if Defendant is *not* a “professional
3 corporation” *and* has not registered, then it falls outside the statutes that permit corporations to
4 render licensed services, and Defendant’s whole business would be unlawful.

5
6 For these reasons, it is simply obvious that as a matter of law the legislature has sought
7 to enact a scheme that does not create a gaping loophole in regulating licensees like the officers of
8 the court here, where consumers are protected if they hire a firm owned by a licensee but not if
9 they hire a corporation providing the identical service. Recall that the general rule is that
10 corporations are not allowed to render licensed services *at all*. The legislature has allowed
11 Defendant to render such services, but only on the sensible condition it must be bound by the
12 same regulatory authority and authorities as licensees. No other view has any internal logic or can
13 explain the existence of the Moscone-Kknox Act.

14
15 **3. Defendant is “engaged in rendering” court reporting services.**

16 There can be no doubt that Defendant “is engaged in rendering” court reporting services,
17 as those words are used in the Corporations Code. “In determining the meaning of a statute, a
18 court must give effect to the statute according to the usual, ordinary import of the language
19 employed in framing it. ... ‘Render’ is defined by the Oxford English Dictionary (1970 ed., Vol.
20 VIII, p. 442, col. 3.) as ‘[t]o hand over, deliver, commend, or commit, to another; ...’ Similarly,
21

22
23 ⁷ “The following shall be grounds for the suspension or revocation of the certificate of
24 registration of a professional corporation or a foreign professional corporation qualified to render
25 professional services in this state: ... (d) **if such corporation shall violate any applicable rule
26 or regulation adopted by the governmental agency regulating the profession in which such
27 corporation is engaged**, or (e) **if such corporation shall violate any statute applicable to a
28 professional corporation** or to a foreign professional corporation, or (f) **any ground for such
suspension or revocation specified in the Business and Professions Code relating to the
profession in which such corporation is engaged. In the event of such suspension or
revocation of its certificate of registration such corporation shall cease forthwith to render
professional services in this state.**” (Emphasis added)

1 Webster's New Collegiate Dictionary defines 'render' as 'to give back, yield,' and 'to transmit to
2 another, deliver.' [] Thus rendering judgment is accomplished only when the interested parties are
3 advised of the decision. This construction comports with commonsense since a judgment has no
4 meaning until it is related to the affected parties." *Austin v. Dept. of Motor Vehicles* (1988) 203
5 Cal.App.3d 305, 309.
6

7 If the Defendant has a role in "transmitting" or "delivering" deposition transcripts to its
8 own clients, then it is "engaged in rendering" court reporting services. The evidence submitted
9 by the Board and attached as Exhibit D (including Defendant's massive court reporting manual,
10 Exhibit D-1) shows incontrovertibly that the Defendant here not only "transmits" or "delivers"
11 the transcript to its clients, it does far more. Defendant boasts on its website: "U.S. Legal
12 Support's highly skilled court reporters have experience in all aspects of depositions and trials."
13 See Exhibit D-2. The Defendant's motto: "**Available. Involved. Accountable.**" Ibid.
14

15 As shown by the documents at Exhibit D, it is the Defendant that arranges for the
16 licensed service to be provided to a client. It is the Defendant that is "engaged in rendering"
17 services in part by retaining employees or independent contractors to perform certain functions.
18 It is the Defendant that holds itself out to the client as "Involved. Accountable" for the reporting
19 service. It is the Defendant that is in privity with the client, with standing to sue to collect an
20 unpaid bill or be sued for failure to provide services promised. Defendant is obviously "engaged
21 in rendering professional services" under Corporations Code section 13401(b).
22

23 The only way Defendant is not engaged in the business of rendering court reporting
24 services is if it is falsely advertising and lying about what it does.⁸
25

26 ⁸ Defendant is not aided by the fact that, as a corporation, it cannot actually take a
27 deposition and is not a licensee. First, this is exactly why, according to Witkin, the general rule is
28 that Defendant cannot be in the business it is in, except upon the conditions laid out in the
Moscone-Knox Act. Preventing corporations – as fictional, not real people -- from exploiting

1 **4. Defendant is also a shorthand reporting corporation and, as such, it cannot**
2 **engage in unprofessional conduct.**

3 Underscoring the importance of the profession, the legislature has made Defendant
4 subject to the Board’s authority in still another way. In order to be authorized to “render
5 professional services” of these officers of the court state law says that a professional corporation
6 such as Defendant must also and specifically be a “shorthand reporting corporation,” as defined
7 by the Business & Professions Code section 8040:

8 A shorthand reporting corporation is a corporation which is authorized to render
9 professional services, as defined in Section 13401 of the Corporations Code, as
10 long as **that corporation** and all of its shareholders, officers, directors, and
11 employees rendering professional services who are certified shorthand reporters
12 are in compliance with the Moscone-Knox Professional Corporation Act, ***this***
13 ***article***, and all other statutes and regulations now or hereafter enacted or adopted
14 pertaining to that corporation and the conduct of its officers. With respect to a
shorthand reporting corporation, the governmental agency referred to in the
Moscone-Knox Professional Corporation Act is the Court Reporters Board of
California ...

15 (Emphasis added).

16 Under this law, if Defendant “is authorized to render professional services, as defined in
17 Section 13401 of the Corporations Code” (and it must be to do business here and not have to
18 register), then such a corporation must also comply with the statutes in the “article.”

19
20
21

their fictional status to escape regulations imposed on real people who are licensees is the self-
22 evident reason the Moscone-Knox Act is law.

23 Second, and more broadly, when it comes to holding corporations *qua* corporations
24 criminally or civilly liable, corporations cannot escape liability because, as fictions, they cannot
25 actually conjugate verbs in the first-person. If a corporation enters into a contract, it is a person
26 who signs on its behalf. When a corporation is criminally or civilly liable for its acts, it is
27 because of what human beings did, acting in its name or on its behalf. Thus, when it comes to
28 requiring a “professional corporation” to obey the Moscone-Knox Act, it cannot mean that the
corporation must physically do the things that only licensed human beings can do. Such circular
reasoning not only makes the whole Moscone-Knox Act addressing corporations “rendering”
licensed services a bizarre nullity, such reasoning places corporations *qua* corporations entirely
beyond the reach of legislation or lawsuits.

1 Section 8046, which is in the same article as section 8040, and thus applicable to
2 Defendant, provides (emphasis supplied):

3 A shorthand reporting corporation shall not do or fail to do any act the doing of
4 which or the failure to do which would constitute unprofessional conduct
5 under any statute, rule or regulation now or hereafter in effect which pertains
6 to shorthand reporters or shorthand reporting. In conducting its practice it
shall observe and be bound by such statutes, rules and regulations to the same
extent as a person holding a license under this chapter.

7 Thus, as a “shorthand reporting corporation” the Defendant is subject to the Board’s
8 authority as well.⁹

9
10 **5. Just months ago, a legislative committee observed that the Board has jurisdiction over Defendant.**

11 Echoing all of these statutes, one legislative committee recently affirmed that
12 corporations like Defendant are subject to the Board’s authority: “The law covers those
13 individuals licensed by the Court Reporters Board (CRB) and those businesses structured as
14 ‘corporations[.]’ *Assembly Appropriations Committee Analysis of AB 1121(Ruskin)*, p. 2 (2010).
15

16 **6. The Board also has broad and inherent powers to ensure it can successfully fulfill its public policy mandate.**

17
18 Even if there were some ambiguity as to whether the statutes above brought Defendant
19 within the reach of the Board (and, as the legislative committee quote emphasizes, there is no
20 ambiguity), the Board’s interpretation of the statutes it enforces and its own regulations is entitled
21 to significant judicial deference. *Bodinson Mfg. Co. v. Cal. E. Com.* (1941) 17 Cal.2d 371, 325-
22 26 (“An administrative interpretation ... will be accorded great respect by the courts and will be
23 followed if not clearly erroneous.”)
24

25
26
27
28 ⁹ It appears Defendant is violating at least one other law: the statute commanding that its corporate officers be licensees. (Bus. & Prof. Code sec. 8044).

1 Because it is not “clearly erroneous” for the Board to read these statutes cited above as
2 not somehow creating a gaping loophole in the regulation of officers of the court, the Board’s
3 interpretation that it has jurisdiction over the Defendant must be sustained.

4 Indeed, complimenting and reinforcing the reach of all of the authorities above, the
5 Board also has the implicit authority to “exercise such additional powers as are necessary for the
6 due and efficient administration of powers expressly granted.” *Dickey v. Raisin Proration Zone*
7 *No. 1* (1944) 24 Cal. 2d 796, 810. The Board also may exercise any unenumerated powers that
8 “may fairly be implied from the statute granting the powers,” *id.*, and particularly from “the
9 purpose of the agency,” *Rich Vision Ctrs., Inc. v. Bd. of Med. Exam’rs* (1983) 144 Cal. App. 3d
10 110, 114.
11

12 So, even if there were no statutes at all repeatedly reaching the conduct of corporations
13 that provide the services of officers of the court, the Board would still have the “unenumerated
14 power” power to oversee the conduct of the Defendant because that oversight may be “fairly
15 implied” from the “purpose” of regulating the profession in the first place.
16

17 7. **There is no express exemption for corporations such as Defendant.**
18 **Therefore, the Board’s statutory interpretation is owed deference.**

19 There is no express provision of law that permits Defendant to act unprofessionally or
20 that exempts Defendant from the powers, rules, or regulations of the Board. On the other hand, as
21 discussed, there are multiple statutory ways the legislature has evidenced an intent to ensure that
22 the laws against unprofessional conduct, the powers of the Board, and regulations like Section
23 2475(b)(8), are made applicable to Defendant. Moreover, the legislature, as quoted above,
24 believes its laws oversee corporations like the Defendant.
25

26 ///
27
28

1 8. With private firms increasingly being hired by parties to report official
2 proceedings in court, the regulation of the Defendant becomes even more
3 important.

4 As courts lay-off official court reporters in response to fiscal pressures, many courts are
5 relying upon private deposition firms like Defendant to replace them in civil matters, including
6 trial. *See* Official Court notice at Exhibit A. Imagine if Defendant offered to float the cost of
7 providing a reporter for an official proceeding to plaintiff’s counsel in a contingency fees matter,
8 aligning the fiscal interests of a party with those of a “ministerial officer of the court” in the
9 outcome of the lawsuit. Imagine Defendant sending an email to secretaries offering valuable
10 goodies – theater tickets, \$200 gift cards, bottles of champagne¹⁰ – in exchange for booking one
11 of their reporters to report at a trial.

12 Highlighting the crying need to regulate Defendant to ensure the impartiality of these
13 officers of the court, *Defendant here is – incredibly-- simultaneously seeking to earn fees by*
14 *reporting official proceedings in courtrooms while at the same time seeking fees for aiding one*
15 *side in litigation.* *See* Exhibit C.

17 What Defendant simply fails to acknowledge is the full importance of rendering
18 services of “ministerial officers of the court.” Under Defendant’s reading of the law, when it
19 renders the services of these licensed officers – *even when provided to a judge!* – it is no more
20 regulated than a copy service company. Happily for the orderly and impartial administration of
21 justice, the plain language of numerous California laws, the gravamen of a recent California
22 Supreme Court case, and common-sense stand in Defendant’s way.

24 ///
25 ///

28 ¹⁰ These are not hypothetical examples. *See*, examples at Exhibit E.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.
CONCLUSION

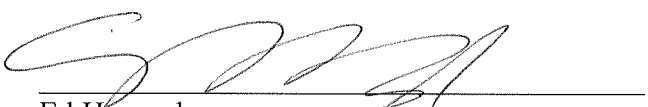
Defendant can point to no statute exempting it entirely from Board supervision.
Defendant cannot contest that the Board's interpretation of applicable law is owed deference.
Defendant self-evidently gets paid for being engaged in rendering court reporting services.

Defendant can articulate no public policy or logic that supports ejecting the Board from being able to regulate the profession when a corporation provides licensed services as opposed to a firm owned by a licensee. As the Supreme Court recently affirmed, it is imperative that this profession be regulated to ensure the proper administration of justice.

For all these reasons, and to ensure the sensible administration of justice, the modest relief sought by the Board should be granted.

Dated: January 12, 2012

Respectfully submitted:



Ed Howard,
On behalf of Amicus Curie the Deposition Reporters
Association of California

1 Re: Court Reporters Board of California v. U.S. Legal Support, Inc.

2 PROOF OF SERVICE

3 I am a citizen of the United States, over the age of 18 years, not a party to the within
4 action, employed in the County of Sacramento, California, and my business address is 401 Watt
5 Avenue, Sacramento, California 95864. I am familiar with this firm's practice for collection and
6 processing of documents for mail with the United States Postal Service, hand-deliveries, and
7 facsimiles. On this date, service of the following document:

8 **BRIEF OF AMICUS CURIE DEPOSITION REPORTERS ASSOCIATION OF**
9 **CALIFORNIA IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF OF**
10 **PLAINTIFF COURT REPORTERS BOARD OF CALIFORNIA**

11 in this matter was effected by:

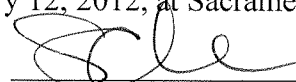
12 Mail
13 Personal Service
14 Federal Express
15 Facsimile

16 on the parties to said cause as follows:

17 NICHOLAS TSUKAMAI
18 Deputy Attorney General
19 455 Golden Gate Ave., Suite 11000
20 San Francisco, CA 94102-7004
21 415.703.1188
22 ATTORNEY FOR PLAINTIFF

23 DENIS F. SHANAGHER
24 Luce, Forward, Hamilton & Scripps, LLP
25 Rincon Ctr II, 121 Spear Street., Suite 200
26 San Francisco, CA 94105-1582
27 415.356.4600
28 ATTORNEY FOR DEFENDANT

Executed under penalty of perjury on January 12, 2012, at Sacramento, California.



Sherry Cleckler