

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

In re Findings Concerning Availability
of Court Reporters for
Humboldt County Superior Court
Felony Criminal Matters and
Standing Order re Electronic
Recording

**STANDING ORDER RE ELECTRONIC
RECORDING FELONY CRIMINAL
MATTERS DUE TO COURT REPORTER
SHORTAGE**

**I.
FACTUAL BACKGROUND**

A. STATEWIDE AND NATIONAL SHORTAGE OF COURT REPORTERS

As set forth in the report prepared by the California Trial Court Consortium (“CTCC”) dated January 25, 2022 entitled, “The Causes, Consequences and Outlook of the Court Reporter Shortage in California and Beyond” there is a shortage of certified shorthand reporters (“CSR”) in California and nationally.¹ These findings were bolstered by the Judicial Council’s January 2024 publication, “Fact Sheet: Shortage of Certified Shorthand Reporters in California.”

Since 2012, the number of court reporters in the United States has decreased by 20 percent. By 2028, the number of court reporters will have decreased by half. This decrease is largely attributed to attrition in the reporter workforce due to retirement. For example, nationally 1,120 reporter retire each year, while only 200 new reporters enter into the market.

¹ The findings concerning the statewide and national shortage of court reporters summarized herein, and the data which supports those findings, are set forth in the CTCC report and the Judicial Council's fact sheet and are adopted herein by reference.

1 The reduction of students entering into the workforce to become a CSR has
2 impacted court reporter schools nationwide. Between 2012 and 2021, the number of
3 court reporter schools approved by the National Court Reporters Association
4 reduced from 54 to 26. Students currently enrolled to become CSRs represent only
5 2.5 of the anticipated labor force need.

6 In California, court reporting programs have reduced from 16 in 2011 to 9 in
7 2021, a 44% decline. The California exam for licensure is also rigorous. Between
8 2018 and 2021, the dictation passage rate for the exam ranged from 8 to 21 percent.
9 In 2019-20, the Court Reporters Board of California issued licenses to 66 new
10 reporters; in 2020-21, 39 new court reporters were licensed. No reciprocity exists in
11 California for reporters licensed in other states. Between 2014 and 2021, the total
12 number of licensed court reporters declined from 7,058 to 5,728 of which only 5,043
13 reside in California.

14 California courts employ approximately 1,200 full-time equivalent court reporters,
15 and it is estimated that California courts may need an additional 650 full-time
16 reporters. The ever-decreasing number of California-licensed court reporters and
17 difficulty competing with private employers, and one another, in the labor market
18 make reaching these standards seemingly impossible.

19 A vast majority of trial courts have implemented a variety of incentives to recruit
20 and retain court reporters. Incentives include signing bonuses, retention and
21 longevity bonuses, increased salaries, and more – to no avail.

22 Legal changes have also impacted the ability of a court to hire a CSR. In 2019,
23 AB5 was adopted establishing limits on the ability of an employer to classify a
temporary employee as an independent contractor. This reduced access to
freelance reporters willing to work on a part-time or on-call basis for the Court. In

1 addition, changes to the Public Employment Retirement System also impacted
2 retirees, including limiting the number of hours a retired annuitant can work and the
3 date on which a retired annuitant can first commence work. As a result of these
4 changes, access to reporters who might desire to work intermittently or after
5 retirement was reduced or eliminated.

6 Finally, the Legislature limited the ability of a court reporter to appear using
7 remote technology starting in January of 2020 (Government Code § 69959), in
8 January of 2022 (Code of Civil Procedure § 367.75 (d)(2)), and again in June of
9 2022 (Penal Code § 977 (g)(2)).

10 In conclusion, a court reporter shortage exists both in California and nationally,
11 which is unlikely to be resolved in the immediate future.

12 **B. COURT REPORTER AVAILABILITY FOR THE HUMBOLDT COUNTY 13 SUPERIOR COURT**

14 Despite its best efforts, Humboldt County Superior Court has not had a full staff of
15 CSRs for many years. To address this problem, the Court has posted hiring
16 advertisements on its website, governmentjobs.com, and indeed.com. It has also
17 increased CSR compensation by 7.5% since 2023 and offered sign on bonuses and
18 incentive pay.

19 Despite its best efforts, the Court currently only employs one (1) full-time CSR and
20 five (5) CSRs with less than full-time positions. The Court would employ part-time
21 CSRs, but there have not been any qualified applicants.

22 Due to the reduction in the number of CSRs the Court restricted the cases in which
23 it would provide reporters. Since then, the Court has only provided reporters in
statutorily mandated cases: death penalty proceedings, juvenile proceedings,
felonies, and proceedings regarding withdrawal of consent to adopt. To free up CSRs
to cover these areas, they are no longer provided in limited civil and family matters.

1 Overall, the Court is faced with this critical shortage and currently is unable to
2 employ an adequate number of CSRs. And, as with any workforce, there are times
3 when one or more of the Court's CSRs are simply unavailable due to the
4 circumstances of life. In those circumstances, the Court has no choice but to forego
5 having assigned CSRs for matters, even those required by statute, and must record
6 proceedings to preserve an adequate record.

7 **II.**
8 **LEGAL FINDINGS**

9 **A. THE LEGISLATURE IS PRESUMED TO NOT HAVE INTENDED THE**
10 **IMPOSSIBLE AND THE COURT'S INABILITY TO PROVIDE A CSR IS**
11 **LEGALLY EXCUSED**

12 The requirement to have CSR in felony criminal matters is excused due to
13 impossibility or impracticability. "[W]here strict compliance with the terms of a statute
14 is impossible, compliance as near as can be has been permitted on the principle that
15 the law does not require impossibilities." (*Board of Supervisors v. McMachon* (1990)
16 219 Cal.App.3d 286, 300, quoting 73 Am.Jur.2d, Statute, § p. 278.) Here, despite
17 diligent and significant effort, the Court is unable to provide a CSR in this matter due
18 to the local, statewide, and national shortage of CSRs. However, the Court must
19 continue to fulfill its core judicial functions.

20 Refusing to proceed in felony criminal matters until a CSR is available would result
21 in the following, and potentially other, deprivations, depending on the hearing:

- 22 1. The defendant's right to a trial within statutory time in violation of Penal Code
23 section 1382;
2. The defendant's right to a speedy trial pursuant to California Constitution,
article I, section 15 and the Constitution of the United States of America, Sixth
Amendment;

- 1 3. The People and the Victim of the right to a speedy trial and timely justice
- 2 pursuant to California Constitution, article I, sections 28 and 2;
- 3 4. Inconvenience to witnesses under subpoena;
- 4 5. Both parties of their right to a preliminary hearing at the “soonest possible time”
- 5 pursuant to Penal Code section 859b.

6 Waiting until a CSR is available is likely to increase the backlog and worsen the
7 delay for litigants now and in the future. The CSR shortage is more likely to worsen
8 than improve.

9 The Court therefore finds that the statutory obligation to provide a CSR is excused
10 as an impossible or impractical act.

11 **B. STATUTES MANDATING A CSR AT THE IMPLICATED HEARINGS ARE
12 VOID AS APPLIED TO THE PRESENT SITUATION DUE TO CONFLICT
13 WITH SUPERIOR STATE AND FEDERAL CONSTITUTIONAL
14 PROVISIONS**

15 Statutory provisions mandating a CSR at these hearings are invalid as applied to
16 the present situation because those requirements are in conflict with superior state
17 and federal constitutional provisions. The state and federal constitutions guarantee
18 rights to speedy trial and due process. (Cal. Const., art. I, §§ 15, 28, 29; U.S. Const.,
19 5th, 6th, 14th Amends.) As the CSR shortage is predicted to worsen, delaying
20 hearings until CSRs are available will simply exacerbate the problem. These litigants,
21 and others, would be more likely to be deprived of their constitutional rights. The Court
22 therefore finds statutory provisions mandating CSR reporting, including but not limited
23 to, Code of Civil Procedure section 269, subdivision (a) and Government Code section
69957, subdivision (a) (to the extent it could be interpreted to prohibit use of electronic
recording for this matter), invalid as applied to the present situation. (See *Punsly v.
Ho* (2001) 87 Cal.App.4th 1099, 1104, internal quotation marks removed: “The

1 practical effect of holding a statute unconstitutional 'as applied' is to prevent its future
2 application in a similar context, but not to render it utterly inoperative.")

3 **C. AN ADEQUATE RECORD WILL BE PRESERVED IN THE ABSENCE OF A**
4 **CSR USING MODERN TECHNOLOGY**

5 Balancing interests, due process requires the availability of an adequate record
6 to afford appellate review. Further, the absence of a record can impact the ability of
7 the assigned judicial officer to recall the proceedings, evidence or testimony or
8 undertake functions such as preparation of a settled statement. Electronic recording
9 is currently authorized by statute for use in certain matters, including misdemeanor
10 criminal matters, limited jurisdiction matters, traffic and infractions. In the absence of
11 an available CSR, use of electronic recording provides an adequate record to ensure
12 the parties are afforded due process and to permit the Court to fulfill its core function:
13 the administration of justice. Despite statutory limits on the use of electronic recording,
14 due process requires that electronic reporting be utilized in the absence of a CSR.

15 **THEREFORE, THE COURT FINDS AND ORDERS:**


- 16 1. The Court has confirmed that the services of an in-person CSR are not
17 available for these proceedings;
- 18 2. By law, the Court is mandated to provide an adequate record to ensure the
19 opportunity for meaningful appellate review in a matter in which the state
20 initiates an action to which a litigant is entitled to due process that may result
21 in the deprivation of liberty or property;
- 22 3. Electronic recording is authorized by statute for other matters in which the
23 state has initiated action which may result in deprival of liberty or property
and will provide the litigants with an adequate record to ensure meaningful
appellate review;

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- 4. Further delay of these proceedings for the prospect of securing the services of an in-person reporter is not appropriate as such prospect is uncertain and such delay does not serve the interests of justice; and
- 5. Electronic recording will provide the litigants with an adequate record to ensure meaningful appellate review.

IT IS SO ORDERED.

Dated: 2/13/24



Gregory J. Kreis, Presiding Judge of
the Superior Court of California,
County of Humboldt