

Memorandum 99-13

Trial Court Unification: Cases in Which Court Reporter Is Required

The Commission's trial court unification report identified for further study the "role of court reporter in a county in which the courts have unified, particularly in a criminal case," citing Code of Civil Procedure Section 274c, Government Code Section 72194.5, and Penal Code Section 869. (All three of these sections were amended by the Commission's 1998 trial court unification bill to preserve their substance after unification.)

Shorthand Reporting (Code Civ. Proc. §§ 269, 274c)

Attached is a staff draft of a Tentative Recommendation on *Cases in Which Court Reporter is Required*. It would broaden Code of Civil Procedure Section 269 to include the substance of Section 274c, and repeal the latter section.

Code of Civil Procedure Section 274c required shorthand reporting by hand or machine of various civil and criminal proceedings in municipal court. Section 269 had a similar rule for superior court. The Commission's trial court unification bill amended Section 274c to apply it to limited civil cases and to misdemeanor or infraction cases, and amended Section 269 to limit it to felony cases and to civil cases other than a limited civil case. This raises the question why there should be two sections potentially applicable in a unified superior court — one for limited civil cases and misdemeanor or infraction cases, and the other for all other cases.

Other than the distinction by size or severity of the cases to which they apply, subdivision (a) of Section 269 is virtually identical to Section 274c. The differences are in criminal cases, shown below in boldface:

- Section 269 requires shorthand reporting "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." This requires the superior court to provide a court reporter when requested by the prosecution or defense in a felony case. *In re Armstrong*, 126 Cal. App. 3d 565,

572, 178 Cal. Rptr. 902 (1981); 6 B. Witkin & N. Epstein, *California Criminal Law Appeal* § 3230, at 3992 (2d ed. 1989).

- Section 274c requires shorthand reporting “at the request of either party or of the court in a limited civil case, or on the order of the court in a misdemeanor or infraction case.” This gives the municipal court discretion to provide or not to provide a court reporter in a misdemeanor case. *In re Armstrong, supra*. The *Armstrong* case (Court of Appeal for the First District) held this discretion unconstitutional as a denial of due process and equal protection. But a case in the Court of Appeal for the Fourth District disagreed with *Armstrong*, and said its holding should be limited to misdemeanor defendants who establish indigence. *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1049-56, 192 Cal. Rptr. 341 (1983) (hearing denied by California Supreme Court by 4-3 vote). Section 274c has not been amended since the *Armstrong* and *Andrus* cases to address this issue.

The staff discussed this with Gary Cramer of the California Court Reporters Association. Mr. Cramer is a court reporter for the Los Angeles Superior Court. He also has extensive experience as a court reporter in the municipal courts in Los Angeles County. He said the Court Reporters Association would support a proposal to require the taking down of a verbatim transcription at the request of the defendant in misdemeanor cases, but this would obviously have significant cost implications, even though we are talking merely about taking down the oral proceedings, and not the subsequent preparation of a transcript. Mr. Cramer said the practice varies widely from county to county, and many municipal courts, especially in rural areas, do not provide a court reporter in misdemeanor or infraction cases. Some counties use electronic recording without a monitor to ensure recording quality, so results are uneven and unreliable.

Because the constitutional issue will remain unsettled until resolved by the California Supreme Court, and because of significant cost implications of extending the right to a court reporter to all criminal cases, the staff recommends not revising the application of these two sections to criminal cases.

It is a different matter, however, with respect to the application of Sections 269 and 274c to civil cases. There is virtually no difference between the two sections in this respect. It would be less confusing to have one provision applicable to all cases, both civil and criminal. The attached Tentative Recommendation would do this.

The attached Tentative Recommendation also revises Section 269 by requiring the court reporter to take down “the arguments of the prosecuting attorney

attorneys to the jury.” This conforms this section to Government Code Section 72194.5 on electronic recording.

The attached Tentative Recommendation redesignates subdivisions (b) and (c) of Section 269 as subdivisions (c) and (d), respectively. The staff will search for other code sections that may refer to either of these subdivisions and thus will need a conforming revision.

The staff recommends the Commission approve the attached Tentative Recommendation for distribution for comment.

Electronic Recording (Gov’t Code § 72194.5)

Government Code Section 72194.5 permitted a municipal or justice court to order electronic recording if a court reporter was unavailable. Chapter 931 amended Section 72194.5 to substitute “a limited case or a misdemeanor or infraction case” for “municipal or justice court.” This raises the question whether the court should have discretion to order electronic recording in superior court if a reporter is unavailable.

In 1992, the Judicial Council sponsored a bill to allow electronic recording in superior court, but the bill was defeated. 2 B. Witkin, *California Procedure Courts* § 393, at 31 (4th ed. 1998 Supp.). In 1993, the Judicial Council adopted Rules of Court to permit electronic recording of superior court proceedings, but these rules were held unconstitutional in *California Court Reporters Ass’n v. Judicial Council*, 39 Cal. App. 4th 15, 46 Cal. Rptr. 2d 44 (1995).

As a matter of policy, electronic recording of proceedings should be equally available in superior and municipal courts. But this does not appear politically feasible at present.

The Commission’s trial court unification bill changed the authority for electronic recording in criminal cases from “municipal or justice court” to “a misdemeanor or infraction case.” A question has arisen whether electronic recording may be used for preliminary hearings in municipal court in felony cases. This is being considered by the Judicial Council. **The staff recommends we wait for the Judicial Council to decide the best policy on this question.**

Respectfully submitted,

Robert J. Murphy
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Cases in Which Court Reporter Is Required

April 1999

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 July 15, 1999.

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
4000 Middlefield Road, Suite D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

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 consolidation is nonsubstantive, will reduce the opportunity for confusion, and will make the statute easier to use.

This recommendation was prepared pursuant to Section 70219 of the Government Code.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 269 (amended). Record on appeal**

2 SEC. ____ . 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 (e) (d) 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 the identical volume divisions, pagination, line numbering, and text of the certified
38 original paper transcript or any portion thereof. Each disk shall be sequentially
39 numbered within the series of disks.

1 **Comment.** Subdivision (a) of Section 269 is amended to include the substance of the first
2 portion of former Section 274c. Subdivision (a) is also amended to substitute “attorneys” for
3 “prosecuting attorney.” This conforms subdivision (a) to Government Code Section 72194.5
4 (electronic recording).

5 **Code Civ. Proc. § 274c (repealed). Reporter in limited civil case and misdemeanor and**
6 **infraction cases**

7 SEC. _____. Section 274c of the Code of Civil Procedure is repealed.

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

20 **Comment.** Section 274c is repealed and continued in substance in subdivisions (a) and (b) of
21 Section 269.

22