

# CALIFORNIA LAW REVISION COMMISSION

REVISED TENTATIVE RECOMMENDATION

## Cases in Which Court Reporter Is Required

March 2001

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 30, 2001.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

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, consistent with existing law.

This recommendation was prepared pursuant to Government Code Section 70219.

## CASES IN WHICH COURT REPORTER IS REQUIRED

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

### 5 **Consolidation of Duplicative Provisions**

6 Code of Civil Procedure Section 269(a) governs the use of a court reporter in an  
7 unlimited civil case or a felony case.<sup>2</sup> Section 274c governs the use of a court  
8 reporter in a limited civil case or a misdemeanor or infraction case.<sup>3</sup>

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

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

19 The Commission recommends broadening Section 269(a) to apply to all civil  
20 and criminal cases, and repealing Section 274c.<sup>4</sup> This would not be a substantive

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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.

3. Section 274c provides:

274c. Official reporters must, 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

1 change in the law, because the proposed legislation would continue the current  
2 rules on who is entitled to request a court reporter in a criminal case.<sup>5</sup>

3 **Nonsubstantive Clarification**

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

6 *Official reporters pro tempore.* The statute should be amended to refer to official  
7 reporters “pro tempore,” as well as official reporters, as is already done in other  
8 provisions.<sup>6</sup> This would be declaratory of existing law, because an official reporter  
9 pro tempore performs the same duties as an official reporter.<sup>7</sup>

10 *Arguments to the jury.* The existing provisions require that the arguments of “the  
11 prosecuting attorney” to the jury be included in the transcript. The statute should  
12 be revised to refer simply to the arguments of “the attorneys,” consistent with  
13 existing practice and with other statutes.<sup>8</sup>

14 *Request of “the district attorney.”* The statute should be amended to require  
15 court reporting at the request of “the prosecution,” rather than at the request of  
16 “the district attorney,” because in some circumstances the Attorney General acts as  
17 prosecutor in place of the district attorney.<sup>9</sup>

18 *Pro per felony defendant.* The statute should be amended to clarify its  
19 application to a pro per felony defendant. It should be clear that a felony defendant  
20 is entitled to a court reporter on request by the defendant personally, not just on

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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 such 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 municipal court, but the municipal courts have been eliminated due to trial court unification. Cal. Const. art. VI, § 5(e).

5. The rules in Sections 269(b) and (c) 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 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 § 8106; Code Civ. Proc. § 273; Gov’t Code §§ 68105, 68525, 69941, 69944, 69946, 69955.

7. Gov’t Code § 69945.

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

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

1 request by the defendant’s attorney. This would conform to existing interpretations  
2 of the statute.<sup>10</sup>

3 *Transcript for nonparty.* The statute should be amended to make clear that a  
4 nonparty is generally entitled to obtain a transcript. This is consistent with  
5 longstanding practice and other statutory language.<sup>11</sup> It also conforms to  
6 constitutional constraints.<sup>12</sup> A nonparty is entitled to a transcript of a proceeding  
7 that was open to the public,<sup>13</sup> a proceeding that was erroneously closed to the  
8 public,<sup>14</sup> or a proceeding that was properly closed, once the reasons for closure are  
9 no longer viable.<sup>15</sup>

### 10 **Scope and Effect of Proposal**

11 This recommendation would not change the extent to which court reporters may  
12 be used in the courts. It is a nonsubstantive proposal, intended to aid courts and  
13 practitioners by simplifying and clarifying existing law on when a court reporter is  
14 required.

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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. Godeau*, 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 an 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 “person” in this provision.

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 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 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. KPNX*, 156 F.3d 940, 947-48 (9th Cir. 1998).

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

- 4 (1) Whether the defendant in a misdemeanor or infraction case should be  
5 entitled to request shorthand reporting.<sup>16</sup>
- 6 (2) Whether statutes authorizing the court to order the county treasurer to  
7 pay transcript fees are obsolete in light of recent changes in trial court  
8 funding.<sup>17</sup>
- 9 (3) Whether distinctions in the superior and municipal court procedures for  
10 charging, depositing, and paying court reporter fees, and other statutes  
11 providing special rules for municipal courts, should be maintained in a  
12 unified court.<sup>18</sup>
- 13 (4) Whether the statutes governing reporters and their fees in various  
14 counties require revision.<sup>19</sup>

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16. Appellate courts have provided conflicting guidance on whether a nonindigent defendant is constitutionally entitled to a verbatim record at public expense in a misdemeanor or infraction case. *Compare In re Armstrong*, 126 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (“upon request therefor, there is a constitutional right that a verbatim record be provided at public expense for all defendants in misdemeanor matters”), with *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (“[n]othing in the Constitutions of the United States or California requires a free verbatim record in misdemeanor cases on request without a showing of indigency). The courts have not resolved whether electronic recording or a method besides shorthand reporting is sufficient to satisfy the requirement of a free verbatim record on request of an indigent defendant in a misdemeanor or infraction case. Electronic recording is permitted on order of the court in a misdemeanor or infraction case if a court reporter is unavailable (Gov’t Code § 72194.5), but there does not appear to be any statute requiring electronic recording on request of a defendant in a misdemeanor or infraction case. Because of the uncertainty, and because changing the law on these points would involve significant cost considerations, the present recommendation does not address the current scheme.

17. 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.

18. See, e.g., Gov’t Code §§ 68086 (procedures for court reporter fees), 72197 (pro tempore phonographic reporter of municipal court). The Commission is reviewing the codes for provisions that are obsolete due to the elimination of the municipal courts. See Gov’t Code § 71674; 1999 Cal. Stat. res. ch. 81. The Commission in another context has proposed a technical change in Government Code Section 68086. See *Expired Pilot Projects*, 30 Cal. L. Revision Comm’n Reports 327 (2000).

19. 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

1 **Code Civ. Proc. § 269 (amended). Reporting of cases**

2 SECTION 1. Section 269 of the Code of Civil Procedure is amended to read:

3 269. (a) ~~The official reporter of a superior court, or any of them where there are~~  
4 ~~two or more, shall, at the request of either party, or of the court in a civil case other~~  
5 ~~than a limited civil case, and on the order of the court, the district attorney, or the~~  
6 ~~attorney for the defendant in a felony case, An official reporter or official reporter~~  
7 ~~pro tempore of the court shall take down in shorthand all testimony, objections~~  
8 ~~made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences~~  
9 ~~of defendants in felony cases, arguments of the prosecuting attorney attorneys~~  
10 ~~to the jury, and all statements and remarks made and oral instructions given by the~~  
11 ~~judge. If judge, in the following cases:~~

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

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

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

16 ~~(b) Where directed by the court, or requested by either a party, or where~~  
17 ~~requested by a nonparty with respect to a proceeding to which the public is entitled~~  
18 ~~to access, the official reporter or official reporter pro tempore shall, within such~~  
19 ~~reasonable time after the trial of the case as the court may designate, write the~~  
20 ~~transcripts out, or the specific portions thereof as may be requested, in plain and~~  
21 ~~legible longhand, or by typewriter, or other printing machine, and certify that the~~  
22 ~~transcripts were correctly reported and transcribed, and when directed by the court,~~  
23 ~~file the transcripts with the clerk of the court.~~

24 ~~(b)~~

25 ~~(c) In any case where a defendant is convicted of a felony, after a trial on the~~  
26 ~~merits, the record on appeal shall be prepared immediately after the verdict or~~  
27 ~~finding of guilt is announced unless the court determines that it is likely that no~~  
28 ~~appeal from the decision will be made. The court's determination of a likelihood~~  
29 ~~of appeal shall be based upon standards and rules adopted by the Judicial Council.~~

30 ~~(e) Any court, party, or person may request delivery of any transcript in a~~  
31 ~~computer-readable form, except that an original transcript shall be on paper. A~~  
32 ~~copy of the original transcript ordered within 120 days of the filing or delivery of~~  
33 ~~the transcript by the official reporter shall be delivered in computer-readable form~~  
34 ~~upon request if the proceedings were produced utilizing computer-aided~~  
35 ~~transcription equipment. Except as modified by standards adopted by the Judicial~~  
36 ~~Council, the computer-readable transcript shall be on disks in standard ASCII code~~  
37 ~~unless otherwise agreed by the reporter and the court, party, or person requesting~~  
38 ~~the transcript. Each disk shall be labeled with the case name and court number, the~~  
39 ~~dates of proceedings contained on the disk, and the page and volume numbers of~~

1 the data contained on the disk. Each disk as produced by the court reporter shall  
2 contain the identical volume divisions, pagination, line numbering, and text of the  
3 certified original paper transcript or any portion thereof. Each disk shall be  
4 sequentially numbered within the series of disks.

5 **Comment.** Subdivision (a) of Section 269 is amended to continue former Section 274c without  
6 substantive change.

7 Subdivision (a) is also amended to refer to official reporters pro tempore, as well as official  
8 reporters. This is not a substantive change. See Gov't Code § 69945 (official reporter pro tempore  
9 shall perform same duties as official reporter).

10 Subdivision (a) is further amended to substitute “arguments of the attorneys” for “arguments of  
11 the prosecuting attorney,” consistent with standard practice. See, e.g., Gov't Code § 72194.5  
12 (“arguments of the attorneys”).

13 Similarly, subdivision (a) is amended to substitute “prosecution” for “district attorney,” to  
14 reflect that the Attorney General sometimes acts as prosecutor in place of the district attorney.  
15 See Gov't Code § 12553 (disqualification of district attorney); see also Penal Code § 1424  
16 (motion to disqualify district attorney).

17 Finally, subdivision (a) is amended to make clear that a felony defendant, whether represented  
18 by counsel or in pro per, is entitled to a court reporter on request by the defendant personally or  
19 by the defendant's attorney (if any). This is not a substantive change. See generally *People v.*  
20 *Turner*, 67 Cal. App. 4th 1258, 1266, 79 Cal. Rptr. 2d 740 (1998) (“a verbatim record is  
21 implicitly among the rights of which a defendant appearing in propria persona must be  
22 apprised”); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983)  
23 (California confers right to free verbatim record “in felony proceedings by statute (Code Civ.  
24 Proc., § 269.)”); *In re Armstrong*, 126 Cal. App. 3d 565, 572, 178 Cal. Rptr. 902 (1981) (a  
25 “felony defendant *is*, as a matter of right, entitled to have ‘taken down,’ all related testimony and  
26 oral proceedings”) (emphasis in original); *People v. Godeau*, 8 Cal. App. 3d 275, 279-80, 87 Cal.  
27 Rptr. 424 (1970) (“In California felony proceedings a court reporter must be present if requested  
28 by the defendant, the district attorney, or an order of the court. (Code Civ. Proc., § 269.)”); *People*  
29 *v. Hollander*, 194 Cal. App. 2d 386, 391-93, 14 Cal. Rptr. 917 (1961) (denial of transcript to pro  
30 per indigent defendant was prejudicial error).

31 Subdivision (b) is amended to make clear that a nonparty is generally entitled to request  
32 preparation of a transcript. This is consistent with longstanding practice and conforms to  
33 constitutional constraints. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986)  
34 (media request for transcript of preliminary hearing); *Fisher v. King*, 232 F.3d 391, 397 (4th Cir.  
35 2000) (general public and press “enjoy a qualified right of access under the First Amendment to  
36 criminal proceedings *and transcripts thereof*”) (emphasis added); *United States v. Antar*, 38 F.3d  
37 1348, 1360-61 (3d Cir. 1994) (“First Amendment right of access must extend equally to  
38 transcripts as to live proceedings”); *United States v. Berger*, 990 F. Supp. 1054, 1057 (C.D. Ill.  
39 1998) (there “is no question that a written transcript of the Governor's deposition would be made  
40 available to the public upon admission of his testimony before the jury”); *State ex rel. Scripps*  
41 *Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas*, 73 Ohio St. 3d 19, 21,  
42 652 N.E.2d 179 (1995) (right of access “includes both the live proceedings and the transcripts  
43 which document those proceedings”); see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior*  
44 *Court*, 20 Cal. 4th 1178, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (constitutional right of access  
45 applies to civil as well as criminal cases). A nonparty is entitled to a transcript of a proceeding  
46 that was open to the public, see *Scripps Howard Broadcasting*, 73 Ohio St. 3d at 21, a proceeding  
47 that was erroneously closed to the public, see generally *Press-Enterprise*, 478 U.S. at 15, or a  
48 proceeding that was properly closed, once “the competing interests precipitating closure are no  
49 longer viable,” see *Phoenix Newspapers, Inc. v. KPNX*, 156 F.3d 940, 947-48 (9th Cir. 1998).

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

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



1 Section 269 is also amended to make technical changes.

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

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

4 271. (a) Any court, party, or person may request delivery of any transcript in a  
5 computer-readable form, except that an original transcript shall be on paper. A  
6 copy of the original transcript ordered within 120 days of the filing or delivery of  
7 the transcript by the official reporter or official reporter pro tempore shall be  
8 delivered in computer-readable form upon request if the proceedings were  
9 produced utilizing computer-aided transcription equipment.

10 (b) Except as modified by standards adopted by the Judicial Council, the  
11 computer-readable transcript shall be on disks in standard ASCII code unless  
12 otherwise agreed by the reporter and the court, party, or person requesting the  
13 transcript. Each disk shall be labeled with the case name and court number, the  
14 dates of proceedings contained on the disk, and the page and volume numbers of  
15 the data contained on the disk. Each disk as produced by the court reporter shall  
16 contain the identical volume divisions, pagination, line numbering, and text of the  
17 certified original paper transcript or any portion thereof. Each disk shall be  
18 sequentially numbered within the series of disks.

19 **Comment.** Section 271 continues former Section 269(c) without substantive change.

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

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

23 ~~274c. Official reporters must, at the request of either party or of the court in a~~  
24 ~~limited civil case, or on the order of the court in a misdemeanor or infraction case,~~  
25 ~~take down in shorthand all the testimony, the objections made, the rulings of the~~  
26 ~~court, the exceptions taken, all arraignments, pleas and sentences of defendants in~~  
27 ~~criminal cases, the arguments of the prosecuting attorney to the jury, and all~~  
28 ~~statements and remarks made and oral instructions given by the judge; and if~~  
29 ~~directed by the court, or requested by either party, must, within such reasonable~~  
30 ~~time after the trial of such case as the court may designate, write out the same, or~~  
31 ~~such specific portions thereof as may be requested, in plain and legible longhand,~~  
32 ~~or by typewriter, or other printing machine, and certify to the same as being~~  
33 ~~correctly reported and transcribed, and when directed by the court, file the same~~  
34 ~~with the clerk of the court.~~

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

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

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

38 69950. The fee for transcription for original ribbon copy is eighty-five cents  
39 (\$0.85) for each 100 words, and for each copy for the party person buying the  
40 original made at the same time, fifteen cents (\$0.15) for each 100 words. The fee  
41 for a first copy to any other person shall be twenty cents (\$0.20) for each 100

1 words, and for each additional copy, made at the same time, fifteen cents (\$0.15)  
2 for each 100 words.

3 **Comment.** Section 69950 is amended to conform to the rule that a nonparty is generally  
4 entitled to obtain a transcript. See Section 269 & Comment.

5 **Gov't Code § 72197 (repealed). Pro tempore phonographic reporter of municipal court**

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

7 ~~72197. Whenever such request has been granted and any official reporter of the~~  
8 ~~superior court has been assigned to act as a pro tempore phonographic reporter of~~  
9 ~~the municipal court, such reporter shall, during the period of such assignment to~~  
10 ~~the municipal court, perform the duties of an official reporter of such municipal~~  
11 ~~court and during the time of any such assignment such reporter shall be subject to~~  
12 ~~the provisions of Sections 69942 to 69955, inclusive, and Sections 273 and 274c~~  
13 ~~of the Code of Civil Procedure.~~

14 **Comment.** Section 72917 is repealed to reflect elimination of the municipal courts as a result  
15 of unification with the superior courts pursuant to Article VI, Section 5(e), of the California  
16 Constitution.

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

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

19 190.9. (a)(1) In any case in which a death sentence may be imposed, all  
20 proceedings conducted in the ~~municipal~~ and superior courts, including all  
21 conferences and proceedings, whether in open court, in conference in the  
22 courtroom, or in chambers, shall be conducted on the record with a court reporter  
23 present. The court reporter shall prepare and certify a daily transcript of all  
24 proceedings commencing with the preliminary hearing. Proceedings prior to the  
25 preliminary hearing shall be reported but need not be transcribed until the  
26 ~~municipal~~ or superior court receives notice as prescribed in paragraph (2) of  
27 subdivision (a).

28 (2) Upon receiving notification from the prosecution that the death penalty is  
29 being sought, the superior court shall notify the court in which the preliminary  
30 hearing took place. Upon this notification, the court in which the preliminary  
31 hearing took place shall order the transcription and preparation of the record of all  
32 proceedings prior to and including the preliminary hearing in the manner  
33 prescribed by the Judicial Council in the rules of court. The record of all  
34 proceedings prior to and including the preliminary hearing shall be certified by the  
35 court no later than 120 days following notification by the superior court unless the  
36 superior court grants an extension of time pursuant to rules of court adopted by the  
37 Judicial Council. Upon certification, the court in which the preliminary hearing  
38 took place shall forward the record to the superior court for incorporation into the  
39 superior court record.

40 (b)(1) The court shall assign a court reporter who uses computer-aided  
41 transcription equipment to report all proceedings under this section.

1 (2) Failure to comply with the requirements of this section relating to the  
2 assignment of court reporters who use computer-aided transcription equipment  
3 shall not be a ground for reversal.

4 (c) Any computer-readable transcript produced by court reporters pursuant to  
5 this section shall conform to the requirements of ~~subdivision (c) of Section 269~~  
6 Section 271 of the Code of Civil Procedure.

7 **Comment.** Subdivision (a) of Section 190.9 is amended to reflect elimination of the municipal  
8 courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the  
9 California Constitution.

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

12 **Uncodified (added). Effect of act**

13 SEC. 7. Nothing in this act is intended to change the extent to which court  
14 reporter services or electronic reporting may be used in the courts.

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