

# The Deposition Reporter



*in this issue:*

Enlist In The DRA Realtime Army!

CR Board - U.S. Legal Trial UPDATE

DRA Monterey Convention Highlights

Are Transcripts Subject To Sales Tax?

*... and much, much more!*





[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)

FEATURES
<a href="#">March 2012 Issue</a>
<a href="#">President's Message</a>
<a href="#">DRA's 16th Annual Convention Exceeds All Expectations</a>
<a href="#">Meet The New DRA Board</a>
<a href="#">Letter To The Editor</a>
<a href="#">Enlist In DRA's Realtime Army!</a>
<a href="#">CR Board-U.S. Legal Trial Update</a>
<a href="#">Good News From The State Bar Of California</a>
<a href="#">Are Transcripts Subject To Sales Tax?</a>
<a href="#">NCRA TechCon</a>
<a href="#">Deposition Officer Instructions</a>
<a href="#">Plea For Mentors</a>
<a href="#">Pengad Member Discount</a>
<a href="#">Be A Part Of DRA</a>
<a href="#">:) 4 DRA</a>
<a href="#">Depo Diplomat</a>
<a href="#">Court Reporters Board Oversight Hearing</a>
<a href="#">The Power Of One</a>

# President's Message



## ARE YOU READY?

"Hi, Sue. It's Mary from ABC Reporting. We have a deposition next week in your area and want to know if you can cover it for us. It's scheduled to go all day, and the attorneys are requesting realtime."

"Mary, I would love to, but I have not honed my realtime skills enough yet to actually feel comfortable providing a realtime stream. Sorry, but I will have to decline."

Have you ever had the above situation happen to you? I have. And as disheartened as I am to admit it, it's happened to me more than once. While I routinely provide attorneys with rough asciis before leaving a deposition, I have yet to overcome the fear of actually providing realtime. Well, no longer. It is time to revamp my writing, learn the mechanics behind hooking attorneys up to a live feed, and finally take the giant leap into the world of realtime, and I encourage all of you who have also not yet done so to join me.

After hearing Mark Kislingbury speak at our annual convention in Monterey on "Write Short, Write Fast," I was inspired and immediately started incorporating some of his philosophies into my writing. What a difference it has made in only a week! The final -DZ for the -ing ending has already saved me countless keystrokes. I'm anxious to start learning and utilizing some of his other finger combinations and briefs. Having learned a very stroke-intensive theory, I know I have a ways to go, but I'm excited to finally be on my way to cleaner, faster writing.

But cleaning up my writing is only the first step. The next step is actually hooking up a realtime feed for one or more attorneys. As intimidating as this scenario sounds to me – as I am sure it does to countless others – I know I must do it, and I must do it now. Realtime is what sets us as court reporters apart from electronic/digital recording, and it is time that reporters everywhere stood up and joined the ranks.

By the way, did you hear the news? Joining the ranks of realtime reporters just got a little bit easier thanks to DRA's new partnership with Guinness World Record Speed Champion Mark Kislingbury and RealLegal [LiveNote]. Our spring and fall seminars will feature Mark's hands-on bring-your-machine-and-laptop training on Saturday; and then on Sunday, DRA members will be offered free training to become a Certified LiveNote Reporter. It's an exciting new program hot off the press! Read about it right here in this issue under Enlist In DRA's Realtime Army.

I will keep you updated on my journey throughout the year – the high points and the low points – and I would love to hear updates of your own realtime journeys.

So are you ready? Who's with me? Let's do this together and amass an entire "Realtime Army" in California.



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# DRA's 16th Annual Convention Exceeds All Expectations

*by Katherine Wayne*

The sunrise on February 24 out my hotel room window revealed a beautiful blue ocean, waves crashing onto the hotel terrace, and a playful sea otter lingering a few yards away. So began what dozens and dozens of DRA convention attendees agreed was the BEST CONVENTION EVER! The Monterey Plaza Hotel and Resort is stunning inside and out, and while the staff had nothing to do with the clear, crisp, sunny days, everything else within their power to spoil us, overfeed us, pamper us and make us feel at home was handled efficiently and without visible signs of effort or difficulty. Special kudos to Anna, the bartender, who made perhaps 150 fresh pear martinis, the official drink of the 16th annual DRA convention.

Now, if you meant to go to the convention and didn't get around to signing up, if you never go to conventions because you don't see why you should spend the money or because you don't think you can learn anything or because you don't think you would have a good time – slap yourself upside the head right now. No, HARDER than that. You did not choose wisely!

Our members have steadfastly insisted Monterey is where they want to go for the convention, but we had been priced out of hotels there a decade ago. Thanks to a poor economy and our executive director, Vicki Squires', forethought, we signed a contract for the hotel three years ago for an amazing rate. And so many of you put your money where your mouths are and showed up for an all-star line-up of speakers, seminars and vendors that we SOLD OUT.





Potential License Denial Or Suspension For Failure To Pay Taxes
Message From COCRA
Scholarship Winners
Legal System Still Values Court Reporters
Welcome New Members
OTHER LINKS
DRA Mission Statement
DRA Calendar
Membership Application
What is DepoMap?
Classified Ads
DRA Insurance: Highlights Application
War Chest



Margie Wakeman-Wells, a favorite of court reporters everywhere, opened the convention on Friday morning with her seminar on punctuation. Instead of the usual double-tracking of seminars, Convention Chair Anne Torreano opted for mostly a single track in the huge Cypress Ballroom. All those court reporters in one room raised the energy level to the roof, and really inspired all of the speakers. Following Margie, attendees broke out into CAT training sessions. Once again, a big thank you to all our software vendors who make the trip to California each year for the benefit of our convention-goers.



Saturday AND Sunday morning, Mark Kislingbury, Guinness Book of World Records shorthand champion, took the podium for a two-hour presentation of his “Writing Short” theory. Having visualized this speed contest guru as sort of a Mr. Spock-like being, Mark’s warmth and humor were surprising. The man is an amazing speaker! While not many of us will ever write 390 words a minute, Mark, using charts and math and pure passion, inspired us to believe that we can write much faster than we do now with less effort and stress. By the way, did you know that you can go to <http://www.magnumsteno.com> and subscribe to Mark’s Magnum Steno Club? It includes archives of Mark dictating speed drills and discussing his brief forms theory, along with scads of other writing tips.



One seminar was a panel of four non-deposition reporters, each telling us a little about their jobs. Laura Brewer, international realtime contest winner, detailed her life as a CART reporter, realtime reporting at huge conferences in exotic places. Kathy Robson talked about the beginning of captioning on television, and her exciting life captioning huge sporting events, sending out words on the screens of millions and millions of viewers. Jean Whalen, who spent five months in Tanzania reporting the Rwandan genocide trials for the United Nations, reported on her experiences in Africa, working with an international crew of reporters. While the testimony was gruesome, Jean did have enough time off to travel throughout the area, meeting native people and enjoying the incredible country. Joe Strickland, chief reporter for the U.S. House of Representatives, told us about his office staff of 42 reporters covering all floor proceedings and committee and subcommittee hearings, all with a turn-around of hours, not days. It gave the audience an amazing feeling of pride, knowing the ways that our skill sets can be used in communities other than the deposition world. Court reporters rock!!



Anne also inaugurated the DRA Firm Owners Track, giving firm owners some seminar choices that were focused on employment law, tax laws and marketing ideas. Personally, I thought the

marketing ideas I got from Rosalie Kramm (San Diego) and Jan Ballman (Minneapolis) – just that one seminar – made my registration fee for the convention worthwhile.



But there was MORE, so much more!! Friday night's cocktail party on the terrace, with amazing food, a fabulous band booked by Robin Riviello, and a view that was unbeatable, went on long past its stated ending time. No one wanted to stop dancing and go indoors. And who were those two ghosts dancing on the balcony in their white hotel bathrobes? During the party, the hotel set it up so we could project a DRA slideshow onto the brick cannery building next door. Firm owners and vendors sent digital files of their logos, and Monyeen Black, board member and photographer extraordinaire, put pictures of past conventions, seminars and board members together for a two-and-a-half-story-tall DRA show. I can tell you I watched all night, and each time my firm's logo went up, I got a thrill! Monyeen also set up a photo booth, which was the source of a great deal of fun!









DRA was pleased to have Laurel Eiler, NCRA Past President, join us all the way from Tennessee. Laurel gave an inspirational speech at the Saturday luncheon and continued to be a wonderful addition to the rest of the convention. Phil Harris from RealLegal also spoke at the luncheon and unveiled our new realtime partnership plan, outlined in detail here in the newsletter under the tab "Enlist In DRA's Realtime Army."





On Saturday night, the firm owners had a networking cocktail party of their own, allowing them to meet agency owners from other cities. There were a lot of people meeting referring agency owners for the first time face to face, and many cards and business tips were exchanged. The firm owners' track at the convention was incredibly successful, and there are already plans to implement some ideas we got from our members for next year.

Sunday had a line-up of seminars with Toni Pulone, DRA Diplomat, and Yvonne Fenner, executive director of the Court Reporters Board, about strange and crazy deposition situations and how to extricate yourself from them gracefully and legally, and Mike Miller, aka Depoman, with a hard-hitting seminar on how sloppy reporter practices and work habits are threatening our profession. Mike's greatest quote of the seminar: "All of us in this room have, in the recent past, committed an error in a transcript that would make us weep if we saw it." I haven't slept since! You can participate in Mike's forum on court reporting at <http://www.depoman.com/forum>.



The CCRR test had so many participants -- a record 74!! -- it had to be split into two sessions.



The vendor room was packed with reporters eager to upgrade machines and software, check

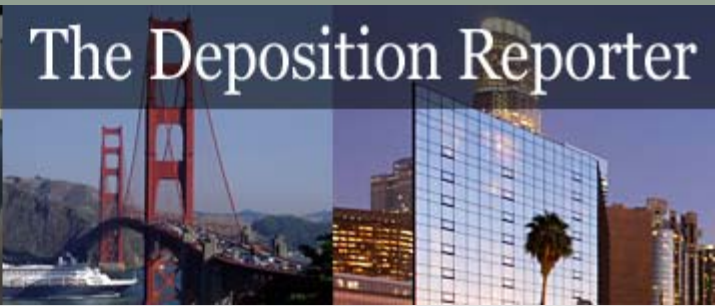
out beautiful jewelry, and discuss new websites or insurance with our wonderful supporting businesses. The auction was full of vacation properties, Kindles, an iPad, an ergonomic desk, wine, gift certificates, and much, more from reporting agencies, individual reporters, and our vendors.



A special thanks to Carmen Santone of Stenovations, who donated a brand new Lightspeed machine for a free drawing.



Thank you to Vicki Squires, Anne Torreano and the convention committee for a weekend of amazing people and seminars. Thank you to our speakers for challenging us, informing us and entertaining us.



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

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- Potential License Denial Or Suspension For Failure To Pay Taxes
- Message From COCRA
- Scholarship Winners
- Legal System Still Values Court Reporters
- Welcome New Members

OTHER LINKS

- DRA Mission Statement
- DRA Calendar
- Membership Application
- What is DepoMap?
- Classified Ads
- DRA Insurance: Highlights Application
- War Chest



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[<< DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Letter To The Editor

Dear D.R.A.

Thank you so much for the fantastic weekend in Monterey. What a beautiful venue to reconnect with old school chums and rekindle the warmth of professionals who have worked together for decades.

Ignite The Light But Leave Your Flame Throwers at Home! Wow, some heated debates ensued regarding the courts regulating our rates and proclaiming what we can charge for court work. This topic is becoming "hotly" debated but will hopefully be solved over the coming months by some cool heads whom we have come to depend on as we try to earn a living without getting burned.

Courts across the nation are laying off reporters and installing electronic recording equipment. Now when reporters are hired by private attorneys to come into those courtrooms, private attorneys pay our fees. But the prices for copies of transcripts are somehow still set by the court.

Let's compare some courthouse jobs, but let's leave the clerks out of this; they are not involved.

Judges don't really take work home with them like court reporters do. But if they ever published a book about their life on the bench, they would use experiences that happened while being paid to be a Judge. Who would decide how much to charge for that book?

Bailiffs' fees are set by the Alameda County Sheriff's Department where I live, so certainly courts do not tell them what they will be charging while in court.

Lawyers are given full discretion on what they will charge, and no judge tells them the going rate. Expert Witnesses come to our courthouse all the time and testify, for pay, and are not told what they will be allowed to earn.

Interpreters, too, are hired privately by the attorneys and come to work in our courthouses. When hired by the courts they are paid according to industry guidelines, not fixed prices, and they are paid for travel time.

Process Servers and Videographers have discretion across the board, fluctuate widely on rates, and are not regulated by any court for their fees.

Even the Muffin Vendors with the Coffee Carts in the courthouse lobby decide on their own the prices they will charge for snacks and treats.

Newspaper and Television reporters make a living off of high-profile cases, and no royalty is paid to the court, nor are they told what they can charge.

A painter arrives to paint the courthouse after a bid, negotiation and contract have been

Potential License Denial Or Suspension For Failure To Pay Taxes	submitted. The painter decides the fee.
Message From COCRA	Someone faints, 9-1-1 is called, the ambulance arrives on scene. Patient is treated, wheeled away on the stretcher. Does the judge set their rate, too?
Scholarship Winners	When a Qualified Domestic Relations Order is needed, our county uses an actuarial company. They analyze data to divide up assets and keep things fair in divorces. The QDRO's rates fluctuate, but no judge tells them what to charge.
Legal System Still Values Court Reporters	What about those Electronic Recording folks who came and set up all that equipment? Wasn't the price "negotiated" and agreed to by all parties before the recorders were installed?
Welcome New Members	I can understand being an in-court reporter who is paid to report all day in Department 5, she has already been paid for her "reporting." But if she stays up nights and weekends to produce a transcript on her own time, she should set the rate for that work.
OTHER LINKS	
DRA Mission Statement	If the county for whom she works provides her time to sit in her court office and produce a transcript, I could understand why they could regulate what that reporter earned for those transcripts, sort of like the court's own intellectual property.
DRA Calendar	But our courts are no longer paying for live reporters. They have been laid off. Instead, an attorney now must hire the reporter to go to Department 5. The County, State or Federal Government will not be paying for the reporter. So why do the courts have any say in what we charge when we are there?
Membership Application	When I arrive in Department 5 and the Judge sees me all set up, I will certainly comply with his request for a read-back. Better yet, I'll bring a laptop for him and provide a live feed. I could even provide an "Original" for His Honor if Attorney Ted pays me to transcribe it. But Ted's from L.A. and he usually stipulates away the Original. Sorry.
What is DepoMap?	I will be paying my own Social Security now, and it is double the rate I paid when I worked in court. I will be paying for my own self-employment taxes and medical, dental, vision, disability and equipment insurance. Remember when I purchased \$10,000 worth of steno equipment? I paid for that; the court didn't. Maybe if the court owned this equipment, it could decide how much I make when I'm using it.
Classified Ads	Built into my price is my rent, those transcript covers, paper, ink, tabbies, CDs, minis, letterhead, license fees, work comp, advertising, equipment, envelopes, shipping and telephones. I can't tell Office Mart the price they can charge me for that paper, nor can I regulate what Chevraco charges me for the gas in the car I use to drive to the courthouse.
DRA Insurance: Highlights Application	If the courts dictate what I can charge, isn't that illegal, a concept called "price fixing" and "anti-trust"? Can I charge an appearance fee? When I divide how much I am making by the amount of hours I worked, will I bring home less than minimum wage?
War Chest	I understand industry. The San Francisco International Airport charges a fee for those taxi cabs to enter the loop and pick up passengers. I get it.
	My town is building a new power plant. All trades on this job must be "union." Each trade negotiated their own Collective Bargaining Agreement with thoughtful consideration. Each trade charges a different price. The customer agreed to it.
	My school chums and I remember the school said we would make a hundred grand a year. It was only a forecast, like the weather. You could say they lied to us. But in those days it seemed reasonable to assume our profession would remain a well-paying job.
	Court Reporting truly is a "cottage" industry, all those CSRs sitting in their little cottages, all alone, cranking out transcripts. No, we don't know who you are, because you don't join your

local, state or national associations.

But, hey, cottage girls, we got your back; we got your front; we got your sides. People like Stephanie Grossman and Toni Pulone are the Jimmy Hoffas of our professions, and we've got their backs, too. We will count on them and they will count on us to fight for our rights and to fight for what is fair. That is all we want.

We are part of the justice system, and we owe it to ourselves to ensure that members of our profession do not get torched and burned while trying to earn a decent living doing a very hard job.

I feel strongly about this issue because the rates for court reporters inside these courthouses were set in the 1980s and have yet to be changed. Deposition rates were "deregulated" in the 1980s, and the attorneys were afraid our rates would skyrocket, like that fuel surcharge we pay for deliveries now. But instead of prices going up, firm owners undercut each other and did a price-slash from which we have been very slow to recover.

Ignite the Light? Oh, DRA certainly did Ignite the Light, like a flamethrower on my shoulder. Let me know what I can do to help. I will obey the laws, know the Evidence Code, Civil Code and the Federal Code. I will follow ethics and treat people fairly. I will volunteer and provide pro bono services when I can.

I want what is fair for our trade. If the courts want to dictate to us how much we will earn while we are working at their courthouses, they should write us the checks!

Charlotte C. Roche, Owner Operator, Bay Area Court Reporters  
CSR4486, RPR, RMR, RDR, CRR, CCRR





[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Enlist In DRA's Realtime Army!

... OR BE DRAFTED!

Either way, WE WANT YOU FOR THE REALTIME ARMY. DRA is building a realtime army to wage war against substandard methods of making the record and mediocre reporters. We've partnered with two industry leaders, legendary national champion realtime writer Mark Kislingbury and realtime litigation support giant RealLegal (LiveNote), to train an army of top-notch, fearless, certified realtime reporters.

If you feel like you can't write fast enough or clean enough for realtime, if you tire of the seemingly endless technical mishaps involved in providing a realtime feed, or if the mere thought of having someone else watching your writing terrifies you, WE WANT YOU. We will give you the tools you need to be a confident and excellent certified realtime reporter. All you have to do is show up with a willingness to learn AND put in some elbow grease!

Step 1: Catch a full day of training learning the principles that made Mark Kislingbury the NCRA realtime speed champion, principles that will revolutionize our profession. However, excellence isn't born from a single day of learning new steno outlines. Like every world-class performer, daily practice is essential to moving into the elite echelons of reporting. Think you don't have time? Mark will show you how just ten minutes a day right before your job begins will help you gain the speed and accuracy that will put you well on your way to getting realtime certified.

Step 2: Take the fear out of "hooking up" by learning the technical aspects and the tools necessary to provide a quality realtime experience for your clients as a result of becoming a Certified LiveNote Reporter.

DRA is partnering with Thomson Reuters (LiveNote/RealLegal) to provide DRA professional members with Certified LiveNote Reporter training AT NO CHARGE. That's right, no charge. DRA members can receive CLR training, valued at \$395, from LiveNote trainers at any scheduled training session anywhere in the country. In addition to earning the CLR designation, you are entitled to receive:

- 5 token-free West LiveNote licenses for loaner laptops
- LiveNote Stream Manager (for facilitating Internet realtime jobs)
- Prepaid NCRA CEU points
- Free upgrade webinars
- Software updates at an administrative cost

Step 3: Become realtime certified! Complete the Mark Kislingbury seminar and the CLR training, and then take the California Certificate in Realtime Reporting (CCRR), DRA's challenging and elite realtime exam. Earn the respect of your peers and clientele by obtaining this highly-sought-after certification!

Step 4: Save these dates!

May 19-20, Long Beach

Saturday: Training with Mark Kislingbury

Sunday: Certified LiveNote Reporter training (seating limited)

CCRR exam (TBA)

September 29-30, Santa Clara

Saturday: Training with Mark Kislingbury

Sunday: Certified LiveNote Reporter training (seating limited)

CCRR exam (TBA)

Chicago, IL March 24, 2012  
New York, NY April 14, 2012  
Albuquerque, NM April 21, 2012  
San Francisco, CA May 5, 2012  
Boston, MA May 19, 2012  
Dallas, TX June 2, 2012  
Orange County, CA June 23, 2012  
Philadelphia, PA September 15, 2012  
Ft. Lauderdale, FL September 22, 2012  
Nashville, TN September 29, 2012  
Los Angeles, CA October 27, 2012

Help us build our realtime army! DRA's goal is to have the highest percentage of certified realtime reporters of any association in the U.S. and full bragging rights. Help us reach our goal of revolutionizing our profession. Watch your e-mail for more information from DRA on upcoming training locations and dates.



<< [DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

## CR Board-U.S. Legal Trial Update



Trial proceeded on March 5th in San Jose. Both sides gave opening statements. The plaintiff Court Reporters Board called two witnesses to testify: Yvonne Fenner, Executive Officer of the Court Reporters Board, and Peter Giammanco, U.S. Legal shareholder and western division manager. U.S. Legal called no witnesses.

Yvonne Fenner explained to the Court that the CRB wants to clarify/confirm its jurisdiction so it can enforce its regulations, how a reporter gets licensed, and why the neutrality of the reporter is key. Peter Giammanco from U.S. Legal explained how they are not "court reporters," but rather, a clearinghouse which just does "administrative" stuff for reporters. But when the questioning turned to specifics of their 95-page reporter manual which details how a transcript should look, that the reporter should deliver it to U.S. Legal and not to the client, and how, among other things, U.S. Legal performs the read & sign/errata process, the DRA Team saw U.S. Legal's defense crumble.

DRA's smart and to-the-point amicus brief <http://bit.ly/DRABriefUSLegal> was accepted by the court. Judge Persky (whom DRA was pleased to note was receiving a realtime feed from the reporter) granted DRA's counsel, Ed Howard -- author of the amicus brief -- the right to sit at counsel table, make opening statements and question the witnesses. On March 16th, Mr. Howard offered DRA's closing statement. DRA is the only California association who offered this litigation help to the Plaintiff.

Attorney General Nick Tsukamaki and DRA's counsel Ed Howard did a fabulous job in trial (they ROCKED). Present at the March 5th session of the trial were DRA Past Presidents Lisa Michaels, Toni Pulone and Holly Moose, and Founding Member Stephanie Grossman.

Click these links to view all three closing briefs:

<http://bit.ly/DRAClosing>



Potential License Denial Or Suspension For Failure To Pay Taxes
Message From COCRA
Scholarship Winners
Legal System Still Values Court Reporters
Welcome New Members
OTHER LINKS
DRA Mission Statement
DRA Calendar
Membership Application
What is DepoMap?
Classified Ads
DRA Insurance: Highlights Application
War Chest

<http://bit.ly/USLegalClosing>  
<http://bit.ly/CRBClosing>

Feeling proud and want to help? Make a donation to our war chest:

<http://www.caldra.org/warchest.asp>



\*\*\*\*\*

BELOW IS THE DRA ENOTE OF MARCH 5th, THE MORNING OF THE TRIAL:

You've heard about it, you've read about it, and now DRA is HERE.

As the gavel sounds this morning opening a lawsuit of real importance to the future of your profession, DRA is here at the Santa Clara courthouse.

DRA filed the gift-giving violation complaint against U.S. Legal that literally serves as Exhibit A to the Attorney General's complaint against the company. Our complaint, and others, caused the California Court Reporters Board (CRB) to issue a fine against US Legal for violating its regulation on kick-backs and gift-giving. When U.S. Legal refused to pay their fine, the CRB had no choice but to file suit to enforce two separate statutes that make the rules applicable to licensees applicable to corporations, as well.

With the ethics of our profession and our members' livelihoods at stake,DRA filed a "friend of the court" brief in support of the CRB position, and DRA's lobbyist and counsel, Ed Howard, is present to participate in the trial.

DRA's work to prompt the case and its continued work on the case, leading up to our appearance in court today, underscores that DRA - the only organization in the nation that is

solely devoted to representing you, the deposition professional - takes the fight to protect you and your profession everywhere. Legislature. Court. Media. We went to the State Bar and Legal Secretaries conventions. We go anywhere and do anything possible...for you.

DRA Members: Feeling proud? You should be!

Do you want to ensure the safety of your livelihood and the honor and integrity of your profession? Do you want to support the organization that's got your back and works tirelessly to eliminate practices that cheapen you and your profession?

This isn't somebody else's responsibility.

DRA needs you and your support to keep up the fight.

Donate to our War Chest today.

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[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)

FEATURES
<a href="#">March 2012 Issue</a>
<a href="#">President's Message</a>
<a href="#">DRA's 16th Annual Convention Exceeds All Expectations</a>
<a href="#">Meet The New DRA Board</a>
<a href="#">Letter To The Editor</a>
<a href="#">Enlist In DRA's Realtime Army!</a>
<a href="#">CR Board-U.S. Legal Trial Update</a>
<a href="#">Good News From The State Bar Of California</a>
<a href="#">Are Transcripts Subject To Sales Tax?</a>
<a href="#">NCRA TechCon</a>
<a href="#">Deposition Officer Instructions</a>
<a href="#">Plea For Mentors</a>
<a href="#">Pengad Member Discount</a>
<a href="#">Be A Part Of DRA</a>
<a href="#">:) 4 DRA</a>
<a href="#">Depo Diplomat</a>
<a href="#">Court Reporters Board Oversight Hearing</a>
<a href="#">The Power Of One</a>

# Good News From The State Bar Of California

Too often our members must resort to Small Claims Court to collect from attorneys. Sometimes an attorney will refuse to pay the judgment and then even refuse to abide by state laws and court rules related to post-judgment collection (listing their assets and the like).

Our members have complained to us about the refusal of the State Bar to consider an attorney's willful breaking of collection-related laws as possible grounds for discipline against the attorney. After all, when a lawyer -- an officer of the court -- breaks the law related to paying the fees of another officer of the court -- you, the reporter -- shouldn't such law-breaking be a grounds for discipline by the Bar?

But, the Bar has always said, "No. That is a private collection matter and we don't get involved in collection matters."

Always, that is ... until now.

We heard you, and we got to work.

After nearly a year of DRA's painstaking advocacy with top officials in the State Bar, we are pleased to announce that the Bar has changed its policy. The State Bar's Office of Chief Trial Counsel has authorized us to release the following statement to our members:

"In the past, the State Bar had not considered an attorney's failure to pay court reporter fees as grounds for discipline unless there were additional acts of unethical conduct by the attorney. Rather, the Bar had treated such stand-alone complaints to be private collection issues. It is the DRA's understanding, however, that the Office of the Chief Trial Counsel of the State Bar considers an attorney's willful or intentional failure to obey statutes, court orders, or court rules as potential grounds for disciplinary action against the attorney's license. So, for example, the Bar may enforce complaints where the attorney has failed to pay court reporter fees and violated a court order during the court reporter's efforts to collect payment. Enforcement action may be appropriate where a civil judgment is obtained and the attorney failed to appear at a debtor's examination or where there is evidence that the attorney's client had advanced funds to pay for vendor services. Please note that the Bar's role is not to aid reporters in the collection of debts nor does this alter the Bar's discretion to prioritize its enforcement actions, emphasizing the most egregious cases. The filing of a complaint against an attorney never guarantees the Bar will take action, however, the Bar is now receptive to complaints from court reporters where there is a final court ruling substantiating an attorney's debt for court

Potential License Denial Or Suspension For Failure To Pay Taxes
Message From COCRA
Scholarship Winners
Legal System Still Values Court Reporters
Welcome New Members
OTHER LINKS
DRA Mission Statement
DRA Calendar
Membership Application
What is DepoMap?
Classified Ads
DRA Insurance: Highlights Application
War Chest

reporter fees and the attorney is violating the law or court orders."

In other words, if you obtain a judgment against an attorney, and the attorney disobeys laws or court rules related to your effort to collect it, the State Bar will now be receptive to your complaint against the attorney and will consider such law-breaking as an act that might result in the attorney losing his license.

This represents an enormous victory for deposition reporters throughout the State, and we are grateful to the Bar for listening to us.

The two advocates who secured this victory -- DRA's lobbyist Ed Howard and DRA Founding Member Stephanie Grossman -- hosted a firm owner seminar at our annual convention in Monterey, February 24-26, explaining just what this means and precisely how best to use it.

For those who missed the Monterey convention, DRA is looking into other ways to educate our members about how to properly interpret and use this change of policy. Keep an eye out for an AskDRA video on the topic: <http://bit.ly/AskDRA>





<< [DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Are Transcripts Subject To Sales Tax?

There has been quite a stir recently about what is happening regarding California's Board of Equalization (BOE) possibly decreeing that deposition reporters should have been collecting sales taxes when they provided copies to parties in litigation.

Here are the facts and here is what DRA has already done:

## THE FACTS

A California licensee and firm owner has been audited by California's BOE. The firm's CPA has been handling the audit and dealing with the auditor. At issue in the audit is whether copies of certified transcripts provided to parties in litigation are subject to sales tax. The firm's CPA was verbally informed by the auditor that the auditor - this is just one auditor - believes that sales tax should have been charged for copies.

This is the preliminary opinion of one auditor. The firm has not yet pressed its legal case against this position to the auditor, let alone exhausted avenues of appeals. In other words, this is at the earliest possible phase.

## WHAT DRA HAS ALREADY DONE

Even though this is at the earliest possible phase, DRA has not waited to act.

At 3 pm on the President's Day holiday, DRA convened a conference call attended by the affected reporter; her counsel; Kevin Hunt – court reporter and firm owner who successfully beat back a similar overreach in New York -- DRA President Lisa Michaels; DRA Legislative Chair Toni Pulone; DRA lobbyist and counsel, Ed Howard; and incoming DRA President Sue Campana.

Before the call, Kevin Hunt supplied the reporter's counsel and conference-call invitees with a brilliant outline of a written response to the auditor.

By the end of the call, a detailed legal strategy had been sketched out for a response to the auditor, as well as a reinforcing and complementary letter to the auditor provided by DRA and Kevin Hunt to the reporter's counsel, citing essential legal authorities. Click here to read the letter: <http://bit.ly/DRALetter2BOE.pdf>

HERE'S WHAT THE REPORTER'S COUNSEL HAD TO SAY ABOUT DRA'S ACCOMPLISHMENT:

*"I must say that in all of my years being exposed to local, state and national reporting organizations, that the response we've seen from DRA is REMARKABLE. DRA assembled all of the necessary people in a moment's notice and you all worked literally day and night to get us the information and resources necessary to hopefully nip this in the bud before it could go viral.*

Potential License Denial Or Suspension For Failure To Pay Taxes	<i>Ed, if you can email that letter to me (which is amazing) I'll forward it to the CPA for submission to the auditor. I will keep you all posted as the matter progresses, and again THANK YOU all for all you have done. DRA Rocks!!!!!!!!!!!!!!"</i>
Message From COCRA	WHAT COMES NEXT
Scholarship Winners	This is, of course, a top-tier issue and we want you to know that we have already moved swiftly to defend you. Hopefully this strategy will stop this threat to our profession now, at the earliest phase.
Legal System Still Values Court Reporters	If for some reason the lone auditor persists on equating copies required to be provided to parties in litigation by licensed officers of the court with copies made at a photocopy shop, there are still many, many places such a decision can be stopped, including appeals to the BOE Board Members themselves and litigation.
Welcome New Members	
OTHER LINKS	This is an important issue, obviously, but it is a long way from being decided. This topic was discussed in various seminars at the DRA annual convention in Monterey, February 24-26, 2012, and the following consensus was reached:
DRA Mission Statement	It would be wise to use the words "certified transcript" rather than "certified copy" and the word "exhibits" rather than "copies/photocopies of exhibits" on transcript covers (stamp), invoices, order forms and worksheets.
DRA Calendar	DRA will update you with further information as it becomes available.
Membership Application	
What is DepoMap?	
Classified Ads	
DRA Insurance: Highlights Application	
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## HOWARD ADVOCACY, INC.

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(916) 844-5646

eh4@sbcglobal.net

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February 23, 2012

To Whom It May Concern  
State Board of Equalization  
Sacramento District  
3321 Power Inn Road  
Sacramento, CA 95826

**Re:   Audit of Carol Nygard & Associates: Lawfulness of Sales Tax Imposed On  
The Work Of Licensed Court Reporters**

To Whom It May Concern:

This office represents the Deposition Reporters Association of California (DRA). We have been informed by Ms. Carol Nygard that it is your preliminary opinion that certain kinds of work product produced by licensed court reporters is subject to sales tax. Because this opinion would be held to be unlawful in California as it has been in every other state to consider the issue, I write on behalf of the only trade group in the nation solely devoted to representing court reporters who report and transcribe depositions to try and explain the situation and resolve the issue definitively and informally at this early phase.

**Deposition Reporters Association of California.**

DRA represents more court reporting professionals who report and transcribe depositions than any organization in California and is the only organization in the nation solely devoted to representing such professionals. DRA is a California affiliate of the National Court Reporters Association (NCRA).

DRA was founded in 1995 by to preserve the impartiality and independence of those who report and transcribe depositions. In the early nineteen nineties, certain deposition companies and firms began the practice of offering certain services or prices to one party in litigation but not to others. DRA was founded to combat such practices.

DRA worked with the NCRA to organize and coordinate successful efforts across the country to preserve the impartiality of the freelance deposition reporting profession. As a result, court rules or laws preserving the impartiality of freelance deposition professionals were passed in fourteen states including Hawaii, Texas, Minnesota, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada, Kentucky, Michigan, Arkansas, Indiana, and North Carolina.

### **The Undersigned Counsel.**

Counsel for DRA is well versed in issues related to interpreting the scope of a state agency's statutory authority generally and administrative law specifically. Counsel has participated as lead or supervising counsel for public interest groups in numerous cases where the statutory authority of administrative agencies was the pivotal issue, including: *Congress of California Seniors v. Quackenbush* (1999) BC 203204 (prevailing superior court administrative law challenge to Insurance Commissioner's long-term care insurance regulations – suit spawned reform legislation); *Carmen Doe v. Wilson* (1997) 57 Cal.App.4<sup>th</sup> 296 (challenge to then-Governor's emergency regulatory effort to cut-off prenatal care to undocumented women); *California Women's Law Center v. State Board of Education* (1994) BC1134 (prevailing superior court administrative law, civil rights case); *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal. App.4<sup>th</sup> 1473 (appellate victory to invalidate initiative amendment reducing premium refunds); *20th Century v. Garamendi* (1994) 4 Cal.4<sup>th</sup> 216 (unanimous victory in Supreme Court case affirming lawfulness of Insurance Commissioner's complex rebate regulations); *Amwest v. Wilson* (1995) 11 Cal.4<sup>th</sup> 1243 (unanimous Supreme Court victory regarding the lawfulness of legislative amendment to Proposition 103). Counsel has also previously served as counsel for *amici* in two noteworthy California Supreme Court cases: *Broughton v. Cigna Health Plans* (1999) 21 Cal.4<sup>th</sup> 1066, and *Strauss v. Horton* (2009) 46 Cal. 4<sup>th</sup> 364.

### **Why The Work Of Court Reporters Operating Within The Scope Of Their License Is Not Lawfully Subject To Sales Tax.**

Respectfully, the opinion that the work of producing so-called “copies” of deposition transcripts for parties in litigation is akin to the work of a retail copy service misapprehends the work of court reporters in this State and the legal authorities they operate under.

In *Serrano v. Stefan Merli Plastering Co.* (2011) 52 Cal.4<sup>th</sup> 1018, the Supreme Court just last year held that court reporters like Ms. Nygard who report and transcribe depositions are “ministerial officers of the court” (*id.* at 1021), meaning officers charged by law with exercising non-discretionary, *inherently judicial* duties. *See also*: “[Deposition reporters] are officers of the court whose impartiality, as with judges, must remain utterly beyond question in order to ensure the enduring confidence and faith from which our judicial system derives its legitimacy,” *Resolution of the American Judges Association*, unanimously adopted, (April 24, 1998).

For this reason, like accountants and physicians, court reporters like Ms. Nygard who transcribe depositions in California are licensed by a licensing board within the California Department of Consumer Affairs. *See*, Business & Professions Code sections 8000-8047.

It appears as though the nomenclature of court reporters and lawyers may be the source of the confusion. When Ms. Nygard takes a deposition, she administers an oath, just like a judge does when swearing-in a witness in court. The “original” transcript of what the witness under oath said is a legal and judicial document, initially retained by the reporter to ensure its authenticity, accuracy, and fair use by the parties.<sup>1</sup> “Copies,” as reporters and lawyers call them, are actually

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<sup>1</sup>California Code of Civil Procedure section 2025.550(a) reads: “The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that



certified transcripts of the deposition and can be used as definitive evidence in court of what was said at the deposition. They are called “copies” simply to distinguish them from the original that initially remains in the custody of the reporter.

That “copies” in the legal-judicial context cannot lawfully be analogized to copies in an unlicensed retail setting is revealed by examining state statutes. Because court reporters are licensed officers of the court, their work – including providing “copies” of transcripts made under oath – is strictly regulated by law. For example, California Code of Civil Procedure section 2025.570(a) imposes strict conditions upon the handling and release of such “copies.” Again, this is to ensure their integrity and authenticity, and to ensure that all sides in litigation are treated impartially and fairly, when it comes to availability of “copies” that can serve as evidence in civil and criminal proceedings.<sup>2</sup>

If Ms. Nygard were to instruct an employee of Office Max on her behalf to make a copy of a deposition transcript for a party in litigation who requested the “copy” without ensuring that the process complied with state law, three things could happen: (i) the copy-shop employee could be guilty of a crime for practicing court reporting without a license; (ii) the transcript could be subject to an objection, and parties therefore could not reliably use it in court or as a part of any legal proceeding; and (iii) the reporter would be at grave risk of losing her Department of Consumer Affairs license. This is because, when a reporter makes a “copy” she is also certifying that it is identical to the original taken at the deposition, and likewise can only make such “copies” under certain, statute-imposed restrictions and conditions, as set forth in the margin.

---

transcript in an envelope or package endorsed with the title of the action and marked: ‘Deposition of (here insert name of deponent),’ and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.”

<sup>2</sup> California Code of Civil Procedure section 2025.570 explains “(a) Notwithstanding subdivision (b) of Section 2025.320, unless the court issues an order to the contrary, a copy of the transcript of the deposition testimony made by, or at the direction of, any party, or an audio or video recording of the deposition testimony, if still in the possession of the deposition officer, shall be made available by the deposition officer to any person requesting a copy, on payment of a reasonable charge set by the deposition officer.

(b) If a copy is requested from the deposition officer, the deposition officer shall mail a notice to all parties attending the deposition and to the deponent at the deponent's last known address advising them of all of the following:

- (1) The copy is being sought.
- (2) The name of the person requesting the copy.
- (3) The right to seek a protective order under Section 2025.420.

(c) If a protective order is not served on the deposition officer within 30 days of the mailing of the notice, the deposition officer shall make the copy available to the person requesting the copy.

(d) This section shall apply only to recorded testimony taken at depositions occurring on or after January 1, 1998.”

To illustrate this point more broadly, consider an attorney. When an attorney – also a licensee, also an officer of the court – makes copies of a brief to mail those copies to the other parties in a lawsuit (as required by law), he will charge the client for those copies. But the mere fact that they are copies does not remove them from being copied while performing a licensed service, under the dictates of state law governing lawyers and lawsuits. He is a lawyer. Part of being a lawyer is filing briefs. Part of filing a brief is obeying statutes related to how briefs are served on other parties. This at times includes making copies of documents he has produced as a lawyer within the scope of being a lawyer. The same is true of licensed CPAs, physicians, and the like. They all, within the scope of the licenses, make copies, sometimes (as here) directly governed by state law. Other times, they do it within the scope of their license while serving a client. But, the mere fact that licensed professionals conjugate verbs like “to copy” in the first-person that unlicensed professionals also conjugate in the first-person in other contexts does not legally mean the licensed professional has temporarily ceased acting within the scope of their license.

If Ms. Nygard violated the Code of Civil Procedure when making copies supposedly subject to sales tax, she could lose her license. Nothing more is required to illustrate that when she is making a “copy” here, she is doing so within the scope of her license.

For these reasons, it respectfully is fundamental legal error to conclude that a “copy” made under strict statutory regulation by an officer of the court solely within the scope of her license for use by lawyers or others in legal proceedings is akin to a retail copy transaction. It is not. As a matter of state law, when Ms. Nygard provides “copies” in obedience to the dictates of her license and pursuant to the Code of Civil Procedure, she is providing a service that can only be undertaken by a licensed officer of the court, acting within the scope of her state-issued license. As a licensed service performed by a licensed legal professional – services that additionally are under the auspices of the judicial branch -- anything Ms. Nygard does that can only be done lawfully by a licensee and is done pursuant to conditions imposed by the Code of Civil Procedure, is by definition, the provision of a licensed legal service, and is simply not subject to sales tax under any known authority. And, respectfully, this has been the conclusion of the courts in New York and the courts or taxing authorities in every single state to have previously considered the issue.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Howard', written in a cursive style.

Ed Howard, for DRA

cc: Ms. Carol Nygard



<< [DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual Convention Exceeds All Expectations](#)

[Meet The New DRA Board](#)

[Letter To The Editor](#)

[Enlist In DRA's Realtime Army!](#)

[CR Board-U.S. Legal Trial Update](#)

[Good News From The State Bar Of California](#)

[Are Transcripts Subject To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer Instructions](#)

[Plea For Mentors](#)

[Pengad Member Discount](#)

[Be A Part Of DRA](#)

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[Depo Diplomat](#)

[Court Reporters Board Oversight Hearing](#)

[The Power Of One](#)

# NCRA TechCon

TechCon event exceeds expectations in Reston, Virginia

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For the first time, NCRA brought together the CLVS Seminar, the Realtime Systems Administrator Workshop, and the Trial Presentation programs in conjunction with tech-only programming to give attendees a comprehensive event dedicated to technology resources.

Based upon preliminary feedback, NCRA is thrilled to report that the event was well received by attendees, especially the featured Ignite reception on Saturday evening. In case you missed it, videos of each 5-minute presentation will be available on the NCRA YouTube page in the coming weeks.

Another highlight of the weekend came when Board members Chris Willette and Steve Zinone challenged each other to a "skate-off" to raise funds for the National Court Reporters Foundation in memory of Richard "Bear" Smith, the late husband of president-elect Tami Smith. The impromptu event raised more than \$1,200 for NCRF programs and initiatives. Visit the NCRA YouTube channel to see Chris and Steve on the ice!



<http://www.youtube.com/watch?v=Solqq87GNyI&feature=youtu.be>

TRAIN program launches during TechCon and Boot Camp weekend.

NCRA's newest task force, TRAIN (which stands for Taking Realtime Awareness and Innovation Nationwide), presented their "train the trainer" styled program to an audience filled with state leaders and technologically oriented court reporters at TechCon on Sunday, February 26. The program was also offered to NCRA's affiliate court reporter associations to present in small groups at their state conventions. The program's goal is to increase the number of court reporters capable of providing realtime across the country. A realtime reporter offers the most technologically advanced method of capturing the record.



[<< DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Deposition Officer Instructions

It's not uncommon for today's court reporter to be working with an assortment of firms, including those out of state and/or managed by nonreporters. To be licensed by the State to serve as a deposition officer, each CSR has passed an examination demonstrating the skill and knowledge required to produce a legally-binding record of the testimony of a witness.

It would be wise for the CSR not to assume that a given reporting firm with whom they are working has the same knowledge as the CSR about the legal requirements that must be followed to produce a legally-binding deposition transcript.

Commonsense things that the law requires of an impartial deposition officer may be far from the mind of a marketing person at a reporting firm when they are pricing and pursuing a case. As the one licensed and supervised by the State, it is incumbent upon the CSR to make sure that the reporting firm clearly understands the laws they must follow.

One way to do this is to include with every job turned in to a reporting firm a set of Deposition Officer Instructions. These can serve as helpful instructions to a reporting firm in handling the duties delegated by the CSR to the reporting firm, ensuring that the firm doesn't run afoul of the law or jeopardize the validity of a transcript, thereby placing the CSR's license at risk.

To assist you in creating your own set of Deposition Officer Instructions, DRA has included an example. It is only intended to be an example, not to be all-inclusive or the *only* way to do it.

## DEPOSITION OFFICER INSTRUCTIONS

The following checklist needs to be followed by the reporting firm to deliver a legally-valid deposition transcript to the parties:

?? No illegal cost shifting has taken place.

VIOLATION EXAMPLE: The impartiality mandated by law has been negated by giving a free or discounted transcript to the party taking the deposition.

? No gifts or kickbacks have been given in connection with this deposition.

VIOLATION EXAMPLE: Giving a paralegal a \$25 gift certificate for scheduling this deposition has violated the NCRA Code Of Professional Ethics Provision 8 and Advisory Opinion 45 prohibition on such gifts: "Nothing offered in exchange for future work is permissible, regardless of its value." (See also B&PC Section 8046 and CCR 2475(b)(8).

? No reformatting or alteration of the transcript has occurred.

VIOLATION EXAMPLE: The transcript has been changed to be 24 lines of text with a running header on line 1, in violation of the Section 2473 Minimum Transcript Format Standards and the Section 2029.500 requirement that depositions taken by California CSRs in California, regardless of where the case is venued (and depositions taken by California CSRs outside of California that are venued in California) must comply with California law.



Potential License Denial Or Suspension For Failure To Pay Taxes	? The transcript has been produced with time stamps, if provided by the reporter in that format. VIOLATION EXAMPLE: The transcript produced by the reporter in time stamp format has been printed by the reporting firm without time stamps, causing the transcript to violate Section 2473, which requires such a transcript to be produced with the time stamps.
Message From COCRA	
Scholarship Winners	
Legal System Still Values Court Reporters	? All parties have been notified of requests for expedites or rough drafts and provided an opportunity to receive such products at the same time. VIOLATION EXAMPLE: A request for a rough transcript comes in, and the other side is not notified, thus violating CCR 2025.220(a)(5) and 2025.320(b).
Welcome New Members	? The same prices for roughs drafts and real time are being charged to each party. VIOLATION EXAMPLE: The party taking the deposition is illegally promised free real time or free rough transcripts, while the other party is being charged for them. CCCP 2025(a)(5) mandates that the cost for real time or a rough may be no greater than the costs charged to any other party or attorney.
OTHER LINKS	
DRA Mission Statement	
DRA Calendar	
Membership Application	? No financial relationships based upon the outcome of the proceeding have been entered into. VIOLATION EXAMPLE: One party has been told that they will not be expected to pay their bill in full unless they win the case, in violation of CCR 2475.
What is DepoMap?	Ensure compliance with the above checklist before attaching the reporter’s signed certificate pages.
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<< [DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Plea For Mentors

Dear DRA Members:

We desperately need qualified volunteers to become DRA Mentors. We have mentees waiting to be placed immediately, all of whom currently attend Certified Court Reporter Training Programs in the Southern California area. While it is logistically beneficial to match mentees with a mentor in the same geographic area, it is not a requirement. In addition, we periodically need mentors in Northern California and would therefore love to have you on board.

Remember how hard it was to go from the frying pan to the fire? Students and new reporters need guidance as they make their way into this exciting and challenging profession. Please help them make a good first impression. This is CRITICAL, as we face constant challenges from alternate means of capturing the record which claim to be superior to a live stenographic reporter.

Can't commit to mentoring? How about letting a reporter sit in with you on a depo, hearing or trial? What a wonderful way to learn! We are forming a list of members who are willing to take the time to show students and new reporters the ropes. We'd like to put you on that list. Please email Board Member Kristi Johnson at [district5@caldra.org](mailto:district5@caldra.org) and let her know you're in.

If you are willing to mentor, and you meet the qualifications of as outlined in DRA's Mentor Guidelines, [http://www.caldra.org/mentor\\_guidelines.asp](http://www.caldra.org/mentor_guidelines.asp), please take the time right now, while you're thinking of it, to submit your mentor application. You may utilize this link from our website [http://www.caldra.org/mentor\\_application.asp](http://www.caldra.org/mentor_application.asp) or print it and submit it by fax or e-mail (contact info is on the application).

THANK YOU IN ADVANCE FOR DONATING YOUR TIME TO A WORTHY CAUSE

THAT'S A WIN/WIN FOR THE ENTIRE PROFESSION!



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Pengad Member Discount



Introducing: 10% off all Regularly Priced merchandise for DRA members!  
(See terms and conditions below.)

The DRA has joined Pengad's Member 10 Buying Program for 2012.

Pengad is proud to support both your profession and your association. We have joined with the DRA to make sure you, as a member, receive the best quality products and service at the best price.

Effective March 1, 2012, members of the DRA are eligible for a 10% off discount on all regularly priced merchandise purchased at Pengad. To take advantage of this offer, just mention the Coupon Code M10912 every time you order. If you are ordering at [www.pengad.com](http://www.pengad.com), enter M10912 in the coupon section of the shopping cart.

Please join our mailing list so that we can continue providing you with email communications regarding special deals and exclusive coupons. As an added bonus, you will receive a coupon code worth \$5.00 off your next Pengad order.

The Member 10 Buying Program terms and conditions are as follows:

- 10% off merchandise only
- Minimum order is \$15.00
- Account must be in good credit standing
- Coupon may not be transferred
- Coupon may not be applied to orders already invoiced
- Coupon may not be combined with other discounts, sales, or special offers
- Coupon may be used for multiple purchases
- Coupon effective March 5, 2012 – December 31, 2012

Thank You,

Sincerely,  
Judy Herring  
Sales Manager

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OTHER LINKS	
DRA Mission Statement	
DRA Calendar	
Membership Application	
What is DepoMap?	
Classified Ads	
DRA Insurance: Highlights Application	
War Chest	
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[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Be A Part Of DRA

WONDERING HOW YOU CAN BE MORE INVOLVED IN DRA?

*by Cheryl Haab, Lorrie Marchant and Rich Alossi*

A wise woman named Sherry Anderson once said, "Volunteers don't get paid -- not because they're worthless, but because they're priceless." A truer statement has never been uttered. We at the Deposition Reporters Association operate through the grace of our volunteer members. But in any association, a small core group cannot continue to do all the work without burning themselves out to the point of extinction. New blood is a must, with regular infusions.

Many of you have expressed an interest to the Officers and Board members of DRA that you would like to be more involved and help out however you can, as your time permits. By volunteering some of your time, not only will you be helping in the fight for the integrity of our valiant profession, but you will make scores of useful contacts and valuable friends in that very undertaking.

We are working on creating a list of people who would like to volunteer on committees and projects at various times throughout the year. Please consider donating your expertise to us this year, and keep in mind that sometimes the smallest efforts can effect the most significant change. Inquiries and interest in our volunteer program may be directed to [dra@caldra.org](mailto:dra@caldra.org).

We look forward to working alongside you in 2012 at the Deposition Reporters Association!

\*\*\*\*\*

DRA Secretary Cheryl Haab writes:

I am so proud to be small part of this effort. Donating my time to DRA has been an enriching experience in a myriad ways. I have learned so much about this fascinating profession through my volunteer efforts, and it has allowed me great success in my own career in a relatively short span of time. While the the term "volunteer" implies that my time and efforts were offered without compensation, I can say without hesitation that this is not so -- my payment has come in the form of the invaluable knowledge and the life-long friendships I have made during my tenure with the association.

DRA District 1 Rep Lorrie Marchant writes: I have been a proud, continuous and active member of DRA since 1997. Last year I was offered the opportunity to serve on the Board of Directors. Now that I have a behind-the-scenes view, so to speak, I am in even more awe and admiration for the volunteers that run DRA. The innovation and motivation is as powerful as Mother Nature herself. I am learning so much and keeping abreast of current events/issues that affect our profession that I would otherwise be unaware of if I was not a member of DRA and on the Board of Directors. I would not be the reporter that I am today if not for DRA. I am honored to serve on the Board and help out in any way that I possibly can. I thank the founding members of DRA and every single officer, Board member and volunteer of

<a href="#">Potential License Denial Or Suspension For Failure To Pay Taxes</a>
<a href="#">Message From COCRA</a>
<a href="#">Scholarship Winners</a>
<a href="#">Legal System Still Values Court Reporters</a>
<a href="#">Welcome New Members</a>
<b>OTHER LINKS</b>
<a href="#">DRA Mission Statement</a>
<a href="#">DRA Calendar</a>
<a href="#">Membership Application</a>
<a href="#">What is DepoMap?</a>
<a href="#">Classified Ads</a>
<a href="#">DRA Insurance: Highlights Application</a>
<a href="#">War Chest</a>

DRA for all of the selfless time spent in an effort to preserve our fabulous and ever-evolving career.

DRA District 4 Rich Alossi writes:

Our profession needs us. Before joining the DRA board, I knew I couldn't just sit on the sidelines and wait for others to tackle the big issues we face, but I wasn't sure how to get more involved. That's when my district rep encouraged me to start going to DRA's conventions, seminars and student barbecues, and to sit in on a board meeting. I had never felt such a sense of community and optimism in an association before, which made DRA a natural fit when I joined the board. We've heard the drumbeat of realtime for years now, and this is the year we're making it a priority. DRA has taken the lead on a number of great programs to help you get realtime-ready, including writing tips with Mark Kislingbury, LiveNote training and the CCRR exam. We just need you to take the leap and help take steno reporting to the next level.



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

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FYI, I just joined DRA! I love the work you guys are doing!

Mary

\*\*\*\*\*

I must say that in all of my years with Carol and being exposed to local, state and national reporting organizations, that the response we've seen from DRA, is REMARKABLE. DRA assembled all of the necessary people in a moment's notice and you all worked literally day and night to get us the information and resources necessary to hopefully nip this in the bud before it could go viral.

I will keep you all posted as the matter progresses, and again THANK YOU all for all you have done. DRA Rocks!!!!!!!!!!!!!!

Mark S. Drobny, Attorney at Law

\*\*\*\*\*

I know that the reporters in CA, and me in particular, have an unbelievable team behind them. I can't tell you how grateful I am.

Carol S. Nygard

\*\*\*\*\*

Many thanks for the speedy response. Great work.

Lois

\*\*\*\*\*

Each one of you is awesome, and I cannot thank you enough for your continual hard work and persistence. If each state had an association, board and officers half as strong as DRA, this profession could be elevated to where it should be. Although I now live in Georgia, I have been a California CSR since 1975 and am proud of it. I always look forward to your mailings. Thank you again!

Sandi



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Depo Diplomat

Dear Depo Diplomat:

I've received a request for a copy from a non-party to an action, so I've followed the instructions in the CCP Section 2025.570 regarding noticing all the parties and the deponent that this request has been received by me. After 30 days with no notice of a protective order from any of the parties or the witness, I am now about to provide a copy to this attorney who's requested it, and it's now about one and a half years after the depo was taken. Upon reprint of the transcript for him, do I do a fresh certificate page to certify that this particular copy is certified by me, or do I reprint it with the original cert page, which was dated in August of 2011?

Also, regarding a different situation, an attorney friend/client asked me if a reporter could regenerate an original, because he lost his original and was preparing for trial eight months after the depo was taken. What would be an appropriate response to him?

\*\*\*\*\*

Dear Reporter:

First, as for the copy that you'll be providing now of the recently requested transcript taken back in August of last year, while the Code of Civil Procedure doesn't include any direction on this subject, I believe it would be appropriate to reprint the original certificate page that was dated back at the original time of production. Our Court Reporters Board opined many years ago that the signature on a certified copy can and should be a "dry" signature, meaning a copy of the signature that appears on the original cert page, rather than a "wet" or original signature. Given that advice, we have followed that opinion since by always just asking reporters to sign their original cert page and have included a copy of that page and signature with all certified copies produced from that transcript. For that reason, I'd say that any certified copy produced from that same original should bear the signature and date that was placed on the original transcript, regardless of how much later the copy is being produced and delivered.

And your second question regarding the reproduction of an original that's been misplaced or lost, that's also a question that's not answered by any language in the CCP, unfortunately, like a lot of somewhat unusual circumstances that the Code doesn't take into account. You may hear different opinions on this, but I've always believed that a reporter can generate a "second" original, or a duplicate original in a situation like this. I would just suggest that the transcript be so marked on the cover page, so that it's clearly indicated that this is a duplicate original, provided to replace the original transcript, which has been lost or misplaced. If any corrections have been submitted since the original was first released, those should be copied and included in the transcript. And you may modify the cert page if you choose, though it's not absolutely necessary, and add a paragraph or line which informs anyone reading it that this transcript has been reprinted from the original transcript file to replace the original transcript, which has been misplace or cannot be located, or words to that effect.



<a href="#">Potential License Denial Or Suspension For Failure To Pay Taxes</a>
<a href="#">Message From COCRA</a>
<a href="#">Scholarship Winners</a>
<a href="#">Legal System Still Values Court Reporters</a>
<a href="#">Welcome New Members</a>
<b>OTHER LINKS</b>
<a href="#">DRA Mission Statement</a>
<a href="#">DRA Calendar</a>
<a href="#">Membership Application</a>
<a href="#">What is DepoMap?</a>
<a href="#">Classified Ads</a>
<a href="#">DRA Insurance: Highlights Application</a>
<a href="#">War Chest</a>

Another option, though, in the case of a missing original would be for the attorney to simply use his certified copy in lieu of the original and file that with the court, after making another copy for his own use. Years ago, when it was still common practice for attorneys to state certain standard stipulations as to the procedures to be followed at the beginning of a depo, one of the stipulations always included in the list would be that at the time of trial, a copy of the transcript could be used in lieu of the original, if the original were not available for some reason. So apparently attorneys must have known that the courts would allow them to do that, and perhaps you could mention that as an option for this attorney, especially if whatever reporter he may be requesting a duplicate original from is not willing to provide one to him.

And since you've indicated that you're located in Northern California, I'm assuming that the Code regarding witness review and maintenance of the original by the depo officer was followed in this case, meaning that this attorney ordered and received both a certified copy and the original and that he didn't agree to stipulate away anything to opposing counsel. So assuming he also hasn't misplaced his certified copy, he should be able to use that in court and explain the circumstances to the judge when the time comes.

I hope this fully answers your questions, and if you have any other questions or if any of the above is not clear, please feel free to email me directly at any time. Thank you, also, for your membership and appreciation of DRA and our website.



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Court Reporters Board Oversight Hearing

## DRA ATTENDS CRB OVERSIGHT HEARING AT STATE CAPITOL

The California Court Reporters Board (CRB), like other boards and bureaus organized under the Department of Consumer Affairs, is required to undergo a sunset-review process periodically to allow the state legislature to assess the effectiveness and performance of the board and determine whether the board is continuing to fill its role as a guardian of the consumers of California.

That review process, most recently conducted in 2005 by the Joint Committee on Boards, Commissions and Consumer Protection, raised a number of issues for the CRB to address, including continuing education requirements, public CR school instructional quality, the clarification of unprofessional conduct by CSRs, and the public disclosure of disciplinary actions taken by the CRB. Most importantly, the Joint Committee ultimately recommended that the court reporting profession should continue to be regulated and that the board be maintained.

This review process has now been assigned to the Senate Committee on Business, Professions and Economic Development, and the oversight hearing called for as part of the evaluation to be conducted was held at the State Capitol on Monday, March 12th. DRA was represented there by Toni Pulone, legislative chair.

Appearing at the hearing on behalf of the CRB were Gregory Finch, attorney and CRB Vice Chair, who provided an overview of the history and purpose of the CRB; Yvonne Fenner, Executive Officer of the CRB, who reported on the various accomplishments and advancements of the CRB in recent years; and Paula Bruning, CRB staff member. Ms. Fenner presented to the Committee Chair, Senator Curren Price, and the Committee members the results of the Board's internal review regarding the eight current sunset-review subjects that were identified and considered by the Committee as the most significant and critical issues of concern.

These eight current issues under review by the CRB and the Committee and the recommendations on these issues submitted by the Committee staff are as follow:

1. Should the licensing and regulation of court reporters be continued, and should the profession continue to be regulated by the CRB?

Staff Recommendation: The court reporting profession should continue to be regulated by the current CRB in order to protect the interests of the public and be reviewed once again in four years.

2. Should an extension be granted to continue to fund the Transcript Reimbursement Fund (TRF) for indigent litigants?

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[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# The Power Of One

by Kevin Wm. Daniel, CCR 711

If you believe one person can't have an influence on our profession – read on. You'll read about one court reporting agency and one attorney who nearly impacted the entire profession of court reporting overnight, and not for the better. You will see how even one reporter or one agency's actions can have far-reaching, unintended ramifications affecting every reporter in the state and potentially the nation.

The story has its beginning when an attorney appeared on the copy side of a deposition. It was a long day of deposition, producing a transcript of 345 pages. When the attorney received the invoice for reporting services one month later, it was a mostly un-itemized bill for a "transcript package" -- exhibits, litigation support disk, "archiving fee," and delivery, totaling over \$1600 for a single copy. The reporting agency is a nationwide agency with an office in Las Vegas, and the attorney, Richard Segerblom, in addition to practicing law, is an Assemblyman in the Nevada Legislature.

Mr. Segerblom realized that if he wanted a copy of the deposition, he had no choice in who he could order it from. He felt as though he was being held hostage by the agency, without any recourse. He had not agreed to the agency's rates because he had not hired them. Mr. Segerblom noticed a delivery charge and attempted to avoid the fee. He called the agency and advised them he would come to their offices personally to pick up the transcript so he would not have to pay the delivery fee. He was told that would not be possible because the production department was in another state. His copy would be FedEx'd from Atlanta.

Mr. Segerblom complained and some \$200 was refunded to him, but he still felt the issue demanded more attention. Attorney Segerblom -- now Assemblyman Segerblom -- decided to craft legislation to address a perceived problem, and he wound up introducing AB353 during the 2011 session of the Nevada Legislature. Assemblyman Segerblom's proposed solution was to place a cap on transcript copy rates at \$2.50/page. Period. No expedited fees, except as granted by the court after petitioning the court "in exigent circumstances."

By the time NVCRA discovered the bill, it was coming up for hearing in less than 24 hours. A mass e-mail was sent to all Nevada reporters requesting phone calls and e-mails to specific legislators, and members were rallied to testify in the hearings. As a result, following a hearing and testimony by Assemblyman Segerblom and several court reporters, the bill was requested to be withdrawn by Assemblyman Segerblom pending discussion with representatives of NVCRA. In discussions following the hearing, concerns from both sides were expressed and a compromise was reached that resulted in Assemblyman Segerblom tabling the bill for the 2011 session, providing NVCRA publish an article designed to:

- 1.Raise awareness within the reporting community about hidden costs and perceived gouging by some reporters and reporting agencies;



<a href="#">Potential License Denial Or Suspension For Failure To Pay Taxes</a>
<a href="#">Message From COCRA</a>
<a href="#">Scholarship Winners</a>
<a href="#">Legal System Still Values Court Reporters</a>
<a href="#">Welcome New Members</a>
<b>OTHER LINKS</b>
<a href="#">DRA Mission Statement</a>
<a href="#">DRA Calendar</a>
<a href="#">Membership Application</a>
<a href="#">What is DepoMap?</a>
<a href="#">Classified Ads</a>
<a href="#">DRA Insurance: Highlights Application</a>
<a href="#">War Chest</a>

2.Educate legal professionals about their rights as consumers of reporting services.

That, in a nutshell, is the purpose of this article.

So let’s begin by looking at some reasons why Mr. Segerblom was so concerned about his bill from the court reporter. From the invoice, several things immediately stand out. There are charges for exhibits, “Litigation Support Disk,” “Archiving Fee,” and a delivery charge. Beyond that, the invoice was not further itemized. A representative of the agency, contacted for this article, confirms that the transcript itself was 345 pages long and the keyword index was an additional 66 pages.

A “Disclaimer” with the un-itemized invoice reads in part: “Transcript package typically includes transcript/word index, exhibits, appearance fee, condensed transcript, litigation support disk, shipping, video charges and may include other service charges based on job or region. Some services and rates may vary by job or region. Please contact your local office for specific detail and questions.”

It’s no wonder Mr. Segerblom was alarmed at the cost. He hadn’t hired the firm for the deposition, so he probably wasn’t aware of their particular billing practices. He didn’t know the transcript was printed in Georgia and Fed Ex’d from there at his expense. He probably wasn’t aware of the Disclaimer and wound up ordering more products and services than he intended. And he would have had to inquire of the Las Vegas office specifically to understand the typical charges due to regional variations in billing practices.

So what tools can attorneys and other consumers of reporting services use to protect themselves and their clients from being overcharged or ordering products and services they don’t want? For starters, they can invoke NAC 656.390(3) which states, “Upon request, a court reporter shall provide to each party to any litigation or the party’s attorney an itemized statement of all rates and charges for services that have been provided by the court reporter in the litigation or services that the court reporter will provide before the completion of the litigation.” A simple request for the rate sheet in writing or on the record, before, during or after a deposition, is the first step. By requesting rate sheets from multiple firms, some subtle but significant differences in rate structure become apparent.

Two standard services that court reporters offer are the condensed or mini transcript and the keyword index. They’re both mentioned in the “Disclaimer” above. Typically, the keyword index will generate approximately 20% more printed pages for each deposition. Some reporting firms charge the same page rate for the keyword index as the deposition page; some charge a flat fee for the whole keyword index, regardless of size. That’s just one subtle difference in reporting rates that can result in a savings – or expense – of 20% on every deposition.

All consumers have the responsibility to compare prices on products and services they purchase or intend to purchase. Here are some basic steps to keep in mind when ordering reporting services and products:

- 1.Order specifically the services and products you want, on the record or in writing. This should override any standard orders found in a “transcript package” or “disclaimer.”
- 2.Read the fine print. Know what you are ordering if you haven’t specified products or services.
- 3.Request a rate sheet from the reporter or firm you are working with per NAC 656.390(3) and demand an itemized invoice for any products or services you have ordered. Compare the costs of extras, such as postage and handling, exhibits, minis, indexes, etc. This is most helpful in deciding who you want to select as your reporting vendor when you are the attorney taking the deposition.
- 4.Ask for adjustments to your bill if you feel you have been overcharged or charged for services

you did not order. In the recent Kitec litigation, Plaintiffs' counsel stated in open court that they had been overcharged 25 to 50 cents per page in discovery and they were able to receive a \$40,000 adjustment to the deposition fees.

5.Finally, if you think you have been subjected to predatory pricing or potentially fraud on the part of a reporter or reporting agency, you can file a complaint with Nevada's Certified Court Reporters Board. They are empowered to hear disciplinary matters and may subject reporters and agencies to fines and even suspension of their license to practice.

To sum up, attorneys and consumers of reporting services need to be educated consumers. Hopefully this article will assist them in that regard. Reporters might want to distribute copies of this article to attorneys with whom they come in contact.

And what lessons can reporters take from this story? For starters, they might want to review their billing practices. Even though it's a free market, "hidden" fees and costs might benefit the bottom line, but as this experience shows, they can also create ill-will, with long-term, unintended consequences that impact the entire profession.

In this instance, at least, that is The Power of One.



<< [DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Potential License Denial Or Suspension For Failure To Pay Taxes

Effective July 1, 2012, the Department of Consumer Affairs and its constituent entities are required to deny an application for licensure and to suspend the license/certificate/registration of any applicant or licensee who has outstanding tax obligations due to the Franchise Tax Board (FTB) or the State Board of Equalization (BOE) and appears on either the FTB or BOE's certified lists of top 500 tax delinquencies over \$100,000. (AB 1424, Perea, Chapter 455, Statutes of 2011)

Once it has been determined that an applicant or a licensee is on a certified list, the applicant or licensee has 90 days from the issuance of a preliminary notice of suspension to either satisfy all outstanding tax obligations or enter into a payment installment program with the FTB or BOE. Any such person who fails to come into compliance will have his/her license denied or suspended until the Board, Bureau, Commission or Committee they have applied to receives a release from the FTB or BOE. The form for requesting a release will be included with the preliminary notice of suspension.

The law prohibits any of DCA's Boards, Bureaus, Commission or Committees from refunding any money paid for the issuance or renewal of a license where the license is denied or suspended as required by AB 1424.

The FTB and BOE are currently expanding the certified lists from 250 to 500, but you can check if you are currently on the FTB's certified list at:

<http://www.ftb.ca.gov/individuals/txdlnqnt.shtml>

or the BOE's certified list at:

<http://www.boe.ca.gov/cgi-bin/deliq.cgi>.

If you believe you are on either list in error, please call the FTB at  
or the BOE at

(866) 418-3702

916-445-5167 .



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Message From COCRA

## COCRA Proudly Announces 2012 Legislation

Team COCRA has drafted legislation to reform reporter user fee statutes in a shift that would allow trial courts to assess and retain civil reporter fees to offset the cost of official reporting services in civil proceedings. This proposal will ensure the public accessibility to the court record at a reasonable cost without encumbering the state budget.

Early last fall, COCRA called for a meeting of stakeholders representing official reporters and labor representatives from IFPTE, SEIU and AFSCME. The purpose of the meeting was to vet proposed amendments in the civil reporter fee statutes. As a result of that meeting, COCRA got the green light to move forward.

In January, COCRA's legislative advocate, Shane Gusman, submitted the statutory change to the State Legislative Counsel's office and began to pursue an author. Stay posted for updates on the revisions and bill introduction.

KEEP IT SIMPLE. KEEP THE FEES. KEEP THE REPORTERS.

COCRA views the loss of official reporters in the courts of paramount importance and commits to advance this statutory change this year! Today's political and budgetary climate will make this a difficult pursuit, and we ask for your support in our efforts to save reporter jobs.

\*\*\*\*\*

## Your COCRA Membership Means You Are Part of the Solution!!

We recognize these are difficult financial times for everyone, but we are working hard for your legislative protection. Throughout California, official court reporters are being laid off and being replaced by digital recording devices in criminal courts and freelance reporters in civil courts. Most elected officials in your city and county, not to mention here in Sacramento, do not understand the expertise that trained court reporters bring to a courtroom. With your help, we're making strides to educate them and the public on the value of official court reporters.

Renew your COCRA membership or become a new member of COCRA and be part of the solution.

\*\*\*\*\*

## Civil Court Reporter Fee System Broken.

Stanislaus County pulled all its Official Reporters out of civil courts, years ago, only to recognize that mistake and return to the staffing of civil courts with official reporters. Yet again, it's their plan to pull reporters from civil courts as an answer to budget shortfalls. Santa Cruz made that same change last year. In Napa, Marin and Alameda civil courts, official court reporters are disappearing at alarming rates. Ventura and LA are being warned of coming layoffs. Other



<a href="#">Potential License Denial Or Suspension For Failure To Pay Taxes</a>
<a href="#">Message From COCRA</a>
<a href="#">Scholarship Winners</a>
<a href="#">Legal System Still Values Court Reporters</a>
<a href="#">Welcome New Members</a>
<b>OTHER LINKS</b>
<a href="#">DRA Mission Statement</a>
<a href="#">DRA Calendar</a>
<a href="#">Membership Application</a>
<a href="#">What is DepoMap?</a>
<a href="#">Classified Ads</a>
<a href="#">DRA Insurance: Highlights Application</a>
<a href="#">War Chest</a>

courts have intimated this might also be a solution to their budget woes. Last Monday, San Francisco Superior Court jettisoned all its official court reporters that cover the civil courts.

What's going on? The answer is not simple.

The California Legislature provides public funding for official court reporters in court matters most intrinsic to an orderly and safe society: criminal, civil conservancy, family and juvenile. Back in 1992, the California Legislature, recognizing the efficiencies derived from using in-house court reporters, enacted a user fee system to encourage the courts also to provide official court reporters in all other matters [not covered by GC69952], including civil. The user fee system was designed to offset the costs of the service provided to the litigants who pay the fee and to guarantee accessibility and availability of a verbatim record.

However, over the past 20 years, the user fee system has become a political football in the battle of the state budget. Over the years, it's been diluted to a point where there is little evidence that it does anything to directly offset the costs to each trial court for the reporting service provided. It's actually becoming an excuse for local courts to put the onus on the litigants with money and a lawyer to privately retain and drag a CSR into court. More problems flow from there, not the least of which is the increasingly imbalanced access to justice between litigants of means and litigants without means. This growing mess is not what the Legislature intended, and it's certainly not consistent with the mission of the courts.

COCRA is inviting other stakeholders to participate in our efforts to fix this broken fee structure and to stop the privatization of the official reporters' jobs. Follow our progress and check back with us here on our website for updates and information on how you can help.

\*\*\*\*\*

*This article was originally published in October of 2011 and gives a basis for COCRA's legislative action.*



[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Scholarship Winners

Again this year, DRA offered \$1000 scholarships to all California court reporting students. We are very proud to announce our 2012 DRA Scholarship winners. These top students wrote inspiring essays, submitted outstanding school scores, and knocked it out of the park during their personal interviews.



**Helen Peabody ~ Downey School of Court Reporting:**  
Before Helen Peabody began her court reporting adventure, she obtained her BA degree from the University of Massachusetts, Amherst. Since starting school, she has been on the Dean's list, the President's Honor list, volunteered as Vice President of the Court Reporting Club and worked as a student aide for a blind court reporting student, all while working two part-time jobs. Helen's straight A's and positive attitude made her stand out among the crowd.



**Michael McMorran ~ Sage College San Diego:**  
Michael McMorran has been an outstanding and inspirational student since he stepped through the doors of Sage College in 2010. He has attended numerous NCRA and DRA events, including our student barbeques. After being presented DRA's Zandonella Scholarship at our Monterey convention, Mike delivered an inspirational and powerful message to the students and reporters in attendance. As a founding member, John Zandonella inspired all of with his courage and perseverance. DRA sees these same qualities in Mike, and we know his future holds nationwide recognition and success.



**Kimberly Kadolph ~ Sage College Moreno Valley:**  
Kimberly is unstoppable and is on her way to being an extraordinary CSR. She expresses extreme pride in her decision to become a court reporter and strives for excellence by attending extra classes (12-13 hour school days), by grading other student's tests, and by serving on the NCRA Student Community of Interest. Her grades are outstanding, her work ethic is phenomenal, and her positive outlook towards her future career made Kimberly Kadolph an easy choice for this award.

Congratulations to our 2012 winners! DRA looks forward to offering scholarships in 2013, and we can't wait to receive more outstanding applications from all California court reporting school students.

\*\*\*\*\*

Potential License Denial Or Suspension For Failure To Pay Taxes

Message From COCRA

Scholarship Winners

Legal System Still Values Court Reporters

Welcome New Members

OTHER LINKS

DRA Mission Statement

DRA Calendar

Membership Application

What is DepoMap?

Classified Ads

DRA Insurance: Highlights Application

War Chest

To Our Valued DRA Members:

YOU MADE IT POSSIBLE!! Many thanks to those who provided generous contributions to make these scholarships possible.

If you'd like to share the proud feeling of giving back and helping a future reporter, DRA would be honored to accept your donation.

(click link to donate)

I WANT TO HELP A STUDENT:

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[<< DRA Home](#) | [Newsletter Archive](#) | [The Deposition Reporter March 2012](#) | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Legal System Still Values Court Reporters

News from Ohio:

Apparently the official record in one Ohio courtroom will now be transcribed by someone other than the person monitoring the new digital equipment.

\*\*\*\*\*

In 2010, a court management consulting firm was hired by the Ohio Court Reporters Association for the purpose of providing a cost analysis of digital recording as compared to stenographic court reporting in Ohio courts. The result of the study indicated that the transcription error rate for a live stenographic court reporter is under one percent, whereas the error rate for a transcribed digital audio recording has been as high as nearly 25 percent.

The Ohio Court Reporters Association has been maintaining a database of reported failures of electronic/digital recordings in courts.

When one Lucas County Common Pleas courtroom switched to electronic recording, the judge said they were just trying to move from the dinosaur age to the digital age.

One reporter's perspective:

Dinosaur? No way.

Court reporters moved from the dinosaur age more than 25 years ago with computerization of our stenograph machine and the use of laptop computers.

For many years, court reporters throughout the country have been able to provide voice-to-word transcription instantly. Judges and attorneys are able to read in real time the spoken word on their laptops.

A tape recorder records every bit of ambient noise in a courtroom — coughing, sneezing, sirens, doors slamming, paper rustling, people talking over one another. The recording creates the need for someone to type every word on a word processor to create a transcript for review by the appellate court.

In most instances, a court reporter must rewrite on the stenograph machine from a digitized audio disc to provide a transcript. Court jurisdictions end up paying twice for what a live court reporter in the courtroom does once.

Steno reporters keep up by spending thousands of dollars of their own money to provide the court with the latest real-time, state-of-the-art technology in the courtroom.

A digital tape recording? The court has begun to step back into the 1960s. Welcome to the



Potential License Denial Or Suspension For Failure To Pay Taxes	dinosaur age.
Message From COCRA	*****
Scholarship Winners	The president of the Ohio Court Reporters Association added that today's stenographic court reporters use state-of-the-art equipment and technology to provide an instantaneous, voice-to-text transcript of proceedings as they are occurring. The written text is then instantly transmitted to the judge and attorneys, providing them access to a written transcript that can be searched and annotated.
Legal System Still Values Court Reporters	Today's stenographic machines are paperless, simultaneously creating three digital copies, which can easily be stored on a server or other medium.
Welcome New Members	Stenographic court reporters are trained to be the guardian of the record. A stenographic court reporter providing real-time translation of proceedings is the most efficient method of making the record.
OTHER LINKS	
DRA Mission Statement	
DRA Calendar	
Membership Application	
What is DepoMap?	
Classified Ads	
DRA Insurance: Highlights Application	
War Chest	
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[<< DRA Home](#) | [Newsletter Archive](#) | The Deposition Reporter March 2012 | [Download PDF Version](#)



FEATURES

[March 2012 Issue](#)

[President's Message](#)

[DRA's 16th Annual  
Convention Exceeds All  
Expectations](#)

[Meet The New DRA  
Board](#)

[Letter To The Editor](#)

[Enlist In DRA's  
Realtime Army!](#)

[CR Board-U.S. Legal  
Trial Update](#)

[Good News From The  
State Bar Of California](#)

[Are Transcripts Subject  
To Sales Tax?](#)

[NCRA TechCon](#)

[Deposition Officer  
Instructions](#)

[Plea For Mentors](#)

[Pengad Member  
Discount](#)

[Be A Part Of DRA](#)

[:\) 4 DRA](#)

[Depo Diplomat](#)

[Court Reporters Board  
Oversight Hearing](#)

[The Power Of One](#)

# Welcome New Members

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

- Barbara Arrpup
- Amanda Asbury-Ellison
- Miriam Baird
- James Beasley, CSR
- Judith Brennan, CSR
- Rachael Brockett
- Joy Chiou
- Melissa Dominguez
- Kylie Evans
- Karen Friedman, CSR
- Brittany Gammon
- Theresa Geibel, CSR
- Lori Goodin
- Anne Hall
- Kimberly Johnson
- Rachelle Kohnen
- Miles Lendway, CSR
- Tiffany Lewis
- Cheryl Martin, CSR
- Natasha McCall, CSR
- Alison McGann
- Rose Miller, CSR
- Elise Nock, CSR
- Jacqueline Palms
- Ashley Parrott, CSR
- Laura Poirier
- Carol Rhyu
- Matt Ridge
- Rosalia Rodas, CSR
- Kelly Roemer, CSR
- Shelley Sailor, CSR
- Dante Sanchez
- Ayu Sasao
- Sherry Sawyer, CSR
- Mary Ann Scanlan, CSR
- George Schumer, CSR
- Margaret Smith, CSR

	Rebecca Staines
Potential License Denial Or Suspension For Failure To Pay Taxes	Michael Sullivan, CSR
	Sarah Vasey
	Ashley Walton, CSR
Message From COCRA	Norma Wehby
	Candace Yount, CSR
Scholarship Winners	
Legal System Still Values Court Reporters	
Welcome New Members	
OTHER LINKS	
DRA Mission Statement	
DRA Calendar	
Membership Application	
What is DepoMap?	
Classified Ads	
DRA Insurance: Highlights Application	
War Chest	
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[www.potterinternational.net](http://www.potterinternational.net)

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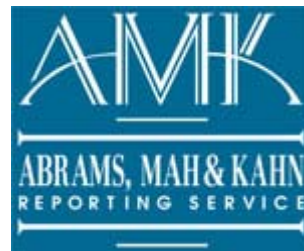
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Dublin, CA 94568  
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E-mail to: [dra@caldra.org](mailto:dra@caldra.org)

Name \_\_\_\_\_ CSR # \_\_\_\_\_ ☐ NCRA Member # \_\_\_\_\_

Firm/School \_\_\_\_\_ ☐ Firm Owner ☐ Instructor ☐ Student

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E-mail \_\_\_\_\_ Website \_\_\_\_\_ Home Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_ Office Phone \_\_\_\_\_ Fax \_\_\_\_\_

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

**PLEASE READ:** 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. You may read the DRA COPE and DRA BYLAWS on the website [www.caldra.org](http://www.caldra.org). **By initialing you are agreeing to the above terms and conditions.** \_\_\_\_\_ **Initial**

### Membership Options

☐ **Professional** ..... \$ 135 ☐ **Three-year professional membership** (\$405 – save \$25) ..... \$ 380

(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

(Any person whose primary reporting income is derived from working as an Official Court Reporter, who holds a current CSR license issued by the Court Reporters Board of California; **OR** any non-CSR who has passed the National Court Reporters Association Registered Professional Reporter examination; **OR** any person wishing to establish a professional affiliation with DRA to assist in promoting the mission of the Association.)

☐ **Student** ..... \$ 30  
(Any student enrolled in a verbatim shorthand reporting school)

☐ **Instructor** ..... \$ 50  
(Instructors who are nonreporting CSRs or, if not CSRs, who teach at institutions recognized/certified by the CRBC.)

☐ **PAC (not tax deductible)** ..... Amount \$ \_\_\_\_\_  
(Used to support the passage or defeat of legislation that has an impact on our members and for the support of political candidates seeking elective office who share similar points of view on issues that are important to our membership.)

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☐ **STUDENT SCHOLARSHIP** ..... Amount \$ \_\_\_\_\_  
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