

## **RESOLUTION 08-03-2013**

### **DIGEST**

#### Government Code: Electronic Recording of Unlimited Civil Proceedings

Amends Government Code section 69957 to include the ability to report unlimited civil cases through the use of electronic recording and to use a transcript of the electronic recording prepared by a certified shorthand reporter on appeal.

### **RESOLUTIONS COMMITTEE RECOMMENDATION-MINORITY REPORT APPROVE IN PRINCIPLE**

#### History

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

#### Reasons:

This resolution amends Government Code section 69957 to include the ability to report unlimited civil cases through the use of electronic recording and to use a transcript of the electronic recording prepared by a certified shorthand reporter on appeal. This resolution should be approved in principle because it may provide a less costly alternative to court reports and/or an alternative where a party or counsel does not realize the department does not have a court reporter available or forgets to request/order a court reporter.

Many superior courts have laid off court reporters due to the budget crisis, leaving parties to hire expensive private court reporters 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 of private court reporters while protecting the parties' rights and access to justice.

As the law now stands, though, 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.

Related to Resolution 06-02-2013.

### **TEXT OF RESOLUTION**

RESOLVED that the Conference of California Bar Association 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~~ no official reporter or an official reporter pro tempore employed directly by  
4 the Court is assigned to the courtroom or otherwise unavailable to report in a court, subject to the  
5 availability of approved equipment and equipment monitors, the court may order that, in an  
6 unlimited civil case, inclusive of probate proceedings, a limited civil case, or a misdemeanor or  
7 infraction case, the action or proceeding be electronically recorded, including all the testimony,  
8 the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and  
9 sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all  
10 statements and remarks made and oral instructions given by the judge. A transcript derived from  
11 an electronic recording may be utilized whenever a transcript of court proceedings is required.  
12 Transcripts derived from electronic recordings shall include a designation of "inaudible" or  
13 "unintelligible" for those portions of the recording that contain no audible sound or are not  
14 discernible. The electronic recording device and appurtenant equipment shall be of a type  
15 approved by the Judicial Council for courtroom use and shall only be purchased for use as  
16 provided by this section. A court shall not expend funds for or use electronic recording  
17 technology or equipment to make an unofficial record of an action or proceeding, including for  
18 purposes of judicial notetaking, or to make the official record of an action or proceeding in  
19 circumstances not authorized by this section.

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

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

33 (d) Except as otherwise specified, a transcript derived from an electronic recording may  
34 be prepared by a California certified shorthand reporter or in accordance with such other  
35 methods as permitted by rules of court adopted by the Judicial Council of California. In an  
36 appeal from an unlimited civil case, a transcript derived from an electronic recording must be  
37 prepared by a California certified shorthand reporter or a professional recording service that has  
38 been certified by the federal court system or the Administrative Office of the Courts in a  
39 typewritten format consistent with such rules as adopted by the Judicial Council of California.

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

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: Current law limits the availability of electronic recording of court proceedings to limited civil cases, misdemeanors and infractions. It does not allow electronic recording in unlimited civil cases, inclusive of probate. The problem is that budget cuts have forced courts throughout the state to lay off and eliminate court reporters in departments hearing unlimited civil and probate cases. This means that parties must hire their own certified shorthand reporters if they want the proceedings reported. This has resulted in conflicts when multiple reporters appear to transcribe a hearing. The statute authorizing electronic recordings currently does not specify the manner in which a typewritten transcript of an electronic recording must be prepared. California Rules of Court, rule 2.952(g), contains the requirements for the preparation of a transcript of an electronically recorded proceeding. However this allows a party to prepare what purports to be a transcript and allows the potential for gamesmanship.

This Solution: This resolution amends Government Code section 69957 to expand the allowable use of electronic recording of proceedings to include unlimited civil cases, inclusive of probate proceedings, where the courtroom does not have a court reporter available to report the proceedings but has electronic recording available. This resolution also codifies allowable methods for the preparation of a typewritten transcript from an electronically recorded proceeding to provide that it may be prepared by a certified shorthand reporter, approved professional recording service, or in a manner consistent with rules adopted by the Judicial Council, but that a transcript for an appeal from an unlimited civil case must be prepared by a certified shorthand reporter or professional recording service certified by the federal courts or Administrative Office of the Courts.

## **LEGISLATIVE HISTORY**

Not known

## **IMPACT STATEMENT**

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

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