

## Memorandum 2000-81

### **Cases in Which Court Reporter Is Required (Comments on Tentative Recommendation)**

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The Commission's tentative recommendation on *Cases in Which Court Reporter Is Required* has been circulated for comment. Based on the number of phone inquiries regarding the tentative recommendation, there seems to be considerable interest in this study. Nonetheless, the Commission received only one comment, an anonymous email message (attached). During the circulation period, the Legislature also amended two of the provisions in the proposal. The Commission needs to consider these developments, as well as a couple of issues identified by the staff, and decide whether to approve a final recommendation for printing and introduction in the Legislature.

#### RECAP OF THE TENTATIVE RECOMMENDATION

Two similar provisions specify when a court reporter is required in a civil or criminal case: Code of Civil Procedure Sections 269 and 274c. The tentative recommendation proposes to consolidate these duplicative provisions into one code section. This nonsubstantive consolidation is intended to prevent confusion and make the statute easier to use.

#### COMMENT ON CODE OF CIVIL PROCEDURE SECTION 269

The sole comment is a grammatical suggestion regarding Code of Civil Procedure Section 269. As revised in the tentative recommendation, that section would provide in pertinent part that "The official reporter of a court, or any of them where there are two or more" shall take down in shorthand certain portions of specified cases. The commentator suggests "paring down" that language to "Any official court reporter shall ...." (Exhibit p. 1.) This would make the provision "shorter and simpler" and would make it "easier to understand that this section applies to pro-tem municipal court reporters without having to refer back" to Government Code Section 72197. (*Id.*)

The staff likes the concept of this suggestion, but would revise it slightly. The phrase “Any official court reporter shall” does not convey that the reporter must be assigned (either on a regular or a pro tem basis) to the court in which the proceedings are conducted. This could be fixed by using the phrase “An official reporter or official pro tempore reporter of the court shall ....” Similar language is already used in other provisions. See, e.g., Bus. & Prof. Code § 8106; Code Civ. Proc. § 273; Gov’t Code §§ 68105, 68525, 69941, 69944, 69946, 69955.

**With this revision, the proposed amendment of Code of Civil Procedure Section 269 would read:**

**Code Civ. Proc. § 269 (amended). Reporting of cases**

SECTION 1. Section 269 of the Code of Civil Procedure is amended to read:

269. (a) ~~The official reporter of a superior court, or any of them where there are two or more, shall, at the request of either party, or of the court in a civil case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the defendant in a felony case, An official reporter or official reporter pro tempore of the court shall take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony criminal cases, arguments of the prosecuting attorney attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. , in the following cases:~~

(1) At the request of either party or of the court in a civil case.

(2) On the order of the court, the district attorney, or the attorney for the defendant in a felony case.

(3) On the order of the court in a misdemeanor or infraction case.

(b) If directed by the court, or requested by either party, the official reporter shall, within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(b) (c) In any case where a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court’s determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

~~(c) Any court, party, or person may request delivery of any transcript in a computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment. Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code unless otherwise agreed by the reporter and the court, party, or person requesting the transcript. Each disk shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Each disk as produced by the court reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.~~

**Comment.** Subdivision (a) of Section 269 is amended to include the substance of former Section 274c. Subdivision (a) is also amended to substitute “arguments of the attorneys” for “arguments of the prosecuting attorney,” consistent with standard practice. See, e.g., Gov’t Code § 72194.5 (“arguments of the attorneys”). Subdivision (a) is further amended to refer to official reporters pro tempore, as well as official reporters. This is not a substantive change in the law. See Gov’t Code § 69945 (official reporter pro tempore shall perform same duties as official reporter).

Former subdivision (c) is continued in Section 271 without substantive change.

#### NEW DEVELOPMENTS

While the tentative recommendation was circulating, the Legislature amended two of the provisions in the proposal: Penal Code Sections 190.9 and 1240.1. 2000 Cal. Stat. ch. 287, §§ 2, 17 (SB 287 (Committee on Public Safety)). The revisions, effective January 1, 2000, do not affect the substance of the Commission’s proposal, but do require some modifications.

In particular, **the proposed amendment of Penal Code Section 1240.1 should be deleted from the Commission’s proposal**, because that provision no longer includes a cross-reference to Code of Civil Procedure Section 269. Further, **the Commission’s proposed amendment of Penal Code Section 190.9 should reflect the recent addition of subdivision (b)**, relating to assignment of a court reporter who uses computer-aided transcription equipment:

**Penal Code § 190.9 (amended). Record in death penalty cases**

190.9. (a)(1) In any case in which a death sentence may be imposed, all proceedings conducted in the municipal and superior courts, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present. The court reporter shall prepare and certify a daily transcript of all proceedings commencing with the preliminary hearing. Proceedings prior to the preliminary hearing shall be reported but need not be transcribed until the municipal or superior court receives notice as prescribed in paragraph (2) of subdivision (a).

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the superior court shall notify the court in which the preliminary hearing took place. Upon this notification, the court in which the preliminary hearing took place shall order the transcription and preparation of the record of all proceedings prior to and including the preliminary hearing in the manner prescribed by the Judicial Council in the rules of court. The record of all proceedings prior to and including the preliminary hearing shall be certified by the court no later than 120 days following notification by the superior court unless the superior court grants an extension of time pursuant to rules of court adopted by the Judicial Council. Upon certification, the court in which the preliminary hearing took place shall forward the record to the superior court for incorporation into the superior court record.

(b)(1) The court shall assign a court reporter who uses computer-aided transcription equipment to report all proceedings under this section.

(2) Failure to comply with the requirements of this section relating to the assignment of court reporters who use computer-aided transcription equipment shall not be a ground for reversal.

(c) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of ~~subdivision (c) of Section 269~~ Section 271 of the Code of Civil Procedure.

**Comment.** Section 190.9 is amended to reflect relocation of former Code of Civil Procedure Section 269(c) to Code of Civil Procedure Section 271.

Some revisions of the preliminary part (narrative portion) of the Commission's proposal are also necessary. Footnotes 7 and 9 on page 3 of the tentative recommendation refer to Senate Bill 2140 (Burton). **These footnotes should be revised to reflect that Senator Burton's bill was enacted. 2000 Cal. Stat. ch. 1010. Similarly, footnote 8 should be revised to reflect that the**

**Commission finalized its tentative recommendation on *Expired Pilot Projects*. Finally, the second and third sentences in footnote 6 should be interchanged, so that the case citations immediately follow the sentence they support.**

#### ADDITIONAL ISSUES

In re-reading the tentative recommendation, the staff spotted several ambiguities in Code of Civil Procedure Section 269(a) that may warrant attention. That subdivision reads:

269. (a) The official reporter of a superior court, or any of them where there are two or more, shall, at the request of either party, or of the court in a civil case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the defendant in a felony case, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge. If directed by the court, or requested by either party, the official reporter shall, within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

....

(Emphasis added.) In two places, the provision refers to a “request of either party,” not to a “request of *the attorney for either party*.” Elsewhere, however, the provision refers to a request of “the district attorney, or the attorney for the defendant in a felony case.” It is not clear why the provision refers to a request of *the attorney* in this instance but to a request of *a party* in the other places.

Case law interpreting Section 269 establishes that a felony defendant is entitled to a court reporter on request, but does not clearly distinguish between a request made by a defendant and a request made by an attorney for a defendant. See, e.g., *California Court Reporters Ass’n, Inc. v. Judicial Council*, 29 Cal. App. 4th 15, 30, 46 Cal. Rptr. 2d 44 (1996) (Section 269 “requires that the official reporter make the record of superior court proceedings, if requested by a party or by the court.”); *In re Armstrong*, 126 Cal. App. 3d 565, 572, 178 Cal. Rptr. 902 (1981) (felony defendant is “as a matter of right, entitled to have ‘taken down,’ all

related testimony and oral proceedings”); *People v. Godeau*, 8 Cal. App. 3d 275, 279-80, 87 Cal. Rptr. 424 (1970) (“In California felony proceedings a court reporter must be present if requested by the defendant, the district attorney, or an order of the court. (Code Civ. Proc., § 269.)”) These cases appear to focus on the portion of Section 269 stating that the official reporter of a superior court shall “on the order of the court, the district attorney, or the attorney for the defendant in a felony case,” take down the proceedings in shorthand.

The courts do not seem to rely on the portion of Section 269 stating that the official reporter of a superior court shall “at the request of either party, or of the court in a civil case other than a limited civil case,” take down the proceedings in shorthand. That language presumably refers only to a request of either party “in a civil case other than a limited civil case.” Similar language in Code of Civil Procedure Section 274c (official reporters “must, at the request of either party or of the court in a limited civil case,” take down the proceedings in shorthand) has been construed to refer only to a request of a party in a limited civil case, not a request of a defendant in a misdemeanor or infraction case. See, e.g., *Armstrong*, 126 Cal. App. 3d at 572 (Under Section 274c, a “criminally charged misdemeanor defendant in the municipal court is not ... entitled to have ‘taken down,’ all related testimony and oral proceedings.”); *Godeau*, 8 Cal. App. 3d at 280 (Under Section 274c, “in misdemeanor proceedings a court reporter is not required unless ordered by the court.”); *Hidalgo v. Municipal Court*, 129 Cal. App. 2d 244, 246, 277 P.2d 36 (1954) (“From a reading of section 274c of the Code of Civil Procedure, it is manifest that the presence of an official court reporter in a criminal proceeding in the municipal court is dependent upon the discretion of the judge thereof.”). Still, it is not out of the question that the comparable portion of Section 269 might be construed to encompass a “request of either party” in a felony case, not just a “request of either party” in “a civil case other than a limited civil case.”

The tentative recommendation would not rule out this construction, nor would it eliminate the ambiguities regarding whether a request for shorthand reporting is to be made by a party as opposed to an attorney for a party. Proposed Section 269(a) would read:

269. (a) The official reporter of a superior court, or any of them where there are two or more, shall, ~~at the request of either party, or of the court in a civil case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the~~

~~defendant in a felony case~~, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony criminal cases, arguments of the prosecuting ~~attorney attorneys~~ to the jury, and all statements and remarks made and oral instructions given by the judge, in the following cases:

(1) At the request of either party or of the court in a civil case.

(2) On the order of the court, the district attorney, or the attorney for the defendant in a felony case.

(3) On the order of the court in a misdemeanor or infraction case.

In subdivision (a)(1), the reference to a “request of either party” is intended to refer only to a request of a party in a civil case. It could, however, be construed to refer to a request of a party in any type of case. Revising subdivision (a)(1) as follows would help clarify that it pertains only to civil cases (as well as improve parallelism with subdivisions (a)(2) and (a)(3)):

269. (a) The official reporter ... shall take down in shorthand all testimony ... in the following cases:

(1) On the order of the court, or at the request of either party, in a civil case.

**This revision should be incorporated into the Commission’s proposal.**

The ambiguities regarding whether a request for shorthand reporting is to be made by a party as opposed to an attorney for a party raise harder issues. On the one hand, there is no indication that disputes relating to this point arise. In the absence of problems, it may be best to leave the language as is. This may be especially appropriate here, because statutory provisions “referring to ‘the plaintiff’ or ‘either party’ are not to be taken literally.” 1 B. Witkin, *California Procedure Attorneys* § 265, at 330 (4th ed. 1996). Such provisions “do not change the rule that the procedural step must be taken for the party by his attorney of record.” *Id.*

On the other hand, clarity is a key objective in statutory drafting. Being precise about who is to request shorthand reporting (a party or the attorney for a party) may prevent future litigation. While disputes on this point might be rare, they are not inconceivable (e.g., between an independent-minded defendant like Theodore Kaczynski and his appointed counsel).

**Does the Commission wish to examine this issue and perhaps circulate a revised tentative recommendation, or would it prefer to maintain the status**

**quo?** Is it worth devoting resources to this point? The staff leans towards maintaining the status quo, but does not feel strongly. **We would, however, improve the grammar of proposed Section 269(a)(2):**

269. (a) The official reporter ... shall take down in shorthand all testimony ... in the following cases:

....

(2) On the order of the court, or at the request of the district attorney, or the attorney for the defendant, in a felony case.

#### NEXT STEP

The comment period for the tentative recommendation was almost three months, so interested parties have had ample time to submit their views to the Commission. Absent new developments, **the staff recommends that the Commission approve the proposal as a final recommendation, with revisions as discussed above.** Alternatively, the Commission could attempt to address the ambiguities identified in Section 269 and then recirculate its proposal.

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel

Exhibit

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**COMMENT ON TENTATIVE RECOMMENDATION**

Date: Tuesday, Nov. 14, 2000  
From: user <user@superior.co.orange.ca.us>  
To: commission@clrc.ca.gov  
Subject: JM1306 (Court Reporter Cases)

JM1306  
California Law Revision Commission  
Tentative Recommendation re: Cases in Which Court Reporter is Required

Dear Sirs and Madams,

Thank you again for your work in simplifying and clarifying the law. I have one grammatical comment to make regarding the tentative recommendation. The language now reads (and as amended would still read):

“The official reporter of a superior court, of any of them, where there are two or more shall...”

I suggest paring down the language of the first sentence of §269. It would be simpler if it read:

“Any official court reporter shall...”

Besides being shorter and simpler, it makes it easier to understand that this section applies to pro-tem municipal court reporters without having to refer back to GC §72197.

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“All statements contained herein are the statements of the individual user and do not constitute or express the official opinion of the County of Orange Superior Court. In addition any statement contained herein, should not be taken as official legal advice or rulings.”

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Cases in Which Court Reporter Is Required

August 2000

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 15, 2000.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission

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## SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would consolidate in one code section the rules that establish when a court reporter must be provided in civil and criminal cases. This nonsubstantive consolidation will reduce the opportunity for confusion and make the statute easier to use.

This recommendation was prepared pursuant to Government Code Section 70219.

## CASES IN WHICH COURT REPORTER IS REQUIRED

1 Two closely similar provisions specify when a court reporter is required in a  
2 civil or criminal case.<sup>1</sup> These provisions are unnecessarily duplicative and should  
3 be consolidated.

4 Code of Civil Procedure Section 269(a)<sup>2</sup> governs the use of a court reporter in a  
5 felony case or a civil case other than a limited civil case:

6 269. (a) The official reporter of a superior court, or any of them, where there  
7 are two or more, shall, at the request of either party, or of the court in a civil case  
8 other than a limited civil case, and on the order of the court, the district attorney,  
9 or the attorney for the defendant in a felony case, take down in shorthand all  
10 testimony, objections made, rulings of the court, exceptions taken, all  
11 arraignments, pleas, and sentences of defendants in felony cases, arguments of the  
12 prosecuting attorney to the jury, and all statements and remarks made and oral  
13 instructions given by the judge. If directed by the court, or requested by either  
14 party, the official reporter shall within such reasonable time after the trial of the  
15 case as the court may designate, write the transcripts out, or the specific portions  
16 thereof as may be requested, in plain and legible longhand, or by typewriter, or  
17 other printing machine, and certify that the transcripts were correctly reported and  
18 transcribed, and when directed by the court, file the transcripts with the clerk of  
19 the court.<sup>3</sup>

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1. In its study on revision of the codes to accommodate trial court unification, the Commission recommended further study of the role of court reporters in a county in which the courts have unified. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 86 (1998). The Legislature directed this study. Gov't Code § 70219.

2. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

3. Subdivisions (b) and (c) of Section 269 provide:

(b) In any case where a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court's determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

(c) Any court, party, or person may request delivery of any transcript in a computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment. Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code unless otherwise agreed by the reporter and the court, party, or person requesting the transcript. Each disk shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Each disk as produced by the court reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.

These rules would not be affected by the Commission's proposal to consolidate Sections 269(a) and 274c. Broadening Section 269(a) to cover limited civil cases and misdemeanor and infraction cases will not change the scope of subdivision (b), because subdivision (b) is expressly limited to felony cases. Similarly, broadening Section 269(a) will not have any impact on subdivision (c), because subdivision (c) already extends to "any transcript," not just a transcript in a felony case or civil case other than a limited civil case.

1 Section 274c states when shorthand reporting is required in a limited civil case  
2 or a misdemeanor or infraction case:

3 274c. Official reporters must, at the request of either party or of the court in a  
4 limited civil case, or on the order of the court in a misdemeanor or infraction case,  
5 take down in shorthand all the testimony, the objections made, the rulings of the  
6 court, the exceptions taken, all arraignments, pleas and sentences of defendants in  
7 criminal cases, the arguments of the prosecuting attorney to the jury, and all  
8 statements and remarks made and oral instructions given by the judge; and if  
9 directed by the court, or requested by either party, must, within such reasonable  
10 time after the trial of such case as the court may designate, write out the same, or  
11 such specific portions thereof as may be requested, in plain and legible longhand,  
12 or by typewriter, or other printing machine, and certify to the same as being  
13 correctly reported and transcribed, and when directed by the court, file the same  
14 with the clerk of the court.

15 The only significant difference between these provisions, other than the  
16 distinction in cases to which they apply, pertains to who is entitled to request a  
17 court reporter in a criminal case. Section 269(a) requires shorthand reporting “on  
18 the order of the court, the district attorney, or the attorney for the defendant” in a  
19 felony case. In contrast, Section 274c only requires shorthand reporting “on the  
20 order of the court” in a misdemeanor or infraction case.

21 This distinction does not merit a separate code provision, given the extensive  
22 overlap between Sections 269(a) and 274c. Having two substantively similar  
23 provisions, one for limited civil cases and misdemeanor and infraction cases, and  
24 another for felony cases and all other civil cases, is potentially confusing. The  
25 provisions would be easier to use if consolidated into a single provision that  
26 establishes when a court reporter must be provided.

27 The Commission recommends broadening Section 269(a) to apply to all civil  
28 and criminal cases, and repealing Section 274c. This would not be a substantive  
29 change in the law, because the proposed legislation would continue the current  
30 rules on who is entitled to request a court reporter in a criminal case.<sup>4</sup> (For further  
31 simplification of the statutes, Section 269(c), relating to computer-readable  
32 transcripts, should be converted into a separate section.<sup>5</sup>)

33 The present recommendation only addresses the narrow issue of consolidating  
34 Sections 269 and 274c for purposes of simplification. It does not address any of  
35 the following significant issues related to court reporting, some of which may be  
36 the subject of future Commission recommendations:

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4. The existing statutes require that the arguments of “the prosecuting attorney” to the jury be included in the transcript. The proposed consolidation would refer simply to the arguments of “the attorneys,” consistent with existing practice and with other statutes. See, e.g., Gov’t Code § 72194.5 (“arguments of the attorneys”).

5. Section 269(c), enacted in 1993, involves a distinct subject. Neither consolidation of Section 274c with Section 269(a), nor relocation of Section 269(c), would affect the scope of the provision, which applies to all courts and all transcripts.

- 1 (1) Whether the defendant in a misdemeanor or infraction case should be  
2 entitled to request shorthand reporting.<sup>6</sup>
- 3 (2) Whether statutes authorizing the court to order the county treasurer to  
4 pay transcript fees are obsolete in light of recent changes in trial court  
5 funding.<sup>7</sup>
- 6 (3) Whether distinctions in the superior and municipal court procedures for  
7 charging, depositing, and paying court reporter fees, and other statutes  
8 providing special rules for municipal courts, should be maintained.<sup>8</sup>
- 9 (4) Whether the statutes governing reporters and their fees in various  
10 counties require revision.<sup>9</sup>

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6. Appellate courts have provided conflicting guidance on whether a nonindigent defendant is constitutionally entitled to a verbatim record at public expense in a misdemeanor or infraction case. The courts have not resolved whether electronic recording or a method besides shorthand reporting is sufficient to satisfy the requirement of a free verbatim record on request of an indigent defendant in a misdemeanor or infraction case. Compare *In re Armstrong*, 126 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (“upon request therefor, there is a constitutional right that a verbatim record be provided at public expense for all defendants in misdemeanor matters”), with *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (“[n]othing in the Constitutions of the United States or California requires a free verbatim record in misdemeanor cases on request without a showing of indigency). Electronic recording is permitted on order of the court in a misdemeanor or infraction case if a court reporter is unavailable (Gov’t Code § 72194.5), but there does not appear to be any statute requiring electronic recording on request of a defendant in a misdemeanor or infraction case. Because of the uncertainty, and because changing the law on these points would involve significant cost considerations, the present recommendation does not address the current scheme.

7. See, e.g., Gov’t Code §§ 69952, 70131. Pending legislation (SB 2140 (Burton)) would direct the Law Revision Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition. Although both of these provisions refer to Code of Civil Procedure Section 269, neither would be affected by consolidation of Sections 269(a) and 274c. The cross-references incorporate matters required by Section 269 to be included in a transcript, not cases in which a transcript may be ordered.

8. See, e.g., Gov’t Code §§ 68086 (procedures for court reporter fees), 72197 (pro tempore phonographic reporter of municipal court). On unification of the last remaining superior and municipal courts, the Commission will propose cleanup legislation to remove obsolete material from the statutes. (The Commission in another context has proposed a technical change in Government Code Section 68086. See Tentative Recommendation on *Expired Pilot Projects* (June 2000).)

9. The Commission has previously identified this as a matter requiring further legislative attention. “Among the county-specific statutes that must be harmonized in a county in which the courts unify are those governing appointment and compensation of municipal court reporters, and regulating their fees.” *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 77 (1998). Pending legislation (SB 2140 (Burton)) would direct the Law Revision Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition.



PROPOSED LEGISLATION

1 Code Civ. Proc. § 269 (amended). Reporting of cases

2 SECTION 1. Section 269 of the Code of Civil Procedure is amended to read:

3 269. (a) ~~The official reporter of a superior court, or any of them where there are~~  
4 ~~two or more, shall, at the request of either party, or of the court in a civil case other~~  
5 ~~than a limited civil case, and on the order of the court, the district attorney, or the~~  
6 ~~attorney for the defendant in a felony case, take down in shorthand all testimony,~~  
7 ~~objections made, rulings of the court, exceptions taken, all arraignments, pleas,~~  
8 ~~and sentences of defendants in felony criminal cases, arguments of the prosecuting~~  
9 ~~attorney attorneys to the jury, and all statements and remarks made and oral~~  
10 ~~instructions given by the judge. in the following cases:~~

11 (1) At the request of either party or of the court in a civil case.

12 (2) On the order of the court, the district attorney, or the attorney for the  
13 defendant in a felony case.

14 (3) On the order of the court in a misdemeanor or infraction case.

15 (b) If directed by the court, or requested by either party, the official reporter  
16 shall, within such reasonable time after the trial of the case as the court may  
17 designate, write the transcripts out, or the specific portions thereof as may be  
18 requested, in plain and legible longhand, or by typewriter, or other printing  
19 machine, and certify that the transcripts were correctly reported and transcribed,  
20 and when directed by the court, file the transcripts with the clerk of the court.

21 (b) (c) In any case where a defendant is convicted of a felony, after a trial on the  
22 merits, the record on appeal shall be prepared immediately after the verdict or  
23 finding of guilt is announced unless the court determines that it is likely that no  
24 appeal from the decision will be made. The court's determination of a likelihood  
25 of appeal shall be based upon standards and rules adopted by the Judicial Council.

26 (c) ~~Any court, party, or person may request delivery of any transcript in a~~  
27 ~~computer readable form, except that an original transcript shall be on paper. A~~  
28 ~~copy of the original transcript ordered within 120 days of the filing or delivery of~~  
29 ~~the transcript by the official reporter shall be delivered in computer readable form~~  
30 ~~upon request if the proceedings were produced utilizing computer aided~~  
31 ~~transcription equipment. Except as modified by standards adopted by the Judicial~~  
32 ~~Council, the computer readable transcript shall be on disks in standard ASCII code~~  
33 ~~unless otherwise agreed by the reporter and the court, party, or person requesting~~  
34 ~~the transcript. Each disk shall be labeled with the case name and court number, the~~  
35 ~~dates of proceedings contained on the disk, and the page and volume numbers of~~  
36 ~~the data contained on the disk. Each disk as produced by the court reporter shall~~  
37 ~~contain the identical volume divisions, pagination, line numbering, and text of the~~  
38 ~~certified original paper transcript or any portion thereof. Each disk shall be~~  
39 ~~sequentially numbered within the series of disks.~~

1 **Comment.** Subdivision (a) of Section 269 is amended to include the substance of former  
2 Section 274c. Subdivision (a) is also amended to substitute “arguments of the attorneys” for  
3 “arguments of the prosecuting attorney,” consistent with standard practice. See, e.g., Gov’t Code  
4 § 72194.5 (“arguments of the attorneys”).

5 Former subdivision (c) is continued in Section 271 without substantive change.

6 **Code Civ. Proc. § 271 (added). Computer-readable transcripts**

7 SEC. 2. Section 271 is added to the Code of Civil Procedure, to read:

8 271. (a) Any court, party, or person may request delivery of any transcript in a  
9 computer-readable form, except that an original transcript shall be on paper. A  
10 copy of the original transcript ordered within 120 days of the filing or delivery of  
11 the transcript by the official reporter shall be delivered in computer-readable form  
12 upon request if the proceedings were produced utilizing computer-aided  
13 transcription equipment.

14 (b) Except as modified by standards adopted by the Judicial Council, the  
15 computer-readable transcript shall be on disks in standard ASCII code unless  
16 otherwise agreed by the reporter and the court, party, or person requesting the  
17 transcript. Each disk shall be labeled with the case name and court number, the  
18 dates of proceedings contained on the disk, and the page and volume numbers of  
19 the data contained on the disk. Each disk as produced by the court reporter shall  
20 contain the identical volume divisions, pagination, line numbering, and text of the  
21 certified original paper transcript or any portion thereof. Each disk shall be  
22 sequentially numbered within the series of disks.

23 **Comment.** Section 271 continues former Section 269(c) without substantive change.

24 **Code Civ. Proc. § 274c (repealed). Reporting of limited civil cases and misdemeanor and**  
25 **infraction cases**

26 SEC. 3. Section 274c of the Code of Civil Procedure is repealed.

27 ~~274c. Official reporters must, at the request of either party or of the court in a~~  
28 ~~limited civil case, or on the order of the court in a misdemeanor or infraction case,~~  
29 ~~take down in shorthand all the testimony, the objections made, the rulings of the~~  
30 ~~court, the exceptions taken, all arraignments, pleas and sentences of defendants in~~  
31 ~~criminal cases, the arguments of the prosecuting attorney to the jury, and all~~  
32 ~~statements and remarks made and oral instructions given by the judge; and if~~  
33 ~~directed by the court, or requested by either party, must, within such reasonable~~  
34 ~~time after the trial of such case as the court may designate, write out the same, or~~  
35 ~~such specific portions thereof as may be requested, in plain and legible longhand,~~  
36 ~~or by typewriter, or other printing machine, and certify to the same as being~~  
37 ~~correctly reported and transcribed, and when directed by the court, file the same~~  
38 ~~with the clerk of the court.~~

39 **Comment.** Former Section 274c is continued in Section 269(a) without substantive change.

## CONFORMING REVISIONS

1 **Gov't Code § 72197 (amended). Pro tempore phonographic reporter of municipal court**

2 **SEC. 4.** Section 72197 of the Government Code is amended to read:

3 72197. Whenever ~~such request~~ a request pursuant to Section 72196 has been  
4 granted and any official reporter of the superior court has been assigned to act as a  
5 pro tempore phonographic reporter of the municipal court, ~~such the~~ reporter shall,  
6 during the period of ~~such the~~ assignment to the municipal court, perform the duties  
7 of an official reporter of ~~such the~~ municipal court and during the time of ~~any such~~  
8 the assignment ~~such the~~ reporter shall be subject to the provisions of Sections  
9 69942 to 69955, inclusive, and Sections ~~273 and 274e~~ 269 and 273 of the Code of  
10 Civil Procedure.

11 **Comment.** Section 72917 is amended to reflect relocation of the substance of former Code of  
12 Civil Procedure Section 274c to Code of Civil Procedure Section 269.

13 **Penal Code § 190.9 (amended). Record in death penalty cases**

14 **SEC. 5.** Section 190.9 of the Penal Code is amended to read:

15 190.9. (a)(1) In any case in which a death sentence may be imposed, all  
16 proceedings conducted in the municipal and superior courts, including all  
17 conferences and proceedings, whether in open court, in conference in the  
18 courtroom, or in chambers, shall be conducted on the record with a court reporter  
19 present. The court reporter shall prepare and certify a daily transcript of all  
20 proceedings commencing with the preliminary hearing. Proceedings prior to the  
21 preliminary hearing shall be reported but need not be transcribed until the  
22 municipal or superior court receives notice as prescribed in paragraph (2) of  
23 subdivision (a).

24 (2) Upon receiving notification from the prosecution that the death penalty is  
25 being sought, the superior court shall notify the court in which the preliminary  
26 hearing took place. Upon this notification, the court in which the preliminary  
27 hearing took place shall order the transcription and preparation of the record of all  
28 proceedings prior to and including the preliminary hearing in the manner  
29 prescribed by the Judicial Council in the rules of court. The record of all  
30 proceedings prior to and including the preliminary hearing shall be certified by the  
31 court no later than 120 days following notification by the superior court unless the  
32 superior court grants an extension of time pursuant to rules of court adopted by the  
33 Judicial Council. Upon certification, the court in which the preliminary hearing  
34 took place shall forward the record to the superior court for incorporation into the  
35 superior court record.

36 (b) Any computer-readable transcript produced by court reporters pursuant to  
37 this section shall conform to the requirements of ~~subdivision (e) of Section 269~~  
38 Section 271 of the Code of Civil Procedure.

39 **Comment.** Section 190.9 is amended to reflect renumbering of former Code of Civil Procedure  
40 Section 269(c) as Code of Civil Procedure Section 271.

1 **Note.** Penal Code Section 190.9 would be revised by SB 1955 (Committee on Public Safety) to  
2 read:

3 190.9. (a) (1) In any case in which a death sentence may be imposed, all proceedings  
4 conducted in the municipal and superior courts, including all conferences and  
5 proceedings, whether in open court, in conference in the courtroom, or in chambers, shall  
6 be conducted on the record with a court reporter present. The court reporter shall prepare  
7 and certify a daily transcript of all proceedings commencing with the preliminary hearing.  
8 Proceedings prior to the preliminary hearing shall be reported but need not be transcribed  
9 until the municipal or superior court receives notice as prescribed in paragraph (2) of  
10 subdivision (a).

11 (2) Upon receiving notification from the prosecution that the death penalty is being  
12 sought, the superior court shall notify the court in which the preliminary hearing took  
13 place. Upon this notification, the court in which the preliminary hearing took place shall  
14 order the transcription and preparation of the record of all proceedings prior to and  
15 including the preliminary hearing in the manner prescribed by the Judicial Council in the  
16 rules of court. The record of all proceedings prior to and including the preliminary  
17 hearing shall be certified by the court no later than 120 days following notification by the  
18 superior court unless the superior court grants an extension of time pursuant to rules of  
19 court adopted by the Judicial Council. Upon certification, the court in which the  
20 preliminary hearing took place shall forward the record to the superior court for  
21 incorporation into the superior court record.

22 (b) (1) The court shall assign a court reporter who uses computer-aided transcription  
23 equipment to report all proceedings under this section.

24 (2) Failure to comply with the requirements of this section relating to the assignment of  
25 court reporters who use computer-aided transcription equipment shall not be a ground for  
26 reversal.

27 (c) Any computer-readable transcript produced by court reporters pursuant to this  
28 section shall conform to the requirements of subdivision (c) of Section 269 of the Code of  
29 Civil Procedure.

30 **Penal Code § 1240.1 (amended). Duties of counsel on appeal**

31 SEC. 6. Section 1240.1 of the Penal Code is amended to read:

32 1240.1. (a) In any noncapital criminal, juvenile court, or civil commitment case  
33 wherein the defendant would be entitled to the appointment of counsel on appeal if  
34 indigent, it shall be the duty of the attorney who represented the person at trial to  
35 provide counsel and advice as to whether arguably meritorious grounds exist for  
36 reversal or modification of the judgment on appeal. The attorney shall admonish  
37 the defendant that he or she is not able to provide advice concerning his or her own  
38 competency, and that the State Public Defender or other counsel should be  
39 consulted for advice as to whether an issue regarding the competency of counsel  
40 should be raised on appeal. The trial court may require trial counsel to certify that  
41 he or she has counseled the defendant as to whether arguably meritorious grounds  
42 for appeal exist at the time a notice of appeal is filed. Nothing in this section shall  
43 be construed to prevent any person having a right to appeal from doing so.

44 (b) It shall be the duty of every attorney representing an indigent defendant in  
45 any criminal, juvenile court, or civil commitment case to execute and file on his or  
46 her client's behalf a timely notice of appeal when the attorney is of the opinion  
47 that arguably meritorious grounds exist for a reversal or modification of the

1 judgment or orders to be appealed from, and where, in the attorney's judgment, it  
2 is in the defendant's interest to pursue any relief that may be available to him or  
3 her on appeal; or when directed to do so by a defendant having a right to appeal.

4 With the notice of appeal the attorney shall file a brief statement of the points to  
5 be raised on appeal and a designation of any document, paper, pleading, or  
6 transcript of oral proceedings necessary to properly present those points on appeal  
7 when the document, paper, pleading or transcript of oral proceedings would not be  
8 included in the normal record on appeal according to the applicable provisions of  
9 the California Rules of Court. The executing of the notice of appeal by the  
10 defendant's attorney shall not constitute an undertaking to represent the defendant  
11 on appeal unless the undertaking is expressly stated in the notice of appeal.

12 If the defendant was represented by appointed counsel on the trial level, or if it  
13 appears that the defendant will request the appointment of counsel on appeal by  
14 reason of indigency, the trial attorney shall also assist the defendant in preparing  
15 and submitting a motion for the appointment of counsel and any supporting  
16 declaration or affidavit as to the defendant's financial condition. These documents  
17 shall be filed with the trial court at the time of filing a notice of appeal, and shall  
18 be transmitted by the clerk of the trial court to the clerk of the appellate court  
19 within three judicial days of their receipt. The appellate court shall act upon that  
20 motion without unnecessary delay. An attorney's failure to file a motion for the  
21 appointment of counsel with the notice of appeal shall not foreclose the defendant  
22 from filing a motion at any time it becomes known to him or her that the attorney  
23 has failed to do so, or at any time he or she shall become indigent if he or she was  
24 not previously indigent.

25 (c) The State Public Defender shall, at the request of any attorney representing a  
26 prospective indigent appellant or at the request of the prospective indigent  
27 appellant himself or herself, provide counsel and advice to the prospective indigent  
28 appellant or attorney as to whether arguably meritorious grounds exist on which  
29 the judgment or order to be appealed from would be reversed or modified on  
30 appeal.

31 (d) The failure of a trial attorney to perform any duty prescribed in this section,  
32 assign any particular point or error in the notice of appeal, or designate any  
33 particular thing for inclusion in the record on appeal shall not foreclose any  
34 defendant from filing a notice of appeal on his or her own behalf or from raising  
35 any point or argument on appeal; nor shall it foreclose the defendant or his or her  
36 counsel on appeal from requesting the augmentation or correction of the record on  
37 appeal in the reviewing court.

38 (e)(1) In order to expedite certification of the entire record on appeal in all  
39 capital cases, the defendant's trial counsel, whether retained by the defendant or  
40 court-appointed, and the prosecutor shall continue to represent the respective  
41 parties. Each counsel's obligations extend to taking all steps necessary to facilitate  
42 the preparation and timely certification of the record of both municipal and  
43 superior court proceedings.

1 (2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the  
2 defendant's appellate counsel from requesting additions or corrections to the  
3 record on appeal in either the trial court or the Supreme Court in a manner  
4 provided by rules of court adopted by the Judicial Council.

5 (f) The court shall assign a court reporter who uses computer-aided transcription  
6 equipment to report all proceedings under this section. Failure to comply with the  
7 requirements of this section relating to the assignment of court reporters who use  
8 computer-aided transcription equipment shall not be a ground for reversal.

9 (g) Any computer-readable transcript produced by court reporters pursuant to  
10 this section shall conform to the requirements of ~~subdivision (c) of Section 269~~  
11 Section 271 of the Code of Civil Procedure.

12 **Comment.** Section 1240.1 is amended to reflect renumbering of former Code of Civil  
13 Procedure Section 269(c) as Code of Civil Procedure Section 271.

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