

RESOLUTION 01-06-2012

DIGEST

Government Code: Limiting Prohibition on Copying of Reporter's Transcripts

Amends Government Code section 69954 to clarify that the limitation on copying and providing others a copy of a reporter's transcript applies only to computer-readable transcripts.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 69954 to clarify that the limitation on copying and providing others a copy of a reporter's transcript applies only to computer-readable transcripts. This resolution should be approved in principle because it would conform the language of the statute to the legislative intent.

Government Code section 69954 was enacted in 1993 as a means of regulating the cost and copying of computer-readable, electronic transcripts. For example, the Legislative Counsel's Digest for the bill provided that the bill "would specifically authorize the court or any party or person to request a transcript in computer-readable form and would specify standards and fees for these transcripts. The bill would also authorize specified copies to be made of these transcripts by persons possessing transcripts[.]" (1993 Cal. Legis. Serv. Ch. 1016 (A.B. 1929).) Despite the fact that the statute was intended to apply only to computer-readable transcripts, the language of subdivision (d) is more broad, using the term "transcripts." As a result, some trial courts have, for example, denied motions to compel production of copies of paper transcripts based upon the subdivision. This resolution would clarify that the restriction on copying transcripts applies only to computer-readable transcripts.

To the extent that there may be a need for a more general restriction on the ability to copy paper transcripts, it would be better addressed in a separate code section.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 66954 to read as follows:

1 § 69954

2 (a) Transcripts prepared by a reporter using computer assistance and delivered on a
3 medium other than paper shall be compensated at the same rate set for paper transcripts, except
4 the reporter may also charge an additional fee not to exceed the cost of the medium or any copies
5 thereof.

6 (b) The fee for a second copy of a transcript on appeal in computer-readable format
7 ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the
8 original transcript shall be compensated at one-third the rate set forth for a second copy of a

9 transcript as provided in Section 69950. A reporter may also charge an additional fee not to
10 exceed the cost of the medium or any copies thereof.

11 (c) The fee for a computer-readable transcript shall be paid by the requesting court, party,
12 or person, unless the computer-readable transcript is requested by a party in lieu of a paper
13 transcript required to be delivered to that party by the rules of court. In that event, the fee shall be
14 chargeable as statute or rule provides for the paper transcript.

15 (d) Any court, party, or person who has purchased a computer-readable transcript may,
16 without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit
17 pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy
18 or copies to any other party or person.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: The current language of Government Code section 69954 limits the circumstances under which a party and persons who have paid for an official reporter's transcript are allowed to make copies of that transcript.

This Resolution: Would clarify that the limitation on copying applies solely to computer-readable transcripts purchased by a party or person from the court reporter.

The Problem: While Government Code section 69954 reads as relating to computer-readable transcripts, subdivision (d), and its limitations on the ability to copy reporter's transcripts, reads as applying to all reporter's transcripts. This resolution would clarify the current ambiguity by specifying the limitation on copying solely applies to computer-readable transcripts purchased from the court reporter.

There are often times during and after litigation where a party, counsel or a person who has purchased a reporter's transcript may be asked for a copy of the transcript. Likewise on occasion, law firms are subpoenaed for records of a prior case, inclusive of any deposition or reporter's transcripts obtained during the case. By providing a copy or complying with the subpoena and allowing a copy of transcripts to be made, parties and their counsel are potentially running afoul of the prohibition against copying as set forth in Government Code section 69954, subdivision (d).

Court reporters are already compensated for their time to take down the testimony, as well as for preparing the original and certified paper copies of trial court and deposition transcripts. They presumptively do not have any copyright protection in the verbatim transcription of court proceedings. At the same time, to the extent court reporters have invested in equipment that allows for the creation of a computer-readable transcript, they should be entitled to extra compensation for that beneficial service which is reflected in Government Code section 69954. Yet subdivision (d) of Government Code section 69954 reads as giving the reporter a monopoly over all transcriptions for proceedings they report. This ambiguity is easily corrected by

clarifying that the limitations on copying of transcripts only applies to the computer-readable electronic format transcripts produced by court reporters and purchased by a party or person.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule. This proposed resolution would foster lending of the record on appeal under California Rules of Court, rule 8.153.

AUTHOR AND/OR PERMANENT CONTACT: Darin L. Wessel, Manning & Kass, Ellrod, Ramirez, Trester, LLP, 550 W. C Street, Suite 1900, San Diego, CA 92101, (619) 515-0269, dlw@manningllp.com; James W. Talley, Galyean Talley & Wood, 739 E. Pennsylvania Ave., Ste. A, Escondido, CA 92025, (760) 747-7500, jwtalley@sbcglobal.net

RESPONSIBLE FLOOR DELEGATE: James W. Talley