Family Law news

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Message from the Chair

Mark Ressa

The Obligatory 'Advice to New Family Law Attorneys' Column

As a teen growing up in Michigan, my best friend's older brother said something I didn't quite understand. He was completing his fourth year of medical school and said, *"Medical school doesn't train you to become a doctor."* How could that be, I thought?

I have since come to appreciate the comment because I have learned, *graduating from law school and passing the Bar does not a lawyer make*.

That is especially true in family law where a working knowledge of human nature, family dynamics, and the psychology of relationships are probably more valuable to a practitioner than knowing the Family Code chapter-and-verse.

With that said, I would like to impart a few pointers not otherwise taught in law school, which will surely help make your practice of family law more successful and stress-free.

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Message from the Editor

Naghmeh Bashar, Executive Editor

In our last Issue, I promised to include articles in the Family Law News that inspire, educate, and provoke thought; I hope I accomplished that for you. I requested to hear from you regarding that which you read in order to create an interactive newsletter. Some of your feedbacks are included in this Issue. I aspire toward the same goals this time as well. In this Issue, in particular, many of our authors have requested your feedback, action, and welcome your suggestions. I encourage you to get involved and interact with one another utilizing this platform as one avenue to communicate and make a difference in our practice.

At the time I am writing this message, President Obama took his second oath to office and delivered his speech to the nation. Whether you are amongst those who voted for him or not, and notwithstanding specific portions of his speech that may have caused many republicans to wince, I believe it can be fairly stated that cutting

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Family Law News

Is there a Right to a Record?

Michele Brown and Michelene Insalaco

"For there can be no equal justice where the kind of an appeal a man enjoys depends on the amount of money he has." *Douglas v. People of the State of California* (1963) 372 U.S. 353, 355.

As we have all experienced, courts in California are facing severe budget constraints. As a result, they are slashing services considered "non mandatory," or not required under either state or federal law. Mandatory services, such as the right to counsel for certain criminal defendants, are not being cut.

As part of the budget trimming, courts are laying off certified court reporters all over the state. Today, in many cases—even those involving termination of parental rights, cross-country or international relocation, domestic violence restraining orders, and child support—hearings and trials are going forward with *no* record. This is particularly true for low-income families, who cannot afford to hire a private shorthand reporter.

Is this appropriate? Is it constitutional? Does conducting unreported family law hearings where important and even fundamental rights are at stake violate California or federal law? If so, what is the solution to correct this injustice?

This article will explore the right to a record in California family law cases, discusses the reasons a record is critically important, and provides an overview of the potential for instituting a system of electronic reporting in family law courtrooms.[1]

1. Statutory Authority Mandating the Creation of an Official Record in Family Law Cases.

Code of Civil Procedure Section 269 states in pertinent part (emphasis added):

> (a) 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, arraignments, pleas, sentences, arguments of the attorneys to the jury, and statements and remarks made and oral instructions given by the judge or other judicial officer, in the following cases:
>
> (1) **In a civil case**, on the order of the court or **at the request of a party**.
>
> (2) In a felony case, on the 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 the order of the court.

It is axiomatic that use of the term "shall" in a statute signifies that the provision is mandatory and not optional or within the court's discretion, while on the other hand the term "may" is permissive and indicates court discretion. (See, e.g. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach* (1998) 523 U.S. 26, 35. (The mandatory "shall" normally creates an obligation "impervious to judicial discretion."))

Code of Civil Procedure Section 24, enacted in 1872 and never amended, provides:

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Michelene Insalaco has practiced family law since 1992, and has been a certified specialist since 2003. She has acted as Chair of the San Francisco Bar's Family Law Section, and has been a member of the Board of Directors of ACFLS and member of FlexCom. She sits as a Judge Pro Tem for the San Francisco Family Law Department, handles family law appeals, and has received numerous awards for her pro bono work. Ms. Insalaco is very interested in family law legislation and issues of constitutional law.

Actions are of two kinds:

1. Civil; and,

2. Criminal.

Family law cases are not criminal cases, and so pursuant to Section 24, they are civil cases. This is widely recognized, for instance by Family Code Section 210, which provides that except as otherwise provided the rules of practice and procedure applicable to civil actions apply to, and constitute the rules of practice and procedure in, proceedings under the Family Code.

Moreover, family law cases are unlimited, as opposed to limited, civil cases. This is pursuant to Code of Civil Procedure Section 88, which provides that only certain cases, which do not include family law cases, are limited civil cases, and every other "civil action or proceeding other than a limited civil case may be referred to as an unlimited civil case."

Rule 2.956 of the California Rules of Court provides that the term "civil case" includes all matters other than criminal and juvenile matters. Rule 1.6(3) provides that "[c]ivil cases include all cases except criminal cases and petitions for habeas corpus."

Numerous court opinions interpret Section 269 to require that an official reporter must make a record of superior court proceedings when requested by a party or the judge. (See, e.g., *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 27.)

Finally, Rule 3.55 of the Rules of Court provides that fees courts are permitted to charge litigants for court reporting (under Govt. Code § 68086, subd. (a)(1)(A)) shall be waived for the indigent. This fee waiver demonstrates the critical nature of access to a court reporter. (See further discussion of the equal protection and due process rights involved in section 4 below.)

Taken together, the above clearly demonstrates the mandatory nature of court reporting in family law cases upon the order of the court or the request of a party.

2. Contrary Statutory Authority.

Government Code Section 68086, subd. (a)(1)(A) provides that the Judicial Council shall adopt rules to ensure that "if an official court reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter . . ." This could be read to mean that while courts are to regularly staff courtrooms with official reporters, when the regular reporter is ill or otherwise unavailable, the parties may bring private reporters. This could also be read to mean that official court reporters are not required. Hence the statute is arguably ambiguous. In fact, according to a representative at the Judicial Council, *it is this code section that the courts rely upon when removing reporters from family law and other departments*.

The rules of statutory construction provide that where more than one code section covers the same topic, courts should adopt a construction that "will give effect to all." (Code of Civil Procedure Section 1858.) If courts interpret Government Code Section 68086, subdivision (a)(1)(A) to mean that court reporters are *not* required, that would place this section in direct conflict with Section 269 of the Code of Civil Procedure. Hence, this construction of 68086, subdivision (a)(1)(A) is arguably incorrect and contrary to the specific rules of statutory construction adopted by the California Legislature.

The conflict between Government Code Section 68086, subdivision (a)(1)(A) and Code of Civil Procedure Section 269, and the appropriate interpretation of Section 68086, subdivision (a)(1)(A), may need to be resolved by the appellate courts and/or by the Legislature. It is only recently that courts have removed official reporters from family law courtrooms and to date there has been no appellate challenge or legislative response to these new protocols.

There appears to be no other statutory provisions that clearly conflict with Code of Civil Procedure Section 269.

Code of Civil Procedure Section 274a provides that a judge may have certain portions of proceedings, including "the testimony or judgment relating to the custody or support of minor children . . . taken down in shorthand and transcribed together with such copies as the court may deem necessary by the official reporter or an official reporter pro tempore of the court." Because this section uses the permissive "may," it could be read to mean that reporting of such matters is not required. However, the focus of Section 274a is not reporting, but rather when the court is permitted to obtain a typed transcript of a proceeding. Typically, due to the expense, courts cannot order transcripts except as specifically authorized. Note here that it is important to bear in mind the distinction between reporting or otherwise creating a record (the focus of this article), and transcribing what was recorded whether by shorthand or electronically.

Government Code Section 69952 provides, "the court may specifically direct the making of a verbatim record and payment therefore shall be from the county treasury on order of the court" in criminal and juvenile proceedings, as well as

"as otherwise provided by law." It is not clear whether the term "making of a verbatim record" as used here refers to reporting or transcribing. Either way, arguably "as otherwise provided by law" could certainly include reference to Section 269 and so this section does not appear to negate the right to an official reporter.

Finally, Rule 1.6(4) of the Rules of Court discusses the term "general civil case" and defines this as all civil cases except for a list of actions including those brought under the Family Code. However, the term "general civil case" is not used in Code of Civil Procedure Section 269, and so these provisions would appear not to be germane. Even if they were, where court rules, including the Rules of Court, conflict with a statute, the statute controls persuant to Article VI, Section 6 of the California Constitution.

3. Why Do We Need a Transcript?

Any attorney who handles appeals, or even reads appellate court opinions, is aware of the importance of a record when making an appeal. In any appeal where the issues relate to either the trial court's discretion or the sufficiency of the evidence in supporting a factual finding, without a transcript of the proceedings the appeal can virtually never succeed.

"A fundamental principle of appellate practice is that an appellant must affirmatively show error by an adequate record . . . . Error is never presumed. . . . A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent." (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) It is the appellant's responsibility to include in the appellate record the portions of the reporter's transcript relevant to her issues on appeal. (*Id.* at p. 1125.) "Matters not presented by the record cannot be considered on the suggestion of counsel in the briefs." (*In re Hochberg* (1970) 2 Cal.3d 870, 875, disapproved on other grounds as stated in *In re Fields* (1990) 51 Cal.3d 1063, 1070, fn. 3.)

"When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two." (*Protect Our Water v. County of Merced* (2003) 110 Cal. App.4th 362, 364.)

For example, in *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, a trustee seeking payment for her services appealed an order denying compensation. The appellate court held that its review had been "thwarted" by the appellant's failure to provide the appellate court with a transcript of the hearing. The appellate court held: "The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion." (*Id.* at p. 259.) The appellant was hence found to have *waived* the argument on appeal. (*Id.*)

And in *Arruda v. Arruda* (1963) 218 Cal.App.2d 410, wife appealed a division of property asserting it was unequal in favor of her husband. (*Id.* at p. 413.) Wife did not include a reporter's transcript or acceptable substitute (e.g. a settled statement) as part of her appellate record. The appellate court held it "must conclusively presume that the evidence is sufficient to support the findings, since no record of the oral proceedings is before this court. . . . Unless reversible error appears on the face of the record, we are confined, therefore, to a determination as to whether the complaint states a cause of action, whether the findings are within the issues, and whether the judgment is supported by the findings." (*Id.* at p. 414, internal citations omitted.)

Family law appeals may involve issues of legal error, but more often they seek review of the trial court's exercise of discretion and whether adequate evidence supports a factual finding. This would be the case when seeking review of decisions related to child custody and visitation, child or spousal support, attorney's fees, and many other common issues in family law. While success in these types of appeals is not common (as again all presumptions are in favor of the trial courts in these types of decisions) a party is effectively *denied* an appeal of discretionary rulings where no transcript exists.

Yvonne Fenner, Executive Officer for the Court Reporters Board of California, which is a governmental agency that protects consumers (litigants), has opined on the loss of court reporters in courtrooms. "There is an access to justice issue for the average person, especially the indigent, who are not going to be able to avail themselves to a record. If you don't have a record, you have no basis for an appeal; if you have no appellate rights, that's an awful lot of power to give to one person [i.e. a judge]."*(sic)*

A transcript is also critical to review for judicial bias, partiality, and other judicial misconduct, whether in the arena of an appeal or elsewhere. For example, in *In re Marriage of Iverson* (1992) 11 Cal.App.4th 1495, the trial judge found against wife when ruling on the validity of a premarital agreement. The transcript demonstrated the trial judge had referred to the wife as "a lovely girl," said that she "had nothing going for her except for her physical attractiveness," and (infamously) found the husband could not have initiated the marriage,

because "why, in heaven's name, do you buy the cow when you get the milk free. . . ." (*Id.* at p. 1498-99.) The appellate court reversed, holding the judge's statement made it clear "he entertained preconceptions about the parties because of their gender [which] made it impossible for [wife] to receive a fair trial." (*Id.* at p. 1499.) Had no transcript existed in *Iverson*, this judge could never have been called to task for his inappropriate, discriminatory conduct and the wife would have had no effective appeal of his orders.

The California Assembly Judiciary Committee recognized the importance of a record in family law cases, in its 2011 Analysis of Assembly Bill No. 803 (2011-2012 Reg. Sess.), where it aptly wrote:

> Currently, there regrettably appear to be many family court proceedings in California that do not have a court reporter. As a result, there is no official record of the proceeding and no ability to appeal a ruling, even a grossly unjust one. There is also all too frequent confusion by litigants about the basic nature of the court's orders as they financially must fend for themselves, and there is no recording or reporting of any kind for them to review after the hearing. Yet family law matters arguably include some of the most important matters facing children and families: dissolution, domestic violence, child custody and child support cases.

(Assembly Judiciary Committee, Bill Analysis Assem. Bill No. 803 (2011-2012 Reg. Sess.), p. 11, 4/26/11, quoting the Judicial Council's Elkins Family Law Task Force, Final Report and Recommendations (April 2010) p. 80.)

4. Special Impact on Indigent Litigants; Expanding the Two-Tiered System of Justice in California.

In *Griffin v. Illinois* (1956) 351 U.S. 12, the United States Supreme Court considered the indigent criminal defendant's right to a record for an appeal. There Illinois conditioned appellate review on the furnishing of a trial transcript, but provided the transcript free of charge only to indigent defendants sentenced to death. The Supreme Court held that this violated the Fourteenth Amendment's due process and equal protection guarantees. (*Id.* at pp. 16–18.) The Court wrote: ". . . a State that does grant appellate review can[not] do so in a way that discriminates against some convicted defendants on account of their poverty." (*Id.* at p. 18.) In other words, if the state sets up a structure where there is an appeal of right it may not structure its system in a way that discriminates against certain parties "on account of their poverty." "For there can be no equal justice where the kind of an appeal a [woman or a] man enjoys depends on the amount of money [she or] he has." (*Id.* at p. 19.) While this is a criminal case, the statement applies equally to civil contexts. In California, there is an appeal of right from all judgments, civil and criminal (Code Civ. Proc., § 902.). Given that the State has set up this structure, it cannot constitutionally create policies that effectively deny indigent parties the right to appeal in family law cases.

The principles of *Griffin v. Illinois* have in fact been specifically adopted by our Legislature, in Government Code Section 68630:

The Legislature finds and declares all of the following:

> (a) That our legal system cannot provide "equal justice under law" unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.

Clearly, when trial courts do not provide court reporters, this impacts indigent clients far more severely than those with the means to hire private certified shorthand reporters. The wealthier litigants may even prefer private reporters, because they can typically prepare transcripts more quickly, provide instantaneous read-outs in the courtroom, and prepare daily transcripts. However, an indigent client will have little ability to pay a private reporter, and most likely would not even know how to begin to do this even if funds were available.

5. Solutions.

a. Require Courts to Comply with Section 269.

The first step in righting this situation is for all attorneys to consistently seek enforcement of Code of Civil Procedure Section 269. Attorneys can and should remind the trial judges that there is a statutory requirement for the court to provide certified reporters in family law proceedings upon request. Appeal or writ review of denials of these requests may be required to ensure that courts comply with Section 269.

b. Staggered Fees to Cover Costs for Full-Time Court Reporters.

A related solution is for the Government Code to be revised to provide for higher daily and half-day reporter fees to be charged to litigants with the ability to pay. Litigants who do not wish to pay for a record can always opt out, but higher fees for those who are able to pay can cover the fees waived for indigent clients. The best solution would be to

specifically stagger fees, depending on each litigant's ability to pay. Family courts are tasked on a daily basis to determine need and ability to pay attorney fees and costs, and assess a litigant's entitlement to a fee waiver. Given these frameworks already in place it would not take significant additional work to set up a system for staggered reporting fees.

c. Electronic Reporting.

Perhaps the most controversial, yet the most obvious, solution is to amend current law to permit electronic reporting in family law proceedings. As more fully discussed below, electronic reporting in family law courtrooms would ensure that a record exists in all cases, and protect the basic rights of the litigants. Presently, Government Code Section 69957, subdivision (a) permits electronic reporting in limited civil cases, misdemeanor cases, and infraction cases.[2] This section could very easily be amended to add family law to the list.[3]

Some may question the wisdom of "lumping family law cases" in with limited civil cases, misdemeanors, and infractions. However, courts in the majority of states, federal courts including the U.S. Supreme Court, California appellate courts, and the California Supreme Court all use electronic methods for recording court proceedings.[4] Family law courtrooms using electronic reporting would thus be in good company.

The suggestion that the Legislature authorize electronic reporting in family law cases is not made with the intent to eliminate court reporters. Many family law attorneys prefer to have live reporters present whenever possible. Live reporters are able to provide read-backs, daily transcripts, and other invaluable services.

According to Court Reporters Board of California Executive Director, Yvonne Fenner, one of their concerns with electronic reporting is the quality of electronic reporting in that live court reporters have the ability to interrupt the proceedings if people are talking over one another to ensure there is an accurate record, whereas that option is not available in electronic reporting. She questioned "whether an 'ok record' is better than no record at all." To be certain, there are fine appellate lawyers who share these concerns about the quality of the all-important record created by electronic means, when the quality of the equipment and of the operator may become an issue.

However, the reality presently is that courts and the State are unable to afford these services. Arguably, an electronic record is better than no record at all. The proposal to permit electronic reporting in family law to supplement live reporters also addresses the steady decline in the number of available qualified shorthand reporters.[5]

6. Electronic Reporting Would Have a Positive Financial Impact.

Transitioning to electronic reporting in family law cases would be far more affordable to courts and litigants. This was explored by the California Legislative Analyst Office ("LAO") in its 2008-2009 and 2009-2010 Budget Analysis Series to Create Better Efficiencies in Court Operations. These reports recommended the Legislature implement electronic court reporting in *all* trial courts. The LAO also carried out a multi-year pilot study in California courts between 1991 and 1994.[6] According to the LAO, the study found a savings of $28,000 per courtroom per year in using audio reporting, and $42,000 per courtroom per year using video, as compared to using a court reporter. According to the study, in 2006–2007, the total amount spent on salaries and benefits for court reporters was $202 million. This would not include the amount of fees for transcripts paid to court reporters by private litigants and counsel in cases where there is no statutory right to receive a transcript. This inlcudes most Family Law cases.

According to the LAO, after factoring in the estimated one-time costs to set up audio and video equipment, in the first year the state could save roughly $13 million and in subsequent years the savings could be as high as $100 million per year.[7]

7. The Politics of Electronic Court Reporting in California.

In view of the above, the LAO, in its 2008-2009 and 2009-2010 sessions, recommended the Legislature direct all trial courts to implement electronic court reporting in all California courtrooms, starting with a 20% phase per year in all of the courtrooms until the transition was complete. Assembly Member Don Wagner accordingly introduced Assembly Bill No. 803 (2011-2012 Reg. Sess.) in 2011, which sought to repeal Government Code Sections 69957 and 69958 and to enact Government Code Section 69959. The proposed legislation would have required the Judicial Council to implement electronic reporting in all trial courts in 20% increments, as outlined in the LAO budget recommendations. Assembly Bill No. 803 (2011-2012 Reg. Sess.) did not make it out of committee. Why not? Politics.

Assembly Bill No. 803 (2011-2012 Reg. Sess.) is not the first attempt by the Legislature to implement electronic reporting. Repeated attempts to expand the use of electronic reporting in courtrooms beyond those authorized in Section 69957 have failed largely as a result of the California Court Reporting Association's ("CCRA") powerful lobbying efforts against electronic reporting.[8]

As noted above, in 1986, the Legislature authorized a demonstration project in selected counties to assess the feasibility of using electronic means of producing a verbatim record of these proceedings.[9] In 1992, based on the success of the feasibility study, the Judicial Council sponsored a bill that would have allowed electronic recording to be used after January 1, 1994. This bill never got out of committee.[10] Nonetheless, in November 1993 the Judicial Council adopted Rules of Court permitting electronic recording of superior court proceedings after January 1, 1994, known as the "Electronic Recording Rules."[11] In response, the CCRA petitioned for a writ of mandate to prevent use of electronic reporting. The Alameda County court denied the petition, but the appellate court reversed. It held that rules permitting the official record of superior court proceedings to be made by electronic recording were inconsistent with legislative scheme. (*California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal. App.4th 15 (review denied) ("CCRA I").

In this opinion, the CCRA I court recognized that no statute expressly *prohibited* a superior court from making an official record by electronic means, or expressly mandated that shorthand reporters create the official record. (*Id.* at p. 26.) However, the appellate court held that looking at the statutory scheme as a whole, it appeared the intent of the Legislature was to limit the use of electronic reporting. This was due in part to the Government Code provisions (discussed above) permitting electronic reporting in certain cases. (*Id.* at pp. 29-29.)

> The fact that the Legislature has by statute authorized electronic recording in some contexts suggests strongly that - unless the existing statutory scheme providing for the official record to be taken down in shorthand is amended - the Legislature does not intend that electronic recording of superior court proceedings be the method of creating an official record. Although the statutes do not expressly prohibit electronic recording of superior court proceedings, they nevertheless lead to one conclusion - that the Legislature intended that such proceedings be stenographically recorded by official shorthand reporters. (*Id.* at p. 31.)

The same appellate court repeated this conclusion in a second related case, *California Reporters Association v. Judicial Council* (1997) 59 Cal.App.4th 959 (CCRA II).

8. The Future of Electronic Court Reporting in California.

The CCRA cases make very clear the Legislature can act to widen the use of electronic reporting in trial courts. The authors submit that adding family law actions to Government Code Section 69957 is a modest step in this direction, in an area of law where access to justice and due process is critical. Such a legislative proposal would likely meet with less opposition by the reporters, and more success than the recent Assembly Bill No. 803 that sought total elimination of all court reporters.[12]

Adding family law proceedings to the list of actions authorized to utilize electronic reporting would put California courts in line with a majority of other states. According to the Assembly Judiciary Committee Analysis on Assembly Bill No. 803, 46 of the 50 states utilize some form of electronic recording in their trial courts, with the majority of states using a combination of court reporters and electronic reporting. New Hampshire, New Mexico, Oregon, Alaska, Minnesota, Utah and Vermont rely primarily on digital audio recorded proceedings. Our research shows 43 states have a combination of live and audio recording in *family law* proceedings.

The need for a legislative amendment to address the loss of court reporters in family law and ensure access to justice for all litigants was addressed by the Elkins Family Law Task Force, which wrote in its report:

> Legislation should be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings. These options would include court reporters, high quality electronic audio recording, or other available mechanisms to create an accurate, timely, and cost-effective official record. Access to the record in family law is a serious access-to-justice issue and must be significantly improved both to ensure that parties understand and can finalize the court's orders and to ensure that the parties' right to appeal is protected. Parties' current inability to access the record in their family law proceedings is an area of long-standing concern. This inability to have an accurate record of their family law cases makes the ability of family law litigants to appeal too often illusory.

California Courts of Appeal and the Supreme Court rely exclusively on electronic recordings of proceedings. California Rule of Court, Rule 2.952(j) permits electronic recordings to be the official record of the proceedings on appeal if stipulated by both parties and approved by the reviewing court. Thus, the majority of states, the courts of appeal and the Supreme Court all rely on electronic recordings. Isn't it about time our superior courts move in that direction?

The authors submit legislation that is less drastic than Assembly Bill No. 803 will face less opposition from the court reporter associations, implement electronic recording in family law courtrooms where fundamental rights are at issue every day and most litigants are without counsel, and ensure due process to all litigants, instead of just the wealthy. The Judiciary is the third branch of the government and the authors submit it is our duty to make our voices heard so the courts are given the resources to ensure every litigant has access to justice, to include a satisfactory record of proceedings.

Endnotes

1 The authors would like to thank and acknowledge family law attorneys Raymond Goldstein, Ana Storey, and Laurel Brauer for their contribution to research used in this article.

2 Uniquely, Gov't. Code, § 70141.11 permits any court reporting functions for the commissioner in Contra Costa County may be by electronic or mechanical means and devices.

3 Gov't. Code, § 69957, subd. (a) could be amended to include all unlimited civil actions; however, the focus of this article is family law actions.

4 Legislative Analyst Office 2009-2010 http://www.lao.ca.gov/analysis_2009/crim_justice/cj_anl09003004.aspx

5 According to the 2/18/05 Judicial Council, Final Report of the Reporting of the Record Task Force, California courts have experienced a steady decline in the number of available qualified shorthand reporters. In 1995, 301 applicants passed the exam; in 2001, 40 applicants passed the exam; in July 2004, 21 applicants passed the exam.

6 Assem. Bill No. 825 (1985-1986 Reg. Sess.) (Harris), Chap. 373, Stats. 1986, codified as Code Civ. Proc., § 270, required the Judicial Council to "establish a demonstration project to assess utilizing audio and video recording as a means of producing a verbatim record of proceedings" in a limited number of superior court departments. The project contained a sunset provision of 1992, extended to January 1, 1994, but not extended further, despite the legislatively-appointed Electronic Recording Advisory Committee's statement that '[i]n civil litigation, it should be the litigant's decision which method (electronic reporting or shorthand reporting) will be used to make the record.

7 Legislative Analyst Office 2008-2009 Budget Analysis http://www.lao.ca.gov/analysis_2008/crim_justice/cj_anl08003.aspx#zzee_link_4_1202846137. These savings could be higher if courts subcontract out the service of electronic reporting, as they have with the service of telephonic court appearances, to companies such as Court Call.

8 Assem. Bill No. 626 (1981-1982 Reg. Sess.) (Filante), 1982, would have allowed electronic recording upon the stipulation of both parties. It did not pass.

Assem. Bill 2034 (1983-1984 Reg. Sess.) (Bradley), 1983, would have authorized electronic recording of administrative hearings upon consent of all the parties. It did not pass.

Assem. Bill No. 586 (1983-1984 Reg. Sess.) (Frazee), 1984, would have allowed electronic recording in judicial proceedings. It did not pass.

Assem. Bill No. 2937 (1991-1992 Reg. Sess.) (Isenberg), 1992, would have given any court, including superior courts, the discretion to "utilize audio or video recording as the means of making a verbatim record of any hearing or proceedings." It did not pass.

Sen. Bill No. 211 (1993-1994 Reg. Sess.) (Marks), 1993, would have allowed Marin County courts to use electronic recording in all judicial proceedings except death penalty cases. It did not pass.

Assem. Bill No. 721 (1993-1994 Reg. Sess.) (Horcher), 1993, would have required the use of official court reporters that use computer-aided transcription equipment to make the verbatim record of all pretrial motions and trial proceedings in superior court civil cases, and all felony proceedings in justice, municipal, and superior court. It did not pass.

Assem. Bill No. 2113 (1995-1996 Reg. Sess) (Miller), 1996, would have authorized the Judicial Council to promulgate rules of court providing unqualified authorization to superior courts to produce a verbatim record of proceedings. It did not pass.

Assem. Bill No. 128 (1997-1998 Reg. Sess.) (Morrow), 1998, would have expressly authorized the Judicial Council to promulgate rules of court providing unqualified authorization to any court to produce a verbatim record of proceedings. It did not pass.

Assem. Bill No. 1023 (1999-2000 Reg. Sess.) (Margett), 1999, would have expressly authorized the Judicial Council to promulgate rules of court providing unqualified authorization to any court to produce a verbatim record of proceedings. It did not pass.

Assem. Bill No. 1354 (1999-2000 Reg. Sess.) (Lampert), 1999, would have stated the intent of the Legislature to enact provisions permitting the use of electronic recording of court proceedings in participating counties. It did not pass.

Sen. Bill No. 1102 (2003-2004 Reg. Sess.) (Committee on Budget and Fiscal Review), Chap. 277, Stats. 2004, prohibited courts from expending funds for electronic recording technology to make an unofficial record of an action or proceeding or to make an official record of action or proceeding in circumstances not authorized in current law.

Sen. Bill No. 13 (2009-2010 Reg. Sess.) (Ducheny) (4th Ex. Sess.), Chap. 22, Stats. 2009, prevented a court from using electronic recording technology for note taking, but allows a court to use such equipment for monitoring subordinate judicial officer performance.

9 Assem. Bill No. 825 (Harris).

10 Assem. Bill No. 2937 (1991-1992 Reg. Sess.)

11 Cal. Rules of Court, rules 33(e), 891, 892, 980.3

12 A Resolution to permit electronic reporting in cases brought under the Family Code (07-03-2012) was approved by the 2012 Conference of Delegates. The Conference Lobbyist is presently seeking an author for the bill in Sacramento.

POSITIVE FEEDBACK TO OUR EDITOR-IN-CHIEF:

Naghmeh:

Congrats on your first Family Law News. Interesting articles.

Jim Preston