

RESOLUTION 07-03-2012

DIGEST

Family Law: Electronic Reporting in Family Law Proceedings

Amends Government Code section 69957 to allow for the utilization of electronic records where official reporters are unavailable.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 69957 to allow for the utilization of electronic records where official reporters are unavailable. This resolution should be approved in principle because it would expand the discretion of trial courts to use electronic reporting in family law proceedings if such transcript is prepared by a Certified Shorthand Reporter.

Under the current law, family law proceedings are not required to provide an official reporter. Family law proceedings impact an individual's income, property and familial relationships. Violations of domestic violence restraining orders and contempt of court actions brought in family court can result in imprisonment. The lack of official court reporters in the courtroom have a disproportionate impact on indigent and pro per litigants who either cannot afford or do not know how to obtain the services of an official reporter. Allowing electronic recording allows for a record to be created which can later be referenced if necessary and does so in a more cost efficient manner than mandating a court reporter's presence in the court room for every proceeding.

California budget constraints have led to the laying off of numerous official court reporters and such budgetary cut-backs are likely to continue for the foreseeable future. By allowing the use of electronic recording, it provides a viable and cost effective alternative to mandating the presence of a court reporter during all hearings. Also, ensuring that any transcripts made of an electronic recording be prepared by a Certified Shorthand Reporter would ensure that the transcripts comply with the current standards.

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 family law, misdemeanor or
- 5 infraction case, the action or proceeding be electronically recorded, including all the testimony,

6 the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and
7 sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all
8 statements and remarks made and oral instructions given by the judge. A transcript derived from
9 an electronic recording may be utilized whenever a transcript of court proceedings is required, if
10 such transcript is prepared by a Certified Shorthand Reporter. The electronic recording device
11 and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use
12 and shall only be purchased for use as provided by this section. A court shall not expend funds
13 for or use electronic recording technology or equipment to make an unofficial record of an action
14 or proceeding, including for purposes of judicial notetaking, or to make the official record of an
15 action or proceeding in circumstances not authorized by this section.

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

26 (c) Prior to purchasing or leasing any electronic recording technology or equipment, a
27 court shall obtain advance approval from the Judicial Council, which may grant that approval
28 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: The Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Electronic reporting is not permitted in family law proceedings. It is presently not required that trial courts provide official reporters in family law proceedings. Due to these provisions, in many counties family law hearings and trials are not being recorded and no official record is created.

This Resolution: This resolution would expand the discretion of trial courts to use electronic reporting in family law proceedings, and provide that in all cases where electronic reporting is utilized, a transcript derived from an electronic recording may be utilized only if it is prepared by a Certified Shorthand Reporter.

The Problem: Critically important decisions are made in family law courts, including termination of parental rights, decisions on child custody, contempt, domestic violence restraining orders, and division of property. When no reporter or reporting method is provided for by the courts, there can be no appeal of any order and no accountability for family law judges, and ultimately no due process for family law litigants. The lack of a public court reporting system also disproportionately impacts lower income litigants and self-represented parties, as they would have fewer resources to hire private reporters for their legal proceedings.

It is also difficult to prepare accurate written orders when the judge's oral rulings are not reported or recorded.

In 2010 the Legislature enacted AB 939 which provided, among other things, that “[f]amily law touches the most central aspects of Californians’ lives, such as where, when, and how often a parent will see his or her child, the personal safety of the parent and child, how much child and spousal support one person will receive and the other will pay, and how the assets that the family has accumulated will be divided between the separating parties. These decisions can have a dramatic and lasting impact on people's lives.” This statute, and the related Report by the Elkins’ Task Force, focused on the need for full due process in family law proceedings.

Given the policies of the State of California to ensure due process to all family law litigants, it is critically important that court reporting be guaranteed in all family law courtrooms. To permit this at the lowest cost, electronic reporting should be permitted in family law courtrooms where official reporters are not available. This should not have a negative impact on certified shorthand reporters, because they will be needed and hired to prepare transcripts from the electronic recordings.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Michelene Insalaco, Sucherman - Insalaco LLP, 100 Spear Street Suite 1640, San Francisco CA 94105. Telephone: (415) 357-5050; e-mail: MI@Sucherman-Insalaco.com

RESPONSIBLE FLOOR DELEGATE: Michelene Insalaco