SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

GENERAL ORDER RE OPERATION OF
ELECTRONIC RECORDING EQUIPMENT FOR
SPECIFIED PROCEEDINGS INVOLVING
FUNDAMENTAL LIBERTY INTERESTS IN THE
ABSENCE OF AN AVAILABLE COURT REPORTER

EXECUTIVE SUMMARY

Six years ago, the California Supreme Court warned that "the absence of a court reporter at trial court proceedings and the resulting lack of a verbatim record of such proceedings will frequently be fatal to a litigant's ability to [appeal]." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608 (*Jameson*).) "[I]t is an appellant's burden to provide an adequate record demonstrating error. Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment. [Consequently], [an] appellant is effectively deprived of the right to appeal." (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935 (internal citations omitted).)

The *Jameson* Court, invalidating a Superior Court's practice of requiring indigent parties to retain and pay for a court reporter, is one of many instances in which our Supreme Court, Courts of Appeal, and Superior Courts have rejected laws, rules, and policies that might "significantly chill [a] litigant's enjoyment of the fundamental protections of the right to appeal." (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 797.) "The State of California is not

constitutionally required to establish avenues of appellate review, 'but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.' [Citation.]" (*In re Arthur N.* (1974) 36 Cal.App.3d 935, 939.) This General Order reflects the Court's intention to promote equal access to "the fundamental protections of the right to appeal."

Like many superior courts in California, the Alameda County Superior Court ("the Court") has experienced significant difficulty in hiring employee court reporters in recent years due to an ongoing, nationwide decrease in the number of reporters seeking employment and despite extensive recruitment and retention efforts. Further, at any time, the Court may receive a notice of retirement or resignation or hire a new court reporter, and the overall the number of court reporter employees is steadily declining rather than increasing. Moreover, the actual number of reporters available each day is less than the number of reporters employed because of necessary leaves for vacation, illness or injury and preparation of statutorily mandated transcripts.

The Court's reporters are represented by the Alameda County Official Court Reporters Association ("ACOCRA"), itself a bargaining unit of Service Employees International Union Local 1021 ("SEIU 1021"). Both ACOCRA and SEIU 1021 are covered under separate Memoranda of Understanding negotiated between the Court and each union. The most recent MOUs were entered into effective January 1, 2022, and expired on December 31, 2024.

The Court began negotiating successor MOUs with ACOCRA and SEIU 1021 on September 19, 2024. Despite participating in ten subsequent bargaining sessions, as of the date of this General Order the parties have been unable to negotiate successor MOUs. As part of the negotiations, and recognizing the vital role played by court reporters in ensuring a verbatim record of proceedings, the Court attempted to negotiate a "line pass agreement" under which a minimum number of court reporters would be available to work, even in the event of a strike or other work stoppage. ACOCRA, however, refused to enter into such a line pass agreement.

Accordingly, in the event of a strike or other work stoppage, the Court will pursue all available injunctive relief to ensure that sufficient court reporters are present to report in those

cases types in which the Court is mandated by law to staff courtrooms with court reporters: felony, juvenile justice, juvenile dependency, and certain other proceedings, including when requested by an indigent party with an approved fee waiver. However, while the Court requested to be given 72 hours' advance notice of a strike, ACOCRA and SEIU 1021 have thus far refused that request. As such, it is likely that the Court will not have any advanced notice of a strike and that any request for injunctive relief will not occur until sometime late in the first day of any such strike, at the earliest. The result will be that reporters likely will be unavailable for any proceedings unless and until such time as injunctive relief can be obtained.

As a last resort to preserve the appellate rights of litigants and carry out the Court's "duty in the name of public policy to expeditiously process civil cases" (*Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1487 (*Apollo*)), this General Order permits individual judicial officers of the Court to authorize the electronic recording ("ER") of hearings at which fundamental rights are at stake and where no reporter is reasonably available. The Court cannot achieve these important goals through settled or agreed statements, which rightly are understood to be "cumbersome and seldom used" options (Klatchko & Shatz, 1 Matthew Bender Practice Guide (2024) Cal. Civil Appeals and Writs 7.27), whose "inherent limitations usually make them inferior to a reporter's transcript." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2023) ¶ 4:45a). These theoretical alternatives are not feasible given the large number of hearings that will be at issue in the event of a reporters' strike with no advanced notice. Moreover, "the potential availability of a settled or agreed statement does not eliminate the restriction of meaningful access caused by" a party's inability to secure a verbatim record. (*Jameson, supra*, 5 Cal.5th at p. 622, fn. 20.)

The Legislature permits courts to use ER to create a verbatim record of proceedings in misdemeanor, infraction, and limited civil cases. (Gov. Code, § 69957 (hereafter, "section 69957").) As a result, on multiple occasions in 2024 the Court successfully used ER to create verbatim transcripts as the official record. At the Court and across the state, it is clear that ER is a reliable alternative when a court reporter is not reasonably available. "Perhaps the time has come at last for California to enter the 20th century and permit parties to record proceedings

electronically in lieu of the far less reliable method of human stenography and transcription. Until that day, however, we believe the right to effective appellate review cannot be permitted to depend entirely on the means of the parties." (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9 fn. 3.)

In 2023 and early 2024, members of the public, access-to-justice nonprofits, the Judicial Council of California, and lawyers for particularly vulnerable litigants in family law matters implored the Legislature to amend section 69957 to permit ER in additional types of matters when a court reporter is not available. Despite widespread public support for this expansion, the Legislature did not act during the prior legislative session.

At the time it was enacted, section 69957 may have been intended to ensure that proceedings other than misdemeanor, infraction, and limited civil cases were assigned court reporters; but when a court reporter is not reasonably available, section 69957 effectively denies parties any verbatim record at all, which "will frequently be fatal to a litigant's ability to [appeal]." (*Jameson, supra*, 5 Cal.5th at p. 608.) In such instances, section 69957 draws an indefensible distinction between misdemeanor, infraction, and limited civil hearings and all other hearings at which the Court may not implement ER, even when no court reporter is reasonably available.

Indeed, the Court of Appeal has struck down such a distinction in the past, holding that where verbatim transcription is provided to felony defendants, "statutes, which permit the municipal court to deny defendants of misdemeanor criminal actions the availability of a phonographic reporter, or an electronic recording device, or some equivalent means of reasonably assuring an accurate verbatim account of the courtroom proceedings, fail to comport with constitutional principles of *due process* and *equal protection of the laws*." (See *In re Armstrong* (1981) 126 Cal.App.3d 565, 572-574 (*Armstrong*), original italics.) Currently, section 69957 permits ER in some proceedings but does not permit ER in other proceedings that implicate constitutionally protected fundamental interests and liberty interests of the litigants. Where such fundamental rights and liberty interests are at stake, the denial of ER to litigants who cannot reasonably secure a court reporter violates the constitutions of the United States and the

State of California. This legislative discrimination is not narrowly tailored to meet a compelling state interest as required by a constitutionally mandated strict scrutiny analysis. The Court does not believe there is any valid justification for depriving litigants of a verbatim record when a technological means for doing so exists.

The appellate courts are "profoundly concerned about the due process implications of a proceeding in which the [trial] court, aware that no record will be made, incorporates within its ruling reasons that are not documented for the litigants or the reviewing court." (*Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 100.) Alameda, too, is profoundly concerned about the possibility of the appellate courts reviewing or declining to review decisions where the record is not adequately "documented for the litigants or the reviewing court." (*Ibid.*) Accordingly, to protect the ability of litigants to appeal where their fundamental rights are at issue and no court reporter is reasonably available, the Court issues this General Order.

THE COURT'S EFFORTS TO ENSURE THE PRESENCE OF SUFFICIENT COURT REPORTERS

For the past several years, the State Budget has included funds allocated exclusively to enable trial courts to compete with private employers in the labor market and increase the number of official court reporters in family and civil law cases. By the end of Fiscal Year 2024-2025, the Court will have spent over $2.5M from the funds earmarked to promote open positions and fund hiring bonuses and retention payments. But the Court's efforts have been unsuccessful. While the Court has been able to hire some new court reporters, the number of new hires does not meet or exceed retirements. The investment in effort and funds has failed to significantly increase the number of court reporters employed by the Court and the overall downward trend in the number of court reporters entering the profession leads the Court to believe the shortage cannot be eliminated or sufficiently mitigated by recruitment and retention efforts.

Moreover, the Court's already-depleted court reporter ranks now threaten to become entirely unavailable due to an impending strike/work stoppage. In connection with its efforts to negotiate a new MOU with its court reporter employees and their union, when it became apparent to the Court that no successor MOU would be in place by January 1, 2025, the Court took steps to ensure that even in the absence of a new MOU, sufficient numbers of court reporters would be present to report at least those case types where a reporter is mandated by law.

On December 24, 2024, the Court sent representatives for the reporters' union, ACOCRA, a proposed line pass agreement. That agreement would have ensured the presence of at least 15 court reporters in the event of a strike, which the Court determined would be the minimum number needed to ensure that mandatory case types could be reported. However, on December 27, 2024, ACOCRA rejected the line pass agreement in its entirety, i.e., the union did not attempt to negotiate some lesser number of court reporters to be available for mandatory reporting in the event of a strike.

Despite its best good faith and reasonable efforts to negotiate the presence of some minimal number of court reporters to ensure that at least mandatory case types can be reported in

the event of a strike or work stoppage, the Court's reporters and their union have refused to make any such commitment. As such, and given the fundamental rights and liberty interests of litigants at stake, the Court has no choice but to issue this order to prepare for the eventuality of a complete lack of available court reporters.

EFFORTS FOR LEGISLATIVE RELIEF

Presiding Judges, Court Executive Officers, and lawyers whose clients are most affected by the absence of a verbatim transcript have implored the California Legislature to take up legislation that could address this crisis. In 2023, California State Senator Susan Rubio introduced SB 662 which would have expanded the use of ER from limited civil, misdemeanor and infraction matters under section 69957 to other proceedings when a court reporter was unavailable. But on January 18, 2024, the Legislature failed to advance SB 662 and on August 31, 2024, the Legislature recessed without taking any action in that session.[1]

THE CONSTITUTIONAL CRISIS

A. The Court's Mission

The Alameda County Superior Court serves the public by providing equal justice for all in a fair, accessible, effective, efficient, and courteous manner: by resolving disputes under the law; by applying the law consistently, impartially and independently; and by instilling public trust and confidence in the Court. (See https://www.alameda.courts.ca.gov/general-information/about-court) This mission flows from the rights provided in the constitutions of the United States of America and the State of California, which all judicial officers swear to support and defend.

The Presiding Judge and Court Executive Officer of the Court are aware that our Court's practical inability to provide court reporters, combined with section 69957's statutory prohibition against ER in many proceedings, results in a profound denial of equal justice for all in a fair, accessible, effective and efficient manner. In the absence of a court reporter, these

[1] See Joint Rules, Rule 51(b)(3), Senate Concurrent Resolution No. 1 (2023-34 Reg. Sess.) regarding Legislature's "recess on September 1 until adjournment sine die on November 30." Pursuant to California Evidence Code section 452, subdivisions 28 (a), (c), and (g), the Court takes judicial notice of Senator Rubio's introduction of SB 662 in 2023, the Legislature's failure to advance SB 662 on January 18, 2024, and its recess on August 31, 2024, without having taken further action on the bill.

proceedings either could not occur or they would have to occur without any sort of transcript of the proceedings. Many of these hearings involve the parties' fundamental rights and liberty interests. For those hoping to appeal an adverse ruling, the lack of a verbatim record may be fatal. (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

Permitting ER where a court reporter is not reasonably available would "eliminate the restriction o[n] meaningful access" to the appellate process. (*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20.) As stated above, the Court successfully uses ER to create a verbatim record in infraction, criminal misdemeanors, and limited civil proceedings, which permitted appellate review in the Court's Appellate Division in numerous cases in 2024. Unfortunately, outside of infraction, misdemeanor and limited civil proceedings, section 69957 denies litigants access to ER even in hearings where their fundamental rights and liberty interests are at stake. This General Order confirms that judicial officers, consistent with the mission of the Court and with the judicial officers' oaths of office, can authorize ER where fundamental rights and liberty interests are at stake and no court reporter is reasonably available.

B. <u>Section 69957 Prohibits a Verbatim Record for Some Parties</u>

Litigants in matters where there is no court-provided court reporter have two options for seeking a verbatim transcript, neither of which is reasonable in most cases. First, they may try to retain and pay a private court reporter to report the proceeding. But the Judicial Council has found that the same shortage of court reporters in the community has resulted in the per diem cost of retaining a private court reporter, if one can be found, to be prohibitive to all but the wealthiest of litigants.[2] Second, one or both parties may ask to continue the hearing with the hope that the Court will be able to assign a court reporter on a later date. But this option results in a pernicious delay in the administration of justice in cases where prompt court action is usually essential. Continuances are not a practical or efficient option for litigants to obtain a verbatim record, considering the trial court's "duty in the name of public policy to expeditiously

[2] Pursuant to California Evidence Code section 452, subdivision (c), the Court takes judicial notice of the Judicial Council of California's January 2024 "Fact Sheet: Shortage of Certified Shorthand Reporters in California," and the Legislative Analyst's Office's March 5, 2024, report to Senator Thomas Umberg, Chair of the Senate Judicial Committee, attached to and incorporated in the Declaration of Court Executive Officer and Clerk of Court Chad Finke as Exhibits 2 and 6, respectively.

process civil cases" (*Apollo*, *supra*, 167 Cal.App.4th at p. 1487), the harm that could occur to parties from postponing a hearing, and the fact that there are likely to be fewer, not more, court reporters in the future. As a result, litigants have no choice but to proceed without a verbatim record where there is no court-employed court reporter if the parties cannot reasonably retain or pay a private court reporter and ER is not an option.

C. <u>The Consequence of Proceeding Without a Verbatim Record</u>

As the leading treatise puts it, a verbatim "[t]ranscript may be essential for appellate review." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶ 9:172.) The California Court of Appeal observed 20 years ago: "When practicing appellate law, there are at least three immutable rules: first, take great care to create a complete record; second, if it's 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.) Our Supreme Court approvingly quoted this guidance in *Jameson* as part of its explanation for why that "lack of a verbatim record of such proceedings will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court." (*Jameson, supra*, 5 Cal.5th at pp. 608-609 & fn. 11.)

The Court of Appeal's decision in *In re Christina P.* (1985) 175 Cal.App.3d 115, is instructive on the duty to ensure a verbatim transcript when a hearing may be relevant to a subsequent appeal. "When counsel has reason to anticipate that what is said at a hearing may be pertinent to a subsequent appeal he has a duty to insure that a court reporter is present. [Citation.] Failure to attend to this duty can be tantamount to a waiver of the right to appeal." (*Id.* at p. 129.) "Where the matter is as grave as termination of parental rights and where the client is an indigent person entitled to a free transcript and a free lawyer on appeal, there is no conceivable rational tactical purpose for trial counsel's failure to insure the attendance of a court reporter." (*Id.* at pp. 129-130.) The "loss of the ability to show there [was] insufficient evidence to support the judgment" is "the epitome of prejudice." (*Id.* at p. 130.)

The admonitions of *Jameson* and *In re Christina P.* are not aberrations, but conclusions from jurists at all levels of the California court system. Trial judges and appellate justices alike

have long understood that a verbatim transcript, rather than a post-hoc summary, is what "a complete record" ordinarily entails. (See *Jameson*, *supra*, 5 Cal.5th at p. 608-609 & fn. 11.) 26 "As a general matter … the absence of a court reporter will significantly limit the issues that must be resolved on the merits on appeal." (*Id.* at p. 622, fn. 20.)

For that reason, the Supreme Court has rejected summaries in an order or a settled or agreed statement as the cure when a litigant is denied the opportunity to obtain a verbatim transcript. (*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20.) To be sure, "some issues can be resolved on the clerk's transcript alone or by way of a settled or agreed statement" (*ibid.*), and the option of a settled statement "permit[s] parties to appeal without the expense and burden of preparation of a reporter's transcript" if they so elect (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935 (*Randall*)). "There is, however, generally no way to determine in advance what issues may arise or whether such an issue can be raised and decided on appeal absent a verbatim record of the trial court proceedings." (*Jameson*, at p. 622, fn. 20.)

And even for issues that theoretically could be raised on a summary rather than a verbatim record, "where the parties are not in agreement, and the settled statement must depend upon fading memories or other uncertainties, it will ordinarily not suffice." (*Armstrong, supra*, 126 Cal.App.3d at p. 573; see also *People v. Cervantes* (2007) 150 Cal.App.4th 1117, 1121 (*Cervantes*).) Indeed, leading commentators have noted that "[i]t is unrealistic to expect litigants and judges to accurately recall what was said and decided days or even months after the relevant oral proceedings." (Grimes, et al., *Navigating the New Settled Statement Procedures* (2022) 33(2) Cal. Litig. 24 at p. 28 ["Grimes, Settled Statements"].) Thus, the ability to settle a statement will often depend upon "whether the trial court took 'detailed notes.'" (*Cervantes*, at p. 1121 [quoting *In re Steven B.* (1979) 25 Cal.3d 1, 8–9].) But because section 69957 prohibits trial judges to use ER "for purposes of judicial notetaking," such detailed notes would either be "the notes of a court reporter who had reported the proceedings" (*Jameson*, at pp. 624-625) or the notes of the trial judge captured while also conducting the hearing.

To this longstanding appellate wisdom, trial judges can add further practical facts: trial judges, like trial counsel, generally cannot "determine in advance what issues may arise"

(*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20), so as to know that this is the moment in a hearing at which "detailed notes" should be taken (*Cervantes*, *supra*, 150 Cal.App.4th at p. 1121). And in contentious hearings, particularly those involving unrepresented litigants, judges must focus on their roles as decision-makers and cannot serve as a de facto court reporter. Unfortunately, such hearings are those in which litigants are least likely to be able to manage the complex process of creating a settled statement. Indeed, some may be restrained from having any communication with the other following imposition of a domestic violence, workplace violence, elder abuse, or other restraining order.

Moreover, the Court's judicial officers cannot undertake the settled statement process or a detailed contemporaneous minute order for all the hearings that are currently unreported. "[T]rial courts have a duty in the name of public policy to expeditiously process civil cases." (*Apollo, supra*, 167 Cal.App.4th at p. 1487; *Smith v. Ogbuehi* (2019) 38 Cal.App.5th 453, 468-469.) Even where lawyers are involved, "the settled statement process may take up to three hours each day to complete." (Grimes, Settled Statements at p. 28 ["To avoid the difficulties of recalling events, some judges require counsel to remain in the courtroom each day until they agree on a settled statement for that day's proceedings. In such courtrooms, the settled statement process may take up to three hours each day to complete…."].) And preparing contemporaneous settled statements with self-represented parties in contentious disputes likely would take even longer than three hours. For that reason, recourse to settled statements is "impractical for courts given the sheer volume of cases on their docket"; "settled statements are not the long-term answer" to the court reporter shortage. (*Id.* at pp. 28-29.)

D. <u>The Constitutional Rights at Issue</u>

The Court's judicial officers are obligated to follow the law, including applying statutory law as enacted. But "it is the obligation of the trial and appellate courts to independently measure legislative enactments against the constitution and, in appropriate cases, to declare such enactments unconstitutional." (*People v. Superior Court (Mudge)* (1997) 54 Cal.App.4th 407, 411, as modified (May 9, 1997).) Similarly, "[c]ourts, as custodians of the judicial powers of

government, are not obliged to enforce a statute which … arbitrarily deprives a litigant of his rights." (*People v. Murguia* (1936) 6 Cal.2d 190, 193.)

"'Courts are not powerless to formulate rules of procedure where justice demands it.' [Citation.]" (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967, as modified on denial of reh'g (Oct. 22, 1997).) Indeed, "'all courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority.' [Citation.]" (*Ibid.*) In particular, trial courts have "power over the record," which the Court of Appeal has made clear "must be exercised in a manner that does not interfere with the litigant's statutory right to appeal." (*Randall*, *supra*, 2 Cal.App.5th at p. 934.) That is so because once the State has established an avenue of appeal, it "'must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.' [Citation.]" (*In re Arthur N.*, *supra*, 36 Cal.App.3d at p. 939.) This General Order recognizes that judicial officers may conclude they have the duty, given the particular facts of a case, not to enforce the provisions of section 69957 where such enforcement constitutes a constitutional violation.

Fundamental due process liberty interests under both the California and United States constitutions are implicated in judicial determinations of felony charges, disputes concerning the status of the parties' marriage, the parentage rights and obligations related to minor children, custody determinations of minor children, certain conservatorship proceedings and civil contempt hearings. Similarly, imposition of a non-criminal restraining order, including domestic violence, elder abuse, civil harassment, workplace violence, school violence, gun violence, and transitional housing restraining orders, may impinge upon a person's freedoms of expression and speech, free movement, and association, as well as the right to possess firearms and ammunition, all of which also implicate liberty interests under both the California and United States constitutions.

Where such fundamental rights and liberty interests are at issue, the need to preserve parties' appellate rights is even greater. (See, e.g., *Armstrong*, *supra*, 126 Cal.App.3d at p. 569 [holding that for statutes governing parties' access to verbatim transcription, "where one's 'personal liberty is at stake,' a statutory scheme 'requires application of the strict

scrutiny standard of equal protection analysis'"]; *People v. Serrano* (1973) 33 Cal.App.3d 331, 336 [noting that the Legislature's "deletion of such provision [for relief from a party's appellate default] cannot deprive the appellate courts of their inherent duty to protect constitutional rights"]; *People v. Tucker* (1964) 61 Cal.2d 828, 832 ["Doubts should be resolved in favor of the right to appeal."].) As the Court of Appeal explained in a case concerning the constitutionality of classifications impacting a statutory right to appeal, "[i]n cases touching upon fundamental interests of the individual, the state bears the burden of establishing not only that it has a compelling interest which justifies the suspect classification, but also that the distinctions drawn by the regulation are necessary to further its purpose. [Citation.]" (*In re Arthur N.*, *supra*, 36 Cal.App.3d at p. 939, original italics.)

Based on these principles, this General Order confirms the discretion of the Court's judicial officers to authorize ER to preserve parties' right to appeal when their fundamental rights and liberty interests may be at stake in the hearing.

1. Constitutional Rights to Appeal

Under the California Penal Code ("PC"), California Family Code, California Probate Code and California Code of Civil Procedure ("CCP"), parties possess statutory rights to appeal adjudication of felony charges and family law, probate, and civil controversies. (See PC §§ 1237 and 1238; CCP § 902; CCP § 904.1, subds. (a)(1), (10), (14).) Likewise, under CCP section 904.1, parties have a right of appeal from a judgment of contempt. Where a statutory right to appeal is afforded, parties possess constitutional rights related to that right of appeal. (See *In re Arthur N.*, *supra*, 36 Cal.App.3d at p. 939.) The state must not structure appellate rules to deny, based on unreasoned distinctions, some persons the appellate avenue available to others. (*Ibid.*)

The principle of an equal constitutional right to statutory appellate review is well established. In *Lindsey v. Normet* (1972) 405 U.S. 56, 77, the U.S. Supreme Court held that a state's law conditioning appeal in an eviction action upon the tenant posting a bond, with two sureties, in twice the amount of rent expected to accrue pending appeal, was invalid under the equal protection clause when no similar provision is applied to other cases. In *Griffin v. Illinois*

(1956) 351 U.S. 12, the Supreme Court held that criminal defendants' due process and equal protection rights were violated by a state statute requiring them to pay a fee for a transcript of trial proceedings to permit appellate review. In the family law context, in *M.L.B v. S.L.J.* (1996) 519 U.S. 102, 124, the Supreme Court held that decrees forever terminating parenting rights are in the category of cases in which a state may not, consistent with the equal protection and due process clauses, "'bolt the door to equal justice.' [Citation.]" Accordingly, the state could not withhold from the appellant a "'record of sufficient completeness'" to permit proper appellate consideration of her claims. (*Id.* at p. 128.)

2. Fundamental Rights and Liberty Interests in Felony Proceedings

The right to liberty is not only protected by the United States and California constitutions but is regarded as a fundamental human right. "Every person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees. [Citation.] But a person who has been so convicted is eligible for, and the court may impose, whatever punishment is authorized by statute for his offense, so long as that penalty is not cruel and unusual, [citations] and so long as the penalty is not based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment." (*Chapman v. United States* (1991) 500 U.S. 453, 465.)

There are a number of fundamental rights at stake in any felony case, including the right to a fair, public trial (*People v. Covarrubias* (2016) 1 Cal.5th 838, 917); the right to an impartial jury (*People v. Thomas* (2011) 51 Cal.4th 449, 462); the right to competent and conflict-free counsel (*Strickland v. Washington* (1984) 466 U.S. 668, 686; *People v. Doolin* (2009) 45 Cal.4th 390, 419); the right against self-incrimination (*People v. Low* (2010) 49 Cal.4th 372, 389-390); the right to be informed of charges (*People v. Stone* (2009) 46 Cal.4th 131, 141); the right to confront and cross-examine witnesses (*People v. Sanchez*(2016) 63 Cal.4th 665, 679-680); the right to compulsory process (*People v. Jacinto* (2010) 49 Cal.4th 263, 268-269); the right to a speedy trial (*People v. Wilson* (2024) 16 Cal.5th 874, 939); the right against double jeopardy (*People v. Seel* (2004) 34 Cal.4th 535, 541-542); the right against excessive bail (*People v.*

Seumanu (2015) 61 Cal.4th 1293, 1368-1369); and the right against cruel and unusual punishment (*In re Kirchner* (2017) 2 Cal.5th 1040, 1046).

3. Fundamental Rights and Liberty Interests in Family Law Proceedings

The appellate review provided to parties in family law matters serves to protect fundamental rights and liberty interests protected under the due process clauses of the United States and California constitutions. Marriage and parenting are fundamental rights which cannot be diminished or abrogated without a compelling state interest. At a minimum, parties' fundamental rights and liberty interests are at stake in judicial determinations concerning: (1) the status of their marriage, including its dissolution; (2) parentage rights and obligations; (3) the legal and physical custody of their children; and (4) civil restraining order proceedings.

As the U.S. Supreme Court explained over a century ago, "the individual has certain fundamental rights which must be respected," including "the right to marry, establish a home, and bring up children." (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399, 401.) Five years after that decision, the Court struck down a law that required children to attend public school because it infringed on parents' custodial rights to educate their children as they please. (*Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 534.) In the 1960s, the Court struck down a law banning interracial marriage because it violated the Constitution by infringing on the fundamental right to marry. (*Loving v. Virginia* (1967) 388 U.S. 1, 12.) A decade later, it struck down a law prohibiting marriage of individuals not current on child support payments because it, too, infringed upon the fundamental right to marry. (*Zablocki v. Redhail* (1978) 434 U.S. 374, 386.) More recently, the Supreme Court struck down limitations on same-sex marriages as unconstitutional. (*Obergefell v. Hodges* (2015) 576 U.S. 644, 666 ["Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make."].)

The California Constitution similarly protects marriage and family rights. (See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 809, superseded by const. amend. on other grounds as stated in *Hollingsworth v. Perry* (2013) 570 U.S. 693; *In re Carmaleta B.* (1978) 21 Cal.3d 482,

489 [parenting]; *In re B.G.* (1974) 11 Cal.3d 679, 693-694 [parenting].) Encompassed within "a parent's liberty interest in the custody, care and nurture of a child is … the 'right to determine with whom their children should associate.' [Citation.]" (*Herbst v. Swan* (2002) 102 Cal.App.4th 813, 819.)

Fundamental rights and liberty interests related to marriage and family have direct bearing on the judicial process, too. For instance, "due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." (*Boddie v. Connecticut* (1971) 401 U.S. 371, 374.) Similarly, in *Little v. Streater* (1981) 452 U.S. 1, 13-17, the Court held that a state must pay for blood-grouping tests sought by an indigent defendant to enable him to contest a paternity suit.

Again, California precedent is similar and directly addresses the need to ensure parents' appellate rights. In *In Re Rauch* (1951) 103 Cal.App.2d 690, the trial court declared a minor to be a ward of the Court and revoked the guardianship of the father. The father appealed, but his appeal was challenged on the ground he was not affected or aggrieved by the Court's order. To that, the Court of Appeal explained that "[u]nder the American way of life, the child belongs to the family, and any judicial proceeding which seeks to impair or take away a father's parental authority is certainly litigation, in the subject matter of which such father is interested, and, therefore, brings him within the fundamental rule of appellate jurisdiction that "under our decisions any person having an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment, is a party aggrieved and entitled to be heard upon appeal." [Citation.] (*Id.* at p. 694.)

Finally, certain judicial officers assigned to the Hayward Hall of Justice and to the Wiley W. Manuel Courthouse are assigned all non- criminal restraining order ("RO") proceedings. These include domestic violence ROs, elder abuse ROs, civil harassment ROs, workplace violence ROs, school violence ROs, gun violence ROs, and transitional housing ROs. A common feature of all such proceedings is that the orders of protection issued following the successful prosecution of a petition include material impingements on freedom of speech, freedom of movement, freedom of association, and the right to possess firearms and ammunition.

(See, e.g., *Molinaro v. Molinaro* (2019) 33 Cal.App.5th 824, 831-833 [striking portion of restraining order as violating appellant's freedom of speech]; cf. *People v. Sanchez* (2017) 18 Cal.App.5th 727, 756 [noting, in the anti-gang-injunction context, the importance of due process before a party is "subjected to an injunction with profound consequences for daily life, including family relationships, freedom of movement, and civic participation in the neighborhood in which he lives"].) Such orders clearly bear upon constitutional rights and liberties under the United States and California constitutions.

4. Fundamental Rights and Liberty Interests in Probate Proceedings

Fundamental liberty interests akin to those in a criminal context are also implicated in cases involving civil commitment and Lanterman-Petris-Short ("LPS") conservatorships in probate proceedings. (See, e.g., *People v. Dunley* (2016) 247 Cal.App.4th 1438, 1451 ["The California Supreme Court has long held that under California law, equal protection challenges to involuntary civil commitment schemes are reviewed under the strict scrutiny test because such schemes affect the committed person's fundamental interest in liberty."].) Recognizing that the "due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act," the California Supreme Court outlined the ways in which gravely disabled conservatees' fundamental liberty interests could be impinged in *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 227 (*Roulet*).[3]

Matters in other conservatorship contexts under the Probate Code, not involving confinement, may also implicate fundamental rights. For example, in *Conservatorship in*

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[3] "The gravely disabled person for whom a conservatorship has been established faces the loss of many other liberties in addition to the loss of his or her freedom from physical restraint. For example, the conservator is also given the powers granted to the guardian of an incompetent in chapters 7, 8 and 9 of division 4 of the Probate Code. (§ 5357; Prob. Code, § 1852.) These include: payment of the conservatee's debts and collection or discharge of debts owed the conservatee (Prob. Code, § 1501); management of the conservatee's estate, including sale or encumbrance of the conservatee's property (Prob. Code, §§ 1502, 1530); commencement, prosecution, and defense of actions for partition of the conservatee's property interests (Prob. Code, §§ 1506-1508); disposition of the conservatee's money or other property for court-approved compromises or judgments (Prob. Code, §§ 1510, 1530a); deposit of the conservatee's money in a bank, savings and loan institution, or credit union (Prob. Code, § 1513); the giving of proxies to vote shares of the conservatee's corporate stocks (Prob. Code, § 517); and the borrowing of money when it will benefit the conservatee (Prob. Code, § 1533). In addition, the Court may grant the conservator any or all of the powers specified in Probate Code section 1853.5 (See § 5357.)." (*Roulet, supra*, 23 Cal.3d at p. 227, footnote omitted.))

Wendland (2001) 26 Cal.4th 519, 554, the Supreme Court recognized the conservatee's "fundamental rights to privacy and life" in a case involving a conservator's request to withdraw nutrition from a conscious conservatee. In addition, some guardianship proceedings are likely to implicate fundamental liberty interests when they involve custodial parental rights. (See *Santosky v. Kramer* (1982) 455 U.S. 745, 753 ["The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life."].)

Whether fundamental rights are implicated in a probate conservatorship or guardianship proceedings may be a fairly fact-specific inquiry requiring a case-by-case determination, but where such a determination is made, it weighs in favor of ensuring a verbatim record of proceedings.

5. Fundamental Rights and Liberty Interests in Civil Contempt Proceedings

Finally, judicial officers in the Family Law, Probate and Civil Divisions hear orders to show cause why a person should not be found in civil contempt for their willful failure to follow a lawful court order. A person's first conviction for such contempt exposes that person to criminal penalties, including fines of up to $1,000 and incarceration of up to five days per count. (See CCP § 1218.) Penalties for subsequent convictions are increased. (See *Ibid.*) Such orders likewise implicate constitutional rights and liberties.

In sum, the United States and California constitutions protect the fundamental rights and liberty interests at stake in felony charges; marriage, dissolution of marriage, parentage rights and determinations, custody determinations, and restraining orders in the family court; specified conservatorship and guardianship proceedings in probate court; and civil contempt proceedings in family, probate, and civil court. When parties in such proceedings believe those constitutional rights have been violated, the California Legislature provides the ability to seek appellate review. The precedent of the California Supreme Court and Court of Appeal, as well as of the United States Supreme Court, teaches that the procedures for seeking that appellate review cannot draw

impermissible distinctions between different classes of would-be appellants. Where underlying fundamental rights are at stake, procedures that limit appellate rights face strict scrutiny. Thus, a limit on the ability to secure a verbatim record of a trial court proceeding that results in a limit on the ability to appeal for some litigants and not others must further a compelling governmental interest and must be narrowly tailored to achieve that interest.

6. Fundamental Rights and Liberty Interests in Juvenile Dependency Proceedings

Dependency proceedings concern fundamental rights and liberty interests of both parents and children. The United States Supreme Court has held that the liberty interest in the due process clause of the Fourteenth Amendment protects the "fundamental right of parents to make decisions concerning the care, custody, and control of their children." (*Troxel v. Granville* (2000) 530 U.S. 57, 66.) California courts have further elaborated on this, holding that our society "recognize[s] an 'essential' and 'basic' presumptive right to retain the care, custody, management, and companionship of one's own child, free of intervention by the government." (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76; *In re Marilyn H.* (1993) 5 Cal.4th 295, 306.)

Juveniles in dependency proceedings also have fundamental rights at stake. The United States Supreme Court has held that children in dependency proceedings possess a "fundamental independent right" to be part of a family. (*In re. Kristin H.* (1996) 46 Cal. App. 4th 1635, 1642; *Quillon v. Walcott* (1977) 434 U.S. 246, 255.) This right to family integrity has been derived from the First Amendment's broad right of association and the Fourteenth Amendment's substantive due process protections. (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 617-20; *Santosky v. Kramer* (1982) 455 U.S. 745; *Stanley v. Illinois* (1972) 405 U.S. 645, 651.)

The liberty interests and Constitutional considerations in dependency proceedings are such that, in California, both parents and children are entitled to a full complement of situation-specific rights and services, including, but not limited to, standing, appointment of counsel, and reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448; *In re Sarah C.* (1992) 8 Cal.App.4th 964, 971–972; *R.H. v. Superior Court* (2012) 209 Cal.App.4th 364, 371, as modified (Aug. 30, 2012).) Many of these rights and services extend to appellate proceedings, including an indigent parent's possible right to appointed counsel "in an appeal from a state-

obtained decision adversely affecting child custody or parental status, on a case by case basis, under the due process clause of the Fourteenth Amendment to the United States Constitution and/or that of article I, section 7, subdivision (a), of the California Constitution." (*In re Jay R.* (1983) 150 Cal. App. 3d 251, 262-65; *In re Sade C.* (1996) 13 Cal. 4th 952, 984.)

7. Fundamental Rights and Liberty Interests in Juvenile Delinquency Proceedings

The United States Supreme Court has recognized that, even though delinquency cases are civil proceedings, the interests at stake parallel those in a criminal prosecution. (*Breed v. Jones,* (1975), 421 U.S. 519, 529; *McKeiver v. Pennsylvania* (1971), 403 U.S. 528, 540; *In re Gault*, (1967)] 387 U.S. 1, 17–25.) In delinquency proceedings, juveniles may be subject to a loss of liberty for an extended period of time, making such proceedings comparable in seriousness to a felony prosecution. (*In re Winship*, (1970) 397 U.S. 358, 365–366; *Gault*, 387 U.S. 1, 36.)

In addition to the potential for loss of liberty, a delinquency finding carries with it a stigma that may follow the minor throughout their life. (*Addington v. Texas* (1979) 441 U.S. 418, 427; *Kevin S., supra,* 113 Cal.App.4th at p. 118.) Because of the liberty interests at issue, and the potential for lifelong harm, delinquency proceedings are subject to the "fundamental fairness" guarantees embodied in the due process clauses of the United States and California constitutions. (*Application of Gault* (1967) 387 U.S. 1, 31; *In re Armondo A.*, 3 Cal. App. 4th 1185; *In re Winship,* (1970) 397 U.S. 358, 358–359; *Breed v. Jones* (1975) 421 U.S. 519; *In re John Z.*, 223 Cal. App. 4th 1046; *In re Kevin S.*, 113 Cal. App. 4th 97.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. California provides a statutory right of appeal in felony, family law, probate, and civil proceedings.

2. Felony and juvenile justice defendants and family law, probate, civil, and juvenile dependency litigants have fundamental interests protected by the due process clauses in court proceedings involving their felony charge, marriage, the parentage and custody of their children, certain conservatorship and guardianship matters, their rights under restraining orders, and civil contempt proceedings.

3. The absence of a verbatim record will frequently be fatal to litigants' ability to appeal from adverse decisions in such proceedings.

4. In the event of a labor strike or work stoppage by the Court's reporters—and in the absence of a negotiated line pass agreement or injunctive relief requiring a minimum number of reporters to report to work—the Court will be unable to assign a court-employed court reporter to even mandated proceedings and will have insufficient funding to hire costly reporters from a court reporter agency.

6. California law, under section 69957 of the Government Code, permits electronic recording of infraction, criminal misdemeanor, and limited civil matters for the purpose of creating a verbatim record of proceedings. Pursuant to section 69957, the Court has a reasonable alternative method of permitting the creation of a verbatim record of proceedings via electronic recording technology in the absence of an available court reporter.

7. The judges in the Court's Appellate Division successfully reviewed and decided numerous appeals in 2024 when ER was used to create a record of infraction, criminal misdemeanor, and limited civil matters for the purpose of creating a verbatim transcript.

8. The limitations of section 69957, which does not permit electronic recording of felony, family law, probate, and civil matters, essentially prevents litigants from protecting their appellate rights in even those matters involving constitutionally protected fundamental rights and liberty interests.

9. Many in the judicial branch, along with others, have unsuccessfully attempted to persuade the California Legislature to amend the law to ameliorate this crisis.

10. When the Court's judicial officers adhere to the limitations of section 69957, no transcript is available to vast numbers of litigants in matters implicating constitutionally protected rights and liberty interests even though electronic recording technology is in place which could create a verbatim record.

11. The distinction section 69957 draws among classes of litigants has resulted, and will continue to result, in some litigants suffering actual and serious constitutional harms on account of this legislative discrimination. The discrimination in the law between circumstances in which electronic recording is permitted and prohibited does not pass constitutional muster under the applicable strict scrutiny standard. Indeed, the Court cannot see any legitimate – let alone compelling – reason why the option of electronic recording is given to a party in a limited civil matter involving a small economic loss but denied to a defendant facing a felony charge, a petitioner seeking a restraining order against an abusive partner, a parent facing the loss of custody over their child, a person with grave disabilities facing the imposition of a conservatorship, or a contemnor looking at jail time. Section 69957 could be more narrowly tailored so that it does not deny those litigants a verbatim record when no court reporter is reasonably available. Instead, judicial officers at the Court have conducted hearings in which section 69957 has failed strict scrutiny and might indeed fail even lower levels of scrutiny.

12. Rather than restrict the appellate rights of litigants in matters touching upon fundamental constitutional rights and liberty interests, the Court has a reasonable alternative method of permitting the creation of a verbatim transcript of proceedings via electronic recording technology. In the absence of a reasonably available court reporter which will ameliorate or eliminate the constitutional violations, the judicial officers of the Court should have the option to preserve and protect constitutional rights rather than limit and impinge upon them.

GENERAL ORDER

Accordingly, the Presiding Judge hereby ORDERS the Clerk of Court to direct courtroom staff to operate the electronic recording equipment in any department as directed by the judicial officer presiding in such department when that judicial officer finds that: (1) the proceeding concerns matters that implicate fundamental rights or liberty rights as described herein; (2) one or more parties wishes to have the possibility of creating a verbatim transcript of the proceedings; (3) no official court-employed court reporter is reasonably available to report the proceeding; (4) the party requesting a verbatim record has been unable to secure the presence of a private court reporter to report the proceeding because such reporter was not reasonably available or on account of that party's reasonable inability to pay; (5) the proceeding involves significant legal and/or factual issues such that a verbatim record is likely necessary to create a record of sufficient completeness; and (6) the proceeding should not, in the interests of justice, be further delayed. The Court may impose reasonable fees when such order is made.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND WILL REMAIN IN EFFECT UNTIL OTHERWISE ORDERED BY THE PRESIDING JUDGE.

Dated: February 19, 2025

Hon. Thomas Nixon
Presiding Judge of the Superior Court

DECLARATION OF COURT EXECUTIVE OFFICER AND CLERK OF COURT CHAD FINKE

I, Chad Finke, declare:

BACKGROUND

1. I am the Court Executive Officer, Clerk of Court, and Jury Commissioner for the Alameda County Superior Court ("Court"), offices I have held since October 2015. I have personal knowledge of the facts contained in this declaration and would testify to them if called upon to do so.

2. I have worked in California State Court administration and operations for nearly 24 years. From 2001-2005 I served as a Legal Research Attorney and later a Supervising Legal Research Attorney at the Court. From 2005-2013 I worked for the Judicial Council of California in various managerial roles, culminating in a position as a Division Director. In 2013 I became the Court's General Counsel, and I held that position until I promoted into my current role in late 2015. I have also served on numerous Judicial Council statewide committees since 2015. I hold a Bachelor of Arts and I received my Juris Doctorate from Berkeley School of Law in 1997.

3. The Court is the 5th largest trial court in California, with 83 authorized judicial positions and approximately 600 employees who work in 9 different courthouses across the county. The Court's judicial officers decide every case type under State law – criminal, juvenile justice, juvenile dependency, civil, family, probate, and traffic – and the range of cases includes murders, removals of abused or neglected children, complicated divorce and custody proceedings, restraining orders, multi-million-dollar lawsuits, involuntary commitments, child support enforcement, guardianships, landlord/tenant disputes and traffic infractions.

THE VERBATIM RECORD CRISIS IN OUR COURT

The Court has a Limited Number of Court Reporters

4. As of the date of this declaration, Alameda employs 40 full-time equivalent (FTE) court reporters The Court has additional vacant positions equivalent to 17 additional FTEs,

which we have been unable to fill despite spending approximately $2.5M on various recruitment and retention incentives over and during the last three fiscal years.

5. Alameda's experience is shared by courts everywhere. For many years, court executive officers and judicial branch leaders throughout California and the nation have studied and discussed the decreasing number of court reporters available for employment.[1]

The Court has Been Unable to Negotiate a Successor MOU or Line Pass Agreement

6. The Court's reporters are represented by the Alameda County Official Court Reporters Association ("ACOCRA"), which is a bargaining unit of Service Employees International Union Local 1021 ("SEIU 1021").

7. The Court and ACOCRA were parties to a negotiated labor Memorandum of Understanding ("MOU"), the term of which was January 1, 2022, through December 31, 2024.

8. The Court and ACOCRA began negotiating successor MOU on or about September 19, 2024. Since that time there have been ten (10) additional bargaining sessions. However, as of the date of this declaration, no successor MOU has been agreed upon by the Court and ACOCRA.

9. On December 24, 2024, with the expiration of the prior MOU looming, the Court attempted to negotiate a "line pass agreement" with ACOCRA, under which ACOCRA would agree that some minimal number of reporters would report to work even in the event of a strike or other work stoppage.

10. On December 27, 2024, ACOCRA rejected the line pass agreement in its entirety, i.e., the union did not attempt to negotiate some lesser number of court reporters to be available for mandatory reporting in the event of a strike or work stoppage.

Electronic Recording is Not Permitted in Unlimited Civil, Family and Probate

11. Although court reporters are not mandated for unlimited civil, family, and probate matters, California Government Code section 69957 does not permit courts to use electronic

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[1] See Exhibit 1, Judicial Council Press Release dated November 2, 2022, entitled "There is a Court Reporter Shortage Crisis in California," and Exhibit 2, Judicial Council Fact Sheet: Shortage of Certified Shorthand Reporters in California, dated January 2024. These exhibits, as well as all those attached to and incorporated herein are true and correct copies of the original documents maintained by the Court.

recording ("ER") to create a verbatim record of proceedings; ER is only permissible in misdemeanor, infraction, and limited civil cases and for the purpose of monitoring the performance of "subordinate judicial officers" such as court commissioners.

12. As a public officer dedicated to securing justice and access to justice for the residents of Alameda County and other users of our Court, Government Code section 69957's prohibition against using ER in unlimited civil, family and probate cases is intolerable.

The Court Is Unable to Assign Employee Court Reporters to Mandated Courtrooms

13. Under current law, the Court is mandated to staff courtrooms with court reporters for certain criminal, juvenile justice, juvenile dependency, and other proceedings, including when requested by an indigent party with an approved fee waiver pursuant to *Jameson v. Desta* (2018) 5 Cal.5th 594 (*Jameson*). However, if all of the Court's reporters go on strike or participate in some other work stoppage—and if ACOCRA continues to refuse to enter into a line pass agreement—then the Court will be unable to assign employee court reporters to the departments that hear felony criminal, juvenile, LPS (involuntary commitments), contempt and fee waiver matters. Section 69957's prohibition against using ER in these cases – when the Court has made every attempt within its means to find a reporter – is also intolerable.

THE PLEA TO THE LEGISLATURE TO ADDRESS THE CRISIS

14. In years past, and again in 2023 and throughout 2024, multiple presiding judges and court executive officers of the Superior Courts, the Judicial Council of California, bar groups representing lawyers for the particularly vulnerable litigants in family law proceedings, and members of the public implored the Legislature to amend section 69957 to permit ER in additional court proceedings to address this crisis.[2] Those joining the Superior Courts and Judicial Council of California in urging the Legislature to amend the law to permit ER to address the crisis through written or oral testimony include:

- Disability Rights Education and Defense Fund
- Elder Law and Disability Rights Center
- Empower Yolo

[2] See Exhibit 3, Letters of Support for SB 662, attached to the Declaration of David W. Slayton, Los Angeles County Superior Court Executive Officer and Clerk of Court.

- Family Violence Appellate Project
- Family Violence Law Center
- Healthy Alternatives to Violent Environments
- Impact Fund
- Inner City Law Center
- Legal Aid Association of California
- Legal Aid of Marin
- Legal Aid Society of San Diego
- Legal Assistance to the Elderly
- Legal Services for Prisoners with Children
- Legislative Coalition to Prevent Child Abuse
- Lumina Alliance
- McGeorge School of Law Community Legal Services
- Mothers of Lost Children
- National Health Law Program
- Neighborhood Legal Services of Los Angeles County
- Next Door Solutions to Domestic Violence
- One Justice
- The People Concern
- Western Center of Law & Poverty
- Los Angeles County Bar Association
- California Lawyers Association
- Legal Aid Foundation of Los Angeles
- Public Counsel
- Bet Tzedek Legal Services
- Community Legal Aid SoCal
- Harriett Buhai Center for Family Law
- Levitt Quinn Family Law Center
- Los Angeles Center for Law and Justice
- Los Angeles Dependency Lawyers, Inc.
- Dependency Legal Services of San Diego
- Asian Americans Advancing Justice Southern California
- Consumer Attorneys Association of Los Angeles
- Association of Southern California Defense Counsel
- Mexican American Bar Association
- Women Lawyers Association of Los Angeles
- Asian Pacific American Bar Association of Los Angeles County
- Beverly Hills Bar Association
- Southern California Chinese Lawyers Association
- Korean American Bar Association of Southern California
- Japanese American Bar Association
- Arab American Lawyers Association of Southern California
- Irish American Bar Association – Los Angeles
- Philippine American Bar Association
- Italian American Bar Association
- Black Women Lawyers Association of Los Angeles

- South Bay Bar Association
- Asian Pacific American Women Lawyers Association
- Latina Lawyers Bar Association
- A Window Between Worlds
- Advocates for Child Empowerment and Safety
- Asian Americans for Community Involvement
- Asian Women's Shelter
- Boucher LLP
- California Advocates for Nursing Home Reform
- California Defense Counsel
- California Judges Association
- California Partnership to End Domestic Violence
- California Protective Parents Association
- California Women's Law Center
- Central California Family Crisis Center, Inc.
- Centro Legal de la Raza
- Disability Rights California

15. In 2023, California State Senator Susan Rubio introduced SB 662 which, if enacted, would have expanded the use of ER from limited civil, misdemeanor and infraction matters to other proceedings for the purpose of creating a verbatim record if and when a court-employed court reporter was unavailable.[3] But on January 18, 2024, the California Legislature failed to advance SB 662.[4]

16. On March 5, 2024, the California Legislative Analyst's Office produced a 23-page report to Senator Thomas Umberg, Chair of the Senate Judiciary Committee, examining "the current and future availability of court reporters in the trial courts." Among the LAO's conclusions are: "records of court proceedings are important for Due Process"; the number of licensed court reporters has steadily declined since at least 2009; "many existing court reporters could be approaching retirement"; the "actual number of court reporters [is] less than [the] need identified by the Judicial Branch"; in a survey of trial courts, "nearly all trial courts . . . reported a marked increase in the number of court reporter FTE vacancies they are experiencing"; "departures [are] not offset despite increased hiring"; court reporter licensees have a "perception

[3] See Exhibit 4, text of SB 662.

[4] See Exhibit 5, a news article dated January 19, 2024, entitled "Bill to Allow Electronic Recording in Civil Cases Dies in California Legislature." I reviewed this article and caused a true and correct copy of it to be created as an exhibit on or around the date of this declaration.

of higher compensation in [the] private sector" and a "perception of better working conditions in [the] private sector"; that 37% of the full-time equivalent court reporter positions needed statewide where electronic recording is not authorized, as estimated by the Judicial Branch, is not filled; and that "the Legislature will need to decide what methods of making an official record should be permissible. This includes whether a record can be made by electronic recording. . ."[5]

17. In its last session. the California Legislature entered its final recess before adjournment on August 31, 2024, without passing a bill that would permit the use of ER to capture the verbatim record when a court reporter is not available.[6] Thus at this time there is no legislative solution to address this crisis for the foreseeable future.

CONFRONTING THE CONSTITUTIONAL CRISIS

18. Each day, the Court's judicial officers and staff strive to meet the goals of the Court's mission statement: *The Court shall fairly and efficiently resolve disputes arising under the law and shall apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States. The employees of the Court shall strive for service excellence and, through their dedication and professionalism, implement the policies and procedures established by the judiciary and legislature. The judges and employees are committed to ensuring equal access to court services and enhancing public confidence in the court system.* Our judicial officers' commitment to equal access to justice is encompassed within the oaths each has taken to support and defend the Constitutions of the United States of America and the State of California. I have an obligation to provide resources to permit judges in the Court to carry out their constitutional obligations; however, I am unable provide court reporters to ensure that a verbatim record is captured in all court proceedings. Our judicial officers and I recognize that the Court's inability to assign court

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[5] See Exhibit 6, California Legislative Analyst's Office Report to Senator Thomas J. Umberg regarding the current and future availability of court reporters, dated March 5, 2024.

[6] Pursuant to Rule 51(b)(3) of the Joint Rules of the Senate and Assembly for the 2023-24 Regular Session, "[t]he Legislature shall be in recess on September 1 until adjournment *sine die* on November 30." (Joint Rules, Rule 51(b)(3), Senate Concurrent Resolution No. 1 (2023-34 Reg. Sess.).)

reporters and use ER due to the limitations of section 69957 represent a profound denial of equal access to justice.

25. While many hearings per year in our Court are now conducted with no verbatim record of proceedings, section 69957 currently permits ER in proceedings to create a verbatim record in infraction, criminal misdemeanors and limited civil proceedings. The Court successfully used transcripts derived from ER as the appellate record in numerous proceedings in 2024 in the Court's Appellate Division. Based on the number of appeals successfully handled by the Court's Appellate Division and the experience of the Court in utilizing ER for that purpose, it is my opinion that ER-created transcripts allow for appellate review of a verbatim record.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 19th day of February, 2025, at Oakland, California.

CHAD FINKE
Court Executive Officer/
Clerk of Court