

**FILED**  
(ENDORSED)  
MAY 29 2012

DAVID H. YAMASAKI  
Clerk of the Court  
County of Santa Clara  
BY W. Nashed DEPUTY  
Superior Court of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

COURT REPORTERS BOARD OF CALIFORNIA,

Plaintiff,

v.

U.S. LEGAL SUPPORT, INC., & DOES 1-100,

Defendant.

Case No: 1-11-CV197817

FINAL STATEMENT OF DECISION

Trial Date: March 5, 2012  
Closing Argument Dates: March 16, 2012 & April 20, 2012  
Dept: 12

Judge: The Honorable Aaron Persky

This matter came on for court trial in Department 12 on March 5, 2012.

Nicholas Tsukamaki, Esq., appeared for Plaintiff Court Reporters Board of California, and Denis Shanaher, Esq., appeared for Defendant U.S. Legal Support, Inc. Ed Howard appeared for Amicus Curiae Deposition Reporters Association of California. The parties finished presenting evidence on March 5, and presented written closing arguments in advance of the oral argument on March 16. On March 16, the Court requested additional briefing on two issues: 1) what authority exists for licensing boards to remedy unlicensed activity, and 2) whether any authorization exists in the Business and Professions Code for the performance of professional services by a foreign professional corporation, within the meaning of Corporations Code section 13401(c).

1 The parties submitted supplemental briefing on the above issues and gave additional  
2 oral argument on April 20, 2012, when the Court took the matter under submission. On April  
3 26, 2012, the Court issued its Tentative Decision and Proposed Statement of Decision.  
4 Plaintiff and Amicus Curiae filed objections on May 9, 2012. After reviewing the evidence  
5 presented at trial, and considering the arguments of counsel, as well as the objections to the  
6 Proposed Statement of Decision, the Court now issues this Final Statement of Decision. The  
7 Court orders Defendant to prepare a proposed judgment and serve and submit it to the Court  
8 within ten days. Plaintiff may, within ten days after service of the proposed judgment, serve  
9 and file objections thereto.

#### 10 **Procedural History**

11 Plaintiff filed its Complaint for Declaratory Relief on Business and Professions  
12 Code Section 8046 on April 1, 2011. The Complaint contains a single cause of action for  
13 declaratory relief. The Complaint's prayer for relief requests that the Court "declare  
14 Plaintiff's and Defendant's respective rights and duties under Business and Professions Code  
15 sections 125.9, 8008, 8027.5, and 8046, Corporations Code section 13410, and California  
16 Code of Regulations, title 16, sections 2475 and 2480, and declare that Plaintiff has the  
17 authority to issue a citation to Defendant for violation of California Code of Regulations, title  
18 16, section 2475(b)(8)." On June 14, 2011, Defendant U.S. Legal, Inc. answered the  
19 Complaint with a general denial and several affirmative defenses.

#### 20 **Factual History**

21 The main facts in this case are not in dispute. Yvonne Fenner, the Executive Officer of  
22 the Court Reporters Board of California (the "Board"), testified that the Board received  
23 complaints about gift-giving in the court reporting industry.<sup>1</sup> In response, the Board issued  
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25 <sup>1</sup> The Court sustains Plaintiff's fourth objection to the Proposed Statement of Decision, and finds that, in each of  
calendar years 2009, 2010, and 2011, Defendant gave gifts in excess of \$100 (per person) to persons associated with  
a proceeding being reported.

1 subpoenas to several companies in the industry, including Defendant. (Exhibit B.) Defendant  
2 declined to produce any documents in response to the subpoena, and argued that the Board does  
3 not “have jurisdiction under any of its authorizing statutes to investigate non-licensees.” (Exhibit  
4 C.)

5 On October 26, 2010, the Board issued a citation to Defendant for violation of “Business  
6 and Professions Code Section 8046, in conjunction with California Code of Regulations (CCR),  
7 Title 16, section 2475(b)(8), in that Respondent failed to comply with the Professional Standards  
8 of Practice.” (Exhibit 1.) The Citation further alleged that Defendant “has failed to comply with  
9 the Professional Standards of Practice in that respondent has offered incentives or gifts for  
10 depositions over the regulated amount of \$100 per calendar year.” The Citation assessed a fine  
11 of \$2500 on Defendant. On November 16, 2010, Defendant’s counsel wrote to the Board and  
12 asserted that the Board “lacks jurisdiction to issue this citation to USL.” (Exh. I.) Defendant’s  
13 counsel added that because the citation “falls outside the Board’s authority, USL is not subject to  
14 this fine and will not pay it.” Fenner testified that the Board filed this action for declaratory  
15 relief to “confirm that it has jurisdiction so that it can continue to enforce existing regulations.”

16 Plaintiff called Peter Giammanco, Defendant’s national director for court reporting  
17 operations, as an adverse witness under Evidence Code section 776. Giammanco testified that:

- 18 • Defendant uses certified shorthand reporters (“CSR’s”) as “independent contractors, not  
19 employees.”
- 20 • The law firms and other entities that schedule deposition reporting services with  
21 Defendant pay Defendant directly; Defendant sets the rates charged and pays the CSR’s  
22 separately.
- 23 • Defendant’s production department prints the deposition transcripts, putting its logo and  
24 phone number at the bottom of each page, and sends it out to Defendant’s clients directly.
- 25 • Any complaints about the transcripts are fielded directly by Defendant.

- 1 • Defendant provides complimentary deposition suites at its offices.
- 2 • The CSR's who provide services to Defendant are expected to follow the procedures in
- 3 Defendant's Reporter's Manual. (Exhibit 10.)
- 4 • Defendant has approximately thirty shareholders, but Mr. Giammanco is the only
- 5 shareholder who is a CSR.

### 6 Discussion

7 Plaintiff makes a straightforward, linear argument in support of its authority to issue a  
8 citation to Defendant pursuant to 16 CCR 2475(b)(8). Defendant is a "foreign professional  
9 corporation" as defined in Corporations Code section 13401(c), and hence a "shorthand  
10 reporting corporation" as defined in Business and Professions Code section 8040. As a  
11 shorthand reporting corporation, Defendant is subject to all of the Board's rules and regulations  
12 pursuant to Corporations Code section 13410(a) and Business and Professions Code section  
13 8046. Specifically, Defendant must comply with the anti-gift-giving regulation in 16 CCR  
14 2475(b)(8), which prohibits "every person under the jurisdiction of the Board who holds a  
15 license or certificate" from giving gifts exceeding \$100 in a calendar year to any person or  
16 entity "associated with a proceeding being reported."

17 The problem with this argument is foundational. Corporations Code section 13401(c)  
18 defines a foreign professional corporation as a corporation "organized under the laws of a state  
19 of the United States other than this State that is engaged in a profession of a type for which  
20 there is authorization in the Business and Professions Code for the performance of professional  
21 services by a foreign professional corporation." It is undisputed that Defendant is organized  
22 under the laws of the State of Texas, but it is also clear that there is no express authorization in  
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24  
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1 the Business and Professions Code for the performance of court reporting services by a foreign  
2 professional corporation.<sup>2</sup>

3 Plaintiff argues that the “authorization for foreign corporations to perform professional  
4 services, including shorthand reporting services, is implicit in the statutes governing the  
5 nineteen types of professional corporations.” Plaintiff is essentially arguing that section  
6 13401(c) is capable of two different constructions: one that requires an actual, stated  
7 authorization for the performance of shorthand reporting services by a professional foreign  
8 corporation, and one that does not. The Court finds that the second construction is not a  
9 reasonable one, and that the statute is not ambiguous. As noted by the California Supreme  
10 Court in *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4<sup>th</sup> 763, 775, “ordinarily, if  
11 the statutory language is clear and unambiguous, there is no need for judicial construction.”  
12 “Authorization” means the existence of some authorizing language. There is none.

13 Plaintiff’s fallback argument is that Defendant is “engaged in rendering professional  
14 services,” which is the “type of conduct that the Moscone-Knox Act was created to regulate.”  
15 As a consequence, “Defendant should not be permitted to escape regulation under that statute  
16 merely because the Business and Professions Code does not explicitly authorize the  
17 performance of court reporting services by foreign corporations like Defendant.” (Plaintiff’s  
18 Supplemental Brief, p. 20. lines 9-15.) Yet the Court Reporters Board is a creature of statute,  
19 limited in its reach to certain enumerated powers and duties. No plausible reading of the  
20 Corporations Code and the Business and Professions Code gives the Board the authority to  
21 issue citations to foreign corporations like Defendant (that do not meet the statutory definition  
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23 <sup>2</sup> The Court sustains Plaintiff’s first objection to the Proposed Statement of Decision, and finds that Defendant,  
24 based on the evidence presented at trial, renders professional services, namely shorthand reporting services, within  
25 the meaning of Corporations Code section 13401. The Court also sustains Plaintiff’s second objection, and finds  
that Defendant is not subject to Business and Professions Code section 8046 because it is not a foreign professional  
corporation, and hence not a shorthand reporting corporation within the meaning of Business and Professions Code  
section 8040.

1 of “foreign professional corporation”) for violating the Board’s anti-gift-giving regulation.  
2 Defendant does not hold a “license or certificate,” and no other statutory language authorizes  
3 the Board to issue citations to foreign corporations like Defendant for violating 16 CCR  
4 2475(b)(8).<sup>3</sup> The Court does not reach the issue of whether Plaintiff is authorized to issue  
5 citations to professional corporations, as defined in Corporations Code section 13401(c), that  
6 render or are engaged in rendering shorthand reporting services for violations of Plaintiff’s  
7 rules and regulations, including Plaintiff’s anti-gift-giving regulation.

8 Amicus offers an alternative to Plaintiff’s fallback argument: the notion that the Board’s  
9 authority to issue citations to entities like Defendant under 16 CCR 2480—including the  
10 issuance of orders of abatement to corporations who are “performing and who have performed  
11 services for which licensure is required as a certified shorthand reporter . . . but who do not  
12 possess a license”—suggests that the Board has the authority to impose lesser sanctions, such  
13 as a citation and fine for noncompliance with the anti-gift-giving regulation. This argument  
14 suffers from a similar defect: there is no statutory authorization for such a power, and this  
15 Court cannot simply invent one.

16 In Plaintiff’s request for statement of decision in its Supplemental Brief, Plaintiff asks  
17 the Court to determine “whether Defendant is authorized to render or engage in the rendering  
18 of shorthand reporting services in California,” and if Defendant is not so authorized, “whether  
19 the Board has the authority to issue a citation to Defendant for engaging in the unauthorized  
20 practice of shorthand reporting.” Plaintiff characterizes these issues as controverted in this  
21 proceeding. Yet the Complaint here simply asks for a “judicial determination and declaration  
22 of Plaintiff’s and Defendant’s respective rights and duties concerning whether Defendant is

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24 <sup>3</sup> The Court sustains Plaintiff’s third objection to the Proposed Statement of Decision, and finds that Business and  
25 Professions Code section 8027.5 does not authorize the Board to issue a citation for a violation of 16 CCR  
2475(b)(8) to Defendant because Defendant is not a “person . . . who holds a license or certificate.” With respect to  
the objections of Amicus Curiae, to the extent that the Court has not modified the language of its Proposed  
Statement of Decision to address those objections, those objections are overruled.

1 subject to the gift-giving provision set forth in California Code of Regulations, title 16, section  
2 2475(b)(8) by way of Business and Professions Code sections 8027.5 and 8046, and  
3 Corporations Code section 13410.” (Complaint, p. 12, lines 7-12.) The Court has addressed  
4 this issue above, and declines to reach the additional issues requested by Plaintiff for two  
5 reasons. First, as argued by counsel for Defendant, Defendant has justifiably relied on the  
6 Complaint to frame the issues at trial, and it would be unfair to change those issues now.  
7 Second, to do so runs the risk of issuing an advisory opinion. As stated in *Selby Realty Co. v.*  
8 *City of San Buenaventura* (1973) 10 Cal.3d 110, 117, “the “actual controversy” referred to in  
9 [Code of Civil Procedure section 1060] is one which admits of definitive and conclusive relief  
10 by judgment within the field of judicial administration, as distinguished from an advisory  
11 opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest,  
12 what the parties may or may not do.”

13 **Orders**

14 Having considered the evidence, the parties’ arguments, and the applicable legal  
15 principles as discussed above, the Court makes the following orders:

- 16 1. Plaintiff’s request for a declaration that Plaintiff has the authority to issue a  
17 citation to Defendant for violation of California Code of Regulations, title 16,  
18 section 2475(b)(8) is DENIED.
- 19 2. Plaintiff shall take nothing by its Complaint.

20 Date: May 25, 2012

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HON. AARON PERSKY