



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, CA 95667

EL DORADO CO. SUPERIOR CT.

FILED MAY 16 2024

BY

Deputy

S. Boley

DATE: May 16, 2024

JUDGE: Vicki Ashworth, Presiding Judge

ADMINISTRATIVE ORDER RE: USE OF ELECTRONIC RECORDING

Due to the nationwide court reporter shortage, the Court is unable to provide a Certified Shorthand Reporter (CSR) in each matter required under CCP § 269 and Local Rule 2.00.07.

The Proposed Tentative Ruling Re Electronic Recording, a copy of which is attached and incorporated as a part of this Administrative Order, allows the Judicial Officer presiding over any matter before this Court to make good cause findings allowing the use of electronic recording whenever a CSR is otherwise unavailable.

The Court may reference this Administrative Order in the individual minutes of each case in which good cause findings under this order are made.

IT IS SO ORDERED

Dated: May 16, 2024

Vicki Ashworth

VICKI ASHWORTH
Presiding Judge of the Superior Court of California

BENCH MEMORANDUM TENTATIVE RULING RE ELECTRONIC RECORDING

Factual Background:

The El Dorado County Superior Court currently has eight (8) judges and one (1) commissioner. The California Civil Code of Procedures (CCP) Section 269 provides for the appointment of as many court reporters (hereinafter, “CSR”) as there are judges in a trial court. Our minimum CSR staffing requirement is eight (8) to cover: four (4) full-time criminal trial courts, two (2) full-time juvenile courts, one (1) full-time civil court and one (1) full-time family court.

As of February 2024, the Court had five (5) CSR vacancies, with the last vacancy occurring in January 2024. Our vacancies leave us grossly understaffed with CSRs, a situation that is exacerbated by having five (5) branch locations spread-out within the Court’s jurisdiction (i.e., South Lake Tahoe, Placerville and Cameron Park), where CSR coverage is needed. In response, the Court has taken the following actions to secure CSRs to meet our statutory requirements:

1. Maintained an open recruitment since 2019 to fill vacancies as they occur and in 2022 expanded recruitment efforts to include: advertisement with major online recruitment sites, such as NeoGov, Governmentjobs.com, Indeed, LinkedIn, and have shared recruitment with the Court Reporters Board of California. Since 2022, the Court received two (2) applications from qualified CSRs - of those, one was hired to fill vacancies opened in 2023 and the second applicant declined the position in April 2023. Of note are statistics reported by the California’s Court Reporting Schools wherein only 53 applicants statewide passed the Court Reporters Board Dictation Exam in November 2023 (see https://www.courtreportersboard.ca.gov/applicants/stats_202311.pdf, accessed March 18, 2024).
2. Court Administration has engaged 33 other courts to see if any could spare a CSR to cover matters, on an as needed basis, and if a CSR was available, the Court would offer to cover travel expenses and salaries for the CSR. Of those counties who have responded, they indicated they were short-staffed as well and therefore could not assign a CSR to El Dorado Superior Court. Many courts indicated that although they had ongoing open recruitments, they have been unable to fill CSR positions.
3. Numerous private court reporting services throughout Northern California and Sacramento area have been contacted, along with official reporter pro tempores, and none were able to assist with in-person or remote reporting consistent with applicable statute or rules.
4. Utilized electronic recording pursuant to Government Code section 69957.

Despite the above actions, the Court is unable to provide CSR coverage in this matter as mandated.

Analysis of the Law:

Statutory Requirement of a CSR in Felony Cases. CCP section 269 provides in relevant

part: “(a) an official reporter or an 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: . . . (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.” This section falls under Title 4, which prescribes the duties of ministerial officers of the courts. The statute is a directive to a CSR regarding their duties, not a mandate for the Court.

It is important to note that the Court does not require a request by the defendant, their attorney, or the prosecution, per the Court’s Local Rules, Rule 2.00.07 “an official court reporter will normally be available for matters not specifically excluded in Local Rule 2.00.07(D). Therefore, the failure to specifically request a CSR is not considered by this court as a waiver of the normal expectation that a CSR will be provided in this matter.

Government Code section 69957 provides in relevant part:

If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge.

That section is a statutory limitation on electronic recording, not a requirement of a CSR in felony cases.

In *People v. Turner* (1999) 67 Cal. App. 4th 1258, the court recognized that any right to a reporter (as opposed to electronic recording) is a statutory, as opposed to a Constitutional, right. Since the *Turner* case was decided, the State Legislature has amended Government Code section 69957, and expressly held that:

....in many actions and proceedings presently heard in municipal and justice courts, official reporters are either physically unavailable in a given geographical location or it is not practical from a cost-benefit standpoint to have official reporters continually available for such proceedings. The Legislature declares its intent that electronic recording devices should be used to supplement, not supplant, the present recordkeeping process in municipal and justice courts and that such devices be considered for use in (1) misdemeanor criminal proceedings in which guilty pleas, or waivers of rights, or both are taken, (2) misdemeanor trials at which official reporters are not presently used, and (3) civil trials which may require a settled statement.

This amendment reflects the Legislature’s statutory preference for CSRs, as opposed to electronic recording.

Constitutional Implications. Numerous Constitutional rights are implicated in this criminal trial. A criminal defendant has a Constitutional right to a speedy and continuous trial,

as well as a right to competent counsel. (California Constitution, Article I, §15; United States Constitution, 6th Amendment).

Likewise, a victim of a crime has California constitutional rights under *Marsy's Law* to a “speedy trial and a prompt and final conclusion of the case.” Cal. Const. Article I, § 28(b)(9). The prosecution has a right to a speedy trial under California Constitution Article I, § 29.

These rights of the defendant, the alleged victim, and the prosecution are all in harmony in this matter.

A criminal defendant has a Constitutional right under the Fourteenth Amendment to a record on appeal, which is adequate to permit meaningful review. Such a record is inadequate only if the deficiency is prejudicial to the defendant’s ability to prosecute his appeal. *See, e.g., People v. Alvarez* (1996) 14 Cal. 4th 155, 196 fn. 8.

“Congress may expressly preempt state law through an explicit preemption clause, or courts may imply preemption under the field, conflict, or obstacle preemption doctrines. . . . Implied preemption, for its part, may be found . . . (ii) when compliance with both federal and state regulations is an impossibility [citation]; or (iii) when state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Solus Industrial Innovations, LLC v. Superior Court* (2018) 4 Cal. 5th 316, 332, citing *Bronco Wine Co. v. Jolly* (2004) 33 Cal. 4th 943, 955. Under the Supremacy Clause of the United States Constitution, our state law must bow. The Constitutional rights described above must be held sacrosanct. A state law reflecting a legislative preference for a CSR cannot overcome the rights of all parties to a speedy trial and to due process of law.

Tentative Ruling on the use of Electronic Recording:

Therefore, it is this Court’s ruling, based on the narrow facts of the specific situation faced in this case, that the rights of the parties must outweigh the legislative preference for a CSR. The court finds good cause to proceed forward with electronic recording as, despite the aforementioned efforts, we were unable to obtain a CSR for these proceedings. This matter shall proceed and the record shall be made with the use of electronic recording.

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