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Superior Court of California
County of Los Angeles

JAN 08 2016

Sherri R. Carter, Executive Officer/Clerk

By: Nancy Navarro, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TARA R. BURD, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

BARKLEY COURT REPORTERS, INC., a
California Corporation; and DOES 1
through 20,

Defendants.

Case No.: BC556703

ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS

Hearing Date: January 8, 2015

Time: 2:30 p.m.

Dept.: 307

Plaintiff Tara Burd ("Plaintiff") or ("Burd") brings this putative class action alleging that Defendant Barkley Court Reporters ("Defendant" or "Barkley") violated Cal. Gov. Code §§ 69950 and 69954 by charging more than the statutory rate for official court reporters. Plaintiff alleges causes of action for declaratory relief and violation of the UCL. Defendant moves for judgment on the pleadings. The Court finds that under a plain reading of the statute, the fees set forth in sections 69950 and 69954 apply only to court reporters employed

1 by the court. Accordingly, the Court GRANTS Defendant's motion for judgment on the
2 pleadings.¹

3
4 **I. Introduction**

5 Official court reporters are public employees paid by the county to provide
6 transcription services for superior court proceedings. Prior to 2008, California superior
7 courts provided salaried official court reporters to transcribe all court proceedings.
8 Beginning in 2008, in response to budget cuts affecting the court system, the California
9 courts ceased to provide official court reporters for civil proceedings. (Compl. ¶ 1.) In 2012,
10 the Los Angeles Superior Court instituted a policy making official court reporters available
11 in general jurisdiction civil courts only 2 and ½ days per week. (Def. RJN Exh. A.) It also
12 adopted a policy allowing parties to "arrange for privately retained reporters by stipulation
13 and order." (*Ibid.*) As a result, many litigants now hire private reporters through companies
14 such as Barkley who are appointed to transcribe court proceedings as official reporters pro
15 tempore.

16
17 As alleged in the Complaint, on June 27, 2013, Plaintiff hired Defendant to provide
18 transcribe a court proceeding and requested to have a transcript of the hearing. (Compl. ¶
19 15.) On July 2, 2013, Defendant issued an invoice for the June 27, 2013 hearing in the
20

21 ¹ The Court GRANTS Plaintiff's Requests for Judicial Notice and Supplemental Requests for Judicial Notice.
22 Defendant objects to Plaintiff's Supplemental Request for Judicial Notice of the Court Reporter Board's opinion letter
23 on the grounds that the letter is not a legislative enactment and may not be judicially noticed under Evid. Code 452(b).
24 The Court overrules this objection as the CRB's opinion letter is not reasonably subject to dispute (Evid. Code §
25 452(h)) and is the type of advisory opinion that "while not controlling upon the courts by reason of [its] authority,
26 do[es] constitute a body of experience and informed judgment to which courts and litigants may properly resort for
guidance." (*Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 815 [105 Cal.Rptr.2d 59, 66].) Similarly the
Court overrules Defendant's objections to Plaintiff's Supplemental Request for Judicial Notice of publications by the
California Court Reporters Association and Deposition Reporters Association interpreting the statutes in question.
The Court takes notice of the existence of those documents without accepting the truth of the matters asserted therein.

27 The Court GRANTS Defendant's Requests for Judicial Notice of court policies (§452(e)), statutes (§452(a)),
28 legislative history (§452(a)), and a Daily Journal article concerning reporter fees (§452(h)). The Court GRANTS
Amicus Curiae CCRA's Request for Judicial Notice of a court reporter job description (§452(d), (h)) and a Bureau of
Labor Statistics consumer price index report (§452(c)).

1 amount of \$587.00 (calculated at \$6.10 per page for the transcript, \$250 for a half-day per
2 diem, \$20 for a PDF copy of the transcript and exhibits, \$20 for delivery of the original
3 transcript, and \$42 for transcript production) which Plaintiff duly paid. (*Id.* at ¶ 16.)
4 Plaintiff alleges that these charges were unlawful because they exceeded the charges those
5 mandated by statute. (Compl. ¶ 5, 33.)
6

7 On May 30, 2014, Plaintiff filed this putative class action alleging the following
8 causes of action:

- 9
- 10 1. Violations of Cal. Gov. Code §§ 69950 and 69954; and
 - 11 2. Violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

12 Plaintiff seeks to certify the following class:

13 All California consumers who purchased a transcript from Defendant Barkley Court
14 Reporters, Inc., for reporting at an official court proceeding, and who paid more than
15 the statutory rate at any time from July 2, 2009 to the present.

16 Defendant now moves for judgment on the pleadings as to both of Plaintiff's causes of
17 action. The Deposition Reporters Association of California ("DRAC") has submitted an
18 *amicus curiae* brief in support of Defendant's motion. Plaintiff opposes.

19 **II. Analysis**
20

21 "A motion for judgment on the pleadings has the same function as a general demurrer
22 but is made after the time for demurrer has expired." (Weil & Brown, *Civil Proc. Before*
23 *Trial* (The Rutter Group, 2013) ¶ 7:275.) Like a demurrer, the grounds for a motion for
24 judgment on the pleadings "shall appear on the face of the challenged pleading or from any
25 matter of which the court is required to take judicial notice." (Code Civ. Proc. §438(d).) "In
26 deciding or reviewing a judgment on the pleadings, all properly pleaded material facts are
27

1 deemed to be true, as well as all facts that may be implied or inferred from those expressly
2 alleged.” (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.)

3
4 Plaintiff’s causes of action are premised on the assumption that private court reporters
5 such as those employed by Defendant are subject to the transcription rates set forth in Gov.
6 Code §§ 69950 (Transcription Fees) and 69954 (Transcripts Prepared with Computer
7 Assistance; Fees). As explained below, the Court finds that (1) under a plain reading of the
8 statute, the fees set forth in those sections apply only to court reporters employed by the
9 court; (2) the Court is not bound to follow the Court Reporters Board of California; and (3)
10 public policy does not support Plaintiff’s position.

11 A. *The Fee Provisions of the Government Code Plainly Do Not Apply to Private*
12 *Court Reporters*

13
14 As a preliminary matter, it is apparent from the language of Article 9 that its
15 provisions were written at a time when the courts were fully staffed with salaried court
16 reporters. The language in Article 9 was not written with the understanding or expectation
17 that, with diminutions of the courts’ budgets, many of the courts’ salaried reporters would
18 be eliminated and replaced by private reporters appointed on a case by case basis. As a
19 result, the language of Article 9 is not perfectly consistent with an intention not to regulate
20 rates for all reporters who transcribe courtroom proceedings. Reading Article 9 as a whole,
21 for the reasons explained below, the Court nevertheless interprets Article 9 to impose
22 statutory rates only for court reporters employed by the courts.

23
24 “When the Legislature ‘has employed a term or phrase in one place and excluded it
25 in another, it should not be implied where excluded.’ [Citation.]” (*Pasadena Police officers*
26 *Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576 [273 Cal.Rptr. 584, 797 P.2d 608];
27 *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 737 [95
28 Cal.Rptr.3d 53, 58].) Indeed, “[w]hen one part of a statute contains a term or provision, the

1 omission of that term or provision from another part of the statute indicates the Legislature
2 intended to convey a different meaning.” (*Klein v. U.S.* (2010) 50 Cal.4th 68, 80 [112
3 Cal.Rptr.3d 722, 731, 235 P.3d 42, 50].)

4
5 In this case, as Defendant points out, six different sections of Article 9 (governing
6 court reporters) distinguishing between “official reporters” and “official reporters pro
7 tempore:”

- 8
- 9 • Gov. Code, § 69941: “A superior court may appoint as many competent
10 phonographic reporters, to be known as **official reporters** of such court, and
such **official reporters pro tempore**, as are deemed necessary”
- 11 • Gov. Code, § 69944: “Until an **official reporter** of any court or **official**
12 **reporter pro tempore** has fully completed and filed all transcriptions of the
13 reporter's notes in any case on appeal which the reporter is required by law to
transcribe, the reporter is not competent to act as official reporter in any court.”
- 14 • Gov. Code, § 69946: “Before entering upon the duties of his office, the **official**
15 **reporter** of any court or **official reporter pro tempore** shall take and
16 subscribe the constitutional oath of office.
- 17 • Gov. Code, § 69952(b): “When there is no **official reporter** in attendance and
18 a **reporter pro tempore** is appointed, his or her reasonable expenses for
traveling and detention shall be fixed and allowed by the court and paid in like
19 manner.”
- 20 • Gov. Code, § 69955(a): “As used in this section, “reporting notes” are the
21 reporting notes of all court reporters employed to report in the courts of
California, who may be known as official reporters and official reporters pro
22 tempore.”
- 23 • Gov. Code, § 69957: “If an **official reporter** or an **official reporter pro**
24 **tempore** is unavailable . . . the court may order that . . . the action or proceeding
be electronically recorded”

25
26 The use of these two distinct terms indicates that the Legislature intentionally used the term
27 “official reporter pro tempore” to distinguish privately employed reporters appointed pro
28 tempore from official reporters employed by the court.

1
2 The two sections of Article 9 setting forth transcription fees, sections 69950 and
3 69954, make no reference to “official reporters” or “official reporters pro tempore.”
4 However, section 69947 states that, “[e]xcept in counties where a statute provides otherwise,
5 **the official reporter** shall receive for his services the fees prescribed in this article,” which
6 includes the fees set forth in sections 69950 and 69954. The fact that section 69947 only
7 refers to “the official reporter” is evidence that the Legislature did not intend the fee
8 provisions of Article 9 to apply to private reporters acting as official reporters pro tempore.
9

10 Plaintiff argues that the Legislature’s use of the definite article “the” before the term
11 “official reporter” in section 69947 suggests that the Legislature intended section 66947 to
12 include all official court reporters, including reporters pro tempore. This argument is
13 undermined by the Legislature use the definite article “the” to refer to official reporters in
14 the preceding section. Section 69946 states, “Before entering upon the duties of his office,
15 **the official reporter of any court or official reporter pro tempore** shall take and subscribe the
16 constitutional oath of office.” (Gov. Code, § 69946.) Because it appears that the Legislature
17 did not intend the term “the official reporter” in section 69946 to include “official reporters
18 pro tempore,” the Court cannot accept Plaintiff’s reading of section 69947.
19

20 Plaintiff also contends that the Legislature used the term “official reporter” to refer to
21 both official reporters and official reporters pro tempore in sections 69942 and 69944.
22 However, the Court finds that the Legislature’s use of that term in those sections is
23 distinguishable. In section 69944, the Legislature clearly refers to both “official reporters”
24 and “official reporters pro tempore.” The statute then goes on to state that both types of
25 reporters must complete and file transcriptions of their notes in any case on appeal before
26 they are competent “**to act as official reporter in any court.**” Similarly, section 69942 states
27 that “[n]o person shall be appointed to the *position of official reporter* of any court unless
28 the person has first obtained a license to practice as a certified shorthand reporter from the

1 Court Reporters Board of California.” These references to the position of official reporter
2 are distinct from the use of the term “the official reporter” in section 69947.

3
4 Accordingly, because the Legislature omitted the term “official reporter pro tempore”
5 from section 69947, the Court finds that the fee provisions of Article 9 do not apply to private
6 reporters appointed pro tempore. The extensive provisions in Article 9 establishing the rates
7 for reporters in specified counties provides additional support for the Court’s interpretation.
8 These provisions underscore the Legislature’s intent to ensure that rates charged within each
9 County were uniform. The need to establish uniform rates charged in each courtroom and
10 to prevent salaried court reporters within the same courthouse or the same County from
11 competing with one another by charging different rates explains the Legislature’s decision
12 to regulate rates charged by official court reporters. The same concerns are not present with
13 respect to non-salaried official reporters pro tempore.

14 *B. The Court is Not Bound by the Court Reporters Board of California’s*
15 *Interpretation*

16
17 In general, there are two categories of administrative rules: (1) quasi-legislative rules
18 made by an agency that “has been delegated the Legislature’s lawmaking power”; and (2)
19 administrative rules interpreting a statute. (*Yamaha Corp. of America v. State Bd. of*
20 *Equalization* (1998) 19 Cal.4th 1, 10 [78 Cal.Rptr.2d 1, 6, 960 P.2d 1031, 1036]
21 (“*Yamaha*”).) In *Yamaha*, the Supreme Court described the degree of judicial deference to
22 be awarded to the latter category of administrative rules:

23
24 “Unlike quasi-legislative rules, an agency’s interpretation does not implicate the
25 exercise of a delegated lawmaking power; instead, it represents the agency’s view of
26 the statute’s legal meaning and effect, questions lying within the constitutional
27 domain of the courts. But because the agency will often be interpreting a statute
28 within its administrative jurisdiction, it may possess special familiarity with satellite

1 legal and regulatory issues. It is this “expertise,” expressed as an interpretation
2 (whether in a regulation or less formally, as in the case of the Board's tax annotations),
3 that is the source of the presumptive value of the agency's views. An important
4 corollary of agency interpretations, however, is their diminished power to bind.
5 Because an interpretation is an agency's *legal opinion*, however “expert,” rather than
6 the exercise of a delegated legislative power to make law, it commands a
7 commensurably lesser degree of judicial deference. [Citation.]

8
9 (*Id.* at 11.) In this case, Plaintiff argues that the Court should defer to the Court Reporters
10 Board of California’s interpretation of the statutes in question. Plaintiff submits a May 14,
11 2012 letter issued by the Court Reporters Board stating that “[t]he fees set by statute that a
12 licensee may charge for acting as official or official pro tempore reporters have not changed
13 since the issuance of the Board’s interpretation in its letter dated December 7, 1999.” (Pl.
14 RJN Exh. A.) Plaintiff also submits the Board’s Fall 2012 Newsletter stating, “If there is a
15 privately-hired court reporter producing an official record, that reporter is considered a pro
16 tempore and is the official court reporter of record for that proceeding, and statutory
17 transcript rates would apply.” (Pl. RJN Exh. B, p. 3.)

18
19 Because the Board’s letters merely express an agency’s interpretation of a statute,
20 they are entitled to a “lesser degree of judicial deference.” As discussed above, the Court
21 finds that the plain language of the statute fails to embrace court reporters appointed pro
22 tempore and the Court is not persuaded otherwise by the Board’s letters.

23
24 C. California Rule of Court 8.130 Does Not Support Plaintiff's Position

25 Plaintiff next argues that Cal. Rule of Court 8.130, governing the filing of a reporter’s
26 transcript on appeal, would be ineffective if Government Code sections 69950 and 69954 do
27 not apply to official pro tempore reporters. Rule 8.130 sets forth rules governing the filing
28 of a reporter’s transcript in the event that an appellant intends to “raise any issue that requires

1 consideration of the oral proceedings in the superior court.” (Cal Rule of Court 8.120(b)(1).)
2 Once an appellant has designated a reporter’s transcript as the record on appeal, the court
3 clerk “must promptly send the reporter notice of the designation . . . and notice to prepare
4 the transcript” (Rule 8.130(d)(2).) “When the transcript is completed, the reporter must
5 notify all parties to the appeal that the transcript is complete, bill each designating party at
6 the statutory rate, and send a copy of the bill to the superior court clerk.” (Rule 8.130(f)(2).)
7 According to the Advisory Committee Comments, “[t]he fee for reporter’s transcripts are
8 established by Government Code sections 69950 and 69554.”

9
10 Plaintiff argues that if sections 69950 and 69554 do not apply to official reporters pro
11 tempore, then Rule 8.130 is rendered ineffective. The Court disagrees. Rule 8.130 only
12 applies where the reporter’s transcript has been designated as the record on appeal -- a
13 designation that requires the court reporter to file a transcript in court and to augment that
14 record if the Court of Appeal requires it. As Defendant points out, there is a reasonable
15 rationale for regulating fees. Rule 8.130(a)(4) provides that “[i]f the appellant elects to
16 proceed without a reporter’s transcript, the respondent cannot require that a reporter’s
17 transcript be prepared [but] the reviewing court, on its own or the respondent’s motion, may
18 order the record augmented. . . [and] the appellant is responsible for the cost of any reporter’s
19 transcript [so ordered.]” (Rule 8.130(a)(4).) With the appellate court in a position to order
20 the appellant to pay for a transcript, it makes sense that the cost of the transcript should be
21 capped at the statutory rates. It does not follow, from this rule, that the Legislature intended
22 to regulate rates for all transcripts prepared by pro tempore reporters in the trial courts
23 ordered by the respective parties to the proceedings.

24 *D. Public Policy Does Not Support Requiring Private Reporters to Comply with*
25 *the Fee Provisions of Sections 69950 and 69954*

26
27 Finally, Plaintiff argues that public policy supports regulating the statutory
28 transcription rates because regulated rates will “[make] the official recordings of public court

1 proceedings accessible.” (Opp. p. 10.) However, Plaintiff fails to cite any statute, rule or
2 case law giving civil litigants or the public the right to an official transcript. The Court has
3 no information that, even at the regulated rates, all parties can afford to order an official
4 transcript. The California Rules of Court already provide alternative procedures for creating
5 an official record of proceedings for litigants who are unwilling or unable to pay for a private
6 court reporter. Under Rules 8.134 and 8.137, parties who lack an official transcript may
7 designate a “settled statement” or “agreed statement” as the record on appeal. (Cal. Rules
8 of Court 8.134 and 8.137.)

9
10 The Court is concerned, moreover, that government regulation of private reporter
11 rates compromises strong countervailing public policies favoring free enterprise and
12 competition. The Court also agrees with Defendant that regulating the rates for private
13 reporters may have additional impacts on the free market and potentially reduce the
14 economic incentive for highly qualified private court reporters to serve as official reporters
15 pro tempore thereby creating a shortage of qualified reporters available to serve pro tempore.
16 As the Board of Court Reporters explained in its Fall 2012 newsletter, “[t]he statutory
17 transcript rates were set with the idea in mind that official court reporters are already
18 receiving a salary and additional benefits such as health insurance and retirement.” (Pl. RJN
19 Exh. B, p. 3.) As a matter of public policy, it makes sense to impose uniform, regulated
20 rates for public employees who provide additional services for a fee. With taxpayers no
21 longer providing official court reporting services to all litigants and private reporters
22 generating their own salaries, insurance and benefits, it is difficult to justify regulating
23 private reporter rates as a matter of public policy.

1 **III. Conclusion**

2
3 The Court rejects Plaintiffs' interpretation of the applicable statutes and finds that
4 Plaintiffs have failed to state an actionable claim. The Court therefore GRANTS
5 Defendant's motion for judgment on the pleadings.



6 Dated: 1/08/2016

7 AMY D. HOGUE

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9 JUDGE OF THE SUPERIOR COURT
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