Judicial Council *of* California

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April 1, 2025

Hon. Ash Kalra
Chair, Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, California 95814

Subject: Assembly Bill 882 (Papan), as introduced—Oppose
Hearing: Assembly Judiciary Committee April 8, 2025

Dear Assembly Member Kalra:

The Judicial Council must regretfully oppose Assembly Bill 882 which prohibits the courts from purchasing electronic recording equipment when the sole purpose of the purchase is for the monitoring of subordinate judicial officers because it would interfere with the ability of the courts to monitor the performance and demeanor of subordinate judicial officers. Pursuant to California Rule of Court, rule 10.12(a), positions on legislation are taken by the internal Legislation Committee on behalf of the Judicial Council. Chief Justice Guerrero and Justice Corrigan took no part in any deliberation or discussions of this decision, and have both recused themselves on any electronic recording issues that may come before the Judicial Council.

The council also has serious concerns about the March 20, 2025 amendments (see attached) which would minimally expand electronic reporting authority to some additional cases through January 1, 2028 but at the same time place overly burdensome restrictions on the court's ability to utilize that authority, including a prohibition on purchasing or leasing electronic recording equipment to make a court record under this authority. The bill further violates the principle of separation of powers by seeking to dictate court administrative practices and procedures, including collective bargaining and personnel practices.

The courts have a responsibility to monitor subordinate judicial officers and the court proceedings over which they preside. Presiding and supervising judges utilize electronic

recordings of subordinate judicial officers to determine if appropriate courtroom demeanor and decorum were present throughout proceedings. Over time as equipment needs to be replaced, the courts could be prevented from using this necessary tool to monitor performance and ensure due process rights were provided to all court users, regardless of their case type and court reporter availability.

The judicial branch has taken many steps to recruit and retain a sufficient number of court reporters to ensure that all proceedings can have verbatim records, but is facing a court reporter shortage and must look to alternative methods when court reporters are unavailable to ensure all court users have a record of their case. As documented on the Judicial Council's Court Reporter Shortage data dashboard, since April 2023 more than 1.5 million family, probate, and unlimited civil hearings were held in California with no verbatim record and the affected court users are thus unable to seek meaningful appellate review of their cases. Ironically, thousands of these proceedings take place in high tech court rooms fully equipped with approved electronic recording equipment that cannot be used pursuant to current statutory restrictions that have been in place since 1975.

Court reporters are the preferred way to provide a record; however, the number of court reporters licensed by the California Court Reporters Board is not keeping pace with the need.

Year	New Licenses Issued
FY 2015-16	72
FY 2016-17	75
FY 2017-18	86
FY 2018-19	32
FY 2019-20	66
FY 2020-21	39
FY 2021-22	35
FY 2022-23	68
FY 2023-24	123

While last year's number is up from the last few years—likely due to the 2022 authorization for voice writers to be licensed—it does not address the steady decline (20 percent) in the total number of licensees since 2013 (a loss of over 1,300 reporters) or the estimated need for 691 additional full-time court reporters identified by the Legislative Analyst's Office in their 2024 report to cover all non-mandated case types where electronic recording is not allowed. The LAO also highlighted that approximately two-thirds of active in-state licensees received their initial license prior to 2001 and could be approaching retirement.

Despite widespread use of incentives, courts continue to lose reporters faster than they can hire them and faster than the state can license them. Los Angeles Superior Court alone currently has over 100 court reporter vacancies—the state isn't licensing enough new reporters to staff LA, let alone the rest of the state.

AB 882 intrudes on the independence of the judicial branch by limiting the right of trial courts to exercise discretion in hiring decisions, interfering with existing provisions of the Trial Court Employment Protection and Governance Act, and conflicting with ongoing memorandums of understanding between courts and employee organizations. Court reporters are essential court professionals who ensure that a verbatim record of court proceedings is available to court users. The recently amended language, however, blurs the line of judicial independence and undermines collective bargaining by forcing burdensome hiring practices on the courts, including the ability of the courts to assign court reporters where the court determines they are needed.

We share a mutual commitment to maintaining the integrity of, and access to the judicial record and want to work in collaboration with the Legislature and all interested stake holders to increase the number of qualified licensed court reporters. This is a critical access to justice issue in the courts.

In closing, the Judicial Council is actively working with Assemblymember Papan and stakeholders to address concerns and we look forward to continuing these productive conversations.

Should you have any questions or require additional information, please contact Morgan Lardizabal at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director
Governmental Affairs

CTJ/ML/lmm
cc: Members, Assembly Judiciary Committee
Hon. Diane Papan, Member of the Assembly, 21st District
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Daryl Thomas, Consultant, Assembly Republican Office of Policy
Jith Meganathan, Deputy Legislative Secretary, Office of the Governor
Michelle Curran, Administrative Director, Judicial Council of California

AB 882 (Papan) Electronic court reporting.

As Amends the Law on March 20, 2025 [amendments are in blue]

SECTION 1. Section 69957 of the Government Code is amended to read:

69957. (a) 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. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. Transcripts derived from electronic recordings shall include a designation of "inaudible" or "unintelligible" for those portions of the recording that contain no audible sound or are not discernible. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use and shall only be purchased for use as provided by this section. A court shall not expend funds for or use electronic recording technology or equipment to make an unofficial record of an action or proceeding, including for purposes of judicial notetaking, or to make the official record of an action or proceeding in circumstances not authorized by this section.

(b) Notwithstanding subdivision (a), a court may use electronic recording equipment for the internal personnel purpose of monitoring the performance of subordinate judicial officers, as defined in Section 71601 of the Government Code, hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance shall not be used for any other purpose and shall not be made publicly available. Any recording made pursuant to this subdivision shall be destroyed two years after the date of the proceeding unless a personnel matter is pending relating to performance of the subordinate judicial officer, hearing officer, or temporary judge.

(c) Prior to purchasing or leasing any electronic recording technology or equipment, a court shall obtain advance approval from the Judicial Council, which may grant that approval only if the use of the technology or equipment will be consistent with this section. *The Judicial Council shall not grant approval for the purchase or lease of electronic recording technology or equipment solely for the purposes described in subdivision (b).*

[**Comments:**
The newly amended language in the bill is a non-starter from an access to justice perspective.

In its 2018 *Jameson v Desta* ruling, the California Supreme Court stated that "the absence of a verbatim record of trial court proceedings will often have a devastating effect" on a litigant's ability to have an appeal decided on the merits.

The court reporter shortage threatens access to justice for court users, especially Californians who cannot afford to pay for their own reporter in cases where an official court reporter is not available.

From April 2023 through December 2024, an estimated 1.5 million family, probate, and unlimited civil hearings were held in California with no verbatim record.

We share a mutual commitment to maintaining the integrity of, and access to the judicial record. This is a critical access to justice issue in the courts.

The language undermines access to justice and the expansion of electronic recording (ER) by prohibiting the Judicial Council from granting approval for the purchase or lease of ER equipment solely for the purposes of monitoring subordinate judicial officers (69957(c)) and prohibiting courts from purchasing or leasing ER to make records pursuant to the amended statute (69957.5(e)).

Prohibiting the purchase or lease of ER equipment is unworkable as this arbitrarily reduces accountability and oversight of subordinate judicial officers (SJOs), including court commissioners. This is a Separation of Powers (SoP) issue as courts have inherent power to control "the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (*Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 287 [supervisory and administrative powers have been "recognized by the Legislature in Code of Civil Procedure section 128, [but] exist[] apart from express statutory authority"], internal quotations omitted.)

Due to the well documented shortage of court reporters and the growing numbers of proceedings with no verbatim record, it is critical for supervising judges to be able to utilize ER to make sure SJOs are effective in assisting the court to carry out its constitutional duties under Article VI, Section 22 of the California Constitution. Eliminating a court's ability to assess SJO performance through a mechanism that allows the court to gain insight on qualities such as demeanor substantially interferes with the court's ability to carry out its core constitutional functions in the most appropriate manner.

Even if a verbatim transcript is available, a recording is critical in understanding the tone and nuance of what was said and the manner in which it was spoken during the proceeding. Also, in proceedings using an interpreter, a recording is the only way to accurately capture the complete record of what was said and whether it was interpreted correctly.]

SEC. 2. *Section 69957.5 is added to the Government Code, to read:*

69957.5. *(a) Notwithstanding Section 69957, if a court is unable, after due diligence, to hire sufficient official reporters or official pro tempore reporters, the court may issue a general order authorizing the use of electronic recording on a temporary basis in family law, probate, and civil contempt proceedings, subject to the requirements of subdivision (d). Electronic recording shall not be used in dependency proceedings. A transcript derived from such an electronic recording may be utilized whenever a transcript of court proceedings is required. Transcripts derived from electronic recordings shall include a designation of "inaudible" or "unintelligible" for those portions of the recording that contain no audible sound or are not discernable.*

[**Comments:**
[SoP] Under the proposed legislation, a court would be required to issue a general order containing specified components before using electronic recording in certain case types, and to revoke any such general order under specified conditions. "[T]he issuance of orders is a quintessential judicial act." (*Wright-Bolton v. Andress-Tobiasson* (9th Cir. 2017) 696 Fed.Appx. 258, 259.) By dictating that a court must issue a general order of specified content, and rescind such order under specified conditions, this provision arrogates a judicial function for itself, defeating, or at least materially impairing, the court's judicial discretion in this realm.

In order to even issue a general order, a court must show that after "due diligence" it was not able to hire "sufficient" court reporters, but those terms are not defined.

The language would allow ER in fewer case types than the existing general orders as it would apply only to family law, probate, and civil contempt, and exclude juvenile dependency proceedings. By contrast, the general orders contemplate ER use in family law, probate, civil proceedings, and Alameda and Santa Clara's general orders apply to felony criminal proceedings as well.

Any reference to dependency proceedings should be replaced with juvenile proceedings to include both dependency and justice/delinquency proceedings.]

(b) Electronic recording may be utilized pursuant to this section only if the judicial officer presiding over the proceeding finds that all of the following requirements are satisfied:
(1) The proceeding concerns matters that implicate fundamental rights or liberty interests.
(2) One or more parties wishes to preserve the possibility of ordering a verbatim transcript of the proceeding.
(3) No official reporter or official reporter pro tempore retained by the court, including reporters generally assigned to other departments, is reasonably available to report the proceeding.
(4) The party requesting a verbatim record has been unable to secure the presence of a private certified shorthand reporter to report the proceeding as an official reporter pro tempore because either of the following requirements is satisfied:
(A) Despite the party's reasonable effort to retain a private certified shorthand reporter, no reporter was reasonably available.

(B) The party qualifies for a waiver of court filing fees because of an inability to pay and the court is unable to provide an official reporter or official reporter pro tempore for the proceeding.
(5) The proceeding involves significant legal or factual issues such that a verbatim record is likely necessary to create a record of sufficient completeness for review on appeal.

[**Comments:**
The language permits ER only for litigants who are either unable to secure/pay for a private court reporter because a court reporter was not available or have a fee waiver, while the general orders more broadly reference litigants' "reasonable inability to pay". Most self-represented litigants cannot afford to pay a reporter and so would never attempt to attain one but do not qualify for a fee waiver.

Reasonably available and reasonable effort are not defined.]

(6) In the interests of justice, the proceeding should not be delayed.

(c) A judicial officer shall not find that a party has satisfied the requirements of paragraph (4) of subdivision (b) unless the party notified the court at least five court days prior to the hearing that the party seeks to have a record of the hearing and that the party has been unable to retain a private court reporter or that the party has been granted a fee waiver and is unable to pay for a private court reporter. If the official reporters employed by the court are represented by a recognized employee organization, the court shall forward a copy of such notice to the recognized employee organization on the same day it was submitted to the court. If a party has fewer than five court days' advance notice of the hearing, the party shall provide the court with reasonable advance notice that the party seeks to have a record of the hearing and that the party has been unable to retain a private court reporter or that the party has been granted a fee waiver and is unable to pay for a private court reporter. The court shall forward such notice to the exclusive representative, if any, on the same day it was submitted.

[**Comments:**
Imposes onerous and unnecessary notice requirements. Explicitly requires a litigant to provide 5 days' notice prior to a hearing in order for a judicial officer to make the requisite findings for ER to be used but later contemplates a party providing "reasonable advance notice." Parties (particularly pro pers) may not understand the need for a request and the requirement is an unnecessary logistical barrier that impedes access to justice.

[SoP] The proposed language seems designed to thwart the use of ER to the fullest extent possible. The parties must request it under strict timeframes and with detailed showings, and the statute does not authorize a court to excuse noncompliance and allow electronic recording. However, courts have the authority to preserve and promote the administration of justice and to protect the dignity and respect of the court. (See *People v. Shelley* (1984) 156 Cal.App.3d 521, 530.) There will be plenty of circumstances where a party does not strictly comply with the statute, but the administration of justice mandates that a record on appeal be available. The onerous requirements on allowing ER in otherwise

authorized cases creates litigation traps and prevents a court from ensuring that justice is served.

Moreover, the section requires the court to forward the notice to the union the same day it's submitted. Requiring the court to notify the union creates an administrative burden that may be impossible to satisfy when requests are received late in a business day. As a non-party to any litigation, the union would not have a procedurally proper way to challenge the use of ER. However, even though the union would not have a procedurally proper way to object, the fact that there is a statutory notice provision that impliedly creates union involvement would risk creating confusion for judges and parties about the union's ability to object to the use of ER.]

(d) If a court has issued a general order authorizing the use of electronic recording, all of the following requirements shall apply while the general order is in effect:
(1) The court shall provide public notice that the court is accepting applications from certified short reporters for positions as official court reporters. The court shall provide such notice to major court reporter job boards and to court reporting schools in California. The court shall maintain records of its outreach and recruitment activities.
(2) The court shall offer employment to all certified shorthand reporters who apply for official reporter positions unless there is good cause for rejecting the applicant. In the event of a dispute, the court shall have the burden of showing that an applicant was rejected for good cause. The court shall maintain records of applications received, interviews conducted, and reasons for hiring decisions.
(3) The court shall not adopt any unreasonable barriers to applications or to hiring applicants. In the event of a dispute, the court shall have the burden of showing that its requirements are reasonable.
(4) In addition to hiring official reporters, the court shall make all reasonable efforts, consistent with the court's budget, to retain official reporters pro tempore to supplement the work of official reporters. In the event of a dispute, the court shall have the burden of showing that its efforts were reasonable.
(5) If the official reporters in the court are represented by a recognized employee organization, the court shall, upon request of the employee organization, meet and confer with the employee organization about the court's efforts to recruit official court reporters and provide the employee organization with the records that the court is required by this section to maintain.

[**Comments:**
This entire section is highly problematic. No other public sector employment statute, including both the Trial Court Employment Protection and Governance Act (Trial Court Act) and the Trial Court Interpreter Employment and Labor Relations Act (Interpreter Act), have such detailed language regarding the recruitment and hiring process.

[SoP] Court reporters are professionals upon whom the court relies in exercising judicial functions. They are court employees who play a key role in enabling a court to carry out its constitutional functions, including but not limited to enabling a court to fulfill its obligation of ensuring the availability of a verbatim record on appeal. The hiring and

firing of all court employees is left to the discretion of each individual court, consistent with the provisions of the Trial Court Act, the Interpreter Act, the MOU between the court and union, and any applicable court personnel policies. This language would strip courts of important discretion in hiring court reporters, unless the court was able to articulate reasons that would amount to an undefined "good cause" standard. It is contrary to a court's independence and integrity to require that a court must hire essentially any licensed candidate that applies and leave the court with little discretion to reject an applicant whom the court does not find to be an appropriate fit for this sensitive and crucial position.

Labor issues abound in this section, and the union will have the right to file a grievance for any violations.

Is it really the intent to mandate that courts must hire anyone with a certificate? Some applicants demand higher pay than can be granted. Some demand remote work. Some show themselves to be unreliable during the recruitment process.

Places the burden on the court to prove "good cause" for rejecting an applicant—setting up litigation against any court that declines to hire any applicant. This is untenable in many ways.

The suggestion that courts are not hiring "available" reporters likely stems from isolated examples, which are insufficient to justify imposing new statutory requirements on courts' recruitment and hiring processes. For example, we are aware of an instance where a court determined that a pro tem reporter with a long history of disciplinary issues was not "available" even though they wanted to work, given their history of misconduct.

Provides that courts "shall not adopt any unreasonable barriers to applications or to hiring applicants. In the event of a dispute, the court shall have the burden of showing that its requirements are reasonable." Placing this burden on the courts is unreasonable and foreshadows lawsuits.

Courts "shall make all reasonable efforts, consistent with the court's budget, to retain official reporters pro tempore to supplement the work of official reporters. In the event of a dispute, the court shall have the burden of showing that its efforts were reasonable." Again, this invites lawsuits and is an unreasonable burden on the courts.

Courts have a duty to get cases heard with a verifiable record—all of this adds more administrative burden to a court reporter crisis that directly impacts access to justice.

These are collective bargaining issues, and should be left for the parties to resolve through the meet and confer process.

PERB is supportive of a robust bargaining process … dictating terms and requirements with this level of detail in statute is inconsistent with this.]

(6) If the official reporters in the court are represented by a recognized employee organization, the employee organization may file a grievance with the court if the employee organization contends that the court has violated this section. Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, unresolved disputes between the recognized employee organization and the court concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

[**Comments:**
Disputes about recruitment and use of ER are not related to the terms and conditions of employment and should not be subject to grievance and binding arbitration. It seems unlikely that the California State Mediation & Conciliation Service (SMCS) would oversee such a process as they do not provide arbitration services, binding or otherwise. The only service SMCS provides is that for $50 they will generate a random list of arbitrators and provide a copy of their resumes.

What is the position of SMCS on this proposal?

Arbitration is usually agreed upon by both parties. It is unusual for arbitration to be imposed via statute.]

(e) Courts shall not purchase or lease electronic recording technology or equipment to make records pursuant to this section.

[**Comments:**
[SoP] Courts would have inherent authority to do what was needed to secure the right to record, including by purchasing necessary equipment. If there's a right to record new types of cases, as proposed here, telling the courts they cannot then buy the needed equipment undermines separation of powers and it absolutely defeats a court's ability to carry out the judicial function of ensuring that a verbatim record exists in family law, probate, and civil contempt.]

(f) Courts shall not, without the consent of the official reporter, displace existing official reporters from their assignments in family law, probate, and civil contempt departments in order to make records pursuant to this section.

[**Comments:**
Why is this necessary? This is problematic as this is a management right, excluded from bargaining.]

(g) The court shall revoke a general order authorized by this section when the conditions set forth in subdivision (a) no longer exist.

(h) This section shall remain in effect only until January 1, 2028, and as of that date is repealed. The repeal of this section shall automatically revoke any general order authorized by this section.

[**Comments:**
The court reporter shortage is only expected to worsen. Why repeal the statute on January 1, 2028?

The number of court reporters licensed by the California Court Reporters Board is not keeping pace with the need. There has been a steady decline (20 percent) in the total number of licensees since 2013 (a loss of over 1,300 reporters) and the courts, according to the LAO in their 2024 report, have an estimated need for 691 additional full-time court reporters to cover all non-mandated case types where electronic recording is not allowed.

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FY 2015-16	72
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FY 2023-24	123

Despite widespread use of incentives, courts continue to lose reporters faster than they can hire them and faster than the state can license them. Los Angeles Superior Court currently has over 100 court reporter vacancies—the state isn't licensing enough new reporters to staff LA, let alone the rest of the state. And to make the shortage worse, over half of current official court reporters were licensed more than 30 years ago and are currently eligible to retire. See the newly revamped court reporter shortage dashboard for additional facts and statistics.]