



PRESIDENT'S PAGE

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Not Allowing Courts to Electronically Record Proceedings Limits Access to Justice

California is home to the technology capital of the world, yet California courts are largely precluded from electronically recording court proceedings where a court reporter is unavailable. Generally, under California law, only a certified shorthand court reporter licensed to practice by the Court Reporters Board of California may take down the verbatim record of a court proceeding for the creation of an official transcript. If a licensed court reporter is not available, California courts are allowed to electronically record proceedings to create a verbatim record only in a few types of cases: (1) limited civil (where the amount in controversy is less than \$25,000); (2) misdemeanors; and (3) infractions.

Capturing and preserving an official and verbatim record of court proceedings in all cases is essential to the administration of justice and enhancing the public's confidence in our courts and the judicial process. Under existing law, California courts must provide an official court reporter in felony, dependency, juvenile justice proceedings, and in civil cases where a party has a fee waiver. In all other cases, courts may opt to provide a reporter or may leave it to the parties to provide their own court reporter. The critical shortage of licensed court reporters in California has resulted in trial courts across the state terminating the practice of routinely providing court reporters in civil proceedings. As a result, many cases in California lack an official and verbatim record of the proceeding. The Los Angeles Superior Court, for example, calculates that over 300,000 civil, probate, and family law case proceedings will go without an official verbatim record in 2023 alone.¹ This lack of a verbatim record undermines access to justice.

Significantly, the California Supreme Court stated that "the absence of a verbatim record of trial court proceedings will often have a devastating effect on a litigant's ability to have an appeal of a trial court judgment decided on the merits."² The lack of a record could also result in law enforcement being unable to adequately enforce certain orders such as restraining orders or child visitation orders. Even in cases where courts are required to provide an official court reporter, the shortage of official court reporters necessarily results in litigants being forced to choose between proceeding with their matters without a record or returning to court later when a reporter is available, resulting in increased burden and/or financial costs due to litigants or witnesses missing work and/or incurring childcare costs, among other things. While litigants may hire an independent reporter to record proceedings where courts are not required to provide an official court reporter, the cost of an independent reporter can be significant, and thereby limits access to our courts while also discouraging attorneys from taking on lower value cases. Litigants may also not appreciate the consequences of not having an official record of a court proceeding.

To address the problem, in 2021, the legislature appropriated \$30 million for courts to offer raises and other incentives to increase the number of court reporters in family law and civil law cases. As detailed in an article published last month by Orange County Superior Court CEO David Yamasaki,³ there are not enough court reporters in California to meet the demands of our courts. According to Mr. Yamasaki, if Orange County, Los Angeles, and San Diego Superior Courts alone hired all the new court reporter licensees in the entire state for 2021 and 2022, they would still have 90 court reporter vacancies between them. And that does not account for the vacancies at other superior courts. The article shows that despite extensive efforts made by California Superior Courts to hire and retain court reporters, including signing and retention bonuses, court reporter vacancies have increased. The Judicial Council estimates that California courts may need up to an additional 650 full-time court reporters to meet current needs, yet only 80 individuals obtained court reporter licenses in California in 2021 and 2022 combined. The California legislature has long been aware of the shortage of court reporters. In 2018, the Judicial Council informed the legislature that "the state would . . . have a gap of approximately 2,750 court reporters by 2023 if forecasted demand remains constant."⁴

Capturing an official and verbatim record of court proceedings in all cases is essential to the administration of justice and enhancing the public's confidence in our courts and the judicial process. Allowing California courts to electronically record proceedings in all civil cases where a licensed court reporter is not available would enhance access to justice and the public's confidence in our courts and the judicial process.

ENDNOTES

(1) April 17, 2023 letter from Judicial Council of California to Senator Richard Roth, Chair of Senate Business, Professions & Economic Development Committee.

(2) *Jameson v. Desta*, 5 Cal. 5th 594, 622 (2018).

(3) David H. Yamasaki, *A Court Executive Officer's Perspective on Hiring and Retaining Court Reporters*, Orange County Lawyer 38 (May 2023).

(4) March 29, 2018, letter from the Judicial Council to Hon. Lorena Gonzalez-Fletcher, Chair Assembly Appropriations Committee, re: Assembly Bill 2354.



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