

Volume XVI, Number 2 - March 2011

The Deposition Reporter

Deposition Reporters Association
OF CALIFORNIA, INC.



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President's Message

Anyone For A Game Of Four-Square?



The Disneyland Hotel is abuzz. The invitations are sent, the registration list is full, and it is finally time for our DRA 15th Annual Convention. Court reporters, students and teachers everywhere have been patiently waiting for it to arrive. This is our weekend to relax, to see those we met in school, those we met at our first job or those we've always wanted to meet. Whether we are experienced or newly certified, every court reporter deserves a break from one of the most stressful and mind-intensive jobs in the world. This is our school recess, our spring break. This week, everyone heard the bell ring, and we are piling noisily into the schoolyard to play.

In a world that doesn't understand what we do all day, where we work quietly and solitarily, even while in the same room with lawyers and witnesses, or by ourselves for hours silently in front of our computers, here I see groups of reporters telling their best stories and sharing technical software tips. Just like a game of four-square, being at a court reporting seminar or convention helps us feel like we have

partners, friends and teammates who can play this game and are happy to bounce the information ball back.

In a world where we are confronted with politicians who don't understand that we are not just tape recorders with a pulse, but true professionals who prepare for depositions by reading patents and expert reports, true professionals who make sure that even when lawyers are screaming at each other and over each other, that every critical, potentially life-changing word shines on the page, crystal clear, in the interests of justice, we have a place to go where we can feel empowered by hearing that we are irreplaceable in the litigation process and that our membership dues are achieving great success for freelance court reporters in California.

In a world where even our clients, family members and friends sometimes don't fully appreciate how important and extremely hard our jobs are and wonder why we always seem to work such long hours, DRA creates these events to remind us to celebrate just how special we are.

Looking behind the scenes, I can testify that the group most ready for the much-anticipated schoolyard break is the DRA Board of Directors, Officers and Volunteers.

You may not realize this, but planning and executing this much fun takes a complete year of brainstorming and

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tireless work from our Convention Committee before we even get to toast and clink our glasses at the opening reception.

NCRA has a full-time staff who negotiates contracts, takes registration and secures speakers and entertainment for their conventions. DRA makes this three-day event happen with just one outstanding Executive Director and a tireless band of working reporter volunteers who are all truly amazing, smart and creative people.

http://caldra.org/dra_board_of_directors.asp

Seeing all the smiling faces, the crazy zigzagging conga line at the cocktail party and the close to 300 people talking and sharing in the vendor hall, I know that DRA has once again reached its goal and opened the door so we can all get away from everyday stress and transcript deadlines and enjoy that "recess" that we all need.

<http://www.facebook.com/#!/caldra?sk=photos> <http://www.youtube.com/watch?v=scp1Ad9WrZA>

Let's play again in Monterey!

http://www.calendarwiz.com/calendars/popup.php?op=view&id=37609655&crd=cal_dra&



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Convention Recap

2011 DRA DISNEYLAND CONVENTION RECAP

by John Squires

DRA held its 2011 convention at the Disneyland Hotel February 18-20, 2011. The goal every year is to educate, entertain, connect with old friends, make new friends, and facilitate networking possibilities. Every year that I attend I come away thinking, "Well, it can't get any better," but every year it does get better, and this year was no exception.

Here are some highlights:

Todd Olivas conducted a seminar called the "**Web Tour Guide**." This seminar touched on setting up a blog and the strategy of using YouTube and Twitter to get your message out. Todd passed along information on free sites and tools for use when creating your online presence. It turns out Todd is a natural speaker. His reward for having that ability will, of course, be requests to conduct more seminars.

Monyeen Black and **Sue Campana** presented a seminar called "**Have Briefcase/Will Travel**." Seminars on brief forms are very popular and DRA always seems to have such talented and entertaining presenters for these seminars. Monyeen and Sue were wonderful. I particularly enjoyed their acting abilities in feigning innocence when they were ostensibly looking for a set of brief forms for a particular word and its common phrasing partners and a brief for a particular sexual act was "accidentally" projected on the big screen. That one is going in the DRA classics book.



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The opening reception was perfect, from the food and beverages to the Reggae band and **Mary Bardellini's** conga line. **Ed Howard**, DRA's lobbyist, would be a hit at the Copa. I tried to get out there, but my wife talked me out of it.

Our keynote speaker this year was **Peter Greenberg, America's Travel Expert**. We all expected to be informed by Peter, but we had no idea how entertaining he would be. Great choice by the Convention Committee for keynote speaker.

"Map It Out" was presented by **Ed Howard, Toni Pulone and Karen Klein**. This seminar focused on problems and questions faced by working reporters and firm owners in the reporting arena, as well as demonstrating DepoMap, DRA's code section software.

The Saturday luncheon included presentation of DRA's Distinguished Service Award to **Anne Torreano**; presentation of student scholarships to Tara Muckenfuss, Shirley Lynn and Jessica Guardado; more dancing (my wife held me back yet again); and Mary Bardellini's best act yet, as a pirate who is not so adept with his (her?) hook. Mary, thank you. You truly are a gift.



For those interested in and fortunate enough to engage in international reporting, **Rosalie Kramm and Laura Brewer** presented "Reporting Abroad" and shared their invaluable experience. There are so many different rules and regulations, so much in the way of preparation for such work that makes a seminar such as this a necessity for the traveling reporter.

A seminar to get your juices flowing was presented by **Lisa Migliore, Holly Moose** and myself. This seminar was called "Path to Enlightenment," but in retrospect perhaps should have been called "This Audience Does Not Like Gift-Giving and Contracting." Lisa and Holly shared their knowledge and offered advice on educating attorneys on these hot-button issues. This seminar also experienced an "accident" when Lisa Migliore's Power Point presentation got stuck on the picture of a house of prostitution.

At 7:00 a.m. on Sunday morning **Ned Branch** and **Nancy Patterson** dictated the California Certificate in Realtime Reporting exam. There were a total of 33 applicants who sat for the test. DRA would like to thank Ned and Nancy for once again being so generous with their time.

Laura Brewer and **Teri Darrenouge** presented a seminar on CART and captioning. As general reporting is a mystery profession to the public, CART and captioning are mysteries to a lot of reporters. Thank you, Laura and Teri, for such an enlightening seminar.



One of the most popular seminars was "**Moving To The Reporting Rhythm**," presented by **Eva Nemeth**. Eva is a former gymnast and dancer who instructs on proper methods of sitting, standing, walking, workplace and non-workplace posture. This seminar was packed, which is a sad commentary on the trauma we experience as we perform our job. Eva caught me out in the hall before her seminar and within minutes gave me some relief with my lower back problem. I would be interested in knowing how some of the suggestions Eva offered to the audience have worked out.

There was vendor training presented for Case Catalyst, Eclipse, ProCat, DigitalCAT and StenoCAT as part of the convention package. The student track was very popular. This year we had the largest student attendance ever for a DRA convention. Thank you to all who participated in the student seminars and thank you to the students for attending. Please be assured that you are on track to becoming one of the best of the best by attending DRA functions.

By the way, Sue Campana, one of the convention chairs, won the raffle for the iPad. There seemed to be quite a few "accidents" this year.

Being married to the Executive Director, I know firsthand the amount of time put into convention preparation. We always say as reporters that attorneys have no idea what goes into producing a transcript. The same can be said for a convention. I am not going to attempt to thank everyone who contributed to the convention by name because there are so many and I may forget one or two, but DRA's board and officers want to say what an outstanding job the Convention Committee for the 2011 convention did. Thank you Sue Campana, **Vicki Saber and Charlotte Dunn**.



I'm sure the board, officers and Convention Committee would like to thank our Executive Director, **Vicki Squires**, for her hard work. Besides the months of work beforehand, there is the last-minute work in the "war room" of the hotel.

Thank you to all who volunteered, whether it was preparation, decorations, the raffle table, working DRA's booth, punching CEU tickets, proctoring the CCRR test, running errands. A special

thank you to NCRA's **Tami Smith** for her help and for being such a good sport. Thank you, Lisa Migliore, for your willingness to travel across the country to participate in such an important seminar. Lisa, the greatest compliment we could give you is that we wish you lived in California. You are an inspiration to all of us who care about the future of the profession. Thank you to the student sponsors, to those who made donations to offset costs of the convention and to those who made donations to the war chest established to fight unfair business practices.

Over the years, we have pushed and pushed reporters to attend these conventions. We hear the excuses, we understand the hardships. We are aware it can be costly to attend a convention, especially if it is not in your geographic area. But please look at the bigger picture, the networking possibilities, the educational opportunities that will make you more efficient and productive. I can't tell you how many times I've said "If you make one connection, pick up one job, you have more than paid for the cost of the convention." Here is a perfect example: Often as you walk the halls in between seminars you will see firm owners on the phone with their offices. They are sometimes working on the calendar for the coming week. I was walking down the hall to run an errand during the convention when a firm owner, who was on the phone, yells out "John, are you working Tuesday? Do you want to work?" Well, I just paid for my convention. A couple of years ago I picked up a 14-copy expedited job because I met someone at the DRA convention cocktail party who was looking for a reporter in San Francisco the next week. So to those of you who for whatever reason don't attend, let me just say, you have no idea what you're missing.



Our 2012 convention is going to be in Monterey. For those of you who have never been to Monterey, you owe it to yourself to attend. Another opportunity to be educated, entertained, an opportunity to network with the best deposition reporting firms in our state, and you can write it off. So no excuses. Start planning now. We want to see you in Monterey in 2012.



By Vicki Saber, Convention Committee Chair ...It's one month post our 2011 Disneyland Convention, and I'm still vacillating between relief that it's over and hunger for the exhilaration of it all. The old saying of "What doesn't kill you makes you stronger" comes to mind, and although it may sound like a bit of an exaggeration here, maybe the quote is referencing ALL the challenges in life we pursue and is not limited just to huge life lessons.

The convention committee, along with the entire DRA Board and volunteers, worked tirelessly to bring you a weekend full of education, social fun, networking and camaraderie. Knowing that such a large undertaking will of course have its naysayers, if we fulfilled any part of that mission, I say we achieved success. I hope you feel the same way.

February 2012 will be here before we know it, and the fast-paced excitement of coordinating our next convention will soon be upon us. If you've never volunteered at a convention in the past, give it some thought. New ideas and creativity are the hallmarks that make associations thrive and endure. And everyone has an opinion how things can be better. We hope you will join us in Monterey!

By Rosalie Kramm ...The "Web Tour Guide" seminar by our very own District 6 representative Todd Olivas was informative and funny! Todd explained how to set up a blog and the strategy of using YouTube and Twitter to get your message out, among other helpful topics. What was great about this seminar is it gave the audience free sites and tools to use when creating your online presence.

The "**Reporting Abroad**" seminar with speakers Laura Brewer and Rosalie Kramm, gave direction for court reporters who want to work internationally. Laura outlined the mechanics of buying the right equipment and how to stay healthy for your job assignment. I focused on the laws of different countries when it comes to swearing in a witness and bringing in your steno equipment. Did you know it is against the law in China to take a deposition? It could mean being arrested. The advice at the end of the seminar, if you want to report internationally, is to put together an "International Resume" that lists everything from any working visas you may possess to having an inventory of the equipment you are ready to bring to an international job.

By Valerie Eames ...The realtime test had an excellent turnout at 7:00 a.m. on a Sunday morning! Hosted by Ned Branch and Nancy Patterson, the California Certificate in Realtime Reporting (CCRR) attracted a total of 33 candidates ready to test their realtime skills. The CCRR is a validated skills test designed to measure the basic realtime writing competency of court reporters. It consists of five minutes of live two-voice dictation at 180 words per minute, requiring 96% accuracy to pass. Most of the candidates felt good about it afterwards. They thought it was a fair test. Good luck to all of you!

By Diana Sasseen ...Rick Louie, Stenocat guru, offered Stenocat vendor training at the convention. He started out with a list of "Top Editing Items to Know." There were 46 items on the list. He didn't want to go over what all of us already knew, so he asked up to look at the list and tell him which items we needed to discuss. It was a great way to get us all engaged and on the same page. He also went over all the "bells and whistles" in the latest update, i.e., "Smart Briefs," "Seating Chart" and more and gave a demonstration of each. Rick did a great job of answering all of our questions. I for one learned quite a bit – and definitely learned how much more my software can do than I was aware of. Thanks, Rick & DRA for the great information.

Lisa Migliore Black, Holly Moose & John Squires presented "**The Path To Enlightenment**" to a packed room. Also in attendance were representatives of our own Court Reporters Board of California and NCRA. This seminar updated us all on some of the more egregious gift-giving practices of firms throughout the country and particularly California. There was much discussion on how this practice affects us as reporters as well as how it can negatively affect the law firms that are accepting these gifts. Many audience members came to the microphone to tell their own experiences and to ask questions, and ideas were passed back and forth between the panel and audience members as to what we can do individually and as a group to protect our profession from these unethical practices. It was a very informative seminar and really got us all fired up to work towards eliminating these practices and evening out the playing field for all of us.

By Sue Campana ...A record number of students took part in DRA's student track. The day started with Mary Gallagher giving her highly-respected and much-sought-after tips, advice, and counsel on how to practice, take tests, and get out of school. An open question-and-answer panel consisting of NCRA Vice President Tami Smith, freelance reporter/agency owner Valerie Eames, freelance reporter Cynthia Dunbar, and newly-licensed freelance reporter Cheryl Haab followed Mary Gallagher's presentation. We then segued into a lively and informative game of "The Wonderful World of Depos" where the students' knowledge of the ins and outs of depositions was put to the test. A mock CSR exam presented by Dixie King and Carolee Freer wrapped up the day.

By Robin Rivielo ...At DRA's Fall Seminar in Sacramento this past September, attendees were able to participate in free CAT training, generously provided by Stenograph (CaseCATalyst) and Advantage Software (Eclipse). At the recent convention in Anaheim, three additional vendors joined in, and conference attendees were able to benefit from that training as well. DRA was pleased to provide the venue for users of Case CATalyst, Eclipse, ProCAT, DigitalCAT, and StenoCAT software to take advantage of three hours of complimentary training.

Sandi Starbuck presented highlights of Case CATalyst Version 12, soon to be released, and she also discussed keyboard maps and macros, tools to streamline the editing process. Anastasia Swinkles gave a brief overview of the upcoming software update to Total Eclipse Version 5, an amazingly interactive program designed to help new and seasoned reporters. Then she went back to the basics, discussing ways to increase translation rates, streamlining dictionary entries, and reviewing the amazing powers of automatic fill-in fields.

Thursday night in the "War Room"... Who is Vicki Squires, and how does she do it? A DRA convention wouldn't be a DRA convention without Vicki Squires. To spend a couple of hours in her room the night before a convention is an amazing experience. As a conference attendee in the past, I have just walked into a convention, gone to the registration desk, gotten my packet, picked up my bag, and happily attended the seminars and luncheon and any other functions, always so careful to get that card punched to earn my CEUs.

A DRA convention is a smooth-running machine. It seems things go off without a hitch. Everything seems to work. The smiling faces at the registration table seem to always know what to do if there is any difficulty or problem. The raffle table is impressive, well-organized, and fun! The food and drink arrive like clockwork. The lunches are great. The social events provide a relaxing environment to meet with friends. I have always left a convention with the satisfied feeling that I accomplished what I needed to. I learned. I mingled. I got those CEUs. I saw the latest equipment. I chatted with vendors. I was inspired by those who have been in the profession longer than I have who seem to just have everything together. But I have to admit that I never really gave much thought to what must have happened behind the scenes to put on

a convention.

Being on the DRA Board, one begins to understand what is really involved in putting on a convention. There are committees and plans and conversations, contacts with speakers, arrangements to be made, hotel rooms to book, food and beverage contracts to be negotiated, written materials to be assembled, AV equipment to be ordered. The list goes on and on.

To step into Vicki Squires' room the night before the convention was a surreal experience. Even though it was a large suite, there was very little floor space for walking. Bodies and piles of papers and convention bags and convention goodies filled the room. The air was thick with revelry and teamwork and joking and the friendly conversations of friends who had known each other for years, had worked together, had streamlined DRA into the fantastic organization that it is today. The newcomers were made to feel welcome by the old-timers who have been around since DRA's inception. The experienced board members and friends of DRA who devote so much of their time and energy to DRA showed us the ropes, showed us what needed to be done. Over in the corner, seemingly oblivious to the commotion and noise, Vicki Squires sat intently focused on her computer, finishing up the convention details. She worked and worked and worked, quietly and competently, while the rest of us went about our merry way assembling convention packets. We left her room around 1:00 a.m., knowing that she wouldn't get to bed until probably 3:00 a.m., and then we saw her the next morning in her bright red blazer looking as if she had just returned from a relaxing vacation.

How does she do it? It's the mystery of DRA. Another successful DRA convention, with Vicki Squires at the helm.

By Jeri Cain ...Being involved in the convention on the raffle committee this year was exhilarating, to say the least. I had no prior experience in this arena. I always leave the task of buying lotto tickets to my other half, who has strong hopes of winning big and retiring on some remote tropical island. Fortunately, I found myself surrounded with experienced and earnest helpers to make my transition from neophyte to experienced raffler an easy one. The generous donations from individual reporters and firm owners ran the gamut from reporter-specific technology, such as realtime kits and thumb drives, to items such as a Nook, VIP speed-racing tickets, a year's subscription to a transcript conversion program, jewelry, gift certificates for local restaurants, spas, Nordstrom's and Macy's. We so appreciate the generous donations from all of you, including our wonderful exhibitors, who give of themselves year after year.

Being involved in the raffle experience also presented me with the unique opportunity to speak one-on-one with so many DRA members. I wouldn't have traded the experience for anything. A special thanks to Leslie Toledo, Katherine Wayne and Holly Moose for showing me the ropes. Additional thanks to Charlotte Dunn, Mary Pierce, Diana Sasseen, and Derek Hoagland for your help and support when additional hands were needed.



Here's some much-appreciated feedback from our attendees:

"Thank you so much for your hard work. I had an amazing time at the DRA convention (my first convention) and will definitely be attending future conventions!"

"I had a blast. Made new friends. You and everyone I met was awesome, so nice, friendly, professional and fun. I want to thank the committee for putting on a great convention. I liked one track so everyone can be together and all enjoy their input. I am very happy I was part of this great group of professionals."

"I tip my hat to you and to all board members who dedicate and volunteer time, talent and personal experiences to the working reporter. This past weekend I left with not only a briefcase of briefs but with a briefcase of know-how! Spreading the word 'DRA' and looking forward to Monterey."

"Great job on the convention! It's always fun to catch up with old friends and make some new ones, and as always, the new briefs I picked up were worth the price of admission! The one area that I think we could improve upon would be the exhibitors. I was so looking forward to picking up some cables and typical court reporting gadgets, and there were none to be found. My hope for Monterey would be that we have more court reporting directed vendors. Having said that, I do want to thank you and your committee for all your hard work. It is truly appreciated."

"I attended all three days. It was wonderful. Peter Greenberg and Eva were both exceptional in their own rights! Also, I thought Friday night's welcoming reception was right on the mark, as was Saturday's luncheon. The food was very good. I requested onsite a vegetarian lunch entree and they immediately responded. And it was one of the best restaurant meals I have had in a long time."

"I enjoyed the atmosphere of Disneyland for the convention and it afforded lots of folks alternatives for family and friends and off-convention hours. So that was a big A plus. on the above-mentioned topics. I would like to see more time, personally, on the software vendor breakouts. That was time very well spent. I think you folks, all of you, did just a super job of pulling the entire weekend off! Kudos to all of you. It's such hard work, and we all really appreciate it!!"

"I'm glad I went to that seminar 'The Path Of Enlightenment' because it fired me up."

"DRA rocks!"

<http://www.facebook.com/#!/caldra?sk=photos>

<http://www.youtube.com/watch?v=scp1Ad9WrZA>

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Distinguished Service Award

DRA'S 2011 DISTINGUISHED SERVICE AWARD GOES TO . . . ANNE TORREANO!

DRA was honored to present Anne with her award at the Disneyland convention luncheon on February 19th, 2011.

Thank you, Anne, for your tireless contributions to the stenographic profession and for all you have done to make this association what it is today.

Introduction by Toni Pulone ...

I have the great pleasure and privilege of presenting the DRA's Distinguished Service Award for this year to Anne Torreano. To those of you who know Anne well, it may not come as a surprise for you to learn that she was very reluctant to accept this award, because she was convinced that she didn't deserve it. I also had the pleasure of being asked by the DSA committee to break the news to Annie that she had been selected for this award, and I expected her to be surprised, and I was hoping for maybe even a tear or two, and she was indeed surprised but said, very definitively, that no, she absolutely could not accept this award because she wasn't an appropriate choice, hadn't done enough, shouldn't get it because she was just an admin person for DRA, just served as a worker bee. The conversation played on, with me pointing out all the reasons why she was the perfect candidate for the award, and with Anne increasingly resolute that she could not and would not accept. I didn't have much luck in changing her mind at that time, but fortunately the DSA committee was later successful in persuading Anne that they had very strong and supportable reasons for their choice, and so we now, happily, are here to present this award to the most deserving Ms. Torreano, and she is here to receive it.

I'd like to list for you some of the many tasks that our recipient has taken on for DRA over this first fifteen years of its existence, though the list is so long that I'm likely to have forgotten some, and I'd bet even Anne has. First, she was there in the very first days of DRA, involved in the planning and organizing, attending the first meetings, adding her encouragement, enthusiasm and good, solid thinking. Those contributions of spirit and time, she has always offered to DRA without limit. She soon served on the Board of Directors, representing District 2, and in very short time was elected to the officer ranks of Vice President and then President.

Before, after and during her years in these roles, she took on innumerable committee chairs, and in some cases was even the person to suggest the formation of certain committees, which she then would often take on the responsibility for. She has chaired and organized more of our conventions and fall seminars than anyone else in DRA, and has always done them successfully. She also has served and is serving as chair of public relations, membership, and strategic planning. She worked on the development of DRA's realtime test, the CCRR, the first realtime test offered by any state association, and later served on a joint committee of DRA and COCRA to establish a joint realtime test offered by the two associations. Meanwhile she has volunteered as a proctor on most dates when these realtime tests have been given. When it was decided that DRA should send a representative to NCRA Board meetings, Anne was the first to volunteer for this duty and has attended often since.

In our very early days, Anne devoted countless hours to the creation of a logo for DRA and then

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to developing DRA's earliest version of a pocket guide for depo reporters, and she later offered assistance to Karen Klein when that depo-guide concept was modified to become our now online DepoMap. More recently, Anne has spearheaded DRA's ventures into the world of social media by suggesting and then taking on the responsibility for the creation of and the ongoing monitoring of our Facebook page and Twitter account.

As you can see, Anne's description of herself as only a worker bee within DRA seriously minimizes the importance of the role that she has played in the founding, organizing and building of this wonderful association. It is the worker bees of this world that perform all the work that keeps the wheels turning and keep DRA alive and well and on target. I truly don't know what we would have done without Anne's intelligence, common sense and tireless efforts for the past 15 years. And fortunately, her love and devotion for this remarkable group of people, I feel certain, will ensure that we can continue to depend upon her contributions long into the future.

Please join me in thanking and congratulating our 2011 recipient of the Distinguished Service Award, Anne Torreano.





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Tax Consequences of Incentives



Dear DRA or CCRA Member:

Both of California's court reporting trade associations representing deposition reporters want to make you aware of some **important tax and legal information for you and your clients.**

As you may know, many court reporting firms have been promising valuable incentives to law firm secretaries and assistants in exchange for those secretaries and assistants booking depositions with the firm. DRA and CCRA retained the law firm of Hanson Bridgett to review the tax implications of these incentives. According to the Hanson Bridgett analysis, your clients should be aware that **offers of such incentives raise potentially serious tax consequences for law firms and their employees.** As Hanson Bridgett writes:

Given that the incentives provided by Reporting Firms in exchange for business are payments for services rather than gifts, the [Internal Revenue Code] requires the recipients of those payments to treat the value of the incentives as gross income. This means that recipients must report the value of the incentives they receive as income on their tax returns. Failure to do so could result in the assessment of additional taxes, interest and penalties by the Internal Revenue Service.

A law firm having a general policy in place may not be enough to avoid tax questions, according to the memo:

Where law firms have policies in place prohibiting employees from accepting incentives, serious tax issues may still arise to the extent these policies are not enforced.

Moreover, the memo details that there are serious tax and IRS issues as well for the court reporting firms offering these incentives. The memo can be found by clicking here: <http://bit.ly/hNrUFA> and <http://data.memberclicks.com/site/ccra/HansonBridgett.pdf>. (Editor's note: The press release can be found by

clicking here: http://www.caldra.org/MediaFiles/DRA_newsletter_2011_March_Tax_Memo_Press_Release.pdf)

The Hanson Bridgett memo explaining the tax implications of such incentives offered in exchange for business comes on the heels of the California Court Reporters Board citing and fining U.S. Legal for violating the Board's regulations on so-called gift giving. www.courtreportersboard.ca.gov/lawsregs/cite-fine.pdf

Our organizations have long believed that for the market to promote high quality transcripts at reasonable prices, quality and price – not goodies– must be the main reason to select deposition services. Certainly, it is difficult to imagine selecting other licensed professionals (lawyers, doctors) on the basis of such incentives, and for good reason: incentives distort the market away from rewarding quality reporting and, by doing so, hurt the interests of justice.



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You are free to provide the Hanson Bridgett memo to your clients if, in your judgment, you feel your clients would be interested in or benefit from them.

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Memorandum

TO: Deposition Reporters Association of California
California Court Reporters Association

FROM: Wendy L. Tauriainen

DATE: February 11, 2011

RE: **Taxation of incentives given by court and deposition reporting firms**

I. Issue Presented.

Deposition and court reporting firms ("Reporting Firms") often provide incentives to legal assistants, attorneys, and others in exchange for booking the Reporting Firm's services. These incentives can have significant value, such as bottles of champagne, video game systems, department store gift cards, and points to be earned toward vacations. This memo will analyze the tax consequences to both Reporting Firms and recipients of such incentives.

II. Tax Consequences to Recipients.

The IRS has recently become more attuned to the issue of treating so-called "gifts" as income. In 2006, the IRS reached a settlement with the Academy of Motion Picture Arts and Sciences involving the value of gift bags distributed to presenters and performers of its Academy Award shows.¹ The IRS stated that the recipients of these gift bags generally must report the fair market value of the bag and its contents as income.² While the gift bags are called "gifts," they are not gifts for income tax purposes because they are not given "solely out of affection, respect, or similar impulses for the recipients of the gift bags."³ Instead, they were provided in exchange for the artist performing or presenting at the Awards show.⁴ The settlement between the IRS and the Academy involved the Academy's promise that it would distribute tax information to recipients of the gift bags notifying them of their responsibility to satisfy their tax obligations.⁵ The IRS news release regarding the settlement stated that the IRS would continue to focus on compliance by recipients to ensure that the fair market value of the gifts is reported as income.⁶ The IRS also stated it would continue to monitor compliance by the providers of gift bags to ensure that Form 1099s are issued to recipients.⁷ The Academy has since discontinued

¹ IRS News Release IR-2006-128.

² IRS "Gift Bag Questions and Answers". (2006), <http://www.irs.gov/newsroom/article/0,,id=161153,00.html>.

³ *Id.*

⁴ <http://www.irs.gov/pub/irs-utl/academyawards.pdf>.

⁵ IRS News Release IR-2006-128.

⁶ *Id.*

⁷ *Id.*

the practice.⁸ The Reporting Firm incentives are very similar to the awards shows gift bags -- they are things of value in exchange for a benefit conferred -- and should be treated similarly to ensure compliance with tax rules.

A. Gift or Payment for Services?

The tax consequences to the recipient depends on whether the incentive is a gift or payment for a service. True gifts are not included in the gross income of the recipient.⁹ Whether or not a transfer is a gift is determined by examining the intent of the transferor.¹⁰ The absence of a legal or moral obligation to make the transfer does not make the transfer a gift.¹¹ An incentive will be treated as a taxable payment for services unless the motive for the transfer is "detached and disinterested generosity" made out of "affection, respect, admiration, charity or like impulses."¹² This is true even if the transferor receives no economic benefit from the transfer.¹³

Incentives given by Reporting Firms in exchange for bookings will not be treated as gifts for tax purposes because there is a clear relationship between the incentive and the performance of a service by the recipient. The *quid pro quo* nature of the transaction removes any possibility that the incentive is given out of disinterested generosity. Further, even if the incentive were characterized as a prize or award, the IRC specifically includes amounts received as prizes and awards in gross income unless the prize or award is transferred directly to a charity.¹⁴

Given that the incentives provided by Reporting Firms in exchange for business are payments for services rather than gifts, the IRC requires the recipients of those payments to treat the value of the incentives as gross income.¹⁵ This means that recipients must report the value of the incentives they receive as income on their tax returns. Failure to do so could result in the assessment of additional taxes, interest and penalties by the Internal Revenue Service.

B. Can the Income Be Excluded by the Individual Recipient?

⁸ Academy of Motion Picture Arts and Sciences "Academy and IRS Reach Gift Basket Accord" (2006), <http://www.irs.gov/pub/irs-utl/academyawards.pdf>.

⁹ IRC Section 102.

¹⁰ See *Commissioner v. Duberstein*, 363 U.S. 278 (1960) ("Gift" to taxpayer of automobile in recognition of business referrals made to business friend was payment for services despite taxpayer's reluctance to accept gift).

¹¹ See *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716, 730 (1929) (Payment by employer of employee's income taxes was not a gift despite lack of obligation on employer's part for such payment).

¹² See *Commissioner v. LoBue*, 351 U.S. 243, 246 (1956) (Transfer of stock options to employee not made "with the kind of detached and disinterested generosity which might evidence a 'gift' in the statutory sense."); *Robertson v. United States*, 343 U.S. 711, 714 (1952) (Taxpayer's receipt of prize money for a winning symphonic composition constituted taxable income rather than a gift).

¹³ See *Robertson*, 343 U.S. at 714.

¹⁴ IRC Section 74; Treas. Regs. Section 1.74-1(a)(1).

¹⁵ IRC Section 61(a). (Stating gross income means income from whatever source derived, including compensation for services, including fees, commissions, fringe benefits, and similar items.)

1. Incentive Given by Reporting Firm to Individual.

Where the incentive is given directly by the Reporting Firm to an individual attorney or law firm employee, it is unlikely that an individual attorney or law firm employee could exclude the value of the incentives from income. Given the "payment for services" nature of the incentives, the fair market value of the incentives must be reported by these recipients as taxable income.

2. Incentive Given by Reporting Firm to Law Firm.

Similarly, an incentive given by the Reporting Firm to a law firm, which then transfers the incentive to its employee, may also be includible in the employee's taxable income. Gifts by an employer to an employee may not be excluded from being considered income of the employee.¹⁶ However, the IRC does permit the exclusion from income of certain fringe benefits.¹⁷ Thus, whether the law firm must impute income to the employee for the value of any incentives the law firm receives from a Reporting Firm and then passes on to an employee depends on whether the incentive falls under any of the exceptions in the fringe benefit rules.

The only fringe benefit exception which could apply to incentives is the "de minimis fringe." A de minimis fringe benefit is one which is so small as to make accounting for it unreasonable or administratively impracticable.¹⁸ While de minimis fringe benefits can be deducted as business expenses, they will not be included in the recipient's gross income.¹⁹ The Treasury Regulations give examples of benefits which do and do not qualify as de minimis. For example, occasional typing of personal letters by a company secretary, occasional cocktail parties, traditional birthday or holiday gifts of property with a low fair market value (but not cash), and flowers provided on account of illness are all de minimis fringe benefits and may be excluded from gross income.²⁰ By contrast, season tickets to sporting or theater events, membership dues to a country club or gym, or even use of an employer-provided vehicle more than once a month are not de minimis fringe benefits and must be included in income.²¹ Further, no cash or cash equivalent (such as a gift certificate or gift card) will qualify as a de minimis fringe benefit.²²

The value of the incentive provided to the law firm by the Reporting firm, and then passed onto the employee, may or may not be excludible from the employee's income under the de minimis fringe benefit exception depending on the nature and value of the incentive. A department store gift card will never be excludible because it is a cash equivalent. Items like theater tickets or group meals may be excludible assuming they are given so infrequently both to the employees as a whole and to individual employees as to make

¹⁶ IRC Section 102(c).

¹⁷ IRC Section 132(a).

¹⁸ IRC Section 132(e).

¹⁹ See, e.g., IRS Field Service Advice 200219005 (December 31, 2001).

²⁰ Treas. Reg. Section 1.132-6(e)(1).

²¹ Treas. Reg. Section 1.132-6(e)(2).

²² Treas. Reg. Section 1.132-6(c).

accounting for them unreasonable or impracticable.²³ Of course, determining how frequently or infrequently these items are distributed, and to whom, requires some degree of administrative tracking, which necessarily hinders an argument that such tracking is unreasonable or impracticable.

If the law firm determines that the fringe benefit is not excludible as a de minimis fringe, it must include the fair market value of the benefit in the employee's wages and withhold the appropriate employment taxes. Failure to do so could subject the law firm to additional taxes, penalties and interest. Further, the employer could be required to issue amended W-2s to affected employees who would then be required to file amended tax returns and possibly pay additional tax, interest and penalties.

3. Similarity of Some Kind of Incentives to Tips.

Alternatively, a law firm may be required to withhold and pay employment taxes based on the kind of the incentive received by the employee because of the similarity of incentives to tips. Similar to tips, incentives are paid by Reporting firms to a law firm's employees and are payments made in the course of the employee's employment. Employees are required to report to their employer cash tips received in amounts over \$20 in one month.²⁴ Employers are then obligated to withhold employment taxes from those amounts. "Cash" tips for these purposes includes "monetary media of exchange."²⁵ Tips paid in the forms of passes, tickets and other goods or commodities are not included in the employee's wages.²⁶ Thus, where incentives are paid in the form of things like pre-paid charge cards, or other cash-equivalents, an analogy can be drawn to the reporting and withholding requirements which apply to tips, leaving the employee potentially obligated to report the value of the cash-equivalent incentives to the employer and the employer potentially obligated to withhold employment taxes on those amounts.

4. Tax Liability of Law Firm for Incentives Paid To Their Employees Acting Within the Scope Of Their Employment.

When an incentive is provided to, say, a paralegal or a secretary for booking a deposition at the instruction of a member or another employee of the firm, the question arises: who is the recipient of the incentive, the law firm or the employee? No authority found conclusively determines the answer. Law firms therefore cannot with precision predict how the Internal Revenue Service will treat the matter and, in fact, the issue may turn on the specific facts of each case. As discussed in the Conclusion, law firms may want seriously to weigh the pros and cons of permitting their employees to receive such incentive gifts, for this and all of the other reasons just discussed.

²³ Treas. Reg. Section 1.132-6(b).

²⁴ IRC Section 6053(a).

²⁵ Treas. Reg. § 31.3121(a)(12)-1.

²⁶ *Id.*

III. Tax Consequences to Reporting Firms.

A. Treatment of Incentives as “Kickbacks.”

IRC Section 162(c)(2) disallows business expense deductions for payment of illegal “kickbacks.” Kickbacks are defined as payments that could subject the payor to criminal penalty or the loss of license or privilege to engage in a trade or business.²⁷ Under the California Code of Regulations, the Court Reporters Board of California may suspend, revoke or deny certification of a shorthand reporter for directly or indirectly giving any gift, incentive, reward or anything with a value exceeding \$100 in aggregate during a calendar year to any person or entity associated with a proceeding being reported.²⁸ This rule also applies to Reporting Firms which are corporations and thus under the jurisdiction of the Court Reporters Board of California.²⁹ While Reporting Firms that qualify as “professional corporations” under California Corporations Code section 13401(b) themselves are not required to be licensed, they are nevertheless in the view of the California Court Reporters Board subject to the statutes and regulations governing licensees.³⁰ California Business & Professions Code section 8019 makes any violation of the statutes regulating the profession a misdemeanor. Thus, if a Reporting Firm provides an incentive that violates the statutes in the Business & Professions Code, it also commits a misdemeanor, making application of IRC Section 162(c)(2) a possibility.

B. Treatment of Incentives as Gifts.

Reporting Firms may be incorrectly treating the incentives given to specific individuals in exchange for business as “gifts” and deducting some or all of the cost of the incentive as a business expense. The IRC allows a business expense deduction for gifts to an individual which do not exceed \$25 in one year.³¹ However, to be deductible under this rule, the gift must be an item which is not included in the recipient’s gross income. For these purposes, “gifts” include packaged food to be consumed later and tickets to a place for entertainment as long as the transferor does not accompany the recipient.³² As discussed in Section II above, Tax Consequences to Recipients, these incentives do not qualify as gifts for this purpose and may not be deducted as a business expense under this rule.

The IRC also allows a business expense deduction for incentives given to a recipient other than an employee of the transferor, *as long as the value of the incentive is includible in the*

²⁷ IRC Section 162(c)(2).

²⁸ California Code of Regulations Section 2475(a) and (b).

²⁹ California Business and Professions Code Section 8046; California Code of Regulations Section 2468(a).

³⁰ On October 26, 2010 the California Court Reporters Board issues an administrative citation and fine against U.S. Legal for violating Business & Professions Code section 8046 and the Board’s regulations regulating gifts. <http://www.courtreportersboard.ca.gov/lawsregs/cite-fine.pdf> ,

³¹ IRC Section 274(b)(1). (“No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds \$25.”)

³² Treas. Reg. Section 1.274-2(b)(1)(iii)(b).

recipient's gross income.³³ This section is an exception to the rule disallowing deductions for entertainment expenses. If the incentive is something in the nature of "entertainment," it will only be deductible if specific requirements are met. For these purposes, entertainment includes things like vacations given out in exchange for services performed.³⁴ However, to be deductible under this rule, the Reporting Firm must issue a Form 1099 to the recipient if the total value of the incentives in one year exceeds \$600.³⁵

C. Gifts to Law Firms.

As discussed above, IRC Section 274(b) limits the deductibility of gifts to individuals to \$25. However, because the section refers to a gift to *an individual*, gifts to law firms in amounts over \$25 may be deductible. To be deductible, the Reporting Firm must make the gift with no intention that it will be enjoyed by any particular person and the Reporting Firm must not reasonably be able to ascertain the ultimate recipient of the gift.³⁶ This means that, to qualify for this exception from the \$25 limit, the law firm must be large enough that the Reporting Firm can reasonably claim it did not know who the ultimate recipient would be. Recalling that this deals only with whether the Reporting Firm may deduct the cost of the incentive, not to whether the incentive is income to someone or something else, the likelihood of this argument succeeding when, as here, the incentive is provided in exchange for booking identifiable business is unclear.

The deduction available for gifts to business entities seems to conflict with the Section 102 requirements that "gifts" must be made out of disinterested generosity. The deduction is aimed clearly at transfers where the transferor believes there is some business advantage to be gained, rather than pure generosity. However, the Treasury Regulations regarding these gifts refer to items like theater tickets, books and "several" baseball tickets.³⁷ It is arguable that gifts to law firms that exceed an as-yet undefined threshold, would no longer qualify as "gifts" and would not be deductible.

An additional complication is that, until recently, only payments made to law firms which operated as partnerships triggered the issuance of a Form 1099; payments made to law firms operating as corporations were exempt from the requirement.³⁸ However, a recent change in

³³ IRC Section 274(e)(9) (Allows deduction of expenses "includible in the gross income of a recipient . . . who is not an employee of the taxpayer as compensation for services rendered or as a prize or award . . .")

³⁴ Treas. Reg. Section 1.274-2(c)(5) ("[I]f a manufacturer of products provides a vacation trip for retailers of his products who exceed sales quotas, as a prize or award includible in gross income, the expenditure will be considered directly related to the active conduct of the taxpayer's trade or business."); Treas. Reg. Section 1.274-2(b)(1)(iii)(a) ("[A]ny expenditure which might generally be considered either for a gift or entertainment, or considered either for travel or entertainment, shall be considered an expenditure for entertainment rather than for a gift or travel.")

³⁵ IRC Section 274(e)(9).

³⁶ Treas. Reg. Section. 1.274-3(e)(2).

³⁷ *Id.*

³⁸ The exemption does not extend to payments for legal services, which must be reported on Form 1099 whether or not the law firm is a partnership or a corporation. IRC Section 6045(f).

the law has eliminated the exemption for payments of more than \$600 made to corporations after December 31, 2011.³⁹ Thus, for incentives over \$600 paid in any year after December 31, 2011, Reporting Firms will be required to issue Form 1099s to both corporate law firms and partnerships. Reporting Firms unaware of this change who fail to issue Form 1099s to sole practitioners who practice law as corporations, could be subject to tax penalties.⁴⁰ Of course, as mentioned, even if the value of the incentive is less than \$600 and the recipient doesn't receive a Form 1099, the recipient must still report the income unless it can be otherwise excluded.⁴¹

D. Substantiation Requirements.

Business expenses are not deductible unless the taxpayer properly substantiates the expense. This often means detailed recordkeeping about the nature of the expense including the recipient of the gift, the amount, and the purpose. A more thorough discussion of the substantiation rules is beyond the scope of this memo. However, failure to meet the requirements can have serious tax impacts to the Reporting Firm that improperly deducts incentive expenses without proper substantiation.

IV. Other Issues.

Incentive payments may also implicate state income tax rules and ethical issues. National and state court reporting associations and regulatory boards promulgate limits on the value of incentives which can be distributed per recipient on the grounds that such payments may taint the impartiality of the reporter with regard to the parties to the action.⁴² Further, incentive payments by large Reporting Firms may violate the unfair competition rules of the California Business and Professions Code. These issues are not addressed in this memorandum, but we would be happy to do additional research if that would be useful.

V. Conclusion.

Incentives distributed to employees of law firms by Reporting Firms in exchange for bookings are not gifts. These incentives clearly represent income and must be reported by somebody, depending upon who the IRS deems the recipient to be. Aside from the ethical and professional prohibitions against these incentives, both recipients and the Reporting Firms risk potentially serious tax consequences, depending on the value of the incentives.

³⁹ IRC Section 6041(i); Act Sec. 9006(c) of Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148).

⁴⁰ IRC Section 6721. Failure to file penalties have been increased beginning with Form 1099s due after December 31, 2010. Penalties range from \$30 per return for returns filed with correct information and no more than 30 days late to a minimum penalty of \$250 per return for failing to file due to intentional disregard of the law.

⁴¹ IRC Section 1.

⁴² See, e.g., National Court Reporters Association Code of Professional Ethics limiting incentives to \$100 per recipient per year (<http://ncraonline.org/NCRA/codeofethics/>); see also California Code of Regulations Section 2475(b)(8) limiting incentives to \$100 per recipient per year.

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For attorneys and law firm employees, failing to report the value of the benefits received as income, and paying tax on that income, could result in the imposition of tax and penalties. Where law firms have policies in place prohibiting employees from accepting incentives, serious tax issues may still arise to the extent these policies are not enforced. Similarly, if a law firm receives the incentive and passes it along to an employee, there could be both income and employment tax consequences for the employee and the law firm.

Finally, a Reporting Firm that improperly deducts the cost of the incentives (for example where the incentives are actually kickbacks, the deduction exceeds the allowable amounts, or the Incentives are not properly substantiated) could also result in the imposition of additional tax and penalties on the Reporting Firm.

Overall, incentives provided in exchange for business present significant risks for both the Reporting Firms and the law firms and law firm employees who receive them.

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



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Tax Memo Hits Home

DRA received the following anonymous email three weeks after the tax opinion was released:

Hello and I hope your Friday is going well.

I am involved in securing Court Reporters and Litigation daily in my practice and I have been on the outside looking in at your latest campaign to eradicate the Gift Giving process involving Court Reporters and Law Firms.

Be very, very careful what you ask for. Whether it's a Fruit Basket, Starbuck's Card or a Bloomingdale's Shopping Card - the consensus is that all 30 plus Secretaries in my immediate area as well as over 100 Secretaries my

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colleagues/ friends employ all very much look forward to these gifts.

Your comments regarding the IRS and Tax Incentives etc are breeding a very bad taste in the Legal Communities mouth.

What's next?? Cups of coffee and donuts can't be dropped off? Court Reporters can't drive Attorney's to the airport?

From the looks of things, we all know that the actual Court Reporters are limited on giving gifts, per Code. BUT, the Companies that are not owned by Court Reporters like Esquire, Veritext, Network, US Legal, Sarnoff, Atkinson Baker etc etc are not under your direct jurisdiction.

These large Court Reporting companies EMPLOY Court Repoters. They keep these Reporters busy. The large Companies will keep California Court Reporters very busy. More than that of smaller Companies. It is obvious that you are fighting for the "small mom

and pops" Court Reporting Firms and not the actual California Court Reporter. This special interest and bias is frowned upon.

Lastly, if gift giving is eradicated the large Court Reporting Firms WILL find a way to make their organizations more attractive. If Service, Production and Reporters are all on the same playing field it is quite obvious that there will be a Rate War. Large Companies can and will slash their Rates ultimately resulting in lower Reporter Pay. It is a fact and this practice is already taking place on a very small scale. No perks/gifts absolutely positively will result in a Rate War. Do you think your Mom and Pops Court Reporting Firms can compete?

You will ultimately be hurting your Court Reporters that you say you so respectively represent.

DRA responded with the following email:

Thank you very much for taking the time to reach out to us with your concerns. We truly appreciate your candor.

A few points of explanation:

1) As the memo from Hanson Bridgett painstakingly details, there is a difference from a tax perspective between a true gift and compensation for securing business.

The tax memo focuses in on so-called "gifts" that are only provided in exchange for a deposition being booked. As the memo explains, from a tax perspective (and any other, really) such items aren't gifts at all. They are compensation for a service. They are akin to commissions.

If your colleagues are receiving actual gifts, then they have nothing to fear from the IRS, as the memo explains in detail. If they are instead receiving things of value for securing business, that isn't a gift at all but compensation either to the legal professional who booked the depo or their law firm. You can read the memo for yourself on our website here http://www.caldra.org/tax_memo.asp.

2) We, of course, do not write the Internal Revenue Code. And, of course, tax laws -- all laws -- should be obeyed. That valuables offered in exchange for business must as a matter of law be treated as income by the law firm or the professional that booked the deposition is simply the state of current law; something we ourselves were unaware of before we secured the memo. You and your colleagues and the law firms that employ them are free to operate in any fashion they choose but they should do so, in our view, with eyes open as to the possible tax and legal consequences.

3) More pointedly, in our opinion, such practices only endure because the person who books the depo is not the end-user. Just as you would never select a doctor or a lawyer for yourself because of an offer of a fruit basket, the same goes with a transcript, where the quality can vary dramatically and the importance for the client can be immeasurable. Just as the market for CPAs, lawyers, and other licensed professionals should reward quality and price, the same is true with the licensed profession of court reporting and obtaining business on other bases is simply incompatible with that aim.

4) You may not be aware of this but recently the Court Reporters Board cited and fined US Legal for violating its gift giving regulation. The Board is of the opinion that it has jurisdiction over such firms.

Thank you again. Please do not hesitate to contact us if you have further questions or concerns.

DRA posted the unsigned email and our reply on Depoman.com. Here are some responses:

"WILD APPLAUSE!!! Simply perfect response. Wonder if Mr. or Ms. Anonymous felt better after their tantrum?"

"I view this letter as an attempt at a threat. So sad that some have to stoop to anonymous threats. DRA did a fine job with their response. Thanks for posting this."

"Unsigned email, it figures. This ridiculous letter could have been written by some 1-800 'court reporting' dweeb, no? Thanks for posting, and thank you to DRA for taking a stand."

"Well, done, DRA. Well done. If you're not a member of DRA, please go sign up NOW!"

"Agree with DRA's position that the Board has (or should have) jurisdiction over even non-reporter-owned agencies. Also agree with the approval of DRA's non-emotional response."

"I also want to commend DRA on its very straightforward and professional response. More than I could manage."

"DRA is doing a great job on trying to put the reporter back in the deposition seat."

"Just want to remind the deposition reporters in California to Join DRA ...They are fighters, who are brave and smart and aren't going to take any / SH*EUT. They have your back."

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DRA Co-Sponsors Continuing Ed Bill

DRA AND CCRA CO-SPONSOR LEGISLATION TO REQUIRE CONTINUING ED FOR REPORTERS

The Deposition Reporters Association is pleased to announce that we are co-sponsoring California legislation with CCRA to enact continuing education requirements for court reporters, something that is long overdue and was one of the priorities set by **you**, our members, in DRA's "There Oughta Be A Law" fall seminars.

The legislation is Senate Bill 671, authored by Senator Curren Price. When Senator Price was an Assembly member, he introduced the law we wrote which is making it easier for you to collect from attorneys, AB 1211 (the major accomplishment of DRA's "Project Collect"). That law was also co-sponsored by CCRA.

A huge thank-you to Senator Price for going to bat for deposition reporters.

We will be contacting all of you soon to write emails and letters supporting the bill, so get your pencil-sharpeners out!

We appreciate you, our members, for identifying this as a priority. DRA is listening to you!

As technology continues to change rapidly, as litigation grows more complex and the judicial system becomes more sophisticated, effective preparation and continuing education and development to meet the changing demands of the profession proves even more critical.

The goal of continuing ed programs is to raise the level of competence and professionalism of the practitioners in the industry. For the individual practitioner, continuing ed provides an independent validation of competence that reporters can use to distinguish themselves in the market. There is clearly a public stake in the competent performance of reporters, and in some cases life and liberty rely on the record.

In addition to the goal of protecting the public, regulatory programs have two primary objectives that benefit the occupation and the practitioner: to raise the standards of the profession and to raise the personal performance of reporters, requiring them to remain current in a rapidly changing field. Continuing education increases a reporter's respect and recognition, enhances marketability, provides professional credibility, assures professional competence and offers recognition of the individual's expertise and knowledge.

Furthermore, these benefits go beyond the individual reporter and profession to the users of court reporting services. When continuing education requirements are in place, judges, attorneys and the public know that they are paying for quality.

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By including a requirement for continuing ed, California can guarantee that it continues to have informed, up-to-date and knowledgeable reporters serving the needs of the justice system.

[CLICK HERE TO VIEW THE FULL BILL](#)

Introduced by Senator Price

February 18, 2011

An act to add Section 8024.8 to the Business and Professions Code, relating to shorthand reporters.

LEGISLATIVE COUNSEL'S DIGEST

SB 671, as introduced, Price. Shorthand reporters: continuing education requirements.

Existing law provides for the certification and regulation of shorthand reporters by the Court Reporters Board of California in the Department of Consumer Affairs, and provides for the regulation of shorthand reporting schools by the board. Existing law provides for the renewal of a shorthand reporter's certificate if specified requirements are met.

This bill would require the board to establish, on or before July 1, 2012, minimum approved continuing education requirements for renewal of a shorthand reporter's certificate, with certain exceptions, and would require the board to establish a procedure for approving providers of continuing education courses, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8024.8 is added to the Business and
- 2 Professions Code, to read:
- 3 8024.8. (a) On or before July 1, 2012, the board shall establish
- 4 minimum continuing education requirements for renewal of a
- 5 certificate issued pursuant to this chapter. On and after that date,
- 6 to renew his or her certificate, a certificate holder shall, in addition

1 to the requirements of Section 8024, certify to the board, on a form
2 prescribed by the board, completion of the minimum continuing
3 education requirements.

4 (b) The board shall also establish a procedure for approving
5 providers of continuing education courses, and all providers of
6 continuing education shall comply with procedures established by
7 the board. The board may revoke or deny the right of a provider
8 to offer continuing education coursework pursuant to this section
9 for failure to comply with the requirements of this section or any
10 regulation adopted pursuant to this section.

11 (c) The board may establish exceptions to the continuing
12 education requirements of this section for a certificate holder who
13 cannot meet the continuing education requirements for reasons of
14 health, military service, or undue hardship.

15 (d) The continuing education requirements of this section shall
16 comply fully with the guidelines for mandatory continuing
17 education established by the Department of Consumer Affairs
18 pursuant to Section 166.

19 (e) The board may adopt regulations as necessary to implement
20 this section.



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Two New ER Bills in California

ELECTRONIC RECORDING STILL A VERY REAL THREAT IN CALIFORNIA

Two separate ER bills have been introduced to replace California court reporters with electronic recording.

Assembly Bill No. 1096, authored by Orange County Assemblywoman Diane Harkey, seeks to require ALL court proceedings to be automated.

Assembly Bill No. 803, authored by Orange County Assemblyman Donald Wagner, seeks to require the Judicial Council to implement electronic court reporting in 20% of all superior court courtrooms by July 1, 2012 and in an additional 20% of all superior court courtrooms annually thereafter. This would not apply to felony cases.

DRA is in full support of and ready to aid our fellow official reporters' efforts to defeat these bills. We will continue to bring you updates as they occur.

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DRA War Chest

DRA 2011 URGENT ACTION WAR CHEST

2011 will be a critical year for deposition reporters in California as DRA does battle on your behalf on four fronts:

- We must support the Board in court and elsewhere in its legal action against US Legal!
- We must educate the public about the ethical, tax, and legal problems with incentive gift promotions!
- We must make sure that our continuing education bill gets passed and signed by the Governor!
- We must aid our official colleagues' efforts to defeat two recently introduced bills that would implement ER in California courts!

Because each of these is so important, and because each will be won or lost during 2011, we need you to support DRA by making a contribution to the **2011 War Chest!** [Click here to donate now.](#)

***DRA APPRECIATES
YOUR SUPPORT!***

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DRA CORE Curriculum - Don't Miss It

DRA'S "CORE" CURRICULUM CLASS - MODULE I OF IV



"The **Core Practice** of Reporting for Freelance Reporters"
Presenter: Lois Ludwig, CSR - hearing/depo reporter, agency owner

Gain expert knowledge to market yourself to agencies in tough economy
Real-world reporting in today's times vs. reporting school education
Readback on demand? Telephonic depo tips? Protective orders?

Great refresher ~ Ensure you're at the top of your game!!
Learn how to defend yourself when challenged by today's attorneys

Q&A with top-notch realtime reporters - Jeri Cain, CSR, RMR, CCRR, CRR
Val Eames, CSR, CCRR
Problem-solving with digital Code guide (DepoMap) - Karen Klein, CSR

Saturday, April 16, 2011 - 9:00 a.m. to 1:00 p.m.

Registration starts at 8:30 a.m.

Fresno Chamber of Commerce

Gottschalks/Lyles Board Room
2331 Fresno Street
Fresno, California 92721-1801

Parking: FREE on north side of building on "N" Street

Cost: \$99 for reporters; \$49 for teachers; \$29 for students
DRA membership **not** required

Early bird Discount - Register by April 1st for \$85
No registration deadline - Walk-ins welcome

C.E. POINTS -- LOTS OF USABLE INFO -- HANDOUTS/FORMAT SAMPLES

[CLICK HERE TO REGISTER ONLINE](#)

Come and find out why previous Core I attendees said:

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Steno Reporter
Captures State of the
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*"Always surprised what
working reporters don't
know."*

Most Unusual Depo
Locations

*"Individual specific
situations are
discussed . . . able to
obtain feedback from
others."*

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and Credit Act of 2010
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*"Loved the time of 9 to
1 . . . still had most
of my weekend left after
Core"*

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Depo Diplomat

Dear Depo Diplomat:

I asked my husband, who is an attorney, about counsel's request below. He thinks I should stay out of it since I'm a neutral party. He also thinks I could be called as a witness. I don't really want to be that involved. Do you know if our profession has any code to follow in this type of situation? Let me know what you think.

Begin forwarded message:

*Hello Ms.
Reporter:*

I asked for your email due to what happened at the deposition which took place the other day. After the deposition ended, opposing counsel wrote me a letter accusing me of asking inappropriate questions, harassing his client, being a thug, making his client cry, etc. He also wrote a separate letter to the presiding judge at the San Francisco WCAB with these same accusations and his version of the proceedings that took place at the deposition.

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As a witness to the events, I am asking you to write me a letter discussing your version of the events that occurred at time of the deposition. Please discuss any inappropriate remarks made by either myself or opposing counsel, any inappropriate behavior you may have noticed on either one of our parts, and so forth.

Alternatively, I could write a brief narrative for you, which you could look over and merely sign.

Please let me know if you would be willing to entertain either of these requests.

Dear Reporter:

I agree with your husband completely that your duty as deposition officer to remain entirely neutral prevents you from providing any such opinions or offering your version of what happened at the depo in question. His prediction that you could be called as a witness at some point is very reasonable, since this sounds like a situation that could develop into a bigger battle between the two attorneys. While opposing counsel's accusations about this attorney's behavior at the deposition may be quite false, or at least exaggerated, and it may be tempting to come to this attorney's aid in this situation, it is inappropriate for a reporter to discuss the behavior, actions or comments by any attorney present at a depo, other than to make the transcription record of what verbally took place on the record. And fortunately -- and I'm delighted that we have this clear support in the law -- there is language in the Code of Civil Procedure (CCP) which specifically covers this and gives you a perfect and polite way to respond to his request and point out why you are not able to provide the letter that he's requested from you. This comes from CCP Section 2025.320(c), and I'll paste that language below for your easy reference.

**2025.320.(c)
The deposition officer or the entity providing the services of**

the deposition officer shall not provide to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action.

So the first sentence of the above section very clearly prohibits you from providing any comments or version of the events that took place at the depo regarding either attorney's behavior. And while I appreciate that this is a delicate, rather sticky situation, since you certainly don't want this attorney to go away mad because you've refused to help him with his request, with this language you can easily explain why the law prevents you from providing him with the information he wants from you. You might also add, if necessary, that your state licensing board also advises CSRs against signing any declarations prepared by parties, since they see that as compromising our impartiality, and so signing a narrative prepared by this attorney would also be an action that your licensing board would disapprove of and could lead opposing counsel to file a disciplinary complaint against you.

I hope this is helpful. If you have any further questions on this subject, or any other, or need additional information, please feel free to contact me.

Best of luck to you,

Antonia Pulone
DRA Depo Diplomat



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Comment on DRA President's Open Letter to Governor

Dear Lisa:

I was surfing the net this evening and came across a speech you gave on YouTube regarding apparently Governor Schwarzenegger attempt to replace court reporters in California with tapes. I just wanted to say how well you spoke and how clearly you conveyed what a court reporter does and how machines should not replace live court reporters.

Unfortunately in B.C. we did not have an advocate like yourself to speak for the reporters when the government replaced everyone in 1997 with tapes in the superior courts, I am sure if we had such a well spoken person as yourself a lot of reporters might still be working in the court system, as it is now there are a few real time reporters doing major trials and the remainder do depositions.

I am in my 46th year as a court reporter -- a living dinosaur, I only use 10 digits to take down the spoken word (have not used a taperecorder as a back up for almost 40 years) and believe it or not I actually produce a very accurate transcript!!

When tape recorders were first brought up in the 70's by government officials I was like a lone wolf howling in the wilderness warning every one that it was the thin edge of the wedge -- I hate to admit it but I was right.

Anyway I could drone on for ever but just wanted to say how well I thought your presentation was and the good court reporters of California should thank the good Lord that you are one of their leaders.

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Take care

Steve Coutts

www.okanagancourtreporters.com



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Daily Transcript Tips & Tricks

Deposition Transcript Dailies – Tricks and Tips for Court Reporters
by Rosalie Kramm

I am working on a case in which the attorneys have requested all transcripts be in final and emailed on the following day. The depositions are videotaped, realtime, and streamed. The attorneys have the prescribed Federal Rules seven hours, which means the depositions start at 9:30 end about 6:30 p.m. Everyone wants to get their questions in by the allotted time, so the attorneys are averaging 275 words per minute. The transcripts are all 300 – 350 pages.

How in the world do I get the final transcript out by 6:00 p.m. the following day?

Here are some tips that I have found makes getting dailies out possible:

1. Write clean – no messing around being online, checking email, looking at your calendar. Focus on the writing and create briefs for often-mentioned phrases
2. Mark questions, answers, or colloquy that need to be listened to. Everyone messes up, so create an easy stroke that signifies to you or your scopist the last Q or A needs to be double-checked.
3. Have a trusted scopist. I can send my CAT transcript to my scopist along with the wav file in timed intervals that I have set up with DropBox and/or Sugarsync. So every hour she will get the portion of the transcript from the previous hour to work on.
4. I index the exhibits separately. Some might argue I should be using the CAT software for the exhibit index, but I find it best for me to create a separate file, index all of the exhibits and copy and paste them into the final transcript once I receive it back from the scopist. The scopist does not have access to the exhibits, but I do. The attorneys are marking 50 exhibits a day. The index takes time, and I typically create it early in the morning before the deposition starts.
5. Have your trusted scopist mark spots that need to be double-checked (reading from exhibits, spellings, awkward phrases). My scopist writes *chk or something that the spell check will stop at. I can do a final spell check and hit all of the marked spots.
6. Have a proofer follow the scopist. Your scopist can send the final transcript to a proofer for a final proof.
7. Eat healthy, walk around and sleep. Doing dailies means stress, stress, stress – hurry, hurry, hurry – concentrate, concentrate, concentrate. It is easy to fall into the trap of sitting for 5 hours straight, not moving, taking zero breaks during the day. At the very least take some deep breaths and stretch. You will need your body to perform.

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*Good luck with
dailies. If
anyone has more
tips and tricks,
please let us
know:*

www.kramm.com/blog



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NCRA 2011 Board Slate

Nominating Committee Announces 2011 Selections for NCRA Board of Directors

Upon completion of a March 4-6, 2011, face-to-face meeting, the NCRA Nominating Committee formally made its recommendations for officers and directors for the 2011-2012 membership year. The following slate of nominees will be presented to the NCRA membership for vote on Thursday, July 28, 2011, at the Annual Business Meeting, which will be part of the NCRA Annual Convention in Las Vegas:

Officers

- President-Elect: Tami Smith, RPR, CPE, Lansing, MI • Vice President: Nancy Varallo, RDR, CRR, Worcester, MA • Secretary-Treasurer: Bruce A. Matthews, RDR, CRR, Cleveland, OH

Directors (three-year terms)

- Toni C. O'Neill, RPR, Riverside, CA • Christine J. Willette, RPR, CRR, CCP, Rothschild, WI • Stephen A. Zinone, RPR, Canandaigua, NY

The current President-Elect R. Douglas Friend, RMR, CRR, automatically ascends to the position of President for a one-year term that commences at the 2011 Annual Business Meeting.

(The Nominating Committee also nominated Sarah E. Nageotte, RDR, CRR, CBC (Jefferson, OH) as a candidate for Secretary-Treasurer; however Ms. Nageotte has declined this nomination.)

NCRA published a call for nominations in the November/December JCR and on multiple occasions through the online newsletter, Newsflash. The deadline for nominations was January 3, 2011. The Nominating Committee is chaired by the Immediate Past President of the NCRA Board of Directors, which this year is SueLynn Morgan, RPR. Joining Morgan on the Nominating Committee were Jerry L. "Will" Callaway, RDR, CRR, CPE, Dallas, TX; Marianne A. Cammarota, FAPR, RDR, CRR, Bridgewater, NJ; Mary Cox Daniel, RDR, CRR, CBC, CCP, Las Vegas, NV; Sandra Bunch VanderPol, FAPR, RMR, CRR, Lotus, CA; and Alternate Caryn E. Winters, RPR, Spokane, WA.

In addition to the Nominating Committee's slate, per Article VIII, Section 3 of the NCRA Constitution and Bylaws, members may nominate other candidates from the membership as part of the election. The deadline for such nominations is June 15, 2011. If there should be more than one candidate for a single office, all NCRA voting members will be able to cast ballots on July 28, 2011, either on-site at the business meeting or via the Internet. NCRA will send instructions for accessing online voting to all members in advance of the business meeting.

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Steno Reporter Captures State of the Union Address

Bill Odom reports President Obama's January 25th, 2011 State of the Union Address on a Diamante...



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Most Unusual Depo Locations

DRA posted the following topic on our Facebook page:

What's the strangest setting for a depo you've ever been in?

The responses are priceless!

Juliana Amaya At the morgue, deposing the coroner, with the examination table right behind me. Oh, and it was very, very cold in there.

Sheila Flaherty McWilliams On a stack of tires in a very dirty garage with a hostile witness.

Tammy Helms Steele I had to sit in a high heel shoe chair (leopard, of course) at a strip club. Very interesting!

Lucy Carrillo-Grubbs Paint manufacturing company while they walked around demonstrating how things worked.

Shari Steere Stelhorn Inside jail cell!!!! With pedophile handcuffed to the table!!!!

Neenah Bello prison -- with the prisoner sitting next to me, with no handcuffs! But he had a lovely tattoo of the word "BEAR" on his neck. I suggested that the attorneys wait for me to finish packing up.

Raquel Guzman Fisher In a chiropractor's examination room having to sit on the noisy white paper on the examination table. My back was killing me.

Cathryn Bauer Tire store.

Angie Hollandsworth Smith McGalliard Sat on a box on a front porch once. 90 + degrees outside. Went outside with the jury to view a vehicle in freezing windy weather. But this week, I actually took a depo at my next-door-neighbor's house! I had never even met him. ER doc who worked nights and told attorneys he wanted to take it early in the morning at his house, just happened to be my next-door-neighbor! Hmmm . . .

Trista Visser Bait shack.

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Tracy Didier Abbott Had to finish doctor depo in parking lot because of fire alarm ~ when I was still writing paper.

Jaymee Gonzalez-Ochoa A coworker of mine had to take a depo in the backyard of the witness. They had large dogs and there was mounds of poop every where. So the smell, the flies and the dogs jumping all over everyone during the depo is something she will remember forever!

Sabine Becker Meat packing plant. And I also took a doctor depo; this doctor claimed to have been a personal doctor of Elvis. Had a framed picture of him and Elvis. His whole office decor was like being in the 1950s too.

Melissa L. Charlton Clark On a farm with the cows and chickens running around. The day was very windy. This was back when we used paper and my paper was blowing everywhere. Also at a chocolate factory where you could smell the chocolate. Yummy. And the attorneys marked chocolate bars as exhibits. How do you attach candy bars to a transcript?

Gayle Cowan Container ship, the depo of the Dutch captain. We even had a Dutch meal with/ served by the crew! :)

Rachael Moore Somewhere in the San Gabriel mountains, dirt road with horses walking by. We were in the lawyer's cabin/office with a fire going. Quite cozy, just a little odd!!

Linda Pugliese Spent a week at the Chowchilla Prison For Women once. That was interesting. In a room with the 300-lb prisoner shackled to the table bragging about how she busted a guard's nose, with me right next to her and the guards with the bullet-proof vests OUTSIDE the room observing through a window!! Then going up to the Mt. Hamilton Observatory, I got carsick on the winding road, lasted about 1/2 hour on the depo and we had to quit and reschedule.

Christine Randall Nielsen In a dirt field on a folding chair while big rigs drove by causing my paper to blow out of the tray. My client put a rock in the paper tray and moved the rock with every fold. Three hours later we were all dusty and dirty. It was an O&8, though.

Reid Bryce Robbins I took a depo in an airplane hangar with airplanes rolling in and out.

Michelle Sease Knowles In the back seat of a van while driving around a college campus reporting traffic routes. Also in the San Francisco Airport at a gate with lots of people walking around and staring, of course!!

Donna Leigh Scott Once on a farm with a dog with his head in my lap. Then San Quentin, and having to walk the gauntlet between prisoners, who by the way, were very polite. The noise in the "depo" room was incredible. (There was no room, just out in the general population in a cubicle) Felt like I was in a movie with Robert DiNero and Bobby Blake shuffling around. It was a civil trial arising out of a bizarre murder case. We were in the general population and the people were really really bizarre (I know I've already used that word). Coming out of that environment into the sunshine was equally weird. The sound of the slam of the iron bars behind you will chill you to the bone...and knowing you are only protected by, in this case for some reason, women with guns. They had been in lock-down for some reason and they were on their best behavior but the female attorney with me was scared out of her wits that one of them would grab us. I thought it was a great adventure!

Donna Leigh Scott In a hotel, taking Michael Jackson's depo in the first child molest case... very, very strange day...thought at first I wouldn't be able to hear him but after he got over giggling, he was sort of normal. This got me on Greta Van Sustren's On The Record. Another

weird place was sitting on the floor in a doctor's hallway. And basically learning how to outsmart the media who are waiting for you around your car, and being able to run in high heels.

Sheila Flaherty McWilliams I had to mark a breast implant in at a dep. There was no way that was being attached to the transcript!

Diana Sasseen In the middle of a runway at Burbank Airport. Yes, they closed that runway for our session. But every time a plane landed on the runway that ran parallel to ours, we'd all look up to make sure he had the right runway, then held our hands over our ears as the plane roared by. Of course my paper blew all over the place, so an attorney had the job of keeping my paper under control as I wrote. And of course no one thought about it before we got in the van to head to the runway - I had no chair. So I kneeled on the runway in my dress, stockings, and heels.

Dan P. Clark In the middle of a round-about driveway of a hotel in downtown San Francisco.

JoAnne Ichiki I did the deposition of the captain of the QEII when it was in port at SF. We were in his private cabin, which was luxurious but small. Tried to talk the attorney into taking more depos of the crew, thus the necessity of our staying on the cruise (it was in the middle of an around-the-world cruise) but sadly he declined.

Ellen Papadakis Mine was in a large warehouse, which was not that bad, but I had to sit on a ladder!!!

Laury Leibowitz Wasoff Oh, boy. Mine pale in comparison to all these stories. I've done prison, hospital, trailer on a construction site, warehouse sitting on a crate. Was supposed to do one last week where the witness needed to be lying down while testifying. We got a room at the Holiday Inn and the plan was for him to be in bed while the attorney and I sat bedside, but the job canceled. In a weird way I was kind of looking forward to it. Yet another story to add to the arsenal of weird stuff that happens to us on the job. Did I mention the multitude of breast-feeding witnesses I've had over the years?? Too much!!

Rosalyn Piderit As a student, I find all these stories very exciting. Can't wait! Thanks guys.

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Small Business Jobs and Credit Act of 2010 Update

Senate Eliminates 1099 Filing Requirement for Small Businesses

In our last issue of this newsletter, we reported on the Small Business Jobs and Credit Act passed by Congress in 2010 which would have created a paperwork nightmare for anyone with self-employment income by requiring them to issue a 1099 for ALL purchases over \$600.

We are pleased to bring you the following update:

*Reprinted from the
February 2011 Newsflash
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NCRA, the professional
association for
reporters and
captioners.*

<http://ncraonline.org/governmentrelations/onthehill/small+Business+Jobs+and+Credit+Act.htm>

On February 2, 2011, the U.S. Senate stripped the 1099 tax requirement that was implemented as a funding mechanism for the Affordable Care Act (commonly known as the Health Care Law) that would have provided a significant impediment to small businesses nationwide. Had Congress not acted, all businesses would have been forced to file a 1099 form to the IRS for every expense or for each merchant to whom they pay \$600 per year. If not fully repealed by the House of Representatives and signed into law by the President, the 1099 tax filing requirement will take effect on January 1, 2012.

This would have been a severe burden on small and medium sized businesses in all industries. The Senate stripped the 1099 tax requirement by a bipartisan 81-17 vote and the issue now will advance to the House of Representatives. House Republican and Democratic leaders have all indicated that they are encouraging the repeal of the 1099 requirement as well. President Obama has also supported repealing this filing requirement.

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Transcription Outsourced to India

March 9, 2011

Bill Nemitz: Grow jobs in Maine? Not when India calls

She's heard all the talk from all the politicians about how Maine's future hinges on its small businesses.

And as the owner of such a business, Kate Meyers recently stood ready, willing and able to add three full-time positions to her payroll -- complete with full Dirigo Choice health benefits she provides to her workers at no cost.

Didn't happen.

No, we're not talking about the mountains of red tape -- real or imagined -- that Gov. Paul LePage likes to blame for keeping Maine in the economic breakdown lane.

"We're talking about India," Meyers said Tuesday. "We're talking about halfway around the world."

Meyers is president of Brown and Meyers, a transcription and records-management service on Washington Avenue in Portland.

Founded in 1994, it has grown from a small court-reporting firm to one that employs six staffers and 75 independent contractors. Together, they churn out everything from court transcripts and medical reports to insurance records and whatever else needs to be scanned, organized or punched into a keyboard.

References? Try Unum, Liberty Mutual, York Hospital, the U.S. Bankruptcy Court, the Maine Public Utilities Commission, the state Medical Examiner's Office, the Maine Department of Health and Human Services ...

Qualifications? Try certifications from the Computer Technology Information Association, the Women's Business Enterprise National Council and the all-important Health Insurance Portability and Accountability Act, known as HIPAA.

Last spring, while LePage was still a dark horse looking to succeed then-Gov. John Baldacci, Meyers' company submitted a bid for the \$100,000-a-year contract to provide transcripts to the DHHS for use in determining eligibility for disability benefits.

The competition was fierce. Of the 41 firms that bid, the DHHS selection committee immediately tossed out 21 proposals for things like failure to use page numbers and other technical flaws -- the theory being that if the bid packages weren't letter-perfect, then the work might not be either.

Based on a 100-point scale, the remaining 20 firms were scored on their qualifications and

Daily Transcript Tips & Tricks

experience (25 points), technical expertise (25 points), customer service (25 points) and cost (25 points).

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Brown and Meyers came in second, with a total of 90.4 points. First place, at 92.4 points, went to Czerenda Court Reporting Services of Binghamton, N.Y.

Steno Reporter Captures State of the Union Address

Check that. The company is in New York, but the people who actually do the work are in India.

Most Unusual Depo Locations

It's all perfectly legal. In fact, Czerenda (which did not respond to a request for an interview Tuesday) was the previous contract holder -- and as the state's request for proposals noted in black and white, "currently all of the transcription is outsourced overseas."

Small Business Jobs and Credit Act of 2010 Update

Meyers knows all about this "outsourced overseas" business. She gets calls and e-mails almost daily from companies in places like India, looking to snag a piece of Brown and Meyers' action.

Transcription Outsourced to India

"They're very aggressive," said Meyers, whose standard response is thanks, but no thanks.

Welcome New Members

Normally, Meyers dispatches her work to her independent transcribers, who are spread out across the United States. But because the DHHS contract offered such steady work, she planned to assign it to three new, full-time workers in her Portland office if her bid won.

Scholarship Winners

"We definitely had the references and the capability to do it," she said.

Sage Essay Winners

Didn't matter. In fact, the state never even checked the references -- turns out it does that only if there's a tie.

Just for Laughs

In October, while the state echoed with pre-election calls for "Maine jobs for Maine people," Meyers hired a lawyer and went to Augusta to appeal the awarding of the contract to Czerenda.

Choosing Internet Passwords

Meyers conceded that Czerenda's price quote was 0.7 cents per line lower than hers -- meaning it would cost the state about \$6,000 more for Brown and Meyers to do the same amount of work.

Advantage Software Lawsuit

But she argued that her bid scores should have been higher on experience and HIPAA compliance (HIPAA protection in India? Really?) and that slight upward adjustments in those criteria would have put her on top.

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She lost the appeal. And tempted as she was to go to court, she'd already paid her lawyers too much to keep fighting.

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Still smoldering, Meyers and Sarah Harding, Brown and Meyers' operations manager, wrote to the governor's office last week in the hope that they might get a better reception from the all-business-all-the-time LePage administration.

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They did get a same-day response from Michael Wenzel, acting director of the state's Division of Purchases. He explained that Maine long ago did away with its practice of giving preference to in-state vendors because it invites retaliation from other states when they weigh bids they get from Maine firms.

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"We're really sympathetic and we understand (Meyers') concerns," Wenzel said in an interview Tuesday. "It's just that there's really no recourse in this instance -- we're guided by statute."

What is DepoMap?

(Other states aren't quite so reticent about favoring their own. According to a 2009 survey by the National Association of State Purchasing Officers, at least 27 states currently "provide a legal preference for in-state bidders or products.")

Classified Ads

DRA Insurance: Highlights Application

Meyers at least understands the concept of reciprocal preference policies among the states. But she's still having a hard time getting her head around the fact that Maine would knowingly ship this work to India to save \$6,000 -- and in doing so squelch the creation of three full-time, state-income-tax-paying jobs right here at home.

War Chest

"We keep hearing all the time that we need to keep the jobs in Maine," Meyers said. "It's really sad."

Indeed. And even under an administration that makes Maine small business its "Job One" priority, there's no sign it's going to change.

"It's a tough case," conceded Dan Demeritt, LePage's communications director, after he looked into Meyers' complaint. "But there are rules (the state's purchasing agents) have to follow."

All the way to India.

Columnist Bill Nemitz can be contacted at 791-6323 or at: bnemitz@mainetoday.com

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Welcome New Members

DRA welcomes these very smart new members who spent their money wisely on supporting their profession:

Adriana Angulo
Jose Avila
Christie Caropino
Francesca
Cavallaro
Elizabeth Chaparro
Ashley Claar
Leslie Cooper
Cynthia Cueto
Lynne Dalton, CSR
Linda Edelman
Cathy Evans
Tracy Formalejo
April Gedneyh, CSR
Angelica
Gutierrez, CSR
Rose Heffernan,
CSR
Marissa Holt
Paige
Hutchinson, CSR
Cristy Johnson
Melinda Johnson
Neeka Johnson,
CSR
Kim Jongmin
Hanna Kim, CSR
Tanya Leonard
Lillia Luna
Lisa McMillan, CSR
Rachael Moore,
CSR
Ramona Norbeck
Vicki Parent
Suzanne Pulver
Jacqueline Redd,
CSR
Alicia Rios, CSR
Tracy Sakowicz
Debra Schroeder
Kathleen Sheehy,

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CSR
Rosheen Sheehy
Lori Shifflet
Ashley Soevyn, CSR
Janine Sugawara
Cari Waters-
Drewry, CSR
Renee Williams
Donna Wong, CSR



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Scholarship Winners

The Deposition Reporters Association has a scholarship program to award financial assistance to deserving reporting students throughout California. Scholarships are awarded yearly, based on the applicants' grades, financial need, participation in reporting activities and organizations, letters of recommendation, essays, and interviews conducted by the DRA Scholarship Committee.

DRA congratulates the 2010 winners of the \$1,000 scholarship awards:

Shirley Lynn from Downey Adult School; Tara Muckenfuss from Argonaut/Charles A. Jones Skills Center; Jessica Guardado from Downey Adult School

Congratulations to these very deserving recipients! DRA is proud to be able to help such motivated, enthusiastic, promising future reporters to attain their goals.

Two of our winners attended the DRA Disneyland convention and were honored at the Saturday luncheon. Here is what they had to say about their convention experience:



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Jessica Guardado:

When I started the Court Reporter program I never dreamed that I would receive so much support from the Deposition Reporters Association. They have their annual student barbeque; students are invited to their seminars; they offer a fantastic scholarship; and they make sure to have a special student track at their annual convention. DRA goes out of their way to make sure that we students have the proper guidance and information.

My experience with the DRA scholarship committee has been an enjoyable one. From answering my questions during the application process, to the interviews, to the phone call notifying me of the award, there is not one thing that I would change about it.

Receiving my award in front of hundreds of court reporters made me a little tense, but that was such a small part compared to the vast number of events and surprises at the convention. I

cannot express the gratitude I feel for every presenter, speaker, reporter, and student that attended the convention. I learned more in three days at Disneyland than I ever could have imagined. The wealth of information that the speakers have and are willing to share is invaluable. Perhaps the greatest value that weekend was not the amount of the scholarship, but the knowledge that I obtained.

Shirley Lynn:
The DRA convention was such an inspiring and informative experience. I am so grateful to have had the opportunity to attend and be able to learn so much about our field.

All of the speakers were able to show me a greater perspective about what goes on in the working environment and what areas of court reporting there are to pursue. The speakers really opened my eyes to all the work DRA does in order to protect our

jobs and to protect the way we are treated in the working environment.

I learned so much from each of the speakers at the convention and each fellow court reporter that attended the convention. Everyone was so willing to share their experiences, and for that I am grateful and a better person.

It was most inspiring to be among court reporters that are a part of the DRA who have made it and are out there working and making a difference. Each member has been in our shoes, and to hear each person's advice and encouragement really helped me to keep believing in myself and working towards the end goal.

My suggestion to anyone is to definitely come out to events held by DRA, who are there working on our behalf to make the working world a better place for us. It will definitely renew any aspiring court reporter and make you proud to be a part of this phenomenal



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Sage Essay Winners

Sage College sponsored two court reporting students to attend DRA's annual convention in February - one each from its San Diego and Moreno Valley campuses. The winners had to write a one-page essay answering two questions:

- 1) Why is it important to participate in events in the court reporting world?
- 2) What do you think will be gained by attending the DRA convention?

Below are the two winning essays and a recap of the convention from both attendees. Congratulations, and thank you for coming, Cathy Evans and Kimberly Kadolph!

Cathy Evans from Sage College/San Diego Campus writes:

Positive reporters eager to share their experiences, new and improved gadgets, networking with future job opportunities...Oh my! The DRA Convention is closer than ever, and I can't wait to experience it.

It is important to participate in events in the court reporting community because I believe that we can all learn from each other. Court Reporters are such a rare breed. Our families and friends do not understand the difficulties of pursuing this profession, so we need to come together and create our own support systems. Soon I will host a brief party and develop a support group for my future reporting friends. I hope to bring what I learn from the convention to my group for inspiration.

My goal is to graduate by April. I am 100 percent confident that I CAN achieve this. Going to the DRA convention will give me the motivation and encouragement needed to help me stay positive. I look forward to soaking up the positive vibes, reporting stories, finding new possibilities, taking the MOCK exam, and having a little fun.

This has been an amazing journey. I have learned so much about myself and continue to learn more each day. I'm amazed at the person I've become. I am honored to have my teachers and this school in my life. I won't let you guys down. I won't let my family down. I won't let myself down. I will become a CSR! This is my year to graduate and spread my wings. Sponsoring me for the convention would be an early graduation gift.

Convention Recap:

I was sponsored by San Diego Sage College to go to the DRA Convention. Thanks, Sage! If it wasn't for you, I would not have had this inspiring experience.

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Every single person there knew my struggle. I felt very comfortable among my kind and ready to soak up any valuable information to help me get out of school and begin my career. My most inspiring moment was listening to Mary Gallagher. She had harsh words for me that I needed to hear. "Every day you need to type a test or you're not learning anything. Might as well change your career choice." Yes! Tell me like it is. "Keep yourself mentally up because it's all mental." Thanks, Mary!! look forward to going to more reporting conventions where I can mingle with my peers, check out the latest machines, and eat VERY well. Thank you DRA for giving me a chance to hang out with everyone and learn from all of you... My heroes.

Kimberly Kadolph from Sage College/Moreno Valley Campus writes:

To Whom It May Concern,

To say that I am more deserving of the reimbursement of my funds for the DRA convention would be unfair to my fellow students that work just as hard, if not harder, than I do. However, as the economy is rough on all professions, \$100 is a lot of money for a starving student, so I feel I must try.

The reason I decided to attend the convention this year, reimbursement or not, is because I understand how important it is to have contacts in this industry. Anybody that knows me well knows that I am painfully socially awkward. It's very hard for me to start up a conversation with somebody, professionally or personally, and when I am able to, I get very nervous.

When I signed up for this profession, I thought it would be perfect for me because it would allow me to do my job alone. There's only one court reporter in a deposition or courtroom, right? It's the perfect profession for me! Then reality set in. Once I hit speeds, we were repeatedly informed of the fact that we had to network to get jobs, and the more relationships we built with people, the better the chance for our professional success. I was mildly heartbroken. The hurdle that I deal with personally is going to also be there obstructing my chance at success.

Funny thing, though. I absolutely love stenography. I would so much rather deal with my social problems than consider giving up this profession. Is it going to be difficult? Of course. Anything worth succeeding at is bound to have its challenges. While I struggle with the speeds (doesn't everybody?), it's the social networking that intimidates me.

I went to the DRA BBQ last year to attempt to start the networking process. I spoke with Todd Olivas and a few other members with the help of my fellow students. In February, I'm going to try adding more working reporters to my contacts.

For the last eight months, I've sat, frustrated to no end, in 160s. I've been able to type that speed for roughly three of those eight. It was my mind holding me back, not my hands. It gave me a lot of time to think. What will I do once I finally get out of this speed? The thought of completing my apprenticeship hours absolutely thrills me. Sitting in an actual legal proceeding and learning about what it's like in the real world all seems like a dream. However, it's a dream that I can't quite make come true without meeting people to sit out with.

At the moment I'm working at a job that I despise as a server in a restaurant. During this economic crisis, it's hard living off the generosity of others. Hours have been cut, and tips have diminished. I am willing to sacrifice the small wages I make for the opportunity to network; however, this reimbursement would be very helpful. I appreciate the time taken to read this.

Convention Recap:

Anybody working toward a CSR would greatly benefit from attending a convention. On top of being informative, the organizers, speakers, and volunteers know how to make it an absolute blast. I wasn't sure what to expect, this being my first real convention. Originally I was disappointed with the scheduling. It appeared there wasn't much time that the professional reporters and students were in the same seminars. With all being said and done, I'm actually glad there was less intermingling.

I originally went with the intent of meeting professional reporters that I could sit out with, but I found that the information I gathered from the student seminars was much more beneficial for me at this junction in my writing. My personal favorite was Mary Gallagher. She unloaded oodles of information upon us, and I even tried using her "Theory of 3's." It is time consuming, but it really opened my eyes to my writing weaknesses. I highly recommend any other students that attended to try her grading process at least once. It's an eye opener.

I'd like to thank DRA for the successful convention they put together, and I'd like to thank Sage College for sponsoring me. Looking forward to next year's!

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Just for Laughs

JoRita B. Meyer, RMR, CRR, CCR; and Lisa Migliore Black, CCR-KY

Does work stress ever get the best of you? Here's a few fun (but inadvisable) ways to get you through the day with laughter.

Is it an attorney that's got your blood pressure boiling? Time for a few practical jokes:

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- *When marking the first exhibit of the day, insist on wearing a giant foam finger while chanting "You're number one! You're number one!"*
- *For realtime depositions, global the word "objection" as "I'm telling. I'm telling. I'm telling, and the judge is gonna be MAD!"*
- *Midway through the day of a fast-paced deposition, if asked to read back the last question that you have, respond with a straight face, "State your name for the record."*
- *The next time an attorney wants to test your ability to lip-read by mouthing the*

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words, "objection" instead of actually saying the words, mouth the words, "Screw you" and see if he gets the point.

Are other reporters giving you grief? Let's not leave them out of the fun:

- *For the next deposition that you're sure will net no copy sale, add in the service list of the last asbestos case you worked on and send to an overflow reporter. Then after the depo starts, leave them a message on their voicemail with your best Simpson's impersonation, "HA-ha!"*
- *Superglue the zipper shut on their equipment bag.*
- *Secretly define "No" as "Heil Hitler" and "Yes" as "You bet your sweet bippy" in a court reporter's personal dictionary the night before their next realtime assignment.*
- *Hide their supply of exhibit stickers and replace with Smiley Face stickers.*
- *Remove steno machine from equipment bag,*

insert toaster.

And, lastly, a modified oath for those problematic witnesses:

***Do you solemnly swear
the testimony you're
about to give will be
the truth, will be in
complete sentences, you
will use coherent
thought patterns when
framing your complete
sentences, you will not
speak at the same time
anyone else is
speaking, you will be
courteous to the court
reporter, you will not
declare you never eat
lunch and expect
everybody else to
starve along with you,
you will not lay your
papers over my
microphone, you will
not put your drink next
to my computer, you
will not turn your head
away from me, and most
importantly, you
understand I am not
liable for any injuries
suffered as a result of
my having to use my
tripod for infringement
of any of the above-
stated rules -- oh,
and you understand
there is no such thing
as a "courtesy copy!"
Now put your hand down
and behave yourself.***

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Choosing Internet Passwords

How To Choose Very Strong Passwords That Are Easy To Remember

What makes a password strong is the combination of different alphanumeric, special characters, and capitalization that you use, and of course the length of the password.

I don't know about you, but I don't want to remember and type an epistle when I fill out a password field. And, ideally, I don't want to use the same password on many sites, because if one is compromised then my entire life is unlocked.

I want to show you here how to choose very strong passwords for every website that you use, that are different for each website, and are each only 9 characters in length max.

A study found that an 8-character password that's constructed in the manner I'm going to show you has 7.2 quadrillion different combinations, and will take 83.5 days to crack if the hacker can try 1 billion different passwords per second.

Step 1: Pick 2 Starting Characters

To make it easy to remember, all your passwords are going to start with the same characters. But these are not just any characters. Pick 2 characters from the list of special characters that you see above the numbers on your keyboard and to the left of the Enter key.

These characters are: ~'!@#\$\$%^&*()_+={}[|:;'"<>?/\

Pick any two of them as your password starting characters. To show you an example as you read through the steps, let's pick \$ and % (pick your own two).

In my example, all my passwords are going to start with \$%.

Step 2: Pick 2 Ending Characters

In exactly the same way as above, pick two different special characters that will be at the end of your passwords. Don't pick the same characters as your starting characters.

For the purposes of my example, let's pick * and ^. Hence, all my passwords are going to end with *^.

Step 3: Construct The Middle Part Using The Website Name

This is the fun part. Take the first 6 characters of the website domain name where you want to

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use the password. If the domain name is shorter than 6 characters, then use the full domain name.

In my example, let's create a password www.microsoft.com.

The first 6 characters of the domain name is "micros".

Now we're going to substitute some characters and capitalize others.

Substitute the following characters: a becomes @, e becomes 3, i becomes 1, o becomes 0, and u becomes ^. Now we have "m1cr0s".

Now, decide on a standard for yourself regarding which character(s) you're going to capitalize.

For this example, let's say we're always going to capitalize the 3rd consonant.

So now we have "m1cR0s".

The next step is to drop the last character ("s" in our case), and append the Ending Characters (*^) that you picked in Step 2.

Our password is now "m1cR0*^".

The last step is to add the Starting Characters (Step 1) to the beginning of the password.

The final password is "\$%m1cR0*^".

A Few More Examples

Domain: www.twitter.com, Password: "\$%tw1Tt*^".
Domain: www.facebook.com, Password: "\$%f@c3B*^".
Domain: www.ebay.com: Password: "\$%3b@*^"

Remember

Pick your own 2 starting characters and your own 2 ending characters, don't just use the same ones I used in the example.

In addition, make your own capitalization rule (you can capitalize more than 1 character if you want to).

You can also use more than the first 6 characters of the domain name if you want to. It just means your passwords will be slightly longer.

Is This Password Strong?

Yes, it is very strong. With this method you're potentially using any of 30 special characters, 10 numerals, and 26 lower case and 26 uppercase characters.

Unless a hacker happens to have a water-cooled supercomputer in his briefcase, he will not be able to crack your password.

Making It Even Stronger

If you're concerned that some hackers might know about this password construction method, simply pick 3 starting characters and/or 3 ending characters, or as many as you like. Any slight

variation of the method makes your passwords even more secure.

Credits

This password construction method was designed by **Sammie**, a person with a brilliant technical mind.

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Advantage Software Lawsuit

BROADBENT v. ADVANTAGE SOFTWARE, INC.

DAVID K. BROADBENT, Plaintiff-Appellee, SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v.

ADVANTAGE SOFTWARE, INC.; PORTIA SEELEY; GREG SEELEY, Defendants-Appellants, and MERRILL SCOTT & ASSOCIATES, INC.; GIBRALTAR PERMANENTE ASSURANCE; MERRILL SCOTT & ASSOCIATES, LTD; MICHAEL G. LICOPANTIS; PHOENIX OVERSEAS ADVISERS; PATRICK M. BRODY, Defendants.

No. 09-4180.

United States Court of Appeals, Tenth Circuit
Filed March 4, 2011

Before KELLY, TACHA, and MURPHY, Circuit Judges.

ORDER AND JUDGMENT

DEANELL REECE TACHA, Circuit Judge.

Defendants-appellants Advantage Software, Inc. ("ASI"), Greg Seely, and Portia Seely (collectively "appellants") appeal from the district court's order, which effectively denies them any recovery from the receivership estate of Merrill Scott & Associates, Ltd. ("Merrill Scott"). We have jurisdiction under 28 U.S.C. § 1291 and AFFIRM.

I. BACKGROUND

Mr. and Mrs. Seely are the principal shareholders of ASI, a company which markets and sells court reporting software. In 1987, ASI engaged Jeremy Thorne to develop court reporting software called Eclipse. ASI and Mr. Thorne agreed that Mr. Thorne would develop the Eclipse software and grant ASI the exclusive right to market and sell it. In exchange, ASI agreed to pay Mr. Thorne a percentage of the gross sales.

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SAVE THESE DATES!

DRA CORE Curriculum, Module I
Fresno Chamber of Commerce
Gottschalks/Lyles Board Room
2331 Fresno Street
April 16, 2011
9 a.m. - 1 p.m.



DRA CORE Curriculum
Sacramento
May 14, 2011
9 a.m. - 1 p.m.

DRA Student Barbecues
Northern & Southern California
May 21, 2011
11 a.m. - 3 p.m.

DRA CEU Grab-n-Go
San Diego
September 24, 2011
9 a.m. - 5 p.m.

DRA 16th Annual Convention
Monterey Plaza Hotel & Spa
400 Cannery Row
February 24-26, 2012



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Membership Application

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Mail Application to:
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Fax to: 925-905-2611
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Name _____ CSR # _____ NCRA Member # _____

Firm/School _____ Firm Owner Instructor Student

Address _____ City/State/Zip _____

E-mail _____ Website _____ Home Phone _____

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Referred by _____ OR Facebook Direct Mailing Internet search

Have you ever been a member of DRA before? Yes No List me on DRA's on-line database List me as available for freelance work

** I certify that the contents of this application are accurate and complete and will advise the association of significant or material changes to the membership information. I agree to abide by the DRA Bylaws, the written policies of the association, and in the decisions of duly constituted DRA Committees. I agree that my membership may be terminated immediately if this application contains false or misleading statements. _____ Initial

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(Any person whose primary reporting income is derived from the practice of deposition reporting or general reporting and who holds a current CSR license issued by the Court Reporters Board of California.)

Associate \$ 125 Three-year associate membership (\$375 – save \$25) \$ 350

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