

RESOLUTION 08-03-2018 – AS AMENDED

DIGEST

Court Reporters: Authorize Recording of Proceedings When No Court Reporter

Amends Government Code section 69957 to authorize the court to record proceedings in counties where the superior court discontinued funding for official court reporters.

STATEMENT OF REASONS

The Problem: As the budgets continued to be slashed for the judicial branch, courts continue to cut back on staff and expenses and one of the victims of the budget cuts has been official court reporters. In San Diego County, official court reporters have been eliminated in all matters except felony criminal cases, juvenile matter and domestic violence restraining order hearings over 40 minutes.

The Solution: This would allow the court to electronically record the hearings in order to make a record. This is necessary so that sort of a record is in place. The court reporters will still have an opportunity to transcribe the recorded hearing if a transcript is requested.

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 or if the court has discontinued or limited funding for official
4 reporters or official reporters pro tempore, then, subject to the availability of approved
5 equipment and equipment monitors, the court may order that, in any civil action, whether
6 classified as a limited civil case or an unlimited civil case, including actions or proceedings
7 arising under the Family Code or the Probate Code, in any special proceeding, or a misdemeanor
8 or infraction case, the action or proceeding be electronically recorded, including all the
9 testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments,
10 pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury,
11 and all statements and remarks made and oral instructions given by the judge. A transcript
12 derived from an electronic recording may be utilized whenever a transcript of court proceedings
13 is required. Transcripts derived from electronic recordings shall include a designation of
14 “inaudible” or “unintelligible” for those portions of the recording that contain no audible sound
15 or are not discernible. The electronic recording device and appurtenant equipment shall be of a
16 type approved by the Judicial Council for courtroom use and shall only be purchased for use as
17 provided by this section. A court shall not expend funds for or use electronic recording
18 technology or equipment to make an unofficial record of an action or proceeding, including for
19 purposes of judicial notetaking, or to make the official record of an action or proceeding in
20 circumstances not authorized by this section.

21 (b) Notwithstanding subdivision (a), a court may use electronic recording equipment for
22 the internal personnel purpose of monitoring the performance of subordinate judicial officers, as
23 defined in Section 71601 of the Government Code, hearing officers, and temporary judges while

24 proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial
25 officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be
26 recorded for that purpose. An electronic recording made for the purpose of monitoring that
27 performance shall not be used for any other purpose and shall not be made publicly available.
28 Any recording made pursuant to this subdivision shall be destroyed two years after the date of
29 the proceeding unless a personnel matter is pending relating to performance of the subordinate
30 judicial officer, hearing officer, or temporary judge.

31 (c) Prior to purchasing or leasing any electronic recording technology or equipment, a
32 court shall obtain advance approval from the Judicial Council, which may grant that approval
33 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

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Melissa L. Bustarde, Mayfield Bustarde, LLP, 462 Stevens Ave., Suite 303, Solana Beach, CA 92075, (858) 793-8090, bustarde@mayfieldbustarde.com

RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolutions 07-03-2012, 06-02-2013, 08-03-2013, and 08-10-2016, which were all approved in principle.

Reasons:

This resolution amends Government Code section 69957 to authorize the court to record proceedings in counties where the superior court discontinued funding for official court reporters. This resolution should be approved in principle because a means to provide the reviewing court with a transcript of oral proceedings should be available in all California courts, particularly where the court no longer provides official court reporters.

Since many courts have stopped providing certified shorthand reporters in non-criminal matters, litigants in family law, probate and unlimited civil proceedings are forced to pay for a private reporter if they wish to have a full and proper record. This is very expensive for litigants and in

particular for many pro per litigants. The lack of a transcript of the oral proceedings is frequently fatal to any effort to appeal an unfavorable result. As the Court of Appeal held in *Taylor v. Nu Digital Marketing, Inc.* (2015) 245 Cal.App.4th 283:

A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error. Where, as here, the appeal is on the judgment roll alone, the question of the sufficiency of the evidence to support the findings of the trial court is not open. Instead, the evidence is conclusively presumed to support the findings, and the only questions presented are the sufficiency of the pleadings and whether the findings support the judgment. (*Id.* at 287.)

This analysis would also apply to such issues as objections on the record and other oral proceedings that are not apparent in the court's file. Although the provision for the official transcription of the proceedings will involve some costs, this resolution would at least make such transcripts more readily available when needed and the costs involved in using an electronic reporter are often lower than those associated with the use of a certified shorthand reporter.

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TRUSTS AND ESTATES SECTION - SUPPORT

Courts are already empowered under Government Code section 69957 to order that proceedings in limited civil cases be electronically recorded. Given that probate proceedings are particularly affected by the discontinued funding for official court reporters, this resolution proposes a sensible expansion of the power to probate cases (among other types of cases). Moreover, based on the experience of TEXCOM members, in certain counties, a court reporter cannot be engaged to serve as an official pro tempore reporter without the stipulation of all parties; this effectively gives each party the right to deprive the others of the services of a court reporter. Expansion of the ability to electronically record proceedings (from which a transcript may be derived) would facilitate the administration of justice in probate cases.