

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Cases in Which Court
Reporter Is Required**

November 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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CALIFORNIA LAW REVISION COMMISSION

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November 15, 2001

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

This recommendation would consolidate the rules governing when a court reporter must be provided in civil and criminal cases. Nonsubstantive revisions would also be made to clarify the application of the statute and related provisions, consistent with existing law.

This recommendation is submitted pursuant to Resolution Chapter 78 of the Statutes of 2001.

Respectfully submitted,

Joyce G. Cook
Chairperson

CASES IN WHICH COURT REPORTER IS REQUIRED

Two closely similar provisions specify when a court reporter is required in a civil or criminal case.¹ These provisions are unnecessarily duplicative and should be consolidated. Nonsubstantive revisions should also be made to clarify the application of the statute and related provisions, consistent with existing law.

Consolidation of Duplicative Provisions

Code of Civil Procedure Section 269(a) governs the use of a court reporter in an unlimited civil case or a felony case.²

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 subsequently directed the Commission to undertake such a study. Gov't Code § 70219.

2. Code of Civil Procedure Section 269(a) provides:

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.

For the full text of the provision, see "Proposed Legislation" *infra*. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

Section 274c governs the use of a court reporter in a limited civil case or a misdemeanor or infraction case.³

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

This distinction does not merit two separate code provisions. It is cumbersome to have two substantively similar provisions, one for limited civil cases and misdemeanor and infraction cases, and the other for felony cases and all other civil cases. The provisions should be consolidated into a single section.

The Commission recommends broadening Section 269(a) to apply to all civil and criminal cases, and repealing Section 274c.⁴ This would not be a substantive change in the law,

3. Section 274c provides:

274c. Official reporters shall, 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, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of the case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

4. Section 274c is cross-referenced in Government Code Section 72197. Instead of correcting this cross-reference, the proposed law would repeal Government Code Section 72197, because the provision is obsolete. The provision pertains to temporary reassignment of a court reporter from a superior court to a

because the proposed legislation would continue the current rules on who is entitled to request a court reporter in a criminal case.⁵

Nonsubstantive Clarification of Section 269

Section 269 should also be revised to clarify its application consistent with existing law:

Official reporters pro tempore. The statute should be amended to refer to official reporters “pro tempore,” as well as official reporters, as is already done in other provisions.⁶

Arguments to the jury. The existing provisions require that the arguments of “the prosecuting attorney” to the jury be included in the transcript. The statute should be revised to refer simply to the arguments of “the attorneys,” consistent with existing practice and with other statutes.⁷

Request of “the district attorney.” The statute should be amended to require court reporting at the request of “the prosecution,” rather than at the request of “the district attorney,” because in some circumstances the Attorney General acts as prosecutor in place of the district attorney.⁸

municipal court, but the municipal courts no longer exist due to trial court unification. Cal. Const. art. VI, § 5(e).

5. The rules in subdivisions (b) and (c) of Section 269 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 would not change the scope of subdivision (b), because subdivision (b) is expressly limited to felony cases. Similarly, Section 269(c), relating to computer-readable transcripts, involves a distinct subject. It should be converted into a separate section. 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.

6. See, e.g., Bus. & Prof. Code § 8016; Code Civ. Proc. § 273; Gov’t Code §§ 68105, 68525, 69941, 69944, 69946, 69955.

7. See, e.g., Gov’t Code § 72194.5 (“arguments of the attorneys”).

8. See Gov’t Code § 12553 (disqualification of district attorney); see also Penal Code § 1424 (motion to disqualify district attorney).

Subordinate judicial officer. The statute should be amended to make clear that it requires shorthand reporting regardless of whether a proceeding is conducted by a judge or by another type of judicial officer. The availability of shorthand reporting does not depend on the status of the person conducting a proceeding.⁹

Pro per felony defendant. The statute should be amended to clarify its application to a pro per felony defendant. It should be clear that a felony defendant is entitled to a court reporter on request by the defendant personally, not just on request by the defendant's attorney. This would conform to existing interpretations of the statute.¹⁰

Transcript for nonparty. The statute should be amended to make clear that a nonparty is generally entitled to obtain a transcript. This is consistent with longstanding practice and other statutory language.¹¹ It also conforms to constitutional

9. For an exception to this rule, see Gov't Code § 70141.11 (court reporting for Contra Costa County commissioner).

10. See generally *People v. Turner*, 67 Cal. App. 4th 1258, 1266, 79 Cal. Rptr. 2d 740 (1998) ("a verbatim record is implicitly among the rights of which a defendant appearing in propria persona must be apprised"); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (California confers right to free verbatim record "in felony proceedings by statute (Code Civ. Proc., § 269)"); *In re Armstrong*, 126 Cal. App. 3d 565, 572, 178 Cal. Rptr. 902 (1981) (a felony defendant "is, as a matter of right, entitled to have 'taken down,' all related testimony and oral proceedings") (emphasis in original); *People v. Goudeau*, 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 on order of the court. (Code Civ. Proc., § 269.)"); *People v. Hollander*, 194 Cal. App. 2d 386, 391-93, 14 Cal. Rptr. 917 (1961) (denial of transcript to pro per indigent defendant was prejudicial error).

11. See Section 269(c) (any "court, party, or person may request delivery of any transcript in a computer-readable form") (emphasis added). See also Government Code Section 69950, which refers to the fee for a copy of a transcript for "any other person," but also refers to the fee for "each copy for the party buying the original made at the same time." (Emphasis added.) A conforming revision would replace "party" with "court, party, or other person" in this provision.

constraints.¹² A nonparty is entitled to a transcript of a proceeding that was open to the public,¹³ a proceeding that was erroneously closed to the public,¹⁴ and a proceeding that was properly closed, once the reasons for closure are no longer viable.¹⁵

Computer-readable transcript. The statute should be amended to convert the provision on computer-readable transcripts¹⁶ into a separate section,¹⁷ because it concerns a distinct subject. Revisions should also be made to clarify how the provision applies where a transcript is corrected, and to make clear that a computer-readable version of a transcript is available only where a person is entitled to a hard-copy version.

12. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (media request for transcript of preliminary hearing); *Fisher v. King*, 232 F.3d 391, 397 (4th Cir. 2000) (general public and press “enjoy a qualified right of access under the First Amendment to criminal proceedings *and the transcripts thereof*”) (emphasis added); *United States v. Antar*, 38 F.3d 1348, 1360-61 (3d Cir. 1994) (“First Amendment right of access must extend equally to transcripts as to live proceedings”); *United States v. Berger*, 990 F. Supp. 1054, 1057 (C.D. Ill. 1998) (“There is no question that a written transcript of the Governor’s deposition would be made available to the public upon the admission of his testimony before the jury.”); *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas*, 73 Ohio St. 3d 19, 21, 652 N.E.2d 179 (1995) (right of access “includes both the live proceedings and the transcripts which document those proceedings”); see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (constitutional right of access applies to civil as well as criminal cases).

13. See *Scripps Howard Broadcasting Co.*, 73 Ohio St. 3d at 21 (transcript of contempt proceeding that was open to the public); see also *Antar*, 38 F.3d at 1359-61 (transcript where court requested but did not order press to leave courtroom).

14. See generally *Press-Enterprise Co.*, 478 U.S. at 15.

15. See *United States v. Ellis*, 90 F.3d 447, 450 (11th Cir. 1996), *cert. denied*, 519 U.S. 1118 (1997); *Phoenix Newspapers, Inc. v. United States Dist. Court*, 156 F.3d 940, 947-48 (9th Cir. 1998).

16. Section 269(c).

17. See proposed Section 271 *infra*.

Nonsubstantive Clarification of Related Provisions

Similar nonsubstantive revisions should be made in a number of provisions related to Sections 269 and 274c:

Transcription fee. Government Code Section 69950 governs transcription fees. It should be amended to reflect changes in technology and conform to the rule that a nonparty is generally entitled to obtain a transcript.

Trial court unification. Penal Code Section 190.9 includes a cross-reference to Section 269 that requires correction. The provision also needs to be revised to reflect unification of the municipal and superior courts.¹⁸ Similarly, Government Code Section 72197 includes a cross-reference to Section 274c, but the statute should be repealed due to trial court unification.

Transcript of special hearing on suppression motion in felony case. Penal Code Section 1539, concerning preparation of the transcript of a special hearing on a suppression motion, also requires revisions to reflect trial court unification. Before unification, the superior court conducted special hearings in felony cases, but not special hearings in misdemeanor cases.¹⁹ Because Penal Code Section 1539 was limited to a “special hearing in the superior court,” it applied only to a special hearing in a felony case. After unification, however, the superior court conducts special hearings in misdemeanor cases, as well as special hearings in felony cases.²⁰ To make clear that Penal Code Section 1539 still applies only to a special hearing in a felony case, it should be amended to refer to

18. The last remaining municipal court was eliminated on February 8, 2001, when the municipal and superior courts in Kings County unified.

19. See former Penal Code § 1538.5 (1997 Cal. Stat. ch. 279, § 3).

20. See Penal Code § 1538.5 & Comment.

“a special hearing in a felony case,” instead of “a special hearing in the superior court.”²¹

Scope and Effect of Proposal

The proposed legislation would not change the extent to which court reporters may be used in the courts. It is a non-substantive proposal, intended to aid courts and practitioners by simplifying and clarifying existing law concerning when a court reporter is required.

The recommendation does not address the following significant issues related to court reporting, some of which may be the subject of future Commission recommendations:

(1) Whether the defendant in a misdemeanor or infraction case should be entitled to request shorthand reporting.²²

21. Penal Code Section 1539 does not address whether a defendant is entitled to shorthand or other verbatim reporting of a special hearing in a misdemeanor case pursuant to the United States Constitution, California Constitution, or other statutory provision. The proposed Comment provides citations to cases on shorthand reporting in misdemeanor cases.

The proposed amendment would also revise the statute to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). As part of trial court funding reform, the powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are now delegated to the court administrative or executive officer, and the county clerk has been relieved of those powers, duties, and responsibilities. See Gov't Code §§ 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court personnel).

22. For cases relating to the extent to which a defendant may be constitutionally entitled to a verbatim record at public expense in a misdemeanor case, see *Ryan v. Commission on Judicial Performance*, 45 Cal. 3d 518, 541-42, 754 P.2d 724, 247 Cal. Rptr. 378 (1988); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1049-56, 192 Cal. Rptr. 341 (1983); *In re Armstrong*, 126 Cal. App. 3d 565, 178 Cal. Rptr. 902 (1981). For use of electronic recording (as opposed to shorthand reporting) to create a verbatim record in a misdemeanor case, see Gov't Code § 72194.5; *In re Armstrong*, 126 Cal. App. 3d at 575.

(2) Whether statutes authorizing the court to order the county treasurer to pay transcript fees are obsolete in light of recent changes in trial court funding.²³

(3) Whether distinctions in the superior and municipal court procedures for charging, depositing, and paying court reporter fees, and other statutes providing special rules for municipal courts, should be maintained in a unified court.²⁴

(4) Whether the statutes governing reporters and their fees in various counties require revision.²⁵

23. See, e.g., Gov't Code §§ 69952, 70131. The Legislature has directed the Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition. Gov't Code § 71674. 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.

24. See, e.g., Gov't Code § 68086 (procedures for court reporter fees). The Commission is reviewing the codes for provisions that are obsolete due to the unification of the municipal and superior courts in every county. See Gov't Code § 71674; 2001 Cal. Stat. res. ch. 78.

25. 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). The Legislature has directed the Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition. Gov't Code § 71674.

PROPOSED LEGISLATION

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 superior 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 cases, arguments of the prosecuting attorney attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. If directed judge or other judicial officer, in the following cases:~~

(1) *In a civil case, on order of the court or at the request of a party.*

(2) *In a felony case, on order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant.*

(3) *In a misdemeanor or infraction case, on order of the court.*

(b) *Where a transcript is ordered by the court, or requested by either a party, or where a nonparty requests a transcript that the nonparty is entitled to receive, regardless of whether the nonparty was permitted to attend the proceeding to be transcribed, the official reporter or official reporter pro tempore shall, within such a reasonable time after the trial of the case as that the court may designate designates, 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.

~~(e) 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:

(1) Continue former Section 274c without substantive change.

(2) Refer to official reporters pro tempore, as well as official reporters. This is not a substantive change. See Gov't Code § 69941 (appointment of official reporter and official reporter pro tempore).

(3) 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”).

(4) Substitute “prosecution” for “district attorney,” to reflect that the Attorney General sometimes acts as prosecutor in place of the district attorney. See Gov’t Code § 12553 (disqualification of district attorney); see also Penal Code § 1424 (motion to disqualify district attorney).

(5) Make clear that it requires shorthand reporting regardless of whether a proceeding is conducted by a judge or by another type of judicial officer (e.g., a commissioner). For an exception to this rule, see Gov’t Code § 70141.11 (court reporting for Contra Costa County commissioner).

(6) Make clear that a felony defendant, whether represented by counsel or in pro per, is entitled to a court reporter on request by the defendant personally or by the defendant’s attorney (if any). This is not a substantive change. See generally *People v. Turner*, 67 Cal. App. 4th 1258, 1266, 79 Cal. Rptr. 2d 740 (1998) (“verbatim record is implicitly among the rights of which a defendant appearing in propria persona must be apprised”); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (California confers right to free verbatim record “in felony proceedings by statute (Code Civ. Proc., § 269.)”); *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”) (emphasis in original); *People v. Goudeau*, 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 on order of the court. (Code Civ. Proc., § 269.)”); *People v. Hollander*, 194 Cal. App. 2d 386, 391-93, 14 Cal. Rptr. 917 (1961) (denial of transcript to pro per indigent defendant was prejudicial error).

Subdivision (b) is amended to make clear that a nonparty is generally entitled to request preparation of a transcript. This is consistent with longstanding practice and conforms to constitutional constraints. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (media request for transcript of preliminary hearing); *Fisher v. King*, 232 F.3d 391, 397 (4th Cir. 2000) (general public and press “enjoy a qualified right of access under the First Amendment to criminal proceedings *and the transcripts thereof*”) (emphasis added); *United States v. Antar*, 38 F.3d 1348, 1360-61 (3d Cir. 1994) (“First Amendment right of access must extend equally to transcripts as to live proceedings”); *United States*

v. Berger, 990 F. Supp. 1054, 1057 (C.D. Ill. 1998) (“There is no question that a written transcript of the Governor’s deposition would be made available to the public upon the admission of his testimony before the jury.”); State *ex rel.* Scripps Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas, 73 Ohio St. 3d 19, 21, 652 N.E.2d 179 (1995) (right of access “includes both the live proceedings and the transcripts which document those proceedings”); see also NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (constitutional right of access applies to civil as well as criminal cases). A nonparty is entitled to a transcript of (1) a proceeding that was open to the public, see *Scripps Howard Broadcasting*, 73 Ohio St. 3d at 21; (2) a proceeding that was erroneously closed to the public, see generally *Press-Enterprise*, 478 U.S. at 15; and (3) a proceeding that was properly closed, once “the competing interests precipitating closure are no longer viable,” see *Phoenix Newspapers, Inc. v. United States Dist. Court*, 156 F.3d 940, 947-48 (9th Cir. 1998).

Subdivision (b) is also amended to refer to official reporters pro tempore, as well as official reporters.

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

The other revisions in Section 269 are technical, nonsubstantive changes.

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

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

271. (a) Any court, party, or other person entitled to a transcript may request that it be delivered in 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 or official reporter pro tempore shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment.

(b) 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 other 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. Except where modifications are necessary to reflect corrections of a transcript, each disk as produced by the official 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. Section 271 continues former Section 269(c) without change, except to insert subdivisions, refer to official reporters pro tempore as well as official reporters, make clear that a computer-readable version of a transcript is available only where a person is entitled to a hard-copy version, and clarify how the provision applies where a transcript is corrected. These revisions are nonsubstantive. See Gov't Code § 69941 (appointment of official reporter and official reporter pro tempore).

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

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

~~274c. Official reporters shall, 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, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of the case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and~~

~~transcribed, and when directed by the court, file the same with the clerk of the court.~~

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

Gov't Code § 69950 (amended). Transcription fee

SEC. 4. Section 69950 of the Government Code is amended to read:

69950. (a) The fee for transcription for original ribbon *or printed* copy is eighty-five cents (\$0.85) for each 100 words, and for each copy ~~for the party buying the original made purchased~~ at the same time *by the court, party, or other person purchasing the original*, fifteen cents (\$0.15) for each 100 words.

(b) The fee for a first copy to any *court, party, or other person who does not simultaneously purchase the original* shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, *made purchased* at the same time, fifteen cents (\$0.15) for each 100 words.

Comment. Section 69950 is amended to conform to the rule that a nonparty is generally entitled to obtain a transcript. See Code Civ. Proc. § 269 & Comment.

The section is also amended to reflect changes in technology. When the provision was first enacted, carbon paper was still in use and it was routine to create a copy at the same time as the original. Now the original typically is made first, then copied.

The section is further amended to specify the fee where the person who purchases the original subsequently (as opposed to simultaneously) purchases a copy.

Gov't Code § 72197 (repealed). Duties on assignment to municipal court

SEC. 5. Section 72197 of the Government Code is repealed.

~~72197. Whenever such request has been granted and any official reporter of the superior court has been assigned to act as a pro tempore phonographic reporter of the municipal court, such reporter shall, during the period of such~~

~~assignment to the municipal court, perform the duties of an official reporter of such municipal court and during the time of any such assignment such reporter shall be subject to the provisions of Sections 69942 to 69955, inclusive, and Sections 273 and 274c of the Code of Civil Procedure.~~

Comment. Section 72197 is repealed to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

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

SEC. 6. Section 190.9 of the Penal Code is amended to read:

190.9. (a)(1) In any case in which a death sentence may be imposed, all proceedings conducted in the ~~municipal and superior courts~~ *court*, 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~~ *clerk* 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~~ *is extended* 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~~ *the record of all proceedings is incorporated* 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. Subdivision (a) of Section 190.9 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Subdivision (a) is also amended to make clear that the clerk of the superior court is responsible for ordering transcription and preparation of the record in a death penalty case.

Subdivision (c) is amended to correct a cross-reference. The substance of former Code of Civil Procedure Section 269(c) is continued in Code of Civil Procedure Section 271.

Penal Code § 1539 (amended). Transcript of special hearing

SEC. 7. Section 1539 of the Penal Code is amended to read:

1539. (a) If a special hearing be held in ~~the superior court~~ *a felony case* pursuant to Section 1538.5, or if the grounds on which the warrant was issued be controverted and a motion to return property be made (i) by a defendant on grounds not covered by Section 1538.5; (ii) by a defendant whose property has not been offered or will not be offered as evidence against ~~him~~ *the defendant*; or (iii) by a person who is not a defendant in a criminal action at the time the hearing

is held, the judge or magistrate must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated by a shorthand reporter in the manner prescribed in Section 869.

(b) The reporter shall forthwith transcribe ~~his~~ *the reporter's* shorthand notes pursuant to this section if any party to a special hearing in ~~the superior court~~ *a felony case* files a written request for its preparation with the clerk of the court in which the hearing was held. The reporter shall forthwith file in the superior court an original and as many copies thereof as there are defendants (other than a fictitious defendant) or persons aggrieved. The reporter shall be entitled to compensation in accordance with the provisions of Section 869. In every case in which a transcript is filed as provided in this section, the ~~county~~ *clerk of the court* shall deliver the original of such transcript so filed ~~with him~~ to the district attorney immediately upon receipt thereof and shall deliver a copy of such transcript to each defendant (other than a fictitious defendant) upon demand ~~by him~~ without cost to ~~him~~ *the defendant*.

(c) Upon a motion by a defendant pursuant to this chapter, the defendant shall be entitled to discover any previous application for a search warrant in the case which was refused by a magistrate for lack of probable cause.

Comment. Section 1539 is amended to make clear that it applies only to a special hearing in a felony case pursuant to Section 1538.5. This implements the principle that trial court unification did not change the extent to which court reporter services or electronic reporting is used in the courts. 1998 Cal. Stat. ch. 931, § 507; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998); see also 1997 Cal. Stat. ch. 279, § 3 (former Section 1538.5(g), (i)).

As before unification, Section 1539 does not address whether shorthand or other verbatim reporting is required at a special hearing in a misdemeanor case pursuant to the state or federal Constitution or some other provision of law. For cases relating to the extent to which a defendant may be constitutionally entitled to a verbatim record at public expense in a misdemeanor case, see *Ryan v. Commission on Judicial*

Performance, 45 Cal. 3d 518, 541-42, 754 P.2d 724, 247 Cal. Rptr. 378 (1988); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1049-56, 192 Cal. Rptr. 341 (1983); *In re Armstrong*, 126 Cal. App. 3d 565, 178 Cal. Rptr. 902 (1981).

Section 1539 is also amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Gov't Code §§ 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court personnel).

Uncodified (added). Effect of act

SEC. 8. Nothing in this act is intended to change the extent to which official reporter services or electronic reporting may be used in the courts.
