

## **RESOLUTION 06-02-2013**

### **DIGEST**

#### Electronic Reporting of Hearings:

Amends Government Code section 69957 to permit electronic recording of proceedings in all civil cases.

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **APPROVE IN PRINCIPLE**

#### History:

Similar to 07-03-2012, which was approved in principle.

#### Reasons:

This resolution amends Government Code section 69957 to permit electronic recording of proceedings in all civil cases. This resolution should be approved in principle because it identifies and solves a problem that has arisen because of the deep funding cuts to the California courts.

Many Superior Courts have laid off court reporters due to the budget crisis, leaving parties to hire expensive private court reporters for pre-trial hearings or risk having no transcript of the proceeding. The lack of a transcript prejudices parties who may seek review of the trial court's rulings or judgments. Expanding the court's discretion to permit electronic recording of all civil proceedings would preserve the record at a fraction of the cost while protecting the parties' rights and access to justice.

As the law now stands, electronic recording is only permitted in limited civil cases, and appeals from limited civil cases are referred to the appellate division of the Superior Court, not to the Court of Appeal. (See Code Civ. Proc., § 904.2.) Therefore, this resolution may be inconsistent with or otherwise impact other statutes and rules that govern the use of electronic recordings on appeal because those statutes and rules apply only to appeals in limited civil cases. Despite the potential inconsistencies, this resolution is a good starting point. Thus, it should be approved in principle with the hope that the Conference will propose and pass other resolutions in the future to expand the use of electronic recording, and to address any statutory inconsistencies, particularly in relation to the use of electronic recordings in appeals of unlimited civil cases.

Although opponents have expressed concern about the quality of the electronic recordings, the technology has improved so that the state courts that are currently using electronic recording systems are sophisticated and the quality of the recordings is good and equals the record captured by traditional court reporters. Further, federal courts have found that audio digital recordings save the courts money, and that their reliability is as good as or better than a court reporter's stenographic recording.

This resolution is related to Resolution 08-03-2013.

## TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 69957 to read as follows:

1 § 69957

2 (a) If an official reporter or an official reporter pro tempore is unavailable to report an  
3 action or proceeding in a court, subject to the availability of approved equipment and equipment  
4 monitors, the court may order that, in a ~~limited~~ civil case, or a misdemeanor or infraction case,  
5 the action or proceeding be electronically recorded, including all the testimony, the objections  
6 made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of  
7 defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and  
8 remarks made and oral instructions given by the judge. A transcript derived from an electronic  
9 recording may be utilized whenever a transcript of court proceedings is required. The electronic  
10 recording device and appurtenant equipment shall be of a type approved by the Judicial Council  
11 for courtroom use and shall only be purchased for use as provided by this section. A court shall  
12 not expend funds for or use electronic recording technology or equipment to make an unofficial  
13 record of an action or proceeding, including for purposes of judicial notetaking, or to make the  
14 official record of an action or proceeding in circumstances not authorized by this section.

15 (b) Notwithstanding subdivision (a), a court may use electronic recording equipment for  
16 the internal personnel purpose of monitoring the performance of subordinate judicial officers, as  
17 defined in Section 71601 of the Government Code, hearing officers, and temporary judges while  
18 proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial  
19 officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be  
20 recorded for that purpose. An electronic recording made for the purpose of monitoring that  
21 performance shall not be used for any other purpose and shall not be made publicly available.  
22 Any recording made pursuant to this subdivision shall be destroyed two years after the date of  
23 the proceeding unless a personnel matter is pending relating to performance of the subordinate  
24 judicial officer, hearing officer, or temporary judge.

25 (c) Prior to purchasing or leasing any electronic recording technology or equipment, a  
26 court shall obtain advance approval from the Judicial Council, which may grant that approval  
27 only if the use of the technology or equipment will be consistent with this section.

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

**PROPONENT:** Bar Association of Northern San Diego County

## STATEMENT OF REASONS

The Problem: Government Code section 69957 does not allow digital recording systems to be used in unlimited civil, family law, or probate cases. Superior Courts do not have to provide official reporters in Superior Court proceedings other than felony criminal cases. Because of additional financial constraints recently imposed on the courts because of the legislature's budgetary decisions, some superior courts have recently announced that unlike the past, where

there was a shorthand reporter on duty in each department, such reporters will not be provided. This results in the potential, particularly for law and motion and ex parte matters, that the proceedings will not be reported at all. When no reporter or reporting method is provided by the courts, the ability to effectively appeal any order resulting from any such hearing is significantly impinged. Such lack disproportionately impacts lower income litigants and self-represented parties, who have fewer resources to hire private shorthand reporters.

This Solution: This resolution would expand the discretion of trial courts to use electronic reporting in all civil proceedings, so that an appropriate record of critically important decisions is made in all courts, and appellate courts have access to the reporter's transcript of any proceeding, to aid in evaluating whether or not error was committed. The availability of a digital recording would enable all litigants, including lower income and self-represented parties to have a sufficient record to enable them to effectively appeal.

### **LEGISLATIVE HISTORY**

Not known

### **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** K. Martin White, Post Office Box 1826, Carlsbad, CA 92018-1826; (760) 729-1696; marnew@sbcglobal.net.

**RESPONSIBLE FLOOR DELEGATE:** K. Martin White