



# ASK DRA CODE BOOK

## LAWS AND AUTHORITIES RELATING TO THE PRACTICE OF COURT REPORTING IN CALIFORNIA

FEBRUARY 2014



DEPOSITION  
REPORTERS ASSOCIATION  
— OF CALIFORNIA, INC. —

## An Introductory Note from Your DRA

Dear Treasured DRA Member:

**W**ith our friends and families baffled about what we do for a living, with lawyers too frequently taking what we do for granted, and with elected officials periodically trying to replace us with machines – as if training, ethics, and judgment played no role in our daily jobs – it is easy to forget our critical place in the legal profession.

We are officers of the court. Even when we are working in a private deposition, we are extensions of the judiciary ensuring that important legal proceedings affecting the lives and treasures of our citizens are handled fairly, impartially, and accurately, with an eye toward ensuring justice.

As a benefit of your membership, you will find here those laws and authorities relating to our honored profession.

While DRA will strive every so often to update this document, you are still obligated as a licensee to ensure your knowledge of laws is current. This should not become a static document, circulated throughout the industry as if the laws and authorities reflected in it never change, but rather a helpful reference for you as a dedicated professional.

All the best to you and know that every hour of every day, DRA is thinking about you, fighting for you, working to make your professional life better, for you, your families, our profession, and the cause of fair and impartial justice.

Sincerely,

DRA Board, February 2014  
[www.caldra.org](http://www.caldra.org)

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## **Business & Professions Code Sections Related to the Regulation of All Professions Covered by That Code, Including Court Reporting**

### **2.**

The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.

### **3.**

All persons who, at the time this code goes into effect, hold office under any of the acts repealed by this code, which offices are continued by this code, shall continue to hold the same according to the former tenure thereof.

### **5.**

No rights given by any license or certificate under any act repealed by this code are affected by the enactment of this code or by such repeal, but such rights shall hereafter be exercised according to the provisions of this code.

### **6.**

All persons who, at the time this code goes into effect, are entitled to a certificate under any act repealed by this code, are thereby entitled to a certificate under the provisions of this code so far as the provisions of this code are applicable.

### **7.**

Any conviction for a crime under any act repealed by this code, which crime is continued as a public offense by this code, constitutes a conviction under this code for any purpose for which it constituted a conviction under the act repealed.

### **7.5.**

A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

**8.**

Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the construction of this code.

**9.**

Division, part, chapter, article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this code.

**10.**

Whenever, by the provisions of this code, a power is granted to a public officer or a duty imposed upon such an officer, the power may be exercised or duty performed by a deputy of the officer or by a person authorized pursuant to law by the officer, unless it is expressly otherwise provided.

**11.**

Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, or record is required by this code, it shall be made in writing in the English language unless it is otherwise expressly provided.

**12.**

Whenever any reference is made to any portion of this code or of any other law of this State, such reference shall apply to all amendments and additions thereto now or hereafter made.

**12.5.**

Whenever in any provision of this code authority is granted to issue a citation for a violation of any provision of this code, that authority also includes the authority to issue a citation for the violation of any regulation adopted pursuant to any provision of this code.

**14.**

The present tense includes the past and future tenses; and the future, the present. Each gender includes the other two genders.

**14.1.**

The Legislature hereby declares its intent that the terms “man” or “men” where appropriate shall be deemed “person” or “persons” and any references to the terms “man” or “men” in sections of this code be changed to “person” or “persons” when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law.

**15.**

“Section” means a section of this code unless some other statute is specifically mentioned. “Subdivision” means a subdivision of the section in which that term occurs, unless some other section is expressly mentioned.

**16.**

The singular number includes the plural, and the plural the singular.

**17.**

“County” includes city and county.

**18.**

“City” includes city and county.

**19.**

“Shall” is mandatory and “may” is permissive.

**20.**

“Oath” includes affirmation.

**21.**

“State” means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

**22.**

“Board,” as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

**23.**

“Department,” unless otherwise defined, refers to the Department of Consumer Affairs.

Wherever the laws of this state refer to the Department of Professional and Vocational Standards, the reference shall be construed to be to the Department of Consumer Affairs

**23.5.**

“Director,” unless otherwise defined, refers to the Director of Consumer Affairs.

Wherever the laws of this state refer to the Director of Professional and Vocational Standards, the reference shall be construed to be to the Director of Consumer Affairs.

**23.6.**

“Appointing power,” unless otherwise defined, refers to the Director of Consumer Affairs.

**23.7.**

Unless otherwise expressly provided, “license” means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

**23.8.**

“Licentiate” means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

**29.5.**

In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 17520 of the Family Code.

**30.**

(a) Notwithstanding any other law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or a renewal.

- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or a renewal.
- (e) For the purposes of this section:
  - (1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
  - (2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
  - (3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Bureau of Real Estate.
- (f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.
- (g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.
- (h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.
- (i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).
- (j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.
- (k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a)

may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall at the time of issuance of the license require that each licensee provide the social security number of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, "licensee" means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Bureau of Real Estate, and the Department of Motor Vehicles.

### **31.**

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Bureau of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

(d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.

(e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay his or her state tax obligation and that his or her license may be suspended if the state tax obligation is not paid.

(f) For purposes of this section, "tax obligation" means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

### **35.**

It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and

regulations of boards provided for in this code shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated. These rules and regulations shall also specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. Each board shall perform the duties required by this section within existing budgetary resources of the agency within which the board operates.

**100.**

There is in the state government, in the Business, Consumer Services, and Housing Agency, a Department of Consumer Affairs.

**101.**

The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The State Board of Guide Dogs for the Blind.
- (r) The Bureau of Security and Investigative Services.

- (s) The Court Reporters Board of California.
- (t) The Board of Vocational Nursing and Psychiatric Technicians.
- (u) The Landscape Architects Technical Committee.
- (v) The Division of Investigation.
- (w) The Bureau of Automotive Repair.
- (x) The Respiratory Care Board of California.
- (y) The Acupuncture Board.
- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.
- (ao) Any other boards, offices, or officers subject to its jurisdiction by law.

**101.6.**

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications

necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

#### **101.7.**

(a) Notwithstanding any other provision of law, boards shall meet at least three times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its licensees.

(b) The director at his or her discretion may exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least three times in a calendar year.

(c) The director may call for a special meeting of the board when a board is not fulfilling its duties.

#### **102.**

Upon the request of any board regulating, licensing, or controlling any professional or vocational occupation created by an initiative act, the Director of Consumer Affairs may take over the duties of the board under the same conditions and in the same manner as provided in this code for other boards of like character. Such boards shall pay a proportionate cost of the administration of the department on the same basis as is charged other boards included within the department. Upon request from any such board which has adopted the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code as rules of procedure in proceedings before it, the director shall assign hearing officers for such proceedings in accordance with Section 110.5.

#### **102.3.**

(a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board, as defined in Section 477, which became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.

(b) (1) Where, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as

directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.

(2) Where the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.

(3) The entity shall not delegate to a technical committee its authority to discipline a licentiate who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.

(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until such time as the licensing program administered by the technical committee has undergone a review by the Joint Committee on Boards, Commissions, and Consumer Protection to evaluate and determine whether the licensing program has demonstrated a public need for its continued existence. Thereafter, at the director's discretion, the interagency agreement may be renewed.

### **103.**

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

**105.**

Members of boards in the department shall take an oath of office as provided in the Constitution and the Government Code.

**105.5.**

Notwithstanding any other provision of this code, each member of a board, commission, examining committee, or other similarly constituted agency within the department shall hold office until the appointment and qualification of his successor or until one year shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

**106.**

The Governor has power to remove from office at any time, any member of any board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on him by any other provision of law, to remove any member of any board.

**106.5.**

Notwithstanding any other provision of law, the Governor may remove from office a member of a board or other licensing entity in the department if it is shown that such member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question or questions in advance of or during the examination to any applicant for that examination.

The proceedings for removal shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the Governor shall have all the powers granted therein.

**107.**

Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Human Resources pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

**107.5.**

If any board in the department uses an official seal pursuant to any provision of this code, the seal shall contain the words "State of California" and "Department of Consumer Affairs" in addition to the title of the board, and shall be in a form approved by the director.

**108.**

Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.

**108.5.**

In any investigation, proceeding or hearing which any board, commission or officer in the department is empowered to institute, conduct, or hold, any witness appearing at such investigation, proceeding or hearing whether upon a subpoena or voluntarily, may be paid the sum of twelve dollars (\$12) per day for every day in actual attendance at such investigation, proceeding or hearing and for his actual, necessary and reasonable expenses and such sums shall be a legal charge against the funds of the respective board, commission or officer; provided further, that no witness appearing other than at the instance of the board, commission or officer may be compensated out of such fund.

The board, commission or officer will determine the sums due any such witness and enter the amount on its minutes.

**109.**

(a) The decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are not subject to review by the director, but are final within the limits provided by this code which are applicable to the particular board, except as provided in this section.

(b) The director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of an examination which is administered by a board, or in the review of qualifications which are a part of the licensing process of any board. A request for investigation shall be made by the director to the Division of Investigation through the chief of the division or to any law enforcement agency in the jurisdiction where the alleged misconduct occurred.

(c) The director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law.

The term "intervene," as used in paragraph (c) of this section may include, but is not limited to, an application for a restraining order or injunctive relief as specified in Section 123.5, or a referral or request for criminal prosecution. For purposes of this section, the director shall be deemed to have standing under

Section 123.5 and shall seek representation of the Attorney General, or other appropriate counsel in the event of a conflict in pursuing that action.

**110.**

The department shall have possession and control of all records, books, papers, offices, equipment, supplies, funds, appropriations, land and other property—real or personal—now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the state, is vested in the State of California to be held in the possession of the department. Except as authorized by a board, the department shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations.

**111.**

Unless otherwise expressly provided, any board may, with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board but he shall have the same qualifications as one and shall be subject to the same rules.

**112.**

Notwithstanding any other provision of this code, no agency in the department, with the exception of the Board for Professional Engineers and Land Surveyors, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, the agency shall cooperate with the director in determining its form and content, the time and frequency of its publication, the persons to whom it is to be sold or otherwise distributed, and its price if it is sold. Any agency that requires the approval of the director for the compilation, publication, or distribution of a directory, under the law in effect at the time the amendment made to this section at the 1970 Regular Session of the Legislature becomes effective, shall continue to require that approval. As used in this section, “directory” means a directory, roster, register, or similar compilation of the names of persons who hold a license, certificate, permit, registration, or similar indicia of authority from the agency.

**113.**

Upon recommendation of the director, officers, and employees of the department, and the officers, members, and employees of the boards, committees, and commissions comprising it or subject to its jurisdiction may confer, in this state or elsewhere, with officers or employees of this state, its political subdivisions, other states, or the United States, or with other persons, associations, or organizations as may be of assistance to the department, board, committee, or commission in the conduct of its work. The officers, members, and employees shall be entitled to their actual traveling

expenses incurred in pursuance hereof, but when these expenses are incurred with respect to travel outside of the state, they shall be subject to the approval of the Governor and the Director of Finance.

**114.**

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate his or her license or registration without examination or penalty, provided that all of the following requirements are satisfied:

(1) His or her license or registration was valid at the time he or she entered the California National Guard or the United States Armed Forces.

(2) The application for reinstatement is made while serving in the California National Guard or the United States Armed Forces, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) If application for reinstatement is filed and the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, then the licensing agency may require the applicant to pass an examination.

(d) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this state the profession or vocation for which he or she is licensed or registered shall be required to maintain his or her license in good standing even though he or she is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he or she is prevented from practicing his or her profession or vocation shall be excluded from said period of one year.

**114.3.**

(a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing

education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

- (1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.
  - (2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.
  - (3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.
- (b) (1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.
- (2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.
- (c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.
- (d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.
- (e) A board may adopt regulations to carry out the provisions of this section.
- (f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

#### **114.5.**

Commencing January 1, 2015, each board shall inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

#### **115.**

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

#### **115.5.**

(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

(b) A board may adopt regulations necessary to administer this section.

**116.**

(a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually, commencing March 1, 1995, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

**118.**

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

**119.**

Any person who does any of the following is guilty of a misdemeanor:

- (a) Displays or causes or permits to be displayed or has in his or her possession either of the following:
  - (1) A canceled, revoked, suspended, or fraudulently altered license.
  - (2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.
- (b) Lends his or her license to any other person or knowingly permits the use thereof by another.
- (c) Displays or represents any license not issued to him or her as being his or her license.
- (d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.
- (e) Knowingly permits any unlawful use of a license issued to him or her.
- (f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.
- (g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

**121.**

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession

regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

**121.5.**

Except as otherwise provided in this code, the application of delinquency fees or accrued and unpaid renewal fees for the renewal of expired licenses or registrations shall not apply to licenses or registrations that have lawfully been designated as inactive or retired.

**122.**

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

**123.**

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

#### **123.5.**

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

#### **124.**

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

#### **125.**

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows his or her license to be used by that person.

(b) Acts as his or her agent or partner.

**125.3.**

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

### **125.3.**

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

#### **125.5.**

(a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or

enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

#### **125.6.**

(a) (1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b) (1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c) (1) “Applicant,” as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) “License,” as used in this section, includes “certificate,” “permit,” “authority,” and “registration” or any other indicia giving authorization to engage in a business or profession regulated by this code.

#### **125.7.**

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State Department of Health Services, with that department pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges

available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

#### **125.8.**

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.

(b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation

shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

#### **125.9.**

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged.

Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

#### **127.**

Notwithstanding any other provision of this code, the director may require such reports from any board, commission, examining committee, or other similarly constituted agency within the department as he deems reasonably necessary on any phase of their operations.

#### **128.**

Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars (\$100).

For the purposes of this section, "person" includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section, "license" includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars (\$1,000) and by imprisonment in the county jail not exceeding six months.

**128.5.**

(a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Sciences, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

**129.**

(a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint.

Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board's functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

**130.**

(a) Notwithstanding any other law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

- (1) The Medical Board of California.
- (2) The California Board of Podiatric Medicine.
- (3) The Physical Therapy Board of California.
- (4) The Board of Registered Nursing, except as provided in subdivision (c) of Section 2703.
- (5) The Board of Vocational Nursing and Psychiatric Technicians.
- (6) The State Board of Optometry.
- (7) The California State Board of Pharmacy.
- (8) The Veterinary Medical Board.
- (9) The California Architects Board.
- (10) The Landscape Architect Technical Committee.
- (11) The Board for Professional Engineers and Land Surveyors.
- (12) The Contractors' State License Board.
- (13) The State Board of Guide Dogs for the Blind.
- (14) The Board of Behavioral Sciences.
- (15) The Court Reporters Board of California.
- (16) The State Athletic Commission.

(17) The Osteopathic Medical Board of California.

(18) The Respiratory Care Board of California.

(19) The Acupuncture Board.

(20) The Board of Psychology.

(21) The Structural Pest Control Board.

**131.**

Notwithstanding any other provision of law, no member of an agency designated in subdivision (b) of Section 130 or member of a board, commission, committee, or similarly constituted agency in the department shall serve more than two consecutive full terms.

**132.**

No board, commission, examining committee, or any other agency within the department may institute or join any legal action against any other agency within the state or federal government without the permission of the director.

Prior to instituting or joining in a legal action against an agency of the state or federal government, a board, commission, examining committee, or any other agency within the department shall present a written request to the director to do so.

Within 30 days of receipt of the request, the director shall communicate his or her approval or denial of the request and his or her reasons for approval or denial to the requesting agency in writing. If the director does not act within 30 days, the request shall be deemed approved.

A requesting agency within the department may override the director's denial of its request to institute or join a legal action against a state or federal agency by a two-thirds vote of the members of the board, commission, examining committee, or other agency, which vote shall include the vote of at least one public member of that board, commission, examining committee, or other agency.

**134.**

When the term of any license issued by any agency in the department exceeds one year, initial license fees for licenses which are issued during a current license term shall be prorated on a yearly basis.

**135.**

No agency in the department shall, on the basis of an applicant's failure to successfully complete prior examinations, impose any additional limitations, restrictions, prerequisites, or requirements on any applicant who wishes to participate in subsequent examinations except that any examining agency which allows an applicant conditional credit for successfully completing a divisible part of an examination may require that an applicant be reexamined

in those parts successfully completed if such applicant has not successfully completed all parts of the examination within a required period of time established by the examining agency. Nothing in this section, however, requires the exemption of such applicant from the regular fees and requirements normally associated with examinations.

**136.**

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

**137.**

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

**138.**

Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

**139.**

(a) The Legislature finds and declares that occupational analyses and examination validation studies are fundamental components of licensure programs. It is the intent of the Legislature that the policy developed by the department pursuant to subdivision (b) be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of these boards, programs, and bureaus.

(b) Notwithstanding any other provision of law, the department shall develop, in consultation with the boards, programs, bureaus, and divisions under its jurisdiction, and the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners, a policy regarding examination development and validation, and occupational analysis. The department shall finalize and distribute this policy by September 30, 1999, to each of the boards, programs, bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

- (1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.
  - (2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.
  - (3) Standards for review of state and national examinations.
  - (4) Setting of passing standards.
  - (5) Appropriate funding sources for examination validations and occupational analyses.
  - (6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.
  - (7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.
  - (8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.
- (c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be

revised and a new evaluation submitted to the director whenever, in the judgment of the board, program, or bureau, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(d) The evaluation may be conducted by the board, program, or bureau, the Office of Professional Examination Services of the department, the Osteopathic Medical Board of California, or the State Board of Chiropractic Examiners or pursuant to a contract with a qualified private testing firm. A board, program, or bureau that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity. The department shall compile this information, along with a schedule specifying when examination validations and occupational analyses shall be performed, and submit it to the appropriate fiscal, policy, and sunset review committees of the Legislature by September 30 of each year. It is the intent of the Legislature that the method specified in this report be consistent with the policy developed by the department pursuant to subdivision (b).

**140.**

Any board, as defined in Section 22, which is authorized under this code to take disciplinary action against a person who holds a license may take disciplinary action upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action. In any action brought and sustained by the board which involves a violation of this section and any regulation adopted thereto, the board may assess the licensee with the actual investigative costs incurred, not to exceed two thousand five hundred dollars (\$2,500). Failure to pay those costs may result in revocation of the license. Any moneys collected pursuant to this section shall be deposited in the respective fund of the board.

**141.**

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

**142.**

This section shall apply to the bureaus and programs under the direct authority of the director, and to any board that, with the prior approval of the director, elects to have the department administer one or more of the licensing services set forth in this section.

(a) Notwithstanding any other provision of law, each bureau and program may synchronize the renewal dates of licenses granted to applicants with more than one license issued by the bureau or program. To the extent practicable, fees shall be prorated or adjusted so that no applicant shall be required to pay a greater or lesser fee than he or she would have been required to pay if the change in renewal dates had not occurred.

(b) Notwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.

(c) Notwithstanding any other provision of law, a delinquency, penalty, or late fee shall be assessed if the renewal fee is not postmarked by the renewal expiration date.

**143.**

(a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

(b) The judicial doctrine of substantial compliance shall not apply to this section.

(c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

**143.5.**

(a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires

the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

(b) Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

(c) As used in this section, “board” shall have the same meaning as defined in Section 22, and “licensee” means a person who has been granted a license, as that term is defined in Section 23.7.

(d) Notwithstanding any other law, upon granting a petition filed by a licensee or authorized agent of a licensee pursuant to Section 11340.6 of the Government Code, a board, bureau, or program within the Department of Consumer Affairs may, based upon evidence and legal authorities cited in the petition, adopt a regulation that does both of the following:

(1) Identifies a code section or jury instruction in a civil cause of action that has no relevance to the board’s, bureau’s, or program’s enforcement responsibilities such that an agreement to settle such a cause of action based on that code section or jury instruction otherwise prohibited under subdivision (a) will not impair the board’s, bureau’s, or program’s duty to protect the public.

(2) Exempts agreements to settle such a cause of action from the requirements of subdivision (a).

(e) This section shall not apply to a licensee subject to Section 2220.7.

#### **144.**

(a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

- (3) Board of Behavioral Sciences.
  - (4) Court Reporters Board of California.
  - (5) State Board of Guide Dogs for the Blind.
  - (6) California State Board of Pharmacy.
  - (7) Board of Registered Nursing.
  - (8) Veterinary Medical Board.
  - (9) Board of Vocational Nursing and Psychiatric Technicians.
  - (10) Respiratory Care Board of California.
  - (11) Physical Therapy Board of California.
  - (12) Physician Assistant Committee of the Medical Board of California.
  - (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
  - (14) Medical Board of California.
  - (15) State Board of Optometry.
  - (16) Acupuncture Board.
  - (17) Cemetery and Funeral Bureau.
  - (18) Bureau of Security and Investigative Services.
  - (19) Division of Investigation.
  - (20) Board of Psychology.
  - (21) California Board of Occupational Therapy.
  - (22) Structural Pest Control Board.
  - (23) Contractors' State License Board.
  - (24) Naturopathic Medicine Committee.
  - (25) Professional Fiduciaries Bureau.
  - (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

**144.5.**

Notwithstanding any other law, a board described in Section 144 may request, and is authorized to receive, from a local or state agency certified records of

all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. A local or state agency may provide those records to the board upon request.

**145.**

The Legislature finds and declares that:

(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California.

(b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.

(c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

**146.**

(a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Sections 2052 and 2054.

(2) Section 2630.

(3) Section 2903.

(4) Section 3660.

- (5) Sections 3760 and 3761.
- (6) Section 4080.
- (7) Section 4825.
- (8) Section 4935.
- (9) Section 4980.
- (10) Section 4996.
- (11) Section 5536.
- (12) Section 6704.
- (13) Section 6980.10.
- (14) Section 7317.
- (15) Section 7502 or 7592.
- (16) Section 7520.
- (17) Section 7617 or 7641.
- (18) Subdivision (a) of Section 7872.
- (19) Section 8016.
- (20) Section 8505.
- (21) Section 8725.
- (22) Section 9681.
- (23) Section 9840.
- (24) Subdivision (c) of Section 9891.24.
- (25) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

**147.**

(a) Any employee designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Employees so designated are not peace officers and are not entitled to safety member retirement

benefits, as a result of such designation. The employee's authority is limited to the issuance of written notices to appear for infraction violations of provisions of this code and only when the violation is committed in the presence of the employee.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the person, at the time of such arrest, had reasonable cause to believe was lawful.

**148.**

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

**150.**

The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs.

**151.**

The director is appointed by the Governor and holds office at the Governor's pleasure. The director shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, and his or her necessary traveling expenses.

**152.**

For the purpose of administration, the reregistration and clerical work of the department is organized by the director, subject to the approval of the Governor, in such manner as he deems necessary properly to segregate and conduct the work of the department.

**152.5.**

For purposes of distributing the reregistration work of the department uniformly throughout the year as nearly as practicable, the boards in the department may, with the approval of the director, extend by not more than six months the date fixed by law for the renewal of any license, certificate or

permit issued by them, except that in such event any renewal fee which may be involved shall be prorated in such manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

**152.6.**

Notwithstanding any other provision of this code, each board within the department shall, in cooperation with the director, establish such license periods and renewal dates for all licenses in such manner as best to distribute the renewal work of all boards throughout each year and permit the most efficient, and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in such manner that no person shall be required to pay a greater or lesser fee than he would have been required to pay if the change in license periods or renewal dates had not occurred.

As used in this section "license" includes "certificate," "permit," "authority," "registration," and similar indicia of authority to engage in a business or profession, and "board" includes "board," "commission," "committee," and an individual who is authorized to renew a license.

**153.**

The director may investigate the work of the several boards in his department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees, other than examination questions prior to submission to applicants at scheduled examinations.

**153.5.**

In the event that a newly authorized board replaces an existing or a previous board, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

**154.**

Any and all matters relating to employment, tenure or discipline of employees of any board, agency or commission, shall be initiated by said board, agency or commission, but all such actions shall, before reference to the State Personnel Board, receive the approval of the appointing power.

To effect the purposes of Division 1 of this code and each agency of the department, employment of all personnel shall be in accord with Article XXIV of the Constitution, the law and rules and regulations of the State Personnel Board. Each board, agency or commission, shall select its employees from a list of eligibles obtained by the appointing power from the State Personnel Board. The person selected by the board, agency or commission to fill any

position or vacancy shall thereafter be reported by the board, agency or commission, to the appointing power.

**154.5.**

If a person, not a regular employee of a board under this code, including the Board of Chiropractic Examiners and the Osteopathic Medical Board of California, is hired or under contract to provide expertise to the board in the evaluation of an applicant or the conduct of a licensee, and that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against the person. The Attorney General shall be utilized in the action and his or her services shall be a charge against the board.

**155.**

(a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

**156.**

(a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination purposes which include provisions which hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

**156.1.**

(a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under the terms of Section 8546.7 of the Government Code.

**157.**

Expenses incurred by any board or on behalf of any board in any criminal prosecution or unprofessional conduct proceeding constitute proper charges against the funds of the board.

**158.**

With the approval of the Director of Consumer Affairs, the boards and commissions comprising the department or subject to its jurisdiction may make refunds to applicants who are found ineligible to take the examinations or whose credentials are insufficient to entitle them to certificates or licenses.

Notwithstanding any other provision of law any application fees, license fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded. Claims authorized by the department shall be filed with the State Controller, and the Controller shall draw his warrant against the fund of the agency in payment of such refund.

**159.**

The members and the executive officer of each board, agency, bureau, division, or commission have power to administer oaths and affirmations in the performance of any business of the board, and to certify to official acts.

**159.5.**

(a) (1) There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division.

(2) Except as provided in Section 160, investigators who have the authority of peace officers, as specified in subdivision (a) of Section 160 and in subdivision (a) of Section 830.3 of the Penal Code, shall be in the division and shall be appointed by the director.

(b) (1) There is in the Division of Investigation the Health Quality Investigation Unit. The primary responsibility of the unit is to investigate violations of law or regulation within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Osteopathic Medical Board of California, the Physician Assistant Board, or any entities under the jurisdiction of the Medical Board of California.

(2) The Medical Board of California shall not be charged an hourly rate for the performance of investigations by the unit.

(3) This subdivision shall become operative on July 1, 2014.

**160.**

(a) The chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Dental Board of California have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters set forth in this section.

(b) The Division of Investigation of the department, the Medical Board of California, and the Dental Board of California may employ individuals, who are not peace officers, to provide investigative services.

(c) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or

before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

**161.**

The department, or any board in the department, may sell copies of any part of its respective public records, or compilations, extracts, or summaries of information contained in its public records, at a charge sufficient to pay the actual cost thereof. Such charge, and the conditions under which sales may be made, shall be determined by the director with the approval of the Department of General Services.

**162.**

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

**163.**

Except as otherwise expressly provided by law, the department and each board in the department shall charge a fee of two dollars (\$2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, document or paper.

**163.5.**

Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than one hundred fifty dollars (\$150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

In the event a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars (\$25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars (\$25), the fee so fixed shall be charged.

**164.**

The form and content of any license, certificate, permit, or similar indicia of authority issued by any agency in the department, including any document evidencing renewal of a license, certificate, permit, or similar indicia of authority, shall be determined by the director after consultation with and consideration of the views of the agency concerned.

**165.**

Notwithstanding any other provision of law, no board, bureau, committee, commission, or program in the Department of Consumer Affairs shall submit to the Legislature any fiscal impact analysis relating to legislation pending before the Legislature until the analysis has been submitted to the Director of Consumer Affairs, or his or her designee, for review and comment. The boards, bureaus, committees, commissions, and programs shall include the comments of the director when submitting any fiscal impact analysis to the Legislature. This section shall not be construed to prohibit boards, bureaus, committees, commissions, and programs from responding to direct requests for fiscal data from Members of the Legislature or their staffs. In those instances it shall be the responsibility of boards, bureaus, committees, commissions, and programs to also transmit that information to the director, or his or her designee, within five working days.

**166.**

The director shall, by regulation, develop guidelines to prescribe components for mandatory continuing education programs administered by any board within the department.

(a) The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. The guidelines shall require mandatory continuing education programs to address, at least, the following:

- (1) Course validity.
- (2) Occupational relevancy.
- (3) Effective presentation.
- (4) Actual attendance.
- (5) Material assimilation.
- (6) Potential for application.

(b) The director shall consider educational principles, and the guidelines shall prescribe mandatory continuing education program formats to include, but not be limited to, the following:

- (1) The specified audience.

- (2) Identification of what is to be learned.
- (3) Clear goals and objectives.
- (4) Relevant learning methods (participatory, hands-on, or clinical setting).
- (5) Evaluation, focused on the learner and the assessment of the intended learning outcomes (goals and objectives).
- (c) Any board within the department that, after January 1, 1993, proposes a mandatory continuing education program for its licensees shall submit the proposed program to the director for review to assure that the program contains all the elements set forth in this section and complies with the guidelines developed by the director.
- (d) Any board administering a mandatory continuing education program that proposes to amend its current program shall do so in a manner consistent with this section.
- (e) Any board currently administering a mandatory continuing education program shall review the components and requirements of the program to determine the extent to which they are consistent with the guidelines developed under this section. The board shall submit a report of their findings to the director. The report shall identify the similarities and differences of its mandatory continuing education program. The report shall include any board-specific needs to explain the variation from the director's guidelines.
- (f) Any board administering a mandatory continuing education program, when accepting hours for credit which are obtained out of state, shall ensure that the course for which credit is given is administered in accordance with the guidelines addressed in subdivision (a).
- (g) Nothing in this section or in the guidelines adopted by the director shall be construed to repeal any requirements for continuing education programs set forth in any other provision of this code.

### **301.**

It is the intent of the Legislature and the purpose of this chapter to promote and protect the interests of the people as consumers. The Legislature finds that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free enterprise market economy. The Legislature declares that government advances the interests of consumers by facilitating the proper functioning of the free enterprise market economy through (a) educating and informing the consumer to insure rational consumer choice in the marketplace; (b) protecting the consumer from the sale of goods and services through the use of deceptive methods, acts, or practices which are inimical to the general welfare of consumers; (c) fostering competition; and (d) promoting effective representation of consumers' interests in all branches and levels of government.

**302.**

As used in this chapter, the following terms have the following meanings:

- (a) “Department” means the Department of Consumer Affairs.
- (b) “Director” means the Director of the Department of Consumer Affairs.
- (c) “Consumer” means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.
- (d) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.
- (e) “Individual” does not include a partnership, corporation, association, or other group, however organized.
- (f) “Division” means the Division of Consumer Services.
- (g) “Interests of consumers” is limited to the cost, quality, purity, safety, durability, performance, effectiveness, dependability, availability, and adequacy of choice of goods and services offered or furnished to consumers and the adequacy and accuracy of information relating to consumer goods, services, money, or credit (including labeling, packaging, and advertising of contents, qualities, and terms of sales).

**303.**

There is in the department a Division of Consumer Services under the supervision and control of a chief. The chief shall be appointed by the Governor and shall serve at his pleasure. His compensation shall be fixed by the director in accordance with law.

**305.**

The director shall administer and enforce the provisions of this chapter. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or the chief of the department’s Division of Consumer Services, subject to such conditions and limitations as the director may prescribe.

**306.**

The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of such clerical or other personnel as may be necessary to carry out the provisions of this chapter. All such personnel shall perform their respective duties under the supervision and the direction of the director.

**307.**

The director may contract for the services of experts and consultants where necessary to carry out the provisions of this chapter and may provide compensation and reimbursement of expenses for such experts and consultants in accordance with state law.

**310.**

The director shall have the following powers and it shall be his duty to:

- (a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.
- (b) Represent the consumer's interests before federal and state legislative hearings and executive commissions.
- (c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.
- (d) Study, investigate, research, and analyze matters affecting the interests of consumers.
- (e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.
- (f) Propose and assist in the creation and development of consumer education programs.
- (g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.
- (h) Advise the Governor and Legislature on all matters affecting the interests of consumers.
- (i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.
- (j) Maintain contact and liaison with consumer groups in California and nationally.

**312.**

The director shall submit to the Governor and the Legislature on or before January 1, 2003, and annually thereafter, a report of programmatic and statistical information regarding the activities of the department and its constituent entities. The report shall include information concerning the director's activities pursuant to Section 326, including the number and general patterns of consumer complaints and the action taken on those complaints.

**313.**

The director shall provide for the establishment of a comprehensive library of books, documents, studies, and other materials relating to consumers and consumer problems.

**313.1.**

(a) Notwithstanding any other provision of law to the contrary, no rule or regulation, except those relating to examinations and qualifications for licensure, and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

(b) The director shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:

(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.

(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.

(3) Final rulemaking records.

(c) The submission of all notices and final rulemaking records to the director and the completion of the director's review, as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the completion of the director's review and only then if the director has not disapproved it. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall have the authority for a period of 30 days to disapprove a proposed rule or regulation on the ground that it is injurious to the public health, safety, or welfare.

(e) Final rulemaking records shall be filed with the director within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-year notice period may be extended, as specified by this subdivision.

(1) In the event that the one-year notice period lapses during the director's 30-day review period, or within 60 days following the notice of the director's disapproval, it may be extended for a maximum of 90 days.

(2) If the director approves the final rulemaking record or declines to take action on it within 30 days, the board, commission, or committee shall have five days from the receipt of the record from the director within which to file it with the Office of Administrative Law.

(3) If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Nothing in this section shall be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

### **313.2.**

The director shall adopt regulations to implement, interpret, and make specific the provisions of the Americans with Disabilities Act (P.L. 101-336), as they relate to the examination process for professional licensing and certification programs under the purview of the department.

The director shall periodically publish a bibliography of consumer information available in the department library and elsewhere. Such bibliography shall be sent to subscribers upon payment of a reasonable fee therefor.

### **320.**

Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court or agency, any matter or proceeding which the director finds may affect substantially the interests of consumers within California, the director, or the Attorney General, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary, for the effective protection of the interests of consumers.

### **321.**

Whenever it appears to the director that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal

proceedings in the appropriate forum to enjoin such acts or practices and may seek other appropriate relief on behalf of such consumers.

**325.**

It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale, and lease of any goods and services undertaken by any person which may endanger the public health, safety, or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

**325.3.**

In addition to the duties prescribed by Section 325, it shall be the duty of the director to receive complaints from consumers concerning services provided by the entities described in paragraph (2) of subdivision (b) of Section 234 of the Public Utilities Code.

**326.**

(a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the local, state or federal agency whose authority provides the most effective means to secure the relief.

The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

(c) If the director receives a complaint or receives information from any source indicating a probable violation of any law, rule, or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he or she considers to be valid to any appropriate law enforcement or regulatory agency and any evidence or information he or she may have concerning the probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

**450.**

In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he

have been within the period of five years immediately preceding his appointment, any of the following:

(a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.

(b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

(c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

#### **450.2.**

In order to avoid a potential for a conflict of interest, a public member of a board shall not:

(a) Be a current or past licensee of that board.

(b) Be a close family member of a licensee of that board.

#### **450.3.**

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

#### **450.5.**

A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

#### **451.**

If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

(a) The actual preparation of, the administration of, and the grading of, examinations.

(b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

**452.**

“Board,” as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

**453.**

Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations necessary to establish this training and orientation program and its content.

**460.**

(a) No city or county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof.

(b) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.

(1) This subdivision shall not be construed to prohibit the enforcement of a local ordinance in effect prior to January 1, 2010, related to any act or procedure that falls within the professionally recognized scope of practice of a healing arts professional licensed under Division 2 (commencing with Section 500).

(2) This subdivision shall not be construed to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for

establishments or businesses of a healing arts professional licensed under Division 2 (commencing with Section 500).

(c) Nothing in this section shall prohibit any city, county, or city and county from levying a business license tax solely for revenue purposes, nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

**461.**

No public agency, state or local, shall, on an initial application form for any license, certificate or registration, ask for or require the applicant to reveal a record of arrest that did not result in a conviction or a plea of nolo contendere. A violation of this section is a misdemeanor.

This section shall apply in the case of any license, certificate or registration provided for by any law of this state or local government, including, but not limited to, this code, the Corporations Code, the Education Code, and the Insurance Code.

**462.**

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions:

(1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.

(3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following:

(A) Pay the renewal fee.

(B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701.

**475.**

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

**476.**

(a) Except as provided in subdivision (b), nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) Section 494.5 shall apply to the licensure of persons authorized to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3, and the licensure or registration of persons pursuant to Chapter 5 (commencing with Section 19800) of Division 8 or pursuant to Division 9 (commencing with Section 23000).

**477.**

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

**478.**

(a) As used in this division, “application” includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, “material” includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

**480.**

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

**481.**

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

**482.**

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

**484.**

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

**485.**

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

- (a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

**486.**

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

**487.**

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

**488.**

Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

(d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

**489.**

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

**490.**

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

**490.5.**

A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.

**491.**

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

**492.**

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

**493.**

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

**494.**

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

- (1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.
- (2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the

conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

#### **494.5.**

(a) (1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's name is included on a certified list.

(2) The Department of Motor Vehicles shall suspend a license if a licensee's name is included on a certified list. Any reference in this section to the issuance, reactivation, reinstatement, renewal, or denial of a license shall not apply to the Department of Motor Vehicles.

(3) The State Bar of California may recommend to refuse to issue, reactivate, reinstate, or renew a license and may recommend to suspend a license if a licensee's name is included on a certified list. The word "may" shall be substituted for the word "shall" relating to the issuance of a temporary license, refusal to issue, reactivate, reinstate, renew, or suspend a license in this section for licenses under the jurisdiction of the California Supreme Court.

(4) The Alcoholic Beverage Control Board may refuse to issue, reactivate, reinstate, or renew a license, and may suspend a license, if a licensee's name is included on a certified list.

(b) For purposes of this section:

(1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.

(2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1

(commencing with Section 12500) of Division 6 of the Vehicle Code. “License” excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.

(3) “Licensee” means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) “State governmental licensing entity” means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. “State governmental licensing entity” shall not include the Contractors’ State License Board.

(c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.

(d) Notwithstanding any other law, each state governmental licensing entity shall collect the social security number or the federal taxpayer identification number from all applicants for the purposes of matching the names of the certified lists provided by the State Board of Equalization and the Franchise Tax Board to applicants and licensees.

(e) (1) Each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.

(2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity’s intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant’s or licensee’s last known mailing address on file with the state governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.

(A) The state governmental licensing entity shall issue a temporary license valid for a period of 90 days to any applicant whose name is on a certified list if the applicant is otherwise eligible for a license.

(B) The 90-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and the term of the temporary license shall coincide with the first 90 days of the regular license term. A license for the full term or the remainder of the license term may be issued or renewed only upon compliance with this section.

(C) In the event that a license is suspended or an application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the state governmental licensing entity.

(f) (1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.

(2) Notwithstanding any other law, if a board, bureau, or commission listed in Section 101, other than the Contractors' State License Board, fails to take action in accordance with this section, the Department of Consumer Affairs shall issue a temporary license or suspend or refuse to issue, reactivate, reinstate, or renew a license, as appropriate.

(g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that upon expiration of that time period, the license will be denied unless the state governmental licensing entity has received a release from the State Board of Equalization or the Franchise Tax Board, whichever is applicable.

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the State Board of Equalization or the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(h) If the applicant or licensee wishes to challenge the submission of his or her name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.

(2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.

(3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. "Financial hardship" means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall

submit any information, including information related to reasonable business and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.

(i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that he or she diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.

(j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state

governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with this subdivision.

(k) The State Board of Equalization and the Franchise Tax Board may enter into interagency agreements with the state governmental licensing entities necessary to implement this section.

(l) Notwithstanding any other law, a state governmental licensing entity, with the approval of the appropriate department director or governing body, may impose a fee on a licensee whose license has been suspended pursuant to this section. The fee shall not exceed the amount necessary for the state governmental licensing entity to cover its costs in carrying out the provisions of this section. Fees imposed pursuant to this section shall be deposited in the fund in which other fees imposed by the state governmental licensing entity are deposited and shall be available to that entity upon appropriation in the annual Budget Act.

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

(n) Any state governmental licensing entity receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or who has been granted a temporary license under this section shall respond that the license was denied or suspended or the temporary license was issued only because the licensee appeared on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Any state governmental licensing entity that discloses on its Internet Web site or other publication that the licensee has had a license denied or suspended under this section or has been granted a temporary license under this section shall prominently disclose, in bold and adjacent to the information regarding the status of the license, that the only reason the license was denied, suspended, or temporarily issued is because the licensee failed to pay taxes.

(o) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the

public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(p) The State Board of Equalization, the Franchise Tax Board, and state governmental licensing entities, as appropriate, shall adopt regulations as necessary to implement this section.

(q) (1) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the State Board of Equalization or the Franchise Tax Board, pursuant to this section, except to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to this section. The release or other use of information received by a state governmental licensing entity pursuant to this section, except as authorized by this section, is punishable as a misdemeanor. This subdivision may not be interpreted to prevent the State Bar of California from filing a request with the Supreme Court of California to suspend a member of the bar pursuant to this section.

(2) A suspension of, or refusal to renew, a license or issuance of a temporary license pursuant to this section does not constitute denial or discipline of a licensee for purposes of any reporting requirements to the National Practitioner Data Bank and shall not be reported to the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank.

(3) Upon release from the certified list, the suspension or revocation of the applicant's or licensee's license shall be purged from the state governmental licensing entity's Internet Web site or other publication within three business days. This paragraph shall not apply to the State Bar of California.

(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

(u) No provision of this section shall be interpreted to allow a court to review and prevent the collection of taxes prior to the payment of those taxes in violation of the California Constitution.

(v) This section shall apply to any licensee whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code on or after July 1, 2012.

**495.**

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproval, public reproval and suspension, or public reproval and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

**496.**

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

**498.**

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

**499.**

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

## **Business & Professions Code Sections Related to Professional Photocopiers**

### **22450.**

A professional photocopier is any person who for compensation obtains or reproduces documents authorized to be produced under Part 2.6 (commencing with Section 56) of Division 1 of, or Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of, the Civil Code, or Section 1158 of, or Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of, the Evidence Code and who, while engaged in performing that activity, has access to the information contained therein. A professional photocopier shall be registered pursuant to this chapter by the county clerk of the county in which he or she resides or has his or her principal place of business, and in which he or she maintains a branch office.

### **22451.**

This chapter does not apply to any of the following:

- (a) Any government employee who is acting in the course of his or her employment.
- (b) A member of the State Bar or his or her employees, agents, or independent contractors.
- (c) Any person who is specially appointed by the court to obtain or reproduce in order to transmit or distribute those records.
- (d) An employee or agent of a person who is registered under this chapter.
- (e) Any custodian of records who makes his or her own copies.
- (f) Any certified shorthand reporter, official court reporter, or stenotype operator who makes his or her own copies.
- (g) Any person licensed under Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code or his or her employees.
- (h) The Office of the Secretary of State.

### **22452.**

(a) The application for registration of a natural person shall contain all of the following statements about the applicant certified to be true:

- (1) Name, age, address, and telephone number.
- (2) He or she has not been convicted of a felony.

(3) He or she will perform his or her duties as a professional photocopier in compliance with the provisions of law governing the transmittal of confidential documentary information in this state.

(b) The application for registration of a partnership or corporation shall contain all of the following statements about each general partner or corporate officer, and be certified to be true:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) The general partners or officers have not been convicted of a felony.

(3) The partnership or corporation will perform its duties as a professional photocopier in compliance with the provisions of law governing the transmittal of confidential documentary information in this state.

(c) The county clerk shall retain the application for registration for a period of three years following the expiration date of the application, after which time the application may be destroyed if it is scanned or if the conditions specified in Section 26205.1 of the Government Code are met. If the application is scanned, the scanned image shall be retained for a period of 10 years, after which time that image may be destroyed and, notwithstanding Section 26205.1 of the Government Code, no reproduction thereof need be made or preserved.

(d) A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this provision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

### **22453.**

An applicant shall pay a fee of one hundred seventy-five dollars (\$175) to the county clerk at the time he or she files an application for registration. An additional fee for each card in an amount sufficient to cover the reasonable regulatory costs associated with the issuance of additional cards, as determined by the county clerk, shall be paid to the county clerk for each additional card of identification.

### **22453.1.**

Notwithstanding Section 22453, any person registered pursuant to Chapter 16 (commencing with Section 22350) shall pay a fee of one hundred dollars (\$100) instead of the fee of one hundred seventy-five dollars (\$175) otherwise required by Section 22453.

**22454.**

At least one person involved in the management of a professional photocopier shall be required to hold a current commission from the Secretary of State as a notary public in this state. If the notary commission is held by someone other than the registrant, written confirmation from the notary authorizing the use of their commission for this registration is required.

**22455.**

(a) A certificate of registration shall be accompanied by a bond of five thousand dollars (\$5,000) which is executed by a corporate surety qualified to do business in this state and conditioned upon compliance with the provisions of this chapter and all laws governing the transmittal of confidential documentary information under the code sections specified in Section 22450. The total aggregate liability on the bond shall be limited to five thousand dollars (\$5,000). The bond may be terminated pursuant to the provisions of Section 995.440 and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure.

(1) The county clerk shall, upon filing the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registered professional photocopier. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(2) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars (\$7).

(3) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for the notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(b) In lieu of the bond required by subdivision (a), a registrant may deposit five thousand dollars (\$5,000) in cash with the county clerk.

(c) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to the provisions of subdivision (d) and the right of a person to recover against the bond or cash deposit under Section 22459.

(d) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years

upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

**22456.**

A certificate of registration shall be effective for a period of two years or until the date the bond expires, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration or a renewal of the certificate of registration and pay the fee required by Section 22453. A certificate of registration may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal shall be effective for a period of two years from the effective date or until the expiration date of the bond, whichever occurs first.

**22457.**

(a) The county clerk shall maintain a register of professional photocopiers, assign a number to each professional photocopier, and issue an identification card to each one. Additional cards for employees of professional photocopiers shall be issued upon the payment of a fee for each card in an amount sufficient to cover the reasonable regulatory costs associated with the issuance of additional cards, as determined by the county clerk. Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card not less than 3<sup>1</sup>/<sub>4</sub> inches by 2 inches, and shall contain at the top the title, "Professional Photocopier" followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The identification card for a partnership or corporation registration shall be issued in the name of the partnership or corporation, and shall not contain a photograph. The identification card for an employee of a professional photocopier or a partnership or corporation shall contain a photograph of the employee in the lower left corner.

(c) The identification card for an employee of a professional photocopier or a partnership or corporation shall be issued in the name of the employee and include "Employee of: [insert name of the professional photocopier or the partnership or corporation]."

**22458.**

A professional photocopier shall be responsible at all times for maintaining the integrity and confidentiality of information obtained under the applicable codes in the transmittal or distribution of records to the authorized persons or entities.

**22459.**

(a) Any person who recovers damages in any action or proceeding for injuries caused by the revelation of information which was improperly obtained,

transmitted, or distributed by a registrant, or caused by a registrant's noncompliance with requirements of confidential documentary information under the code sections specified in Section 22450 may recover damages from the bond or cash deposit required by Section 22455.

(b) Whenever there has been a recovery against a bond or cash deposit under subdivision (a), the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 22455. If the registrant does not file a bond or deposit this amount within 30 days, his or her certificate of registration shall be revoked.

#### **22460.**

The county clerk shall revoke the registration of a professional photocopier upon receipt of a court document or record stating that the registrant has been found guilty of a misdemeanor violation of this chapter, or that a civil judgment has been entered against the registrant in an action arising out of an improper disclosure or transmittal of confidential information. The county clerk shall be given notice of such court actions. A registrant whose registration is revoked pursuant to this subdivision may reapply for registration after one year.

#### **22460.5.**

A certificate of registration may be revoked or suspended whenever it has been determined that the registrant has transmitted or distributed records obtained under the applicable sections in a manner which does not comply with the provisions of law governing the transmittal of confidential documentary information under the code sections specified in Section 22450, or which constitutes an improper transmittal or distribution not amounting to a violation of law.

(b) An investigation concerning the revocation of certificate of registration of a registrant may be commenced at any time the public prosecutor deems it appropriate or upon the complaint of any person who has been injured by a transmittal or distribution which was handled by the registrant and does not comply with the provisions of law governing the transmittal of confidential documentary information under the code sections specified in Section 22450, or which constitutes an improper transmittal or distribution not amounting to a violation of law.

(c) If the public prosecutor determines from the investigation that cause may exist for the suspension or revocation of the certificate of registration, he or she shall set the matter for hearing and give notice to the registrant. That hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, and, for the purposes of those provisions, the public prosecutor shall be deemed to be the

agency, but shall be charged as provided by Section 11527 of the Government Code.

**22461.**

A registrant whose certificate of registration is suspended or revoked shall be entitled to challenge the decision in a court of competent jurisdiction.

**22462.**

(a) All records transmitted or distributed by a professional photocopier shall be accompanied by a certificate containing all of the following:

(1) An affidavit signed by the custodian of the original records that were reproduced for transmittal. It shall conform to the requirements specified in Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code.

(2) An affidavit signed by the professional photocopier or his or her employee stating that the records shall be transmitted or distributed to the authorized persons or entities.

(b) The certificate shall bear the name, address, and registration number and county of registration of the professional photocopier. The custodian of records shall be entitled to a copy of the certificate, completed as provided in subdivision (a).

(c) The custodian of records shall not be liable for the improper release of the records when the records:

(1) Were released to a professional photocopier for the production of records under authorization or subpoena or other means.

(2) Were certified pursuant to this section.

**22463.**

A failure to comply with the requirements of this chapter shall be punishable as a misdemeanor.

## **Business & Professions Code Sections Related to Court Reporters Specifically**

### **8000.**

(a) There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

(c) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

### **8001.**

Appointment as a member of the board shall be for a term of four years. Members of the board shall hold office until the appointment and qualification of their successors or until one year shall have elapsed since the expiration of the term for which they were appointed, whichever first occurs. No person shall serve as a member of the board for more than two consecutive terms except as provided in Section 131. Vacancies occurring shall be filled by appointment for the unexpired term.

The Governor shall appoint one of the public members and the two certified members qualified as provided in Section 8000. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

### **8002.**

Each member of the board shall receive a per diem and expenses as provided in Section 103.

### **8003.**

At each yearly meeting a chairman and vice chairman shall be elected from the membership of the board. Three members shall constitute a quorum for the transaction of business. The board shall keep a complete record of all its proceedings and all certificates issued, renewed, or revoked, together with a detailed statement of receipts and disbursements.

### **8004.**

The expenses of the members of the board and the expenses of the board that are necessary to carry out the provisions of this chapter shall be paid from

the fees collected under this chapter and such expenses shall not exceed the amount so collected.

**8005.**

The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**8005.1.**

Protection of the public shall be the highest priority for the Court Reporters Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

**8007.**

The board shall:

- (a) Determine the qualifications of persons applying for certificates under this chapter.
- (b) Make rules for the examination of applicants and the issuing of certificates provided for in this chapter.
- (c) Grant certificates to such applicants as may, upon examination, be qualified in professional shorthand reporting and in such other subjects as the board may deem advisable.
- (d) Adopt, amend, or repeal rules and regulations which are reasonably necessary to carry out the provisions of this chapter.

**8008.**

The board has the following powers and duties:

- (a) To adopt a seal.
- (b) By affirmative vote of at least three members of the board, to suspend, revoke, or impose any other disciplinary action against a certificate for any cause specified in this chapter.
- (c) To charge and collect all fees as provided for in this chapter.
- (d) To require the renewal of all certificates.

(e) To issue subpoenas, to administer oaths, and to take testimony concerning any matter within the jurisdiction of the board.

(f) To investigate the actions of any licensee, upon receipt of a verified complaint in writing from any person, for alleged acts or omissions constituting grounds for disciplinary action under the chapter.

(g) To administer the Transcript Reimbursement Fund described in Section 8030.2.

**8009.**

Disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code and the board shall have all the powers granted therein.

**8010.**

Information regarding a complaint against a specific licensee may not be disclosed to the public until an accusation has been filed by the board and the licensee has been notified of the filing of the accusation against his or her license and the disciplinary proceedings to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This section does not apply to citations, fines, letters of reprimand, or orders of abatement, which shall be disclosed to the public upon notice to the licensee.

**8011.**

The board shall promulgate, by regulation, a definition of a “full-time student” for the purposes of this chapter.

**8015.**

This chapter is designed to establish and maintain a standard of competency for those engaged in the practice of shorthand reporting, for the protection of the public, in general, and for the protection of all litigants whose rights to personal freedom and property are affected by the competency of shorthand reporters, in particular.

This section shall become operative on June 30, 1996.

**8016.**

No person shall engage in the practice of shorthand reporting as defined in this chapter, unless that person is the holder of a certificate in full force and effect issued by the board. This section does not apply to a salaried, full-time employee of any department or agency of the state who is employed as a hearing reporter.

This section shall apply to all persons who are appointed, on and after January 1, 1983, to the position of official reporter or pro tempore official reporter of any court, as defined in the Government Code.

**8017.**

The practice of shorthand reporting is defined as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. Nothing in this section shall require the use of a certified shorthand reporter when not otherwise required by law.

**8018.**

Any natural person holding a valid certificate as a shorthand reporter, as provided in this chapter, shall be known as a “certified shorthand reporter.” Except as provided in Section 8043, no other person, firm, or corporation may assume or use the title “certified shorthand reporter,” or the abbreviation “C.S.R.,” or use any words or symbols indicating or tending to indicate that he, she, or it is certified under this chapter.

**8019.**

A violation of any provision of this chapter is a misdemeanor.

Any person who directly or indirectly assists in or abets the violation of, or conspires to aid or abet in the violation of, any provision of this chapter, is guilty of a misdemeanor.

**8020.**

Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination without first presenting satisfactory evidence to the board that the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand reporting.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

**8021.**

Examinations shall be held at least semiannually, and at such times and places as the board may designate.

**8022.**

(a) Each applicant for a certificate under this chapter shall file an application with the executive officer, on a form as prescribed by the board. The last date to file an application shall be a set number of days as established by the board's regulations. The application shall be accompanied by the required fee. For purposes of determining the date upon which an application is deemed filed with the executive officer, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope containing the application shall control.

(b) Nothing in this section shall be construed to limit the board's authority to seek from any applicant any other information pertinent to the background, education, and experience of the applicant that may be deemed necessary in order to evaluate the applicant's qualifications and fitness for licensure.

**8023.**

No certificate shall be issued until the applicant has passed the examination prescribed by the board.

**8023.5.**

If an applicant for a certificate is from a country where the principal language spoken is one other than English, the board may, in addition to any other examination required by this chapter, examine the applicant on his or her knowledge of the English language.

**8024.**

All certificates issued under this chapter shall be valid for a period of one year, except for the initial period of licensure as prescribed by the board, and shall expire at 12 midnight on the last day of the month of birth of the licensee unless renewed.

To renew an unexpired certificate, the certificate holder shall, on or before each of the dates on which it would otherwise expire, do all of the following:

(a) Apply for renewal on a form prescribed by the board.

(b) Pay the renewal fee prescribed by this chapter.

(c) Notify the board whether he or she has been convicted of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter and whether any disciplinary action by any regulatory or licensing board in this or any other state was taken against the licensee subsequent to the licensee's last renewal.

#### **8024.1.**

Every person to whom a certificate is issued shall, as a condition precedent to its issuance, and in addition to any other fee which may be payable, pay the initial certificate fee prescribed by this chapter. Prior to receipt of an initial certificate fee, the board may issue an interim permit of a limited duration, but only to candidates eligible for certification under Section 8020. A limited permit shall be valid for 45 days, or until the board issues a certificate to the limited permitholder. If the board issues interim permits, the initial certificate fee, and any other fee that may be payable, shall be paid prior to the issuance of the certificate.

#### **8024.2.**

(a) Except as otherwise provided in this article, a certificate that has expired may be renewed at any time within the period set forth in Section 8024.5 by doing all of the following:

- (1) Applying for renewal on a form prescribed by the board.
  - (2) Paying the renewal fee prescribed by this chapter.
  - (3) Notifying the board whether the licensee has been convicted of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter and whether any disciplinary action was taken against the licensee by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.
- (b) If the certificate is not renewed within 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee set forth in Section 163.5. Renewal under this section shall be effective on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 8024 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

#### **8024.3.**

A suspended certificate is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the certificate, while it remains suspended and until it is reinstated, to engage in

the activity to which the certificate relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

#### **8024.4.**

A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

#### **8024.5.**

A certificate that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of the certificate shall return the expired certificate to the board. To obtain a new certificate, the holder shall pay all of the fees and meet all of the qualifications and requirements set forth in this chapter for obtaining an original certificate, including qualifying for, taking, and passing the licensing examination.

#### **8024.6.**

(a) A certificate holder shall give written notice to the board at its office in Sacramento of a name change within 30 days after each change, giving both the old and the new names. A copy of the legal document affecting the name change, such as a court order or marriage certificate, shall be submitted with the notice.

(b) Each certificate holder shall notify the board in writing at its office in Sacramento of a change of address within 30 days after each change, giving both the old and the new addresses.

(c) A penalty as provided in this chapter shall be paid by each certificate holder who fails to notify the board within 30 days as specified in this section. Any certificate holder to whom this penalty applies who fails to pay that penalty shall not have their certificate renewed without payment of that penalty, and the board may take disciplinary action.

#### **8024.7.**

The board shall establish an inactive category of licensure for persons who are not actively engaged in the practice of shorthand reporting.

(a) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(b) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license is exempt from any continuing education requirement for renewal of an active license.

(c) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(d) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with both of the following:

(1) Pay the renewal fee.

(2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

#### **8025.**

A certificate issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction described in subdivision (a), in accordance with Section 8024 or 8024.2.

(c) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in or directly related to the practice of shorthand reporting.

“Unprofessional conduct” includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(e) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts of those notes within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed to by contract. Violation of this subdivision

shall also be deemed an act endangering the public health, safety, or welfare within the meaning of Section 494.

(f) Loss or destruction of stenographic notes, whether on paper or electronic media, that prevents the production of a transcript due to negligence of the licensee.

(g) Failure to comply with, or to pay a monetary sanction imposed by, any court for failure to provide timely transcripts. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(h) Failure to pay a civil penalty relating to the provision of court reporting services or products.

(i) The revocation of, suspension of, or other disciplinary action against a license to act as a certified shorthand reporter by another state. A certified copy of the revocation, suspension, or disciplinary action by the other state is conclusive evidence of that action.

(j) Violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters.

#### **8025.1.**

(a) In addition to the causes for discipline or denial of certification set forth in Section 8025, the board may suspend or revoke any certificate, or deny certification, on any of the following grounds:

(1) That the applicant or licensee is incapable of performing the duties of a certified shorthand reporter due to physical or mental infirmity or incapacity.

(2) That the applicant or licensee is unable to perform the duties of a certified shorthand reporter due to the abuse of chemical substances or alcohol.

(b) For purposes of determining the existence or nonexistence of grounds for denial, suspension, or revocation of a license as set forth in this section, the board may, based upon a reasonable belief that grounds exist, require the applicant or licensee to submit to a physical or mental examination or examinations by a licensed physician as designated by the board. Failure to submit to, or to schedule, a physical or mental examination within 10 days of written demand by the board shall result in the automatic suspension of any license or the denial of any application. The denial of an application on any of the grounds set forth in this section shall be subject to the provisions of Sections 11504 and 11504.5 of the Government Code. The licensee may request a hearing to contest an automatic suspension of licensure under this section by sending a written request for hearing to the offices of the board within 12 days of the date that the board mails a notice of suspension to the licensee. If a hearing is requested, it shall be convened within 30 days after the receipt by the board of the written request for the hearing. The hearing

shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The sole issue for determination in the hearing, whether for denial or suspension of license, shall be whether the licensee failed or refused to submit to the physical or mental examination after being duly ordered to do so by the board. Evidence that the licensee has, since the date of automatic suspension, submitted to a mental or physical examination shall be considered as mitigation of any failure or refusal to comply with the board's order, and may, in the sound discretion of the administrative law judge, constitute cause to set aside any automatic suspension. A decision shall be rendered by the administrative law judge within 10 days of the hearing and shall constitute the final determination as to the continuing status of any automatic suspension.

(c) Following a physical or mental examination pursuant to subdivision (b), the physician conducting the examination shall determine whether the applicant or licensee is incapable of performing the duties of a certified shorthand reporter due to physical or mental infirmity or incapacity, or whether the applicant or licensee is unable to perform the duties of a certified shorthand reporter due to the abuse of chemical substances or alcohol. Where a medical determination is made that an impairment exists, and the finding is reported to the board, the board shall deny any application and any license shall be automatically suspended. The denial of an application on these grounds shall be subject to the provisions of Sections 11504 and 11504.5 of the Government Code. The licensee may request a hearing to contest an automatic suspension of licensure under this section by sending a written request for hearing to the offices of the board within 12 days of the date that the board mails a notice of suspension to the licensee. If a hearing is requested, it shall be convened within 30 days after the receipt by the board of the written request for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The sole issue for determination in the hearing, whether for denial or suspension of license, shall be whether the applicant or licensee is incapable of performing the duties of a certified shorthand reporter due to physical or mental infirmity or incapacity, or whether the applicant or licensee is unable to perform the duties of a certified shorthand reporter due to the abuse of chemical substances or alcohol.

(d) For purposes of the hearing conducted pursuant to subdivision (c), the applicant or licensee shall, at a minimum, have the following rights:

- (1) To be represented by counsel.
- (2) To have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of any reasonable charges associated with the record.
- (3) To call, examine, and cross-examine witnesses.

- (4) To present and rebut evidence determined to be relevant.
- (5) To present oral argument.
- (e) The statutory period governing reapplication for licensure following denial of the application as set forth in Section 486 does not apply to licenses denied under this section.

**8026.**

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a certified shorthand reporter is deemed to be a conviction within the meaning of this article.

The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

**8027.**

(a) As used in this section, “school” means a court reporter training program or an institution that provides a course of instruction approved by the board and the Bureau for Private Postsecondary Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the State Department of Education, the Bureau for Private Postsecondary Education, the Office of the Chancellor of the California Community Colleges, or the Western Association of Schools and Colleges,

whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools, including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics that display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section, including, but not limited to, unannounced site visits.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

“IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).”

(l) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog that shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying whether the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) A school offering court reporting shall not make any written or verbal claims of employment opportunities or potential earnings unless those claims are based on verified data and reflect current employment conditions.

(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school shall also make this disclosure to all students enrolled on January 1, 2002.

(o) Private and public schools shall provide each prospective student with all of the following and have the prospective student sign a document that shall become part of that individual's permanent record, acknowledging receipt of each item:

(1) A student consumer information brochure published by the board.

(2) A list of the school's graduation requirements, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary.

(3) A list of requirements to qualify for the state-certified shorthand reporter licensing examination, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary, if different than those requirements listed in paragraph (2).

(4) A copy of the school's board-approved benchmarks for satisfactory progress as identified in subdivision (u).

(5) A report showing the number of students from the school who qualified for each of the certified shorthand reporter licensing examinations within the preceding two years, the number of those students that passed each examination, the time, as of the date of qualification, that each student was enrolled in court reporting school, and the placement rate for all students that passed each examination.

(6) On and after January 1, 2005, the school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

(p) All enrolled students shall have the information in subdivisions (n) and (o) on file no later than June 30, 2005.

(q) Public schools shall provide the information in subdivisions (n) and (o) to each new student the first day he or she attends theory or machine speed class, if it was not provided previously.

(r) Each enrolled student shall be provided written notification of any change in qualification or graduation requirements that is being implemented due to the requirements of any one of the school's oversight agencies. This notice shall be provided to each affected student at least 30 days before the effective date of the change and shall state the new requirement and the name, address, and telephone number of the agency that is requiring it of the school. Each student shall initial and date a document acknowledging receipt of that information and that document, or a copy thereof, shall be made part of the student's permanent file.

(s) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

(t) An individual serving as a teacher, instructor, or reader shall meet the qualifications specified by regulation for his or her position.

(u) Each school shall provide a substitute teacher or instructor for any class for which the teacher or instructor is absent for two consecutive days or more.

(v) The board has the authority to approve or disapprove benchmarks for satisfactory progress which each school shall develop for its court reporting program. Schools shall use only board-approved benchmarks to comply with the provisions of paragraph (4) of subdivision (o) and subdivision (u).

(w) Each school shall counsel each student a minimum of one time within each 12-month period to identify the level of attendance and progress, and the prognosis for completing the requirements to become eligible to sit for the state licensing examination. If the student has not progressed in accordance with the board-approved benchmarks for that school, the student shall be counseled a minimum of one additional time within that same 12-month period.

(x) The school shall provide to the board, for each student qualifying through the school as eligible to sit for the state licensing examination, the number of hours the student attended court reporting classes, both academic and machine speed classes, including theory.

(y) The pass rate of first-time examination takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above-described standard on the two examinations that follow the three-year period.

(z) A school shall not require more than one 10-minute qualifying examination, as defined in the regulations of the board, for a student to be eligible to sit for the state certification examination.

(aa) A school shall provide the board the actual number of hours of attendance for each applicant the school qualifies for the state licensing examination.

(ab) The board shall, by December 1, 2001, do the following by regulation as necessary:

(1) Establish the format that shall be used by schools to report tracking of all attendance hours and actual timeframes for completed coursework.

(2) Require schools to provide a minimum of 10 hours of live dictation class each school week for every full-time student.

(3) Require schools to provide students with the opportunity to read back from their stenographic notes a minimum of one time each day to his or her instructor.

(4) Require schools to provide students with the opportunity to practice with a school-approved speed-building audio recording, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this audio recording to their instructor the following day for review.

(5) Develop standardization of policies on the use and administration of qualifier examinations by schools.

(6) Define qualifier examination as follows: the qualifier examination shall consist of 4-voice testimony of 10-minute duration at 200 words per minute, graded at 97.5 percent accuracy, and in accordance with the guidelines followed by the board. Schools shall be required to date and number each qualifier and announce the date and number to the students at the time of administering the qualifier. All qualifiers shall indicate the actual dictation time of the test and the school shall catalog and maintain the qualifier for a period of not less than three years for the purpose of inspection by the board.

(7) Require schools to develop a program to provide students with the opportunity to interact with professional court reporters to provide skill support, mentoring, or counseling that they can document at least quarterly.

(8) Define qualifications and educational requirements required of instructors and readers that read test material and qualifiers.

(ac) The board shall adopt regulations to implement the requirements of this section not later than September 1, 2002.

(ad) The board may recover costs for any additional expenses incurred under the enactment amending this section in the 2001–02 Regular Session of the Legislature pursuant to its fee authority in Section 8031.

#### **8027.5.**

In addition to the authority to conduct disciplinary proceedings under this chapter, the board, through its duly authorized representatives, shall have authority to issue administrative citations or assess fines for the violation of any rules and regulations adopted by the board under the provisions of this chapter.

#### **8030.**

All fees and other revenues received by the board shall be reported promptly to the State Controller and shall be deposited with the State Treasurer to be placed in the Court Reporters' Fund, which fund is continued in existence in the State Treasury and is appropriated to carry out this chapter.

**8030.2.**

(a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund in the amount of three hundred thousand dollars (\$300,000) at the beginning of each fiscal year.

Notwithstanding any other provision of this article, a transfer to the Transcript Reimbursement Fund in excess of the fund balance established at the beginning of each fiscal year shall not be made by the board if the transfer will result in the reduction of the balance of the Court Reporters' Fund to an amount less than six months' operating budget.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996-97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the level of funding for the Transcript Reimbursement Fund, as specified in subdivision (a), in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) (1) Applicants, including applicants pursuant to Section 8030.5, who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorney's fees by judgment or by settlement agreement shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(2) An applicant pursuant to Section 8030.5 who has been reimbursed for services provided to litigants under this chapter shall refund the full amount reimbursed if a court orders the applicant's fee waiver withdrawn or denied retroactively pursuant to Section 68636 of the Government Code, within 90 days of the court's order withdrawing or denying the fee waiver.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of January 1, 2017, shall be transferred to the Court Reporters' Fund.

(h) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

#### **8030.4.**

As used in this chapter:

(a) "Applicant" means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term "applicant" shall not include a person appearing pro se to represent himself or herself at any stage of a case.

(b) "Case" means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

(c) "Certified shorthand reporter" means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(d) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Public Law 94-103), as amended.

(e) "Fee-generating case" means any case or matter that, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) If the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) If recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) If a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public-supported benefit program for which entitlement to benefit is based on need.

(f) (1) "Indigent person" means any of the following:

(A) A person whose income is 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget.

(B) A person who is eligible for supplemental security income.

(C) A person who is eligible for, or receiving, free services under the federal Older Americans Act or the Developmentally Disabled Assistance Act.

(D) A person whose income is 75 percent or less of the maximum level of income for lower income households as defined in Section 50079.5 of the Health and Safety Code, for purposes of a program that provides legal assistance by an attorney in private practice on a pro bono basis.

(E) A person who qualifies for a waiver of fees pursuant to Section 68632 of the Government Code.

(2) For the purposes of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(g) "Lawyer referral service" means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(h) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (Public Law 93-355), as amended.

(i) "Older Americans Act" means the Older Americans Act of 1965 (Public Law 89-73), as amended.

(j) “Other qualified project” means a nonprofit organization formed for charitable or other public purposes, that does not receive funds from the Legal Services Corporation or pursuant to the federal Older Americans Act, and provides free legal services to indigent persons.

(k) “Pro bono attorney” means any attorney, law firm, or legal corporation, licensed to practice law in this state, that undertakes, without charge to the party, the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating, as defined in this chapter.

(l) “Qualified legal services project” means a nonprofit project, incorporated and operated exclusively in California, that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. A legal services project funded, either in whole or in part, by the Legal Services Corporation or with the federal Older Americans Act funds is presumed to be a qualified legal services project for the purposes of this chapter.

(m) “Qualified support center” means an incorporated nonprofit legal services center that has an office or offices in California that provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. A support center funded, either in whole or in part, by the Legal Services Corporation or with the federal Older Americans Act funds is presumed to be a qualified legal services project for the purposes of this chapter.

(n) “Rules of professional conduct” means those rules adopted by the State Bar of California pursuant to Sections 6076 and 6077.

(o) “Supplemental security income recipient” means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act (Public Law 92-603), as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(p) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

#### **8030.5.**

(a) Notwithstanding subdivision (a) of Section 8030.4, as used in this chapter the term “applicant” also means an indigent person, as defined in subdivision (f) of Section 8030.4, appearing pro se to represent himself or herself at any stage of the case and applying to receive funds from the Transcript Reimbursement Fund established by this chapter.

(b) Notwithstanding Section 8030.6, total disbursements to cover the cost of providing transcripts to all applicants pursuant to this section shall not exceed thirty thousand dollars (\$30,000) annually and shall not exceed one thousand five hundred dollars (\$1,500) per case.

(c) The board shall provide a report to the Senate and Assembly Committees on Judiciary by March 1, 2012, that includes a summary of the expenditures and claims relating to this article, including the initial fund balance as of January 1, 2011; all funds received, including the amount of, and reason for, any refunds pursuant to subdivision (e) of Section 8030.2; all claims received, including the type of case, court involved, service for which reimbursement was sought, amount paid, and amount denied, if any, and the reason for denial; and all administrative fees. This report shall be provided using existing resources.

(d) The Legislature finds and declares that there are funds available for indigent pro se parties under this article only because the Transcript Reimbursement Fund has not been fully utilized in recent years by the eligible applicants for whom its use has been intended, despite the evident financial need among legal services organizations and pro bono attorneys. Accordingly, the board shall, using existing resources, undertake further efforts to publicize the availability of the Transcript Reimbursement Fund to prospective applicants, as defined in subdivision (a) of Section 8030.4, through appropriate entities serving these applicants, including the State Bar of California, the California Commission on Access to Justice, and the Legal Aid Association of California. These efforts shall be described in the report required by subdivision (c).

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2017, deletes or extends that date.

#### **8030.6.**

The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges by official reporters, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If there is no deposition transcript, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars (\$75) for one-half day, or one hundred twenty-five dollars (\$125) for a full day. If a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the regular customary charges for a

transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars (\$2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges shall not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents (\$0.35) each or a total of thirty-five dollars (\$35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) shall not exceed twenty thousand dollars (\$20,000) per case per year.

(d) If entitled, and funds are available, the board shall disburse the appropriate sum to the applicant or the certified shorthand reporter when the documentation described in Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court shall not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this section within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filed on a first-come-first-served basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund. Applications held over shall be given a priority standing in the next fiscal year.

(i) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

#### **8030.8.**

(a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons. If the applicant is an indigent person applying pursuant to Section 8030.5, the application shall be accompanied by a copy of the fee waiver form approved by the court in the matter for which the applicant seeks reimbursement.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorney's fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (j), (l), or (m) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (k) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (e) of Section 8030.4, and that the litigant or litigants are indigent persons, together with a letter from the director of a project or center defined in subdivision (j), (l), or (m) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board if the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified shorthand reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

(g) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

#### **8031.**

The amount of the fees required by this chapter is that fixed by the board in accordance with the following schedule:

(a) The fee for filing an application for each examination shall be no more than forty dollars (\$40).

(b) The fee for examination and reexamination for the written or practical part of the examination shall be in an amount fixed by the board, which shall be equal to the actual cost of preparing, administering, grading, and analyzing the examination, but shall not exceed seventy-five dollars (\$75) for each separate part, for each administration.

(c) The initial certificate fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, if the certificate will expire less than 180 days after its issuance, then the fee is 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, or fifty dollars (\$50), whichever is greater. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(d) By a resolution adopted by the board, a renewal fee may be established in such amounts and at such times as the board may deem appropriate to meet its operational expenses and funding responsibilities as set forth in this chapter. The renewal fee shall not be more than one hundred twenty-five dollars (\$125) nor less than ten dollars (\$10) annually, with the following exception:

Any person who is employed full time by the State of California as a hearing reporter and who does not otherwise render shorthand reporting services for a fee shall be exempt from licensure while in state employment and shall not be subject to the renewal fee provisions of this subdivision until 30 days after leaving state employment. The renewal fee shall, in addition to the amount fixed by this subdivision, include any unpaid fees required by this section plus any delinquency fee.

(e) The duplicate certificate fee shall be no greater than ten dollars (\$10).

(f) The penalty for failure to notify the board of a change of name or address as required by Section 8024.6 shall be no greater than fifty dollars (\$50).

#### **8040.**

A shorthand reporting corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its officers. With respect to a shorthand reporting corporation, the

governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Court Reporters Board of California.

**8042.**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

**8043.**

The name of a shorthand reporting corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, corporation or other organization and whose name or names appeared in the name of such predecessor organization, and shall include either (a) the words "shorthand reporting corporation;" (b) the title "certified shorthand reporter," or the abbreviation "C.S.R.," and wording or abbreviations denoting corporate existence; or (c) the words "a professional corporation."

**8044.**

Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a shorthand reporting corporation shall be a licensed person as defined by Section 13401 of the Corporations Code.

**8045.**

The income of a shorthand reporting corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined by Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder for his shares in the shorthand reporting corporation.

**8046.**

A shorthand reporting corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.

**8047.**

The board may formulate and enforce rules and regulations to carry out the provisions of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a shorthand reporting corporation shall include a provision whereby the capital stock of such corporation owned by a

disqualified person, as defined by Section 13401 of the Corporations Code, or a deceased person shall be sold to the corporation or the remaining shareholders within such time as such rules and regulations may provide; and (b) that a shorthand reporting corporation as a condition of obtaining a certificate pursuant to the Moscone-Knox Professional Corporation Act and this article shall provide adequate security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.

## Code of Regulations re the Court Reporters Board of California: Title 16, Division 24

### 2400. Location of Offices.

The principal office of the board shall be located in Sacramento, California.

### 2401. Gender.

As used in this chapter, the masculine gender includes the feminine.

### 2402. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Court Reporters Board of California.

(b) "Code" means the Business and Professions Code.

### 2404. Delegation of Certain Functions.

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearings, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform the other functions necessary to the orderly dispatch of the business of the board in connection with proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

### 2406. License Numbers Required.

A reporter licensed under Chapter 13 of Division 3 of the Code shall list his license number on the cover page and certificate page of each deposition, court transcript, or transcript of other legal proceedings. The license number shall also be included in any and all presentments to the public including but not limited to advertising, solicitation, business cards, stationery and telephone listings.

### 2407. Review of Certified Shorthand Reporters Applications.

(a) The following shall apply to applications for Certified Shorthand Reporters Certificates requiring examination:

(1) The Board shall inform an applicant in writing within thirty (30) days of receipt of the application and required fee whether the application is complete and has been referred for examination or is deficient and what specific information is required.

(2) When an application is resubmitted which was previously rejected for deficiencies, the Board shall decide within five (5) days of receipt whether the application is complete or whether further specific information is required.

(3) The Board shall render a decision concerning a candidate's examination results within one hundred (100) days after the candidate has been notified by the Board of his or her eligibility to take the Certified Shorthand Reporters Board examination. This processing time applies to those candidates who take the first available examination.

#### **2408. Processing Time.**

The minimum, median and maximum processing time for written examination results from the time of receipt of a complete application until the Board makes a decision thereon is set forth below:

Minimum: 3 days

Median: 45 days

Maximum: 100 days

The processing times set forth above shall apply to those candidates who submit a completed written examination application on or before the examination filing deadline.

#### **2409. Review of Application for Registration as a Shorthand Reporting Corporation.**

(a) The following provisions shall apply to applications for registration as a shorthand reporting corporation not requiring examination:

(1) The Board shall inform an applicant for registration as a shorthand reporting corporation, which application does not require examination, within thirty (30) days of receipt of the application and required fee whether the application is complete or whether the application is deficient, and where deficient shall state what specific information is required.

(2) When an application is resubmitted which was previously rejected for deficiencies, the Board shall decide within five (5) days of receipt whether the application is complete and accepted for filing. If the application remains deficient, the Board shall inform the applicant, in writing, within five (5) days of receipt what specific information is required.

(3) The Board shall decide and notify the applicant within ten (10) days after the fee and completed application have been received, whether an applicant meets the requirements for registration.

(4) The minimum, median and maximum times for processing an application for registration as a certified shorthand reporting corporation, without examination, from the time of receipt of the application until the Board decides to issue the certificate based upon the Board's actual performance

during the two (2) years preceding the proposal of this section were as follows;

Minimum: 10 days

Median: 30 days

Maximum: 60 days

#### **2411. Criteria for Recognition of Court Reporting Schools; Continued Validity; Reports.**

A recognized court reporting school shall offer at least the following minimum prescribed course of study for not less than the hours specified in order to obtain and maintain board approval:

(a) Machine Shorthand and transcription.....2300

(1) The program shall include classroom lecture or non-lecture instruction in the mastery of making verbatim records of depositions, hearings, meetings, conventions and judicial proceedings, by means of machine shorthand writing, and the accurate transcription of such proceedings.

(2) Tests used to qualify students to sit for the CSR exam shall be transcribed under direct supervision. Schools may require all other tests to be transcribed under supervision.

(3) When the student reaches a proficiency of 80 words per minute on unfamiliar material, the student shall be required to transcribe dictation from stenographic notes of varying difficulty and subject matter of a length equal to five minutes.

(4) Individual dictation classes, other than theory classes, shall include only students whose tested writing speeds are within the same 20-30 words per minute range on similar dictation material.

(5) Students shall be provided the opportunity to read back from their stenographic notes a minimum of one time each day.

(6) Schools shall provide students with the opportunity to practice with school-approved speed-building material a minimum of one hour per day after school hours.

(7) These hours may be reduced if a student is able to pass the qualifier exam defined in section 2412 of this chapter before having completed these hours.

(b) English.....240

A minimum of 150 of these hours shall be in classroom lecture or non-lecture instruction. Instruction in the fundamentals of English grammar and usage with emphasis on sentence structure, punctuation, spelling, capitalization, and vocabulary development.

(c) Medical.....120

A minimum of 75 of these hours shall be in classroom lecture or non-lecture instruction. Instruction, dictation, and transcription in human anatomy, including definitions of medical prefixes and suffixes and terminology.

(d) Legal.....150

A minimum of 100 of these hours shall be in the classroom lecture or non-lecture instruction. Instruction, dictation, and transcription material shall cover diverse subject areas including, but not limited to the following:

(1) Legal Terminology.

The general concepts of the law of real and personal property, torts, contracts, probate, family, business, criminal, evidence, and civil procedure.

(2) Court and Deposition Procedures.

(A) The responsibility of the reporter in the courtroom, including the reporting of jury impanelment, opening statements, testimony, objections, summations, jury instructions, approaching the bench, in camera proceedings, and reading back to the jury.

(B) The responsibility of the reporter in depositions, including administering oaths, the reporting of testimony and objections, reporting with an interpreter, reading back, directing (citing) the witness, certifying questions, and marking exhibits.

(C) Management of pertinent records, including stenographic notes, work sheets, financial records, daily reporting jobs, exhibits and transcripts.

(3) Ethics of the Court Reporting Profession.

The professional responsibilities of a reporter, including, but not limited to, those outlined in the Professional Standards of Practice.

(4) The California law and regulations and California Rules of Court affecting Certified Shorthand Reporters.

(e) Keyboarding.....45 words per minute net

A course to prepare students to achieve a typing proficiency of 45 words per minute.

(f) Transcript Preparation.....25

(1) Instruction in the current methods for preparing and producing a complete transcript, including, but not limited to, equipment and formatting standards.

(2) Instruction in the preparation of transcripts, including covers, appearance pages, index pages, speaker identification, certificates, and exhibits, and the preparation of work sheets.

(3) Development of proofreading skills in order to produce an accurate, verbatim transcript.

(g) Resource Materials.....5

Instruction in accessing resource materials including via the internet to provide the student with the ability to use such materials, including, but not limited to, case citations, codes, almanacs, directories, street atlases, and dictionaries.

(h) Apprenticeship Training.....60

(1) Before the student attains a proficiency of 120 words per minute, the student shall observe a minimum of five hours of proceedings in a court of record.

After attaining a proficiency of 120 words per minute and before attaining a proficiency of 180 words per minute, the student shall observe a minimum of five hours of proceedings in a court of record.

(2) When the student reaches a proficiency of 180 words per minute, the student shall sit in and report with a certified shorthand reporter 40 hours of court proceedings or depositions of which a minimum of 10 hours shall be in depositions and a minimum of 10 hours shall be in court.

A maximum of 10 hours of this training may be gained in reporting mock proceedings sponsored by a law firm or by a law school.

(3) The student shall be required to transcribe and submit to the school for approval a minimum of 20 consecutive pages from stenographic notes taken at a court proceeding and a minimum of 20 consecutive pages from stenographic notes taken at a deposition in compliance with the Minimum Transcript Format Standards.

(4) After attaining a speed of 160 words per minute, the student shall receive a minimum of 10 hours additional instruction to review the following categories:

A. Court and deposition procedures

B. Professional practice and ethics, including the Professional Standards of Practice

C. Legal research and the California Codes

D. Job preparation skills including professional appearance and etiquette, attitude and demeanor, interviewing skills, and resume writing.

(5) Schools shall document that they provide students with the opportunity to interact with professional court reporters at least four times per calendar year, to offer mentoring, counseling, guest speakers, job shadowing, etc.

(i) Technology.....60

(1) The student shall demonstrate knowledge of basic computer terminology and the ability to manage the computer operating system outside the specialized Computer Aided Transcription (CAT) software, including, but not limited to, functions such as deleting, moving, and renaming files, and creating electronic files.

(2) The student shall demonstrate an understanding of the concepts of litigation support, Web streaming, Communication Access Realtime Translation (CART), Best Practices for the use of Backup Audio Media (BAM), and captioning.

(3) The student shall demonstrate the ability to produce a transcript from the student's own stenographic notes in compliance with the Minimum Transcript Format Standards.

(4) The student shall spend a minimum of 10 hours in realtime writing.

The student shall also demonstrate the ability to set up and connect the components to provide interactive realtime. Interactive realtime is defined as the student outputting to a second computer.

(5) The student shall demonstrate knowledge of how to prepare an electronic file from the student's own stenographic notes.

TOTAL MINIMUM PRESCRIBED ACADEMIC HOURS.....660

(j) A recognized court reporting school may grant equivalent proficiency for one or more classes to applicants who have provided proof of prior educational or practical experience which is directly related to classes described in Section 2411(a) of this chapter.

(k) A recognized court reporting school shall provide access to a library of reference materials. This access shall be provided on campus. On-campus access may include online access. These materials shall include at least the following:

(1) Current reference materials shall include at a minimum: Business & Professions Code, Sections 8000 through 8047; Title 16, California Code of Regulations, Division 24, Sections 2400 through 2481; Code of Civil Procedure, Sections 2021 and 2025; Government Code, Chapter 5, Article 9, commencing with section 69941; and California Rules of Court.

(2) Current reference materials shall include at a minimum: California Civil Code, Code of Civil Procedure, Evidence Code, Government Code, Penal Code, Welfare and Institutions Code, Health and Safety Code, Probate Code, Family Code and Labor Code; a world atlas, a world almanac, a local street atlas, standard and specialty dictionaries, drug manufacturer reference, and directory of attorneys.

In addition, the Board recommends that the school also maintains current professional association publications and current publications including at least one daily newspaper and magazines such as Time, Newsweek, Business Week, Money, Inc., Fortune, etc.

(l) Whenever there has been a change in school status as set forth in Section 8027(f) of the Business and Professions Code, the change or changes as specified shall be reported to the board as required by Business and Professions Code Section 8027(f). Such report shall be in writing on the letterhead of the school or other stationery setting forth the current name, address and telephone number of the school, and shall be signed by the responsible program manager, the school owner, the responsible corporate officer if the school is a corporation or the responsible partner if the school is a partnership.

(m) All annual statements filed with the board by court reporting schools in compliance with Section 8027(k) of the Business and Professions Code shall be in writing on the letterhead of the school or other stationery setting forth the current name, address and telephone number of the school and shall have enclosed or attached thereto the current school catalog as specified by Section 8027(l).

(n) Each court reporting school shall advise all applicants to its court reporting program of the existence and purpose of the board, including the board's address, telephone number, and Web site which shall be prominently displayed in any catalogs or Web sites which include course offerings.

#### **2412. Qualifier Exams.**

Schools are prohibited from requiring more than one qualifier examination as defined: The qualifier exam shall consist of unfamiliar material. The material shall be 4-voice testimony of 10-minute duration, dictated at 200 wpm and graded at 97.5% accuracy, and in accordance with the method by which the board grades the licensing examination. Schools shall date and number each qualifier and announce such date and number to the students at the time of administering the qualifier. Schools shall record the following information for each qualifier, for each date on which it was administered, 1) the actual duration of the dictated test, 2) the number of students that took the test, 3) the number of students that transcribed the test, and 4) the number of students that passed the test. The school shall maintain the qualifier and catalogue the required information related to each qualifier test for a period of not less than three years for the purpose of inspection by the Board. Qualifiers shall not be dictated more than once in any twelve-month period.

#### **2414. Definitions.**

(a) Any person teaching an academic course, that is a course other than machine shorthand or keyboarding, in a court reporting program, shall meet at least one of the following criteria:

- (1) Possess at a minimum a Bachelor of Arts or Bachelor of Science degree.
  - (2) Possess at a minimum either an Associate degree in the subject being taught and two years of experience in a related field, or an Associate degree not in the subject being taught and four years of experience in a related field.
  - (3) Possess a current license as a certified shorthand reporter or an RPR certificate from the National Court Reporters Association, and in addition, a minimum of two years of experience in a related field.
  - (4) Possess a minimum of four years of experience teaching the subject being taught or a minimum of four years of experience in a job substantially related to the subject being taught.
- (b) Any person teaching a machine speed-building course, that is a course other than an academic course or keyboarding, shall meet one of the following criteria:
- (1) Possess at a minimum a Bachelor of Arts or Bachelor of Science degree.
  - (2) Possess at a minimum either an Associate degree in the subject being taught or an Associate degree not in the subject being taught and two years of experience in a related field.
  - (3) Possess a current license as a certified shorthand reporter or an RPR certificate from the National Court Reporters Association.
  - (4) Completed all requirements of a California recognized court reporter training program through the 180 word per minute machine speed class and possesses two years of teaching experience.
- (c) Any person hired as a reader by a school shall be trained by the school and shall demonstrate proficiency using a stopwatch, enunciating standard English, familiarity with common phrasing, and a propensity for maintaining consistency within the same speed level.
- (d) A “full-time student” shall be defined as enrolled in school for a minimum of 24 clock hours per week or successfully maintaining either 12 credits per semester or 12 credits per quarter, including 10 hours of live dictation machine speed classes per week.
- (e) “Classroom lecture” is defined as an instruction course in which both the student and the instructor are physically present at the same time in the same classroom.
- (f) “Online instruction” is defined as instruction which may be in realtime, virtual-time, or any combination thereof, and which meets the requirements of non-lecture instruction as defined in subsection (h).
- (g) “Instruction” is defined as instructor directed activities including classroom lecture, non-lecture instruction and other directed activities

identified in course outlines that lead to the accomplishment of the identified learning outcomes.

(h) "Non-lecture instruction" is defined as any academic course under this article that is taught in a non-lecture instruction setting. The school shall prepare and maintain a written statement outlining the course objectives, proposed learning outcomes, the methods of measuring those outcomes, and how this method of instruction meets the course objectives and outcomes. Such instruction requires the availability of an instructor and interim evaluations.

(i) "Direct supervision" shall provide verification of the student's identity, the reasonable assurance that the student is the author of any work product, and shall protect testing and qualifier materials. Direct supervision may take the form of physical or non-physical observation of the student, comparison of work product against stenographic notes, or other methods, as determined and reviewed and approved by the Board.

(j) "Interactive realtime" is defined as the student outputting to a second computer.

#### **2418. Examination Application.**

(a) Application for examination shall be made on a form prescribed by the board, accompanied by such evidence, statements, or documents as are therein required and by the required fee. An application for examination shall be filed with the board's principal office not less than forty-five (45) days prior to the date set for the examination for which the applicant wishes to be scheduled.

(b) To be eligible for examination, an applicant must present evidence satisfactory to the board of having met one of the requirements enumerated in Section 8020 of the Code within five years immediately preceding the date of the applicant's most recent application for examination or reexamination.

(c) A person seeking to qualify pursuant to subsection (a) of Section 8020 of the Code shall submit the following with the application;

(1) The name, address and type of business of at least three references.

(2) One or more affidavits or declarations executed by persons employing the applicant which certify that the applicant has obtained a total of at least one year of experience in making contemporaneous verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of machine shorthand writing and transcribing such records. This experience must consist of contemporaneous multiple-voice proceedings as would occur in hearings, court proceedings, or depositions. The following types of experience do not satisfy the experience qualifications of this section: captioning, reporting classroom lectures, conferences, police or similar

reports, or the transcribing of tapes such as police reports, medical dictation or similar materials.

As used in subsection (a) of Section 8020 of the Code one year means at least 1,400 hours engaged in actually making verbatim records, exclusive of travel.

(d) A person seeking to qualify under subsection (b) of Section 8020 must be enrolled and attending classes at the school through which the applicant qualifies for not less than forty-five (45) days prior to the date the student completes all the qualifications for the certificate. The Board may waive the forty-five (45) day residency requirement upon a showing by the applicant that the change of schools was necessitated by extenuating circumstances such as a spouse being transferred by his or her employer.

(e) A person seeking to qualify under the “equivalent proficiency” provision of subsection (b) of Section 8020 shall submit with his/her application a certificate from a recognized court reporting school evidencing equivalent proficiency in lieu of completion of the minimum prescribed course of study in a recognized court reporting school. Such certificate shall also attest to the applicant's ability to make a verbatim record of unfamiliar material, with four voice dictation, at a speed of 200 words per minute for ten minutes with a minimum of 97.5 percent accuracy and shall be known as a “qualifier” graded in accordance with the method by which the board grades the licensing examination.

(f) A person seeking to qualify under the “valid license” provision of subsection (e) of Section 8020 of the Code shall submit with the application evidence that the applicant possesses an out-of-state license issued pursuant to a statute after completion of all statutory requirements of that state and which is in full force and effect at the time the application is filed with the board.

#### **2419. Time and Place of Holding Examination; Crediting of Fees.**

(a) Applicants who have been found to be qualified for the examination pursuant to the code and these regulations shall be notified in writing of the time and place of their assigned examination.

(b) An applicant who fails to appear for examination after being notified of eligibility therefor pursuant to subdivision (a) of this section, shall be deemed to have abandoned the application. In order to again become eligible for the examination, such person shall file a new application, pay a new application fee, except as provided in subdivision (d) of this section, and otherwise comply in all respects with the provisions of the code and these regulations in the same manner as required of an original applicant.

(c) An applicant who commences but does not finish the assigned examination, or who otherwise fails such examination, shall not be eligible for any future examination except upon filing a new application, paying a

new application fee, except as provided in subdivision (d) of this section, and otherwise complying in all respects with the provisions of the code and these regulations in the same manner as required of an original applicant.

(d) An applicant who fails to appear for the examination as specified in subdivision (b) of this section, or who commences the examination and fails to complete the examination as specified in subdivision (c) of this section shall have their application fee credited toward the payment of the application fee for the next scheduled examination for one time only, on the following conditions and for the following stated reasons:

(1) The applicant petitions the board in writing for a credit of this application fee either before, or within ten (10) days after the examination for which the applicant failed to appear or failed to complete; and

(2) The applicant provides with their petition, written certification of the following reasons for their failure to appear or failure to complete the examination:

(A) Reasons of health as certified by a medical doctor.

(B) That the applicant, or the applicant's spouse, has been transferred to another state or country as certified by the employer who is requiring the transfer; or

(C) Other good cause as deemed sufficient by the board.

(e) Except for the single, one-time credit as specified in subdivision (d) of this section, there shall be no cash or other refund of any application fee to any applicant.

#### **2420. Examination Required, Passing Grades and Conditional Examination Credit.**

(a) The examination shall consist of three divisible parts:

(1) English,

(2) Professional Practice, and

(3) Dictation/Transcription (Machine/Skill).

The passing grades for the Dictation/Transcription part of the examination is 97.5%. The passing grades for the two written knowledge parts of the examination (English and Professional Practice) shall be determined by the Angoff criterion-referenced method. Such passing scores may vary moderately with changes in test composition. Any examinee who obtains a grade which equals or exceeds the passing score determined by the Angoff method will be deemed to have passed the applicable portion of the examination, assuming the other requirements of this section are met.

(b) An applicant must take and pass all three parts of the examination within three (3) consecutive years to have passed the examination. The three (3) year period shall begin from the date of the examination or any part of the examination for which the applicant is first scheduled.

(c) After a period of three months has elapsed, an applicant may repeat any part of the examination. However, no applicant may repeat any part of the examination unless or until a new version of the examination has been introduced.

(d) Notwithstanding subsection (b), an applicant who passes a part of the examination shall receive conditional credit for passing that part and may retake the remaining part(s).

(e) The period of time designated in subsection (b) maybe extended by the board for a period of time not to exceed one (1) year upon the showing of extraordinary extenuating circumstances.

Note: Authority cited: Section 8007, Business and Professions Code. Reference: Sections 135, 8020 and 8023, Business and Professions Code.

#### **2421. Identifying Numbers to Be Assigned to Examinees.**

The identity of each candidate shall be and remain unknown to the board until after final results are announced. Before the commencement of the examination, an identifying number shall be assigned to each candidate. The candidate shall enter such number on each group of papers used in the examination and shall not enter his name at any place on the examination papers.

#### **2422. Inspection of Examination Papers; Notification.**

(a) Each examinee shall be notified in writing whether he/she has passed or failed the examination.

(b) An examinee who has failed the examination may inspect his/her transcript by so requesting in writing sent to the board at its principal office within 30 days of the date appearing on the notification of the examination results. An examinee will be permitted to inspect only his/her transcript and a copy of the board's official transcript.

(c) An examinee may request the board to reconsider his/her examination results. Such request for reconsideration shall be filed with the board at its principal office no later than 45 days following the date appearing on the notification of the examination results. It shall be in writing and shall specify the grounds upon which it is based.

#### **2423. Destruction of Examination Papers.**

The examination papers of all examinees shall be destroyed ninety (90) days following the date written notice of the results of the examination was mailed to all examinees.

### **2430. Issuance of Duplicate Certificates.**

(a) The board may issue a duplicate certificate to a certificate holder upon the written request therefor by such certificate holder. Such request shall be accompanied by the required fee and an affidavit or declaration in a form provided by the board showing to its satisfaction the loss, mutilation or destruction of his original certificate.

(b) A certificate holder who changes his name according to law may request the board to issue a duplicate certificate. Such request shall be accompanied by evidence thereof satisfactory to the board, and payment of the required fee. The board shall thereafter issue a duplicate certificate setting forth the name of the certificate holder as changed.

### **2450. Fee Schedule.**

(a) The fee for filing an application for examination shall be forty dollars (\$40), one time per three-year cycle and twenty-five dollars (\$25) per separate part per administration.

(b) The fee for an initial certificate shall be one hundred twenty-five dollars (\$125). If the certificate is issued less than 180 days before the date on which it will expire, the fee shall be sixty-two dollars and fifty cents (\$62.50).

(c) The fee for the annual renewal of a certificate shall be one hundred and twenty-five dollars (\$125).

(d) The delinquency fee for the renewal of a certificate shall be sixty-two dollars and fifty cents (\$62.50).

(e) The fee for a duplicate certificate shall be five dollars (\$5).

(f) The penalty for failure to notify the board of a change of name or address as required by Section 8024.6 shall be twenty dollars (\$20).

### **2451. Due Dates of Fees.**

(a) The application fee for each application is due and payable at the time of filing the application with the board.

(b) The initial certificate fee is due and payable within one hundred and twenty (120) days after notification to the candidate that he or she has successfully passed the examination. No certificate may be issued until this fee has been paid.

### **2461. Definitions.**

For the purposes of this Article the following shall apply:

(a) "Licensed person" means a natural person who has obtained from the Board a certificate as a certified shorthand reporter which is unexpired and in full force and effect with all current renewal fees paid.

(b) "Certificate of Registration" means a certificate of registration as a shorthand reporting corporation.

(c) "Professional services" means the practice of shorthand reporting as defined in Section 8017 of the Code.

#### **2462. Professional Relationships, Responsibilities, and Conduct Not Affected.**

Nothing in the laws or rules relating to shorthand reporting corporations alters the duties and responsibilities of a licensed person to and professional relationships with his/her clients and others; nor do such laws or rules in any way impair the disciplinary powers of the Court Reporters Board of California over licensed persons; nor do such laws or rules impair any other law or rule pertaining to the standards of professional conduct of licensed persons.

#### **2463. Office for Filing.**

All applications for a certificate of registration and any other documents or reports required by these rules or by law to be filed with the board shall be filed at the board's principal office.

#### **2464. Application; Review of Refusal to Approve.**

(a) An applicant corporation shall file with the board an application for certificate of registration on a form furnished by the board, which shall be signed and verified by an officer of the corporation who is a licensed person and be accompanied by a fee in the amount of \$200.00.

(b) The board shall, within a reasonable time after such an application has been submitted to it, either approve the application and issue a certificate of registration or refuse to approve the application and notify the applicant of the reasons for such refusal.

(c) The board may delegate to its executive secretary or a designated employee its authority under Section 8041 of the Code to review and approve applications for registration and to issue certificates of registration.

(d) Any applicant whose application has been disapproved by the board may request a hearing pursuant to Government Code Section 11504. Such hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) No applicant shall hold itself out as, engage in or render any professional services unless and until a certificate of registration has been issued.

#### **2467. Shares: Ownership and Transfer.**

(a) The shares of a shorthand reporting corporation may be issued only to a licensed person and may be transferred only to a licensed person or to the issuing corporation.

(b) Where there are two or more shareholders in a shorthand reporting corporation and one of the shareholders:

(1) Dies; or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, for a period exceeding ninety (90) days, his shares shall be sold and transferred to a licensed person or to the issuing shorthand reporting corporation, on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date he became a disqualified person.

(c) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he again ceases to become a disqualified person.

(d) The restrictions of subdivision (a) and, if appropriate, subdivision (b) of this section shall be set forth in the corporation's by-laws or articles of incorporation.

(e) The income of a shorthand reporting corporation attributable to shorthand reporting services rendered while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or his shares.

(f) The share certificates of a shorthand reporting corporation shall contain either:

(1) An appropriate legend setting forth the restriction of subdivision (a), and where applicable, the restriction of subdivision (b), or

(2) An appropriate legend stating that ownership and transfer of the shares are restricted and specifically referring to an identified section of the by-laws or articles of incorporation of the corporation wherein the restrictions are set forth.

#### **2468. Certificate of Registration: Continuing Validity: Reports.**

(a) A Certificate of Registration shall continue in effect until it is suspended or revoked. Such certificate may be suspended or revoked if a shorthand reporting corporation fails at any time to comply fully with the provisions of these rules, with the statutory provisions governing certified shorthand reporters and the rules enacted by the Board pursuant thereto, and with the Moscone-Knox Professional Corporation Act and with other applicable provisions of the Corporations Code.

(b) Each year on or before July 31, each shorthand reporting corporation, except those licensed on or after May 16 of that year, shall file with the Board a report on a form provided by the Board reflecting its status as of June 30 and including such information pertaining to its qualifications and compliance with the statutes, rules and regulations of the Board as the Board may require.

(c) Each shorthand reporting corporation shall file a special report, on a form provided by the Board, within 30 days of any change of the officers, directors, shareholders, place of practice, articles of incorporation or corporate name.

(d) Each annual report filed hereunder shall be accompanied by a filing fee of \$30.00.

(e) Each special report filed hereunder shall be accompanied by a filing fee of \$50.00.

#### **2470. Substantial Relationship Criteria.**

For the purpose of denial, suspension, or revocation of the certificate of a shorthand reporter pursuant to Section 475 of the Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a shorthand reporter if to a substantial degree it evidences present or potential unfitness of a shorthand reporter to perform the functions authorized by his certification in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but are not limited to, the following:

(a) Any violation of the provisions of Chapter 13 of Division 3 of the Code.

(b) Violation of any rule or code provision specifically governing shorthand reporters.

(c) Conviction of any crime involving dishonesty or fraud.

#### **2471. Criteria for Rehabilitation.**

(a) When considering the denial of a shorthand reporter's certificate under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for certification, shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of the certificate of a shorthand reporter on the grounds that the person certified has been

convicted of a crime, the Board, in evaluating the rehabilitation of such person and his present eligibility for certification will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
  - (2) Total criminal record.
  - (3) The time that has elapsed since commission of the act(s) or offense(s).
  - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
  - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
  - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering a petition for reinstatement of the certification of a shorthand reporter, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

#### **2472. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines," (Rev. 2/18/89), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

#### **2473. Minimum Transcript Format Standards.**

(a) A reporter licensed under Chapter 13, Division 3 of the Code shall comply with the following transcript format standards when producing a transcript in a legal proceeding. If a reporter is employed by a court, either as an official or pro tem official reporter, the transcript format set forth by state or local rules of court, or adopted by that jurisdiction, if any, will supersede. If there are no transcript format guidelines established within a jurisdiction, the following minimum transcript format standards shall apply:

- (1) No fewer than 25 typed text lines per page;
- (2) A full line of text shall be no less than 56 characters unless timestamping is used, in which case no fewer than 52 characters shall be used on a full line of text;
- (3) Timestamping may only be printed on a transcript under any of the following circumstances:

- (A) when a deposition is videotaped;
- (B) when requested by counsel on the record, or
- (C) when a transcript will have not less than 56 characters per line.
- (4) Left-hand margin is defined as the first character of a line of text;
- (5) Each question and answer is to begin on a separate line;
- (6) Text is to begin no more than 10 spaces from the left margin. “Q” and “A” Symbols shall appear within the first 8 spaces from the left-hand margin;
- (7) Carry-over “Q” and “A” lines to begin at the left-hand margin;
- (8) Colloquy and paragraphed material to begin no more than 10 spaces from the left-hand margin with carry-over colloquy to the left-hand margin;
- (9) Quoted material to begin no more than 14 spaces from the left-hand margin with carry-over lines to begin no more than 10 spaces from the left-hand margin;
- (10) Parenthetical and exhibit markings of two lines or more shall be no less than 35 characters per line; and
- (11) In colloquy, text shall begin no more than two spaces after the colon following speaker “ID.”
- (b) Failure to comply with these minimum standards, as noted above, constitutes grounds for disciplinary action.

**2474. Prohibition on Preparation of Deposition Summaries.**

- (a) As used in this section, the term “deposition summary” means information dictated by an attorney and reported and/or transcribed by the court reporter after the conclusion of a deposition that includes one or more of the following:
  - (1) A summary of the information, facts, or testimony produced at the deposition;
  - (2) The attorney's analysis or evaluation of the witness or witnesses;
  - (3) The attorney's evaluation of the impact of the deposition on the merits of the case; or
  - (4) The attorney's recommendation for further action or strategies to be employed in the case.
- (b) It shall be considered unprofessional conduct, as that term is used in Section 8025, subdivision (d), of the Business and Professions Code, for any certified shorthand court reporter licensed by the Board to transcribe or assist in the preparation of a deposition summary after the conclusion of a

deposition conducted by that reporter pursuant to Section 2025(k) of the Code of Civil Procedure.

**2475. Professional Standards of Practice.**

(a) Consistent with any action that may be taken by the Board pursuant to Sections 8025 and 8025.1 of the Code, the Board may cite a business that renders professional services, namely shorthand reporting services, within the meaning of Corporations Code Section 13401 or cite or discipline any certificate holder, including suspending, revoking, or denying the certification of a certified shorthand reporter, for violation of professional standards of practice.

(b) Every person under the jurisdiction of the Board who holds a license or certificate, or temporary license or certificate, or business that renders professional services, namely shorthand reporting services, within the meaning of Corporations Code Section 13401, shall comply with the following professional standards of practice:

(1) Make truthful and accurate public statements when advertising professional qualifications and competence and/or services offered to the public.

(2) Maintain confidentiality of information which is confidential as a result of rule, regulation, statute, court order, or deposition proceedings.

(3) Perform professional services within the scope of one's competence, including promptly notifying the parties present or the presiding officer upon determining that one is not competent to continue an assignment. A licensee may continue to report proceedings after such notification upon stipulation on the record of all parties present or upon order of the presiding officer.

(4) Comply with legal and/or agreed-to delivery dates and/or provide prompt notification of delays.

(5) In addition to the requirements of Section 2025.220(a)(5) of the Code of Civil Procedure, promptly notify, when reasonably able to do so, all known parties in attendance at a deposition or civil court proceeding and/or their attorneys of a request for preparation of all or any part of a transcript, including a rough draft, in electronic or paper form. No such notification is necessary when the request is from the court.

(6) Act without bias toward, or prejudice against, any parties and/or their attorneys.

(7) Not enter into, arrange, or participate in a relationship that compromises the impartiality of the certified shorthand reporter, including, but not limited to, a relationship in which compensation for reporting services is based upon the outcome of the proceeding.

(8) Other than the receipt of compensation for reporting services, neither directly or indirectly give nor receive any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported. Such persons or entities shall include, but are not limited to, attorneys or an attorney's family members, employees of attorneys or an employee's family members, law firms as single entities, clients, witnesses, insurers, underwriters, or any agents or representatives thereof. Exceptions to the foregoing restriction shall be as follows: (A) giving or receiving items that do not exceed \$100 (in the aggregate for any combination of items given and/or received) per calendar year to or from an attorney or an attorney's family members, an employee of an attorney or an employee's family members, a law firm as a single entity, a client, a witness, an insurer, an underwriter, or any agent or representative thereof; or (B) providing services without charge for which the certified shorthand reporter reasonably expects to be reimbursed from the Transcript Reimbursement Fund, Sections 8030 et seq. of the Code, or otherwise for an "indigent person" as defined in Section 8030.4(f) of the Code.

#### **2480. Administrative Citations & Fine.**

(a) The executive officer of the board, upon completion of an investigation, is authorized to issue citations containing orders of abatement and fines for violations by a licensed certified shorthand reporter of the provisions of law and/or regulations referred to in this section.

(b) A citation shall be issued whenever a fine is levied or an order of abatement is issued. Any order of abatement issued shall provide a reasonable period of time for correction of the identified violation and may include, in addition to any other fine imposed, the levy of a fine which shall be imposed only if the licensee fails to comply with the order of abatement within the time prescribed in the citation, provided the total fine for each citation shall not exceed \$2500. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated. The citation shall be served upon the licensee personally or by certified mail, return receipt requested.

(c) The amount of the fine to be levied by the executive officer shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code.

(1) The executive officer may, in his or her discretion, levy a fine not to exceed \$2500, and issue an order of abatement of any violation of the code. In determining the amount of the fine the executive officer shall consider the tardiness in producing any transcript and the prejudice caused thereby to any party.

(2) The executive officer may, in his or her discretion, issue an order of abatement without levying a fine for the first violation.

(d) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(e) When an order of abatement is not contested, or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. Where the citation or order of abatement is appealed the period for abatement shall be extended until such time as the appeal is resolved. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served. Failure to abate the violation may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

(f) The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing and who have performed services for which licensure is required as a certified shorthand reporter under Division 3, Chapter 13, Article 1 commencing with Section 8000 of the code, but who do not possess a license. Each such citation issued under this subsection shall contain an order of abatement. Where appropriate the executive officer shall levy a fine for such unlicensed activity in accordance with Section 125.9 of the code. The provisions of subsection (b), (d) and (e) of this section shall apply to the issuance of citations for unlicensed activity under this subsection.

(g) The sanctions authorized under this section shall be separate from and in addition to any other administrative, civil or criminal remedies. Nothing in this section shall be deemed to prevent the board from serving and prosecuting an accusation to suspend or revoke a license where grounds for such suspension or revocation exist.

#### **2481. Informal Conference.**

(a) In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may within ten (10) days after service of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served.

(b) The executive officer may, at his or her discretion and depending on the facts of the case, hold within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the executive officer may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. The executive officer shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (e) of Section 2480, a copy of his or her findings and decision to the person cited within ten (10) days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive officer. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of Section 125.9 of the code.

## Court Reporters Board of California, Best Practices for the Use of Backup Audio Media

Backup Audio Media (BAM) is the generic term for any audio recording, including the audio synchronization tool built into computer-aided translation (CAT) software.

For the purposes of these guidelines, “party” is defined as a named person or entity in a case and/or their attorney.

**The duties and responsibilities of the certified shorthand reporter (CSR) regarding preservation of the official record are not changed by the use of BAM.**

**Stenographic notes are the official record.**

- It is the obligation of the CSR to interrupt the proceedings when the record is in jeopardy due to the speed of the testimony, unintelligible and/or simultaneous speakers, et cetera.
- It is the duty of the CSR to read back from the stenographic notes, which are the official record, and no playback of the recording in lieu of readback is allowed.
- CSRs must comply with all applicable local, state and federal rules and/or laws to ensure the integrity of the record, including California Penal Code 632.
- When a backup recording is made by a CSR at his or her own discretion and not otherwise ordered for preservation by any federal, state or local law and/or rule, it is the personal property of the CSR and there is no public entitlement to these recordings.
- The BAM file may be provided at the request of an attorney and/or a party to a proceeding at the discretion of the CSR.

**If the BAM is going to be released, the following best practices should be used.**

**Providing BAM at the request of an attorney or party to a proceeding:**

1. If the BAM is made available to any court reporting firm or party in a case, it is the responsibility of the CSR to ensure that no confidential or off-the-record discussions are contained in the released recording.
2. If the CSR decides to release the BAM, the CSR and/or reporting firm should release a copy and not the original (unless ordered otherwise by a court.) The original should be maintained for no less than one year.

3. If the CSR and/or reporting firm makes available a copy of the BAM to one party, the same offer must be made at the same time to the other party(ies) to the proceeding.
4. CSRs and/or reporting firms should check all applicable local, state and federal laws, rules and regulations to ensure that creating a backup audio media is in compliance with those laws, rules and regulations, including but not limited to California Penal Code 632, which prohibits eavesdropping on or recording confidential communications.
5. If the CSR and/or reporting firm offers BAM as a value-added service, all parties should be advised prior to the start of the proceeding.
6. If the transcript or any portion thereof is designated confidential or sealed, the BAM file shall be clearly labeled as such.

## Court Reporters Board Minimum Transcript Format Standards FAQs

The Court Reporters Board (CRB) continues to receive questions regarding the applicability of California's Minimum Transcript Format Standards (MTFS). A simple rule of thumb for court is that UNLESS a licensee is employed by a court and acting in the capacity of an official or pro tempore reporter and such court has in place its own transcript format standards set forth in state or local rules of court, California's MTFS are applicable. A simple rule of thumb for depositions is if the deposition is physically taken in California, California's MTFS apply.

**Question 1:** If a licensee reports and transcribes depositions in a U.S. District Court (federal) case, are California's MTFS applicable?

**Answer:** Yes. The Federal Rules of Civil Procedure (FRCP) do not specify transcript format standards for depositions.

**Question 2:** If a licensee reports and transcribes depositions within California in a case venued in a state other than California, are California's MTFS applicable?

**Answer:** Yes, the California's MTFS applies.

**Question 3:** Would the California CRB discipline a licensee if a transcript format complaint is received from another jurisdiction's Board or reporter supervising entity?

**Answer:** The California CRB has the authority and jurisdiction to investigate complaints from any source alleging violations of laws and regulations related to the practice of certified shorthand reporting. Discipline is but one of several possible outcomes following investigation of such complaints.

## Minimum Transcript Format Standards Sample Page

1           MR. SMITH: Q Could you see Ms. Butler and the  
2 child clearly from where you were sitting?  
3           A I had to turn my head to see.  
4           Q When you turned your head, were you able to see  
5 them clearly?  
6           A Yes.  
7           Q Is it -- sorry. Strike that.  
8           Were you able to see them more clearly than  
9 you're able to see them on this particular video?  
10          A Yes.  
11          MR. SMITH: I'd like to mark this DVD as  
12 Exhibit Number 10.  
13          (A DVD was marked as People's Exhibit  
14 Number 10 for Identification.)  
15          MR. SMITH: Q Ms. Palmer, were you interviewed  
16 by Inspector Black in connection with this case?  
17          A I don't remember his name, but I did give a  
18 statement to the police.  
19          Q Let me read a portion of this transcript and  
20 see if it refreshes your recollection.  
21                "I heard the little boy screaming.  
22 I saw the woman hit the little boy hard.  
23 She seemed wild and out of control."  
24          MS. JONES: Objection. Foundation.  
25          THE COURT: Let's take this up after lunch.

MINIMUM TRANSCRIPT FORMAT STANDARDS EXAMPLE

1

## Code of Civil Procedure Sections Relating to Depositions

### 307.

There is in this State but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.

### 308.

In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

### 1010.

Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice. Notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code. No bill of exceptions, notice of appeal, or other notice or paper, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding.

### 1010.5.

The Judicial Council may adopt rules permitting the filing of papers by facsimile transmission, both directly with the courts and through third parties. Notwithstanding any other provision of law, the rules may provide that the facsimile transmitted document shall constitute an original document, and that notwithstanding Section 6159 of the Government Code or Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, any court authorized to accept a credit card as payment pursuant to this section may add a surcharge to the amount of the transaction to be borne by the litigant to cover charges imposed on credit card transactions regarding fax filings between a litigant and the court.

If the Judicial Council adopts rules permitting the filing of papers by facsimile transmission, the consent of the Judicial Council shall not be necessary to permit the use of credit cards to pay fees for the filing of papers by facsimile transmission directly with the court, provided that the court charges a processing fee to the filing party sufficient to cover the cost to the court of processing payment by credit card.

### 1010.6.

(a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) “Electronic service” means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party, including the party’s attorney, or through an electronic filing service provider.

(B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

(2) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized when a party has agreed to accept service electronically in that action.

(3) In any action in which a party has agreed to accept electronic service under paragraph (2), or in which the court has ordered electronic service under subdivision (c) or (d), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

(4) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. However, any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following:

(A) A notice of intention to move for new trial.

(B) A notice of intention to move to vacate judgment under Section 663a.

(C) A notice of appeal.

This extension applies in the absence of a specific exception provided by any other statute or rule of court.

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(3) Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Sections

68630 to 68641, inclusive, of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Sections 68630 to 68641, inclusive, of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(c) If a trial court adopts rules conforming to subdivision (b), it may provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

(d) (1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to subdivision (e) and the following conditions:

(A) The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

(B) The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court. Any fees charged by the court shall be for no more than the actual cost of the electronic filing and service of the documents, and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver. Any fees charged by an electronic filing service provider shall be reasonable and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver.

(C) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties.

(D) A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court date that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county.

Documents filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest court day following the filing.

(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost-effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants.

(e) The Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(f) The Judicial Council shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall be informed by any study performed pursuant to paragraph (2) of subdivision (d) and which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, as specified in subdivision (f), a superior court may, by local rule, require mandatory electronic filing, pursuant to paragraph (2) of this subdivision.

(2) Any superior court that elects to adopt mandatory electronic filing shall do so pursuant to the requirements and conditions set forth in this section, including, but not limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the rules adopted by the Judicial Council, as specified in subdivision (f).

#### **1011.**

The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or

papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or a person 18 years of age or older cannot be found at the attorney's residence, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a mail box, subpost office, substation, or mail chute or other like facility regularly maintained by the Government of the United States directed to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the address of the attorney or party of record as designated on the court papers, or by delivering the notice or papers to the clerk of the court, for the attorney.

(b) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court, for that party.

#### **1012.**

Service by mail may be made where the person on whom it is to be made resides or has his office at a place where there is a delivery service by mail, or where the person making the service and the person on whom it is to be made reside or have their offices in different places between which there is a regular communication by mail.

#### **1013.**

(a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the

document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days. The extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial

Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. Service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted, or to be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

(g) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court.

(h) Subdivisions (b), (d), and (f) are directory.

### **1013a.**

Proof of service by mail may be made by one of the following methods:

(1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurs, that he or she is over the age of 18 years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, showing that he or she is an active member of the State Bar of California and is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(3) An affidavit setting forth the exact title of the document served and filed in the cause, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

(4) In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid. This form of proof is sufficient for service of process in which the clerk or deputy clerk signing the certificate places the document for collection and mailing on the date shown thereon, so as to cause it to be mailed in an envelope so sealed and so addressed on that date following standard court practices. Service made pursuant to this paragraph, upon motion of a party served and a finding of good cause by the court, shall be deemed to have occurred on the date of postage cancellation or postage meter imprint as shown on the envelope if that date is more than one day after the date of deposit for mailing contained in the certificate.

#### **1014.**

A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

**1015.**

When a plaintiff or a defendant, who has appeared, resides out of the state, and has no attorney in the action or proceeding, the service may be made on the clerk of the court, for that party. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section. If the party's sole attorney has no known office in this state, notices and papers may be served by leaving a copy thereof with the clerk of the court, unless the attorney has filed in the cause an address of a place at which notices and papers may be served on the attorney, in which event they may be served at that place.

**1016.**

The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

**1017.**

Any summons, writ, or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order, or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect in all respects, as the original thereof might be if delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ or order, must also be filed in the Court from which it was issued, and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy of the letters "L. S.," or by the word "seal."

**1019.**

Whenever any notice or publication is required by a provision in this code or any other code or statute of this state to be provided in a specified size of type or printing which is to be measured by points, the size required, unless otherwise specifically defined, shall be determined by the conventional customs and practices of the printing industry and within the tolerances permitted by conventional custom and practice in that industry, except that

the provisions of this section shall not be used for purposes of evasion of any requirement for notice or publication.

**1019.5.**

(a) When a motion is granted or denied, unless the court otherwise orders, notice of the court's decision or order shall be given by the prevailing party to all other parties or their attorneys, in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes.

(b) When a motion is granted or denied on the court's own motion, notice of the court's order shall be given by the court in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes.

**1020.**

Any notice required by law, other than those required to be given to a party to an action or to his attorney, the service of which is not governed by the other sections of this chapter and which is not otherwise specifically provided for by law, may be given by sending the same by registered mail with proper postage prepaid addressed to the addressee's last known address with request for return receipt, and the production of a returned receipt purporting to be signed by the addressee shall create a disputable presumption that such notice was received by the person to whom the notice was required to be sent.

**1991.**

Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court issuing the subpoena.

When the subpoena, in any such case, requires the attendance of the witness before an officer or commissioner out of court, it is the duty of the officer or commissioner to report any disobedience or refusal to be sworn or to answer a question or to subscribe an affidavit or deposition when required, to the court issuing the subpoena. The witness shall not be punished for any refusal to be sworn or to answer a question or to subscribe an affidavit or deposition, unless, after a hearing upon notice, the court orders the witness to be sworn, or to so answer or subscribe and then only for disobedience to the order.

Any judge, justice, or other officer mentioned in subdivision (c) of Section 1986, may report any disobedience or refusal to be sworn or to answer a question or to subscribe an affidavit or deposition when required to the superior court of the county in which attendance was required; and the court thereupon has power, upon notice, to order the witness to perform the omitted act, and any refusal or neglect to comply with the order may be punished as a contempt of court.

In lieu of the reporting of the refusal as hereinabove provided, the party seeking to obtain the deposition or to have the deposition or affidavit signed, at the time of the refusal may request the officer or commissioner to notify the witness that at a time stated, not less than five days nor more than 20 days from the date of the refusal, he or she will report the refusal of the witness to the court and that the party will, at that time, or as soon thereafter as he or she may be heard, apply to the court for an order directing the witness to be sworn, or to answer as a witness, or subscribe the deposition or affidavit, as the case may be, and that the witness is required to attend that session of the court.

The officer or commissioner shall enter in the record of the proceedings an exact transcription of the request made of him or her that he or she notify the witness that the party will apply for an order directing the witness to be sworn or to answer as a witness or subscribe the deposition or affidavit, and of his or her notice to the witness, and the transcription shall be attached to his or her report to the court of the refusal of the witness. The report shall be filed by the officer with the clerk of the court issuing the subpoena, and the witness shall attend that session of the court, and for failure or refusal to do so may be punished for contempt.

At the time so specified by the officer, or at a subsequent time to which the court may have continued the matter, if the officer has theretofore filed a report showing the refusal of the witness, the court shall hear the matter, and without further notice to the witness, may order the witness to be sworn or to answer as a witness or subscribe the deposition or affidavit, as the case may be, and may in the order specify the time and place at which compliance shall be made or to which the taking of the deposition is continued. Thereafter if the witness refuses to comply with the order he or she may be punished for contempt.

#### **1991.1.**

Disobedience to a subpoena requiring attendance of a witness before an officer out of court in a deposition taken pursuant to Title 4 (commencing with Section 2016.010), or refusal to be sworn as a witness at that deposition, may be punished as contempt, as provided in subdivision (e) of Section 2023.030, without the necessity of a prior order of court directing compliance by the witness.

#### **1991.2.**

The provisions of Section 1991 do not apply to any act or omission occurring in a deposition taken pursuant to Title 4 (commencing with Section 2016.010). The provisions of Chapter 7 (commencing with Section 2023.010) of Title 4 are exclusively applicable.

**2002.**

The testimony of witnesses is taken in three modes:

1. By affidavit;
2. By deposition;
3. By oral examination.

**2003.**

An affidavit is a written declaration under oath, made without notice to the adverse party.

**2004.**

A deposition is a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine. In all actions and proceedings where the default of the defendant has been duly entered, and in all proceedings to obtain letters of administration, or for the probate of wills and the issuance of letters testamentary thereon, where, after due and legal notice, those entitled to contest the application have failed to appear, the entry of said defaults, and the failure of said persons to appear after notice, shall be deemed to be a waiver of the right to any further notice of any application or proceeding to take testimony by deposition in such action or proceeding.

**2005.**

An oral examination is an examination in presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

**2009.**

An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or upon a motion, and in any other case expressly permitted by statute.

**2010.**

Evidence of the publication of a document or notice required by law, or by an order of a Court or Judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which, the publication was made.

**2011.**

If such affidavit be made in an action or special proceeding pending in a Court, it may be filed with the Court or a Clerk thereof. If not so made, it may

be filed with the Clerk of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the Judge of the Court or Clerk having it in custody, is prima facie evidence of the facts stated therein.

**2012.**

An affidavit to be used before any court, judge, or officer of this state may be taken before any officer authorized to administer oaths.

**2013.**

An affidavit taken in another State of the United States, to be used in this State, may be taken before a Commissioner appointed by the Governor of this State to take affidavits and depositions in such other State, or before any Notary Public in another State, or before any Judge or Clerk of a Court of record having a seal.

**2014.**

An affidavit taken in a foreign country to be used in this State, may be taken before an Ambassador, Minister, Consul, Vice Consul, or Consular Agent of the United States, or before any Judge of a Court of record having a seal in such foreign country.

**2015.**

When an affidavit is taken before a Judge or a Court in another State, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such Judge is a member thereof, must be certified by the Clerk of the Court, under the seal thereof.

**2015.3.**

The certificate of a sheriff, marshal, or the clerk of the superior court, has the same force and effect as his or her affidavit.

**2015.5.**

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of

the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

“I certify (or declare) under penalty of perjury that the foregoing is true and correct”:

\_\_\_\_\_  
(Date and Place)(Signature)

(b) If executed at any place, within or without this state:

“I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct”:

\_\_\_\_\_  
(Date)(Signature)

#### **2015.6.**

Whenever, under any law of this State or under any rule, regulation, order or requirement made pursuant to law, an oath is required to be taken by a person appointed to discharge specific duties in a particular action, proceeding or matter, whether or not pending in court, including but not limited to a person appointed as executor, administrator, guardian, conservator, appraiser, receiver, or elisor, an unsworn written affirmation may be made and executed, in lieu of such oath. Such affirmation shall commence “I solemnly affirm,” shall state the substance of the other matter required by the oath, the date and place of execution and shall be subscribed by him.

#### **2016.010.**

This title may be cited as the “Civil Discovery Act.”

#### **2016.020.**

As used in this title:

(a) “Action” includes a civil action and a special proceeding of a civil nature.

(b) “Court” means the trial court in which the action is pending, unless otherwise specified.

(c) “Document” and “writing” mean a writing, as defined in Section 250 of the Evidence Code.

(d) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) “Electronically stored information” means information that is stored in an electronic medium.

**2016.030.**

Unless the court orders otherwise, the parties may by written stipulation modify the procedures provided by this title for any method of discovery permitted under Section 2019.010.

**2019.010.**

Any party may obtain discovery by one or more of the following methods:

- (a) Oral and written depositions.
- (b) Interrogatories to a party.
- (c) Inspections of documents, things, and places.
- (d) Physical and mental examinations.
- (e) Requests for admissions.
- (f) Simultaneous exchanges of expert trial witness information.

**2020.010.**

(a) Any of the following methods may be used to obtain discovery within the state from a person who is not a party to the action in which the discovery is sought:

- (1) An oral deposition under Chapter 9 (commencing with Section 2025.010).
  - (2) A written deposition under Chapter 11 (commencing with Section 2028.010).
  - (3) A deposition for production of business records and things under Article 4 (commencing with Section 2020.410) or Article 5 (commencing with Section 2020.510).
- (b) Except as provided in subdivision (a) of Section 2025.280, the process by which a nonparty is required to provide discovery is a deposition subpoena.

**2020.020.**

A deposition subpoena may command any of the following:

- (a) Only the attendance and the testimony of the deponent, under Article 3 (commencing with Section 2020.310).
- (b) Only the production of business records for copying, under Article 4 (commencing with Section 2020.410).
- (c) The attendance and the testimony of the deponent, as well as the production of business records, other documents, electronically stored information, and tangible things, under Article 5 (commencing with Section 2020.510).

**2020.210.**

(a) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Instead of a court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena. A deposition subpoena issued under this subdivision need not be sealed. A copy may be served on the nonparty, and the attorney may retain the original.

**2020.220.**

(a) Subject to subdivision (c) of Section 2020.410, service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, electronically stored information, and tangible things, as described in Article 4 (commencing with Section 2020.410), and, where personal attendance is commanded, a reasonable time to travel to the place of deposition.

(b) Any person may serve the subpoena by personal delivery of a copy of it as follows:

(1) If the deponent is a natural person, to that person.

(2) If the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

(c) Personal service of any deposition subpoena is effective to require all of the following of any deponent who is a resident of California at the time of service:

(1) Personal attendance and testimony, if the subpoena so specifies.

(2) Any specified production, inspection, testing, and sampling.

(3) The deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or photocopying, if the subpoena so specifies, or specified testing and sampling of the items produced.

(d) Unless the subpoenaing party and the subpoenaed person otherwise agree or the court otherwise orders, the following shall apply:

(1) If a subpoena requiring production of electronically stored information does not specify a form or forms for producing a type of electronically stored information, the person subpoenaed shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A subpoenaed person need not produce the same electronically stored information in more than one form.

(e) The subpoenaed person opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(f) If the person from whom discovery of electronically stored information is subpoenaed establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the subpoenaing party shows good cause, subject to any limitations imposed under subdivision (i).

(g) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(h) If necessary, the subpoenaed person, at the reasonable expense of the subpoenaing party, shall, through detection devices, translate any data compilations included in the subpoena into a reasonably usable form.

(i) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(j) If a subpoenaed person notifies the subpoenaing party that electronically stored information produced pursuant to a subpoena is subject to a claim of privilege or of protection as attorney work product, as described in Section 2031.285, the provisions of Section 2031.285 shall apply.

(k) A party serving a subpoena requiring the production of electronically stored information shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

(l) An order of the court requiring compliance with a subpoena issued under this section shall protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(m) (1) Absent exceptional circumstances, the court shall not impose sanctions on a subpoenaed person or any attorney of a subpoenaed person for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) The subdivision shall not be construed to alter any obligation to preserve discoverable information.

#### **2020.230.**

(a) If a deposition subpoena requires the personal attendance of the deponent, under Article 3 (commencing with Section 2020.310) or Article 5 (commencing with Section 2020.510), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

(b) Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under Article 4 (commencing with Section 2020.410), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

#### **2020.240.**

A deponent who disobeys a deposition subpoena in any manner described in subdivision (c) of Section 2020.220 may be punished for contempt under Chapter 7 (commencing with Section 2023.010) without the necessity of a prior order of court directing compliance by the witness. The deponent is also subject to the forfeiture and the payment of damages set forth in Section 1992.

#### **2020.410.**

(a) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired.

(b) Notwithstanding subdivision (a), specific information identifiable only to the deponent's records system, like a policy number or the date when a consumer interacted with the witness, is not required.

(c) A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(d) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as applicable.

#### **2020.420.**

The officer for a deposition seeking discovery only of business records for copying under this article shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

#### **2020.430.**

(a) Except as provided in subdivision (e), if a deposition subpoena commands only the production of business records for copying, the custodian of the records or other qualified person shall, in person, by messenger, or by mail, deliver both of the following only to the deposition officer specified in the subpoena:

- (1) A true, legible, and durable copy of the records.
- (2) An affidavit in compliance with Section 1561 of the Evidence Code.

(b) If the delivery required by subdivision (a) is made to the office of the deposition officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code.

(c) If the delivery required by subdivision (a) is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person shall do one of the following:

(1) Permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records during normal business hours, as defined in subdivision (e) of Section 1560 of the Evidence Code.

(2) Deliver to the deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy, together with an itemized statement of the cost of preparation, as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope.

(d) Unless the parties, and if the records are those of a consumer as defined in Section 1985.3 or 1985.6, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: "Do not release the requested records to the deposition officer prior to the date and time stated above."

(e) This section does not apply if the subpoena directs the deponent to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e) of Section 1560 of the Evidence Code.

(f) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this article.

#### **2020.440.**

Promptly on or after the deposition date and after the receipt or the making of a copy of business records under this article, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently, within a period of six months following the settlement of the case, notifies the deposition officer that the party desires to purchase a copy of those records.

**2025.010.**

Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010) and Chapter 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

**2025.210.**

Subject to Sections 2025.270 and 2025.610, an oral deposition may be taken as follows:

- (a) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.
- (b) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. On motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

**2025.220.**

(a) A party desiring to take the oral deposition of any person shall give notice in writing. The deposition notice shall state all of the following:

- (1) The address where the deposition will be taken.
- (2) The date of the deposition, selected under Section 2025.270, and the time it will commence.
- (3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.
- (4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.
- (5) Any intention by the party noticing the deposition to record the testimony by audio or video technology, in addition to recording the testimony by the stenographic method as required by Section 2025.330 and any intention to record the testimony by stenographic method through the instant visual display of the testimony. If the deposition will be conducted using instant visual display, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted

prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance. Any party or attorney requesting the provision of the instant visual display of the testimony, or rough draft transcripts, shall pay the reasonable cost of those services, which may be no greater than the costs charged to any other party or attorney.

(6) Any intention to reserve the right to use at trial a video recording of the deposition testimony of a treating or consulting physician or of any expert witness under subdivision (d) of Section 2025.620. In this event, the operator of the video camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

(b) Notwithstanding subdivision (a), where under Article 4 (commencing with Section 2020.410) only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition.

#### **2025.230.**

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent.

#### **2025.240.**

(a) The party who prepares a notice of deposition shall give the notice to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

(b) If, as defined in subdivision (a) of Section 1985.3 or subdivision (a) of Section 1985.6, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or employment records of an employee, the subpoenaing party shall serve on that consumer or employee all of the following:

(1) A notice of the deposition.

(2) The notice of privacy rights specified in subdivision (e) of Section 1985.3 or in subdivision (e) of Section 1985.6.

(3) A copy of the deposition subpoena.

(c) If the attendance of the deponent is to be compelled by service of a deposition subpoena under Chapter 6 (commencing with Section 2020.010), an identical copy of that subpoena shall be served with the deposition notice.

**2025.250.**

(a) Unless the court orders otherwise under Section 2025.260, the deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence.

(b) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office.

(c) Unless the organization consents to a more distant place, the deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California.

(d) If an organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

**2025.260.**

(a) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under Section 2025.250. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

- (1) Whether the moving party selected the forum.
- (2) Whether the deponent will be present to testify at the trial of the action.
- (3) The convenience of the deponent.
- (4) The feasibility of conducting the deposition by written questions under Chapter 11 (commencing with Section 2028.010), or of using a discovery method other than a deposition.
- (5) The number of depositions sought to be taken at a place more distant than that permitted under Section 2025.250.

(6) The expense to the parties of requiring the deposition to be taken within the distance permitted under Section 2025.250.

(7) The whereabouts of the deponent at the time for which the deposition is scheduled.

(c) The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase the travel limits for a party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2025.270.**

(a) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

(c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or 1985.6, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or employment records of an employee, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

(d) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

**2025.280.**

(a) The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(b) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Chapter 6 (commencing with Section 2020.010).

**2025.290.**

(a) Except as provided in subdivision (b), or by any court order, including a case management order, a deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to seven hours of total testimony. The court shall allow additional time, beyond any limits imposed by this section, if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(b) This section shall not apply under any of the following circumstances:

(1) If the parties have stipulated that this section will not apply to a specific deposition or to the entire proceeding.

(2) To any deposition of a witness designated as an expert pursuant to Sections 2034.210 to 2034.310, inclusive.

(3) To any case designated as complex by the court pursuant to Rule 3.400 of the California Rules of Court, unless a licensed physician attests in a declaration served on the parties that the deponent suffers from an illness or condition that raises substantial medical doubt of survival of the deponent beyond six months, in which case the deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to two days of no more than seven hours of total testimony each day, or 14 hours of total testimony.

(4) To any case brought by an employee or applicant for employment against an employer for acts or omissions arising out of or relating to the employment relationship.

(5) To any deposition of a person who is designated as the most qualified person to be deposed under Section 2025.230.

(6) To any party who appeared in the action after the deposition has concluded, in which case the new party may notice another deposition subject to the requirements of this section.

(c) It is the intent of the Legislature that any exclusions made by this section shall not be construed to create any presumption or any substantive change to existing law relating to the appropriate time limit for depositions falling within the exclusion. Nothing in this section shall be construed to affect the existing right of any party to move for a protective order or the court's discretion to make any order that justice requires to limit a deposition in order to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, oppression, undue burden, or expense.

**2025.310.**

(a) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means.

(b) The court may expressly provide that a nonparty deponent may appear at the deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent shall appear at the deposition in person and be in the presence of the deposition officer.

(c) The procedures to implement this section shall be established by court order in the specific action or proceeding or by the California Rules of Court.

**2025.320.**

Except as provided in Section 2020.420, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

(a) The officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of the parties, or of any of the parties.

(b) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

(c) The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action.

(d) Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an

attorney shall be informed by the noticing party or the party's attorney that the unrepresented party may request this statement.

(e) Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(f) Violation of this section by any person may result in a civil penalty of up to five thousand dollars (\$5,000) imposed by a court of competent jurisdiction.

#### **2025.330.**

(a) The deposition officer shall put the deponent under oath or affirmation.

(b) Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. If taken stenographically, it shall be by a person certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code.

(c) The party noticing the deposition may also record the testimony by audio or video technology if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make an audio or video record of the deposition, provided that the other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to make an audio or video record of the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under Section 2025.240, and on any deponent whose attendance is being compelled by a deposition subpoena under Chapter 6 (commencing with Section 2020.010). If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011.

(d) Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(e) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

#### **2025.340.**

If a deposition is being recorded by means of audio or video technology by, or at the direction of, any party, the following procedure shall be observed:

(a) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(b) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this section. Except as provided in subdivision (c), the operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer.

(c) If a video recording of deposition testimony is to be used under subdivision (d) of Section 2025.620, the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(d) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

(e) The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action.

(f) Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

(g) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(h) The deposition shall begin with an oral or written statement on camera or on the audio recording that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(i) Counsel for the parties shall identify themselves on camera or on the audio recording.

(j) The oath shall be administered to the deponent on camera or on the audio recording.

(k) If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.

(l) At the conclusion of a deposition, a statement shall be made on camera or on the audio recording that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio or video recording and the exhibits, or concerning other pertinent matters.

(m) A party intending to offer an audio or video recording of a deposition in evidence under Section 2025.620 shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered. That notice shall be given within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio or video record of deposition testimony that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering an audio or video recording of that testimony under Section 2025.620 shall accompany that offer with a stenographic transcript prepared from that recording.

#### **2025.410.**

(a) Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity

unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served.

(b) If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under Section 2025.620 if the party did not attend the deposition and if the court determines that the objection was a valid one.

(c) In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a meet and confer declaration under Section 2016.040. The taking of the deposition is stayed pending the determination of this motion.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) (1) Notwithstanding subdivision (d), absent exceptional circumstances, the court shall not impose sanctions on any party, person, or attorney for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

#### **2025.420.**

(a) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video recording of the deposition testimony of a treating or consulting physician or of any expert witness, intended for possible use at trial under subdivision (d) of Section 2025.620, be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by Sections 2025.250 and 2025.260.

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, copied, tested, or sampled, or that conditions be set for the production of electronically stored information designated in the deposition notice.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

(16) That examination of the deponent be terminated. If an order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

(c) The party, deponent, or any other affected natural person or organization that seeks a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of

undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exist:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(g) If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) (1) Notwithstanding subdivision (h), absent exceptional circumstances, the court shall not impose sanctions on any party, deponent, or other affected natural person or organization or any of their attorneys for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

**2025.430.**

If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2025.440.**

(a) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(b) If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in Section 2020.240.

**2025.450.**

(a) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.

(b) A motion under subdivision (a) shall comply with both of the following:

(1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.

(2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described

in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance.

(c) In a motion under subdivision (a) relating to the production of electronically stored information, the party or party-affiliated deponent objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or party-affiliated deponent from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(g) (1) If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall impose a monetary

sanction under Chapter 7 (commencing with Section 2023.010) in favor of that party and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(i) (1) Notwithstanding subdivisions (g) and (h), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

#### **2025.460.**

(a) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Chapter 4 (commencing with Section 2018.010) is waived unless a specific objection to its disclosure is timely made during the deposition.

(b) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under Sections 2025.420 and 2025.470, the deposition shall proceed subject to the objection.

(c) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(d) If a deponent objects to the production of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the deponent will not search the source in the absence of an agreement with the deposing party or court order, the deponent shall identify in its objection the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the deponent preserves any objections it may have relating to that electronically stored information.

(e) If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under Section 2025.480.

(f) Notwithstanding subdivision (a), if a deponent notifies the party that took a deposition that electronically stored information produced pursuant to the deposition notice or subpoena is subject to a claim of privilege or of protection as attorney work product, as described in Section 2031.285, the provisions of Section 2031.285 shall apply.

#### **2025.470.**

The deposition officer may not suspend the taking of testimony without the stipulation of all parties present unless any party attending the deposition, including the deponent, demands that the deposition officer suspend taking the testimony to enable that party or deponent to move for a protective order under Section 2025.420 on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.

#### **2025.480.**

(a) If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production.

(b) This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) Notice of this motion shall be given to all parties and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the deponent objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the deponent from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the deposing party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(h) Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio or video technology, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion.

(i) If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

(j) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel an answer or

production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(k) If a deponent fails to obey an order entered under this section, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against any party with whom the deponent is affiliated.

(l) (1) Notwithstanding subdivisions (j) and (k), absent exceptional circumstances, the court shall not impose sanctions on a deponent or any attorney of a deponent for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

#### **2025.510.**

(a) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed.

(b) The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party.

(c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the deponent, at the expense of that party or deponent, may obtain a copy of the transcript.

(d) If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time.

(e) Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the

transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified.

(f) At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio or video technology shall promptly do both of the following:

(1) Permit that other party to hear the audio recording or to view the video recording.

(2) Furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.

(g) If the testimony at the deposition is recorded both stenographically, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(h) (1) The requesting attorney or party appearing in propria persona shall timely pay the deposition officer or the entity providing the services of the deposition officer for the transcription or copy of the transcription described in subdivision (b) or (c), and any other deposition products or services that are requested either orally or in writing.

(2) This subdivision shall apply unless responsibility for the payment is otherwise provided by law or unless the deposition officer or entity is notified in writing at the time the services or products are requested that the party or another identified person will be responsible for payment.

(3) This subdivision does not prohibit or supersede an agreement between an attorney and a party allocating responsibility for the payment of deposition costs to the party.

(4) The requesting attorney or party appearing in propria persona, upon the written request of a deposition officer who has obtained a final judgment for payment of services provided pursuant to this subdivision, shall provide to the deposition officer an address that can be used to effectuate service for the purpose of Section 708.110 in the manner specified in Section 415.10.

(i) For purposes of this section, "deposition product or service" means any product or service provided in connection with a deposition that qualifies as shorthand reporting, as described in Section 8017 of the Business and Professions Code, and any product or service derived from that shorthand reporting.

**2025.520.**

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

(e) The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), on a seasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition

under this section, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2025.530.**

(a) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the audio or video recording made by, or at the direction of, any party, is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of the audio or video recording of the testimony.

(b) For 30 days following a notice under subdivision (a), the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

(c) The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as the deponent's own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the period prescribed by subdivision (b).

(d) When a deponent fails to contact the officer within the period prescribed by subdivision (b), or expressly refuses by a signature to identify the deposition as the deponent's own, the deposition shall be given the same effect as though signed.

(e) Notwithstanding subdivision (d), on a reasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2025.540.**

(a) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audio or video record of deposition testimony, as described in Section 2025.530, that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(b) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the

certified transcript of deposition proceedings as provided by the deposition officer.

**2025.550.**

(a) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

(b) The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

**2025.560.**

(a) An audio or video recording of deposition testimony made by, or at the direction of, any party, including a certified recording made by an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340, shall not be filed with the court. Instead, the operator shall retain custody of that recording and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the recording and the integrity of the testimony and images it contains.

(b) At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly do both of the following:

(1) Permit the one making the request to hear or to view the recording on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the recording.

(2) Furnish a copy of the audio or video recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the recording.

(c) The attorney or operator who has custody of an audio or video recording of deposition testimony made by, or at the direction of, any party, shall retain custody of it until six months after final disposition of the action. At that time, the audio or video recording may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the recording be preserved for a longer period.

**2025.570.**

(a) Notwithstanding subdivision (b) of Section 2025.320, unless the court issues an order to the contrary, a copy of the transcript of the deposition testimony made by, or at the direction of, any party, or an audio or video recording of the deposition testimony, if still in the possession of the deposition officer, shall be made available by the deposition officer to any person requesting a copy, on payment of a reasonable charge set by the deposition officer.

(b) If a copy is requested from the deposition officer, the deposition officer shall mail a notice to all parties attending the deposition and to the deponent at the deponent's last known address advising them of all of the following:

(1) The copy is being sought.

(2) The name of the person requesting the copy.

(3) The right to seek a protective order under Section 2025.420.

(c) If a protective order is not served on the deposition officer within 30 days of the mailing of the notice, the deposition officer shall make the copy available to the person requesting the copy.

(d) This section shall apply only to recorded testimony taken at depositions occurring on or after January 1, 1998.

**2025.610.**

(a) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to Section 2025.240 may take a subsequent deposition of that deponent.

(b) Notwithstanding subdivision (a), for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken.

(c) This section does not preclude taking one subsequent deposition of a natural person who has previously been examined under either or both of the following circumstances:

(1) The person was examined as a result of that person's designation to testify on behalf of an organization under Section 2025.230.

(2) The person was examined pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest.

(d) This section does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

**2025.620.**

At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under Section 2025.410, so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(a) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(b) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under Section 2025.230 of a party. It is not ground for objection to the use of a deposition of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(c) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(1) The deponent resides more than 150 miles from the place of the trial or other hearing.

(2) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is any of the following:

(A) Exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant.

(B) Disqualified from testifying.

(C) Dead or unable to attend or testify because of existing physical or mental illness or infirmity.

(D) Absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process.

(E) Absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(3) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(d) Any party may use a video recording of the deposition testimony of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under Section 2025.220 reserved the right to use the deposition at trial, and if that party has complied with subdivision (m) of Section 2025.340.

(e) Subject to the requirements of this chapter, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(f) Substitution of parties does not affect the right to use depositions previously taken.

(g) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

#### **2026.010.**

(a) Any party may obtain discovery by taking an oral deposition, as described in Section 2025.010, in another state of the United States, or in a territory or an insular possession subject to its jurisdiction. Except as modified in this section, the procedures for taking oral depositions in California set forth in Chapter 9 (commencing with Section 2025.010) apply to an oral deposition taken in another state of the United States, or in a territory or an insular possession subject to its jurisdiction.

(b) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel that deponent to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection, copying, testing, or sampling. The deposition notice shall specify a place in the state, territory, or insular possession of the United States that is within 75 miles of the residence or a business office of a deponent.

(c) If the deponent is not a party to the action or an officer, director, managing agent, or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the state, territory, or insular possession where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection, copying, testing, sampling, and any related activity.

(d) A deposition taken under this section shall be conducted in either of the following ways:

(1) Under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under Section 2025.320 and subdivisions (b) to (f), inclusive, of Section 2025.340.

(2) Before a person appointed by the court.

(e) An appointment under subdivision (d) is effective to authorize that person to administer oaths and to take testimony.

(f) On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and electronically stored information and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission may contain terms that are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.

#### **2027.010.**

(a) Any party may obtain discovery by taking an oral deposition, as described in Section 2025.010, in a foreign nation. Except as modified in this section, the procedures for taking oral depositions in California set forth in Chapter 9 (commencing with Section 2025.010) apply to an oral deposition taken in a foreign nation.

(b) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(c) If a deponent is not a party to the action or an officer, director, managing agent or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the foreign nation where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.

(d) A deposition taken under this section shall be conducted under the supervision of any of the following:

(1) A person who is authorized to administer oaths or their equivalent by the laws of the United States or of the foreign nation, and who is not otherwise

disqualified under Section 2025.320 and subdivisions (b) to (f), inclusive, of Section 2025.340.

(2) A person or officer appointed by commission or under letters rogatory.

(3) Any person agreed to by all the parties.

(e) On motion of the party seeking to take an oral deposition in a foreign nation, the court in which the action is pending shall issue a commission, letters rogatory, or a letter of request, if it determines that one is necessary or convenient. The commission, letters rogatory, or letter of request may include any terms and directions that are just and appropriate. The deposition officer may be designated by name or by descriptive title in the deposition notice and in the commission. Letters rogatory or a letter of request may be addressed: "To the Appropriate Judicial Authority in [name of foreign nation]."

#### **2028.010.**

Any party may obtain discovery by taking a deposition by written questions instead of by oral examination. Except as modified in this chapter, the procedures for taking oral depositions set forth in Chapters 9 (commencing with Section 2025.010) and 10 (commencing with Section 2026.010) apply to written depositions.

#### **2028.020.**

The notice of a written deposition shall comply with Sections 2025.220 and 2025.230, and with subdivision (c) of Section 2020.240, except as follows:

(a) The name or descriptive title, as well as the address, of the deposition officer shall be stated.

(b) The date, time, and place for commencement of the deposition may be left to future determination by the deposition officer.

#### **2028.030.**

(a) The questions to be propounded to the deponent by direct examination shall accompany the notice of a written deposition.

(b) Within 30 days after the deposition notice and questions are served, a party shall serve any cross questions on all other parties entitled to notice of the deposition.

(c) Within 15 days after being served with cross questions, a party shall serve any redirect questions on all other parties entitled to notice of the deposition.

(d) Within 15 days after being served with redirect questions, a party shall serve any recross questions on all other parties entitled to notice of the deposition.

(e) The court may, for good cause shown, extend or shorten the time periods for the interchange of cross, redirect, and recross questions.

**2028.040.**

(a) A party who objects to the form of any question shall serve a specific objection to that question on all parties entitled to notice of the deposition within 15 days after service of the question. A party who fails to timely serve an objection to the form of a question waives it.

(b) The objecting party shall promptly move the court to sustain the objection. This motion shall be accompanied by a meet and confer declaration under Section 2016.040. Unless the court has sustained that objection, the deposition officer shall propound to the deponent that question subject to that objection as to its form.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to sustain an objection, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2028.050.**

(a) A party who objects to any question on the ground that it calls for information that is privileged or is protected work product under Chapter 4 (commencing with Section 2018.010) shall serve a specific objection to that question on all parties entitled to notice of the deposition within 15 days after service of the question. A party who fails to timely serve that objection waives it.

(b) The party propounding any question to which an objection is made on those grounds may then move the court for an order overruling that objection. This motion shall be accompanied by a meet and confer declaration under Section 2016.040. The deposition officer shall not propound to the deponent any question to which a written objection on those grounds has been served unless the court has overruled that objection.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to overrule an objection, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2028.060.**

(a) The party taking a written deposition may forward to the deponent a copy of the questions on direct examination for study prior to the deposition.

(b) No party or attorney shall permit the deponent to preview the form or the substance of any cross, redirect, or recross questions.

**2028.070.**

In addition to any appropriate order listed in Section 2025.420, the court may order any of the following:

- (a) That the deponent's testimony be taken by oral, instead of written, examination.
- (b) That one or more of the parties receiving notice of the written deposition be permitted to attend in person or by attorney and to propound questions to the deponent by oral examination.
- (c) That objections under Sections 2028.040 and 2028.050 be sustained or overruled.
- (d) That the deposition be taken before an officer other than the one named or described in the deposition notice.

**2028.080.**

The party taking a written deposition shall deliver to the officer designated in the deposition notice a copy of that notice and of all questions served under Section 2028.030. The deposition officer shall proceed promptly to propound the questions and to take and record the testimony of the deponent in response to the questions.

**2032.210.**

As used in this article, "plaintiff" includes a cross-complainant, and "defendant" includes a cross-defendant.

**2032.220.**

(a) In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff, if both of the following conditions are satisfied:

- (1) The examination does not include any diagnostic test or procedure that is painful, protracted, or intrusive.
- (2) The examination is conducted at a location within 75 miles of the residence of the examinee.

(b) A defendant may make a demand under this article without leave of court after that defendant has been served or has appeared in the action, whichever occurs first.

(c) A demand under subdivision (a) shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the physician who will perform the examination.

(d) A physical examination demanded under subdivision (a) shall be scheduled for a date that is at least 30 days after service of the demand. On

motion of the party demanding the examination, the court may shorten this time.

(e) The defendant shall serve a copy of the demand under subdivision (a) on the plaintiff and on all other parties who have appeared in the action.

**2032.510.**

(a) The attorney for the examinee or for a party producing the examinee, or that attorney's representative, shall be permitted to attend and observe any physical examination conducted for discovery purposes, and to record stenographically or by audio technology any words spoken to or by the examinee during any phase of the examination.

(b) The observer under subdivision (a) may monitor the examination, but shall not participate in or disrupt it.

(c) If an attorney's representative is to serve as the observer, the representative shall be authorized to so act by a writing subscribed by the attorney which identifies the representative.

(d) If in the judgment of the observer the examiner becomes abusive to the examinee or undertakes to engage in unauthorized diagnostic tests and procedures, the observer may suspend it to enable the party being examined or producing the examinee to make a motion for a protective order.

(e) If the observer begins to participate in or disrupt the examination, the person conducting the physical examination may suspend the examination to enable the party at whose instance it is being conducted to move for a protective order.

(f) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order under this section, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2032.530.**

(a) The examiner and examinee shall have the right to record a mental examination by audio technology.

(b) Nothing in this title shall be construed to alter, amend, or affect existing case law with respect to the presence of the attorney for the examinee or other persons during the examination by agreement or court order.

**2034.410.**

On receipt of an expert witness list from a party, any other party may take the deposition of any person on the list. The procedures for taking oral and written depositions set forth in Chapters 9 (commencing with Section

2025.010), 10 (commencing with Section 2026.010), and 11 (commencing with Section 2028.010) apply to a deposition of a listed trial expert witness except as provided in this article.

**2034.420.**

The deposition of any expert described in subdivision (b) of Section 2034.210 shall be taken at a place that is within 75 miles of the courthouse where the action is pending. On motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

**2034.430.**

(a) Except as provided in subdivision (f), this section applies to an expert witness, other than a party or an employee of a party, who is any of the following:

- (1) An expert described in subdivision (b) of Section 2034.210.
  - (2) A treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are.
  - (3) An architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which that person is asked to express an opinion within the person's expertise and relevant to the action or proceeding.
- (b) A party desiring to depose an expert witness described in subdivision (a) shall pay the expert's reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena, or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, regardless of whether the expert is actually deposed by any party attending the deposition.
- (c) If any counsel representing the expert or a nonnoticing party is late to the deposition, the expert's reasonable and customary hourly or daily fee for the time period determined from the time noticed in the deposition subpoena until the counsel's late arrival, shall be paid by that tardy counsel.
- (d) Notwithstanding subdivision (c), the hourly or daily fee charged to the tardy counsel shall not exceed the fee charged to the party who retained the

expert, except where the expert donated services to a charitable or other nonprofit organization.

(e) A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forgo all business that the expert would otherwise have conducted that day but for the request that the expert be available all day for the scheduled deposition.

(f) In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay the fee under this section.

**2034.440.**

The party designating an expert is responsible for any fee charged by the expert for preparing for a deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

**2034.450.**

(a) The party taking the deposition of an expert witness shall either accompany the service of the deposition notice with a tender of the expert's fee based on the anticipated length of the deposition, or tender that fee at the commencement of the deposition.

(b) The expert's fee shall be delivered to the attorney for the party designating the expert.

(c) If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert.

**2034.460.**

(a) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in Section 2034.430 is effective to require the party employing or retaining the expert to produce the expert for the deposition.

(b) If the party noticing the deposition fails to tender the expert's fee under Section 2034.430, the expert shall not be deposed at that time unless the parties stipulate otherwise.

**2034.470.**

(a) If a party desiring to take the deposition of an expert witness under this article deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. Notice of this motion shall also be given to the expert.

(b) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040. In any attempt at an informal resolution under Section 2016.040, either the party or the expert shall provide the other with all of the following:

(1) Proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.

(2) The total number of times the presently demanded fee has ever been charged and received by that expert.

(3) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(c) In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based on, proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.

(d) In an action filed after January 1, 1994, the expert or the party designating the expert shall also provide, and the court's determination as to the reasonableness of the fee shall also be based on, both of the following:

(1) The total number of times the presently demanded fee has ever been charged and received by that expert.

(2) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(e) The court may also consider the ordinary and customary fees charged by similar experts for similar services within the relevant community and any other factors the court deems necessary or appropriate to make its determination.

(f) Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

(g) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**2035.010.**

(a) One who expects to be a party or expects a successor in interest to be a party to any action that may be cognizable in any court of the State of California, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

(b) One shall not employ the procedures of this chapter for the purpose either of ascertaining the possible existence of a cause of action or a defense to it, or of identifying those who might be made parties to an action not yet filed.

**2035.020.**

The methods available for discovery conducted for the purposes set forth in Section 2035.010 are all of the following:

- (a) Oral and written depositions.
- (b) Inspections of documents, things, and places.
- (c) Physical and mental examinations.

**2035.030.**

(a) One who desires to perpetuate testimony or preserve evidence for the purposes set forth in Section 2035.010 shall file a verified petition in the superior court of the county of the residence of at least one expected adverse party, or, if no expected adverse party is a resident of the State of California, in the superior court of a county where the action or proceeding may be filed.

(b) The petition shall be titled in the name of the one who desires the perpetuation of testimony or the preservation of evidence. The petition shall set forth all of the following:

- (1) The expectation that the petitioner or the petitioner's successor in interest will be a party to an action cognizable in a court of the State of California.
- (2) The present inability of the petitioner and, if applicable, the petitioner's successor in interest either to bring that action or to cause it to be brought.
- (3) The subject matter of the expected action and the petitioner's involvement. A copy of any written instrument the validity or construction of which may be called into question, or which is connected with the subject matter of the proposed discovery, shall be attached to the petition.
- (4) The particular discovery methods described in Section 2035.020 that the petitioner desires to employ.

- (5) The facts that the petitioner desires to establish by the proposed discovery.
- (6) The reasons for desiring to perpetuate or preserve these facts before an action has been filed.
- (7) The name or a description of those whom the petitioner expects to be adverse parties so far as known.
- (8) The name and address of those from whom the discovery is to be sought.
- (9) The substance of the information expected to be elicited from each of those from whom discovery is being sought.
- (c) The petition shall request the court to enter an order authorizing the petitioner to engage in discovery by the described methods for the purpose of perpetuating the described testimony or preserving the described evidence.

**2035.040.**

- (a) The petitioner shall cause service of a notice of the petition under Section 2035.030 to be made on each natural person or organization named in the petition as an expected adverse party. This service shall be made in the same manner provided for the service of a summons.
- (b) The service of the notice shall be accompanied by a copy of the petition. The notice shall state that the petitioner will apply to the court at a time and place specified in the notice for the order requested in the petition.
- (c) This service shall be effected at least 20 days prior to the date specified in the notice for the hearing on the petition.
- (d) If after the exercise of due diligence, the petitioner is unable to cause service to be made on any expected adverse party named in the petition, the court in which the petition is filed shall make an order for service by publication.
- (e) If any expected adverse party served by publication does not appear at the hearing, the court shall appoint an attorney to represent that party for all purposes, including the cross-examination of any person whose testimony is taken by deposition. The court shall order that the petitioner pay the reasonable fees and expenses of any attorney so appointed.

**2035.050.**

- (a) If the court determines that all or part of the discovery requested under this chapter may prevent a failure or delay of justice, it shall make an order authorizing that discovery. In determining whether to authorize discovery by a petitioner who expects a successor in interest to be a party to an action, the court shall consider, in addition to other appropriate factors, whether the requested discovery could be conducted by the petitioner's successor in interest, instead of by the petitioner.

(b) The order shall identify any witness whose deposition may be taken, and any documents, things, or places that may be inspected, and any person whose physical or mental condition may be examined.

(c) Any authorized depositions, inspections, and physical or mental examinations shall then be conducted in accordance with the provisions of this title relating to those methods of discovery in actions that have been filed.

**2035.060.**

If a deposition to perpetuate testimony has been taken either under the provisions of this chapter, or under comparable provisions of the laws of the state in which it was taken, or the federal courts, or a foreign nation in which it was taken, that deposition may be used, in any action involving the same subject matter that is brought in a court of the State of California, in accordance with Section 2025.620 against any party, or the successor in interest of any party, named in the petition as an expected adverse party.

**2036.010.**

If an appeal has been taken from a judgment entered by any court of the State of California, or if the time for taking an appeal has not expired, a party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating testimony or preserving information for use in the event of further proceedings in that court.

**2036.020.**

The methods available for discovery for the purpose set forth in Section 2036.010 are all of the following:

- (a) Oral and written depositions.
- (b) Inspections of documents, things, and places.
- (c) Physical and mental examinations.

**2036.030.**

(a) A party who desires to obtain discovery pending appeal shall obtain leave of the court that entered the judgment. This motion shall be made on the same notice to and service of parties as is required for discovery sought in an action pending in that court.

(b) The motion for leave to conduct discovery pending appeal shall set forth all of the following:

- (1) The names and addresses of the natural persons or organizations from whom the discovery is being sought.

(2) The particular discovery methods described in Section 2036.020 for which authorization is being sought.

(3) The reasons for perpetuating testimony or preserving evidence.

**2036.040.**

(a) If the court determines that all or part of the discovery requested under this chapter may prevent a failure or delay of justice in the event of further proceedings in the action in that court, it shall make an order authorizing that discovery.

(b) The order shall identify any witness whose deposition may be taken, and any documents, things, or places that may be inspected, and any person whose physical or mental condition may be examined.

(c) Any authorized depositions, inspections, and physical and mental examinations shall then be conducted in accordance with the provisions of this title relating to these methods of discovery in a pending action.

**2036.050.**

If a deposition to perpetuate testimony has been taken under the provisions of this chapter, it may be used in any later proceeding in accordance with Section 2025.620.

**2093.**

(a) Every court, every judge, or clerk of any court, every justice, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

(b) (1) Every shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths or affirmations and may perform the duties of the deposition officer pursuant to Chapter 9 (commencing with Section 2025.010) of Title 4. The certified shorthand reporter shall be entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision shall also apply to depositions taken by telephone or other remote electronic means as specified in Chapter 2 (commencing with Section 2017.010), Chapter 3 (commencing with Section 2017.710), and Chapter 9 (commencing with Section 2025.010) of Title 4.

(c) A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no

formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification.

No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

**2094.**

(a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) "Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?"

(2) "Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?"

(b) In the alternative to the forms prescribed in subdivision (a), the court may administer an oath, affirmation, or declaration in an action or a proceeding in a manner that is calculated to awaken the person's conscience and impress the person's mind with the duty to tell the truth. The court shall satisfy itself that the person testifying understands that his or her testimony is being given under penalty of perjury.

## Evidence Code Sections Related to Copies and Business Records

### 1530.

(a) A purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if:

(1) The copy purports to be published by the authority of the nation or state, or public entity therein in which the writing is kept;

(2) The office in which the writing is kept is within the United States or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing; or

(3) The office in which the writing is kept is not within the United States or any other place described in paragraph (2) and the copy is attested as a correct copy of the writing or entry by a person having authority to make attestation. The attestation must be accompanied by a final statement certifying the genuineness of the signature and the official position of (i) the person who attested the copy as a correct copy or (ii) any foreign official who has certified either the genuineness of the signature and official position of the person attesting the copy or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the person attesting the copy. Except as provided in the next sentence, the final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. Prior to January 1, 1971, the final statement may also be made by a secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in the nation in which the writing is kept, authenticated by the seal of his office. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without the final statement or (ii) permit the writing or entry in foreign custody to be evidenced by an attested summary with or without a final statement.

(b) The presumptions established by this section are presumptions affecting the burden of producing evidence.

**1531.**

For the purpose of evidence, whenever a copy of a writing is attested or certified, the attestation or certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be.

**1532.**

(a) The official record of a writing is prima facie evidence of the existence and content of the original recorded writing if:

- (1) The record is in fact a record of an office of a public entity; and
- (2) A statute authorized such a writing to be recorded in that office.

(b) The presumption established by this section is a presumption affecting the burden of producing evidence.

**1550.**

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is as admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. A court may require the introduction of a hard copy printout of the document.

**1550.**

(a) If made and preserved as a part of the records of a business, as defined in Section 1270, in the regular course of that business, the following types of evidence of a writing are as admissible as the writing itself:

- (1) A nonerasable optical image reproduction or any other reproduction of a public record by a trusted system, as defined in Section 12168.7 of the Government Code, if additions, deletions, or changes to the original document are not permitted by the technology.
  - (2) A photostatic copy or reproduction.
  - (3) A microfilm, microcard, or miniature photographic copy, reprint, or enlargement.
  - (4) Any other photographic copy or reproduction, or an enlargement thereof.
- (b) The introduction of evidence of a writing pursuant to subdivision (a) does not preclude admission of the original writing if it is still in existence. A court may require the introduction of a hard copy printout of the document.

**1550.1.**

Reproductions of files, records, writings, photographs, fingerprints or other instruments in the official custody of a criminal justice agency that were microphotographed or otherwise reproduced in a manner that conforms with the provisions of Section 11106.1, 11106.2, or 11106.3 of the Penal Code shall be admissible to the same extent and under the same circumstances as the original file, record, writing or other instrument would be admissible.

**1551.**

A print, whether enlarged or not, from a photographic film (including a photographic plate, microphotographic film, photostatic negative, or similar reproduction) of an original writing destroyed or lost after such film was taken or a reproduction from an electronic recording of video images on magnetic surfaces is admissible as the original writing itself if, at the time of the taking of such film or electronic recording, the person under whose direction and control it was taken attached thereto, or to the sealed container in which it was placed and has been kept, or incorporated in the film or electronic recording, a certification complying with the provisions of Section 1531 and stating the date on which, and the fact that, it was so taken under his direction and control.

**1552.**

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.

(c) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530.

**1553.**

(a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed

representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system.

**1560.**

(a) As used in this article:

(1) "Business" includes every kind of business described in Section 1270.

(2) "Record" includes every kind of record maintained by a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness delivers by mail or otherwise a true, legible, and durable copy of all of the records described in the subpoena to the clerk of the court or to another person described in subdivision (d) of Section 2026.010 of the Code of Civil Procedure, together with the affidavit described in Section 1561, within one of the following time periods:

(1) In any criminal action, five days after the receipt of the subpoena.

(2) In any civil action, within 15 days after the receipt of the subpoena.

(3) Within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer,

body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records that are original documents and that are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records that are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in Section 2020.420 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative, or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in Section 2020.240 of the Code of Civil Procedure.

#### **1561.**

(a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

- (1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.
  - (2) The copy is a true copy of all the records described in the subpoena duces tecum, or pursuant to subdivision (e) of Section 1560 the records were delivered to the attorney, the attorney's representative, or deposition officer for copying at the custodian's or witness' place of business, as the case may be.
  - (3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.
  - (4) The identity of the records.
  - (5) A description of the mode of preparation of the records.
- (b) If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and those records that are available in one of the manners provided in Section 1560.

(c) Where the records described in the subpoena were delivered to the attorney or his or her representative or deposition officer for copying at the custodian's or witness' place of business, in addition to the affidavit required by subdivision (a), the records shall be accompanied by an affidavit by the attorney or his or her representative or deposition officer stating that the copy is a true copy of all the records delivered to the attorney or his or her representative or deposition officer for copying.

**1562.**

If the original records would be admissible in evidence if the custodian or other qualified witness had been present and testified to the matters stated in the affidavit, and if the requirements of Section 1271 have been met, the copy of the records is admissible in evidence. The affidavit is admissible as evidence of the matters stated therein pursuant to Section 1561 and the matters so stated are presumed true. When more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this section is a presumption affecting the burden of producing evidence.

**1563.**

(a) This article shall not be interpreted to require tender or payment of more than one witness fee and one mileage fee or other charge, to a witness or witness' business, unless there is an agreement to the contrary between the witness and the requesting party.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

(1) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a size 8½ by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person, computed on the basis of six dollars (\$6) per quarter hour or fraction thereof; actual postage charges; and the actual cost, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.

(2) The requesting party, or the requesting party's deposition officer, shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with

actual delivery of the subpoenaed records, and until payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party, or the requesting party's deposition officer, setting forth the reproduction and clerical costs incurred by the witness. Should the costs exceed those authorized in paragraph (1), or the witness refuses to produce an itemized statement of costs as required by paragraph (3), upon demand by the requesting party, or the requesting party's deposition officer, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that those costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. In the event that the court finds the costs excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) Where the records are delivered to the attorney, the attorney's representative, or the deposition officer for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars (\$15), plus the actual cost, if any, charged to the witness by a third person for retrieval and return of records held offsite by that third person. If the records are retrieved from microfilm, the reasonable cost, as defined in paragraph (1), shall also apply.

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b).

**1564.**

The personal attendance of the custodian or other qualified witness and the production of the original records is not required unless, at the discretion of the requesting party, the subpoena duces tecum contains a clause which reads:

"The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized pursuant to subdivision (b) of Section 1560, and Sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena."

**1565.**

If more than one subpoena duces tecum is served upon the custodian of records or other qualified witness and the personal attendance of the custodian or other qualified witness is required pursuant to Section 1564, the witness shall be deemed to be the witness of the party serving the first such subpoena duces tecum.

**1566.**

This article applies in any proceeding in which testimony can be compelled.

**1567.**

A completed form described in Section 3664 of the Family Code for income and benefit information provided by the employer may be admissible in a proceeding for modification or termination of an order for child, family, or spousal support if both of the following requirements are met:

(a) The completed form complies with Sections 1561 and 1562.

(b) A copy of the completed form and notice was served on the employee named therein pursuant to Section 3664 of the Family Code.

## Government Code Section Related to Notary Public Fees

### 8211.

Fees charged by a notary public for the following services shall not exceed the fees prescribed by this section.

(a) For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, the sum of ten dollars (\$10) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the seal, the sum of ten dollars (\$10).

(c) For all services rendered in connection with the taking of any deposition, the sum of twenty dollars (\$20), and in addition thereto, the sum of five dollars (\$5) for administering the oath to the witness and the sum of five dollars (\$5) for the certificate to the deposition.

(d) No fee may be charged to notarize signatures on vote by mail ballot identification envelopes or other voting materials.

(e) For certifying a copy of a power of attorney under Section 4307 of the Probate Code the sum of ten dollars (\$10).

(f) In accordance with Section 6107, no fee may be charged to a United States military veteran for notarization of an application or a claim for a pension, allotment, allowance, compensation, insurance, or any other veteran's benefit.

## Labor Code Section Related to Workers Compensation Depositions & Hearings

### 5710.

(a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) Where the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) A copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

(5) A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for any other deposition-related events as permitted by the administrative director.

## Federal Rules of Civil Procedure Related to Depositions

### Rule 6. Computing and Extending Time; Time For Motion Papers

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) “Legal Holiday” Defined. “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) Extending Time.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) Motions, Notices of Hearing, and Affidavits.

(1) *In General*. A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) *Supporting Affidavit*. Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) *Additional Time After Certain Kinds of Service*. When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

## **Rule 27. Depositions To Perpetuate Testimony**

(a) Before an Action Is Filed.

(1) *Petition.* A person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) *Notice and Service.* At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and Examination.* If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition.* A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district-court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) Pending Appeal.

(1) *In General.* The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) *Motion.* The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order.* If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.

(c) *Perpetuation by an Action.* This rule does not limit a court's power to entertain an action to perpetuate testimony.

#### **Rule 28. Persons Before Whom Depositions May Be Taken**

(a) Within the United States.

(1) *In General.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) In a Foreign Country.

(1) *In General.* A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission.* A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a Request, Notice, or Commission.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed “To the Appropriate Authority in [name of country].” A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence.* Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) *Disqualification.* A deposition must not be taken before a person who is any party’s relative, employee, or attorney; who is related to or employed by any party’s attorney; or who is financially interested in the action.

### **Rule 29. Stipulations About Discovery Procedure**

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

### **Rule 30. Depositions By Oral Examination**

(a) *When a Deposition May Be Taken.*

(1) *Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent’s attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) Notice of the Deposition; Other Formal Requirements.

(1) *Notice in General.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) *Method of Recording.*

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28.

The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent;  
and
- (v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of

taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) *Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.*

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording.* Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing.* A party who files the deposition must promptly notify all other parties of the filing.

(g) *Failure to Attend a Deposition or Serve a Subpoena; Expenses.* A party who, expecting a deposition to be taken, attends in person or by an attorney

may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

- (1) attend and proceed with the deposition; or
- (2) serve a subpoena on a nonparty deponent, who consequently did not attend.

### **Rule 31. Depositions By Written Questions**

(a) When a Deposition May Be Taken.

(1) *Without Leave.* A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d); or

(B) if the deponent is confined in prison.

(3) *Service; Required Notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties.* Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

- (1) take the deponent's testimony in response to the questions;
- (2) prepare and certify the deposition; and
- (3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion or Filing.

(1) *Completion*. The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing*. A party who files the deposition must promptly notify all other parties of the filing.

#### **Rule 80. Stenographic Transcript As Evidence**

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

## California Rules of Court Related to Depositions

### **Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means**

#### (a) Taking depositions

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Notice is served with the notice of deposition or the subpoena;
- (2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;
- (3) Any party may be personally present at the deposition without giving prior notice.

#### (b) Appearing and participating in depositions

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Written notice of such appearance is served by personal delivery or fax at least three court days before the deposition;
- (2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

#### (c) Party deponent's appearance

A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer.

#### (d) Nonparty deponent's appearance

A nonparty deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means with court approval upon a finding of good cause and no prejudice to any party. The deponent must be sworn in the presence of the deposition officer or by any other means stipulated to by the parties or ordered by the court. Any party may be personally present at the deposition.

#### (e) Court orders

On motion by any person, the court in a specific action may make such other orders as it deems appropriate.

### **Rule 3.1116. Deposition testimony as an exhibit**

#### (a) Title page

The first page of any deposition used as an exhibit must state the name of the deponent and the date of the deposition.

(b) Deposition pages

Other than the title page, the exhibit must contain only the relevant pages of the transcript. The original page number of any deposition page must be clearly visible.

(c) Highlighting of testimony

The relevant portion of any testimony in the deposition must be marked in a manner that calls attention to the testimony.

## California Laws Related to Official Reporting

### Code of Civil Procedure

#### 45.

An appeal from a judgment freeing a minor who is a dependent child of the juvenile court from parental custody and control, or denying a recommendation to free a minor from parental custody or control, shall have precedence over all cases in the court to which an appeal in the matter is taken. In order to enable the child to be available for adoption as soon as possible and to minimize the anxiety to all parties, the appellate court shall grant an extension of time to a court reporter or to counsel only upon an exceptional showing of good cause.

#### 133.

Courts of justice may be held and judicial business transacted on any day, except as provided in this article.

#### 134.

(a) Except as provided in subdivision (c), the courts shall be closed for the transaction of judicial business on judicial holidays for all but the following purposes:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict.

(2) To receive a verdict or discharge a jury.

(3) For the conduct of arraignments and the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

(4) For the conduct of Saturday small claims court sessions pursuant to the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

(b) Injunctions and writs of prohibition may be issued and served on any day.

(c) In any superior court, one or more departments of the court may remain open and in session for the transaction of any business that may come before the department in the exercise of the civil or criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of the day or night, or both, as the judges of the court prescribe.

(d) The fact that a court is open on a judicial holiday shall not make that day a nonholiday for purposes of computing the time required for the conduct of any proceeding nor for the performance of any act. Any paper lodged with the court at a time when the court is open pursuant to subdivision (c), shall be filed by the court on the next day that is not a judicial holiday, if the document meets appropriate criteria for filing.

**135.**

Every full day designated as a holiday by Section 6700 of the Government Code, including that Thursday of November declared by the President to be Thanksgiving Day, is a judicial holiday, except September 9, known as “Admission Day,” and any other day appointed by the President, but not by the Governor, for a public fast, thanksgiving, or holiday. If a judicial holiday falls on a Saturday or a Sunday, the Judicial Council may designate an alternative day for observance of the holiday. Every Saturday and the day after Thanksgiving Day is a judicial holiday. Officers and employees of the courts shall observe only the judicial holidays established pursuant to this section.

**237.**

(a) (1) The names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part.

(2) Upon the recording of a jury’s verdict in a criminal jury proceeding, the court’s record of personal juror identifying information of trial jurors, as defined in Section 194, consisting of names, addresses, and telephone numbers, shall be sealed until further order of the court as provided by this section.

(3) For purposes of this section, “sealed” or “sealing” means extracting or otherwise removing the personal juror identifying information from the court record.

(4) This subdivision applies only to cases in which a jury verdict was returned on or after January 1, 1996.

(b) Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror’s personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure.

(c) If a hearing is set pursuant to subdivision (b), the petitioner shall provide notice of the petition and the time and place of the hearing at least 20 days prior to the date of the hearing to the parties in the criminal action. The court

shall provide notice to each affected former juror by personal service or by first-class mail, addressed to the last known address of the former juror as shown in the records of the court. In a capital case, the petitioner shall also serve notice on the Attorney General. Any affected former juror may appear in person, in writing, by telephone, or by counsel to protest the granting of the petition. A former juror who wishes to appear at the hearing to oppose the unsealing of the personal juror identifying information may request the court to close the hearing in order to protect the former juror's anonymity.

(d) After the hearing, the records shall be made available as requested in the petition, unless a former juror's protest to the granting of the petition is sustained. The court shall sustain the protest of the former juror if, in the discretion of the court, the petitioner fails to show good cause, the record establishes the presence of a compelling interest against disclosure as defined in subdivision (b), or the juror is unwilling to be contacted by the petitioner. The court shall set forth reasons and make express findings to support the granting or denying of the petition to disclose. The court may require the person to whom disclosure is made, or his or her agent or employee, to agree not to divulge jurors' identities or identifying information to others; the court may otherwise limit disclosure in any manner it deems appropriate.

(e) Any court employee who has legal access to personal juror identifying information sealed under subdivision (a), who discloses the information, knowing it to be a violation of this section or a court order issued under this section, is guilty of a misdemeanor.

(f) Any person who intentionally solicits another to unlawfully access or disclose personal juror identifying information contained in records sealed under subdivision (a), knowing that the records have been sealed, or who, knowing that the information was unlawfully secured, intentionally discloses it to another person is guilty of a misdemeanor.

## **269.**

(a) An official reporter or official reporter pro tempore of the superior court shall take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, sentences, arguments of the attorneys to the jury, and statements and remarks made and oral instructions given by the judge or other judicial officer, in the following cases:

- (1) In a civil case, on the order of the court or at the request of a party.
- (2) In a felony case, on the order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant.
- (3) In a misdemeanor or infraction case, on the order of the court.

(b) If a transcript is ordered by the court or requested by a party, or if a nonparty requests a transcript that the nonparty is entitled to receive, regardless of whether the nonparty was permitted to attend the proceeding to

be transcribed, the official reporter or official reporter pro tempore shall, within a reasonable time after the trial of the case that the court designates, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

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

**271.**

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

(b) Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code, unless otherwise agreed by the reporter and the court, party, or other person requesting the transcript. Each disk shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Except where modifications are necessary to reflect corrections of a transcript, each disk as produced by the official reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.

**273.**

(a) The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceedings.

(b) The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when prepared as a rough draft transcript, shall not be certified and cannot be used, cited, distributed, or transcribed as the official certified transcript of the proceedings. A rough draft transcript shall not be cited or used in any way or at any time to rebut or contradict the official certified transcript of the proceedings as provided by the official

reporter or official reporter pro tempore. The production of a rough draft transcript shall not be required.

(c) The instant visual display of the testimony or proceedings, or both, shall not be certified and cannot be used, cited, distributed, or transcribed as the official certified transcript of the proceedings. The instant visual display of the testimony or proceedings, or both, shall not be cited or used in any way or at any time to rebut or contradict the official certified transcript of the proceedings as provided by the official reporter or official reporter pro tempore.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**274a.**

Any judge of the superior court may have any opinion given or rendered by the judge in the trial of a felony case or an unlimited civil case, pending in that court, or any necessary order, petition, citation, commitment or judgment in any probate proceeding, proceeding concerning new or additional bonds of county officials or juvenile court proceeding, or the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed together with such copies as the court may deem necessary by the official reporter or an official reporter pro tempore of the court.

**651.**

(a) On its own motion or on the motion of a party, where the court finds that such a view would be proper and would aid the trier of fact in its determination of the case, the court may order a view of any of the following:

- (1) The property which is the subject of litigation.
- (2) The place where any relevant event occurred.
- (3) Any object, demonstration, or experiment, a view of which is relevant and admissible in evidence in the case and which cannot with reasonable convenience be viewed in the courtroom.

(b) On such occasion, the entire court, including the judge, jury, if any, court reporter, if any, and any necessary officers, shall proceed to the place, property, object, demonstration, or experiment to be viewed. The court shall be in session throughout the view. At the view, the court may permit testimony of witnesses. The proceedings at the view shall be recorded to the same extent as the proceedings in the courtroom.

**660.**

On the hearing of such motion, reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions and documentary evidence offered at the trial and to the report of the proceedings on the trial taken by the phonographic reporter, or to any certified transcript of such report or if there be no such report or certified transcript, to such proceedings occurring at the trial as are within the recollection of the judge; when the proceedings at the trial have been phonographically reported, but the reporter's notes have not been transcribed, the reporter must upon request of the court or either party, attend the hearing of the motion and shall read his notes, or such parts thereof as the court, or either party, may require.

The hearing and disposition of the motion for a new trial shall have precedence over all other matters except criminal cases, probate matters and cases actually on trial, and it shall be the duty of the court to determine the same at the earliest possible moment.

Except as otherwise provided in Section 12a of this code, the power of the court to rule on a motion for a new trial shall expire 60 days from and after the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days from and after service on the moving party by any party of written notice of the entry of the judgment, whichever is earlier, or if such notice has not theretofore been given, then 60 days after filing of the first notice of intention to move for a new trial. If such motion is not determined within said period of 60 days, or within said period as thus extended, the effect shall be a denial of the motion without further order of the court. A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed. The minute entry shall in all cases show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

## Penal Code

### 93.

(a) Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or decision upon any matters or question which is or may be brought before him or her for decision, shall be influenced thereby, is punishable by imprisonment in the state prison for two, three, or four years and, in cases where no bribe has been actually received, by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) or, in cases where a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars (\$10,000), whichever is greater.

(b) In imposing a restitution fine under this section, the court shall consider the defendant's ability to pay the fine.

### 94.

Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. The lawful compensation of a temporary judge shall be prescribed by Judicial Council rule. Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him or her, or any other person, to record the proceedings of any court or investigation held by him or her, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his or her office. Any stenographer or reporter, appointed by any judicial officer in this state, who shall pay, or offer to pay, the whole or any part of the fees allowed him or her by law, for his or her appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts of this state.

### 95.2.

Any person who, with knowledge of the relationship of the parties and without court authorization and juror consent, intentionally provides a defendant or former defendant to any criminal proceeding information from records sealed by the court pursuant to subdivision (b) of Section 237 of the Code of Civil Procedure, knowing that the records have been sealed, in order to locate or communicate with a juror to that proceeding and that information is used to violate Section 95 or 95.1, shall be guilty of a misdemeanor. Except as otherwise provided by any other law or court order limiting communication with a juror after a verdict has been reached,

compliance with Section 206 of the Code of Civil Procedure shall constitute court authorization.

### **95.3.**

Any person licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code who, with knowledge of the relationship of the parties and without court authorization and juror consent, knowingly provides a defendant or former defendant to any criminal proceeding information in order to locate or communicate with a juror to that proceeding is guilty of a misdemeanor. Conviction under this section shall be a basis for revocation or suspension of any license issued pursuant to Section 7561.1 of the Business and Professions Code. Except as otherwise provided by any law or court order limiting communication with a juror after a verdict has been reached, compliance with Section 206 of the Code of Civil Procedure shall constitute court authorization.

### **190.6.**

(a) The Legislature finds that the sentence in all capital cases should be imposed expeditiously.

(b) Therefore, in all cases in which a sentence of death has been imposed on or after January 1, 1997, the opening appellate brief in the appeal to the State Supreme Court shall be filed no later than seven months after the certification of the record for completeness under subdivision (d) of Section 190.8 or receipt by the appellant's counsel of the completed record, whichever is later, except for good cause. However, in those cases where the trial transcript exceeds 10,000 pages, the briefing shall be completed within the time limits and pursuant to the procedures set by the rules of court adopted by the Judicial Council.

(c) In all cases in which a sentence of death has been imposed on or after January 1, 1997, it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing. However, where the appeal and a petition for writ of habeas corpus is heard at the same time, the petition should be decided and an opinion reaching the merits should be filed within 210 days of the completion of the briefing for the petition.

(d) The failure of the parties or the Supreme Court to meet or comply with the time limit provided by this section shall not be a ground for granting relief from a judgment of conviction or sentence of death.

### **190.7.**

(a) The "entire record" referred to in Section 190.6 includes, but is not limited to, the following:

(1) The normal and additional record prescribed in the rules adopted by the Judicial Council pertaining to an appeal taken by the defendant from a judgment of conviction.

(2) A copy of any other paper or record on file or lodged with the superior or municipal court and a transcript of any other oral proceeding reported in the superior or municipal court pertaining to the trial of the cause.

(b) Notwithstanding this section, the Judicial Council may adopt rules, not inconsistent with the purpose of Section 190.6, specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced.

**190.8.**

(a) In any case in which a death sentence has been imposed, the record on appeal shall be expeditiously certified in two stages, the first for completeness and the second for accuracy, as provided by this section. The trial court may use all reasonable means to ensure compliance with all applicable statutes and rules of court pertaining to record certification in capital appeals, including, but not limited to, the imposition of sanctions.

(b) Within 30 days of the imposition of the death sentence, the clerk of the superior court shall provide to trial counsel copies of the clerk's transcript and shall deliver the transcript as provided by the court reporter. Trial counsel shall promptly notify the court if he or she has not received the transcript within 30 days.

(c) During the course of a trial in which the death penalty is being sought, trial counsel shall alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the ordinary course of trial preparation. The court shall periodically request that trial counsel provide a list of errors in the trial transcript during the course of trial and may hold hearings in connection therewith.

Corrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion.

(d) The trial court shall certify the record for completeness and for incorporation of all corrections, as provided by subdivision (c), no later than 90 days after entry of the imposition of the death sentence unless good cause is shown. However, this time period may be extended for proceedings in which the trial transcript exceeds 10,000 pages in accordance with the timetable set forth in, or for good cause pursuant to the procedures set forth in, the rules of court adopted by the Judicial Council.

(e) Following the imposition of the death sentence and prior to the deadline set forth in subdivision (d), the trial court shall hold one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention and to certify that they have

reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported and that have occurred in the course of the case in any court, as well as all documents required by this code and the rules adopted by the Judicial Council.

(f) The clerk of the trial court shall deliver a copy of the record on appeal to appellate counsel when the clerk receives notice of counsel's appointment or retention, or when the record is certified for completeness under subdivision (d), whichever is later.

(g) The trial court shall certify the record for accuracy no later than 120 days after the record has been delivered to appellate counsel. However, this time may be extended pursuant to the timetable and procedures set forth in the rules of court adopted by the Judicial Council. The trial court may hold one or more status conferences for purposes of timely certification of the record for accuracy, as set forth in the rules of court adopted by the Judicial Council.

(h) The Supreme Court shall identify in writing to the Judicial Council any case that has not met the time limit for certification of the record for completeness under subdivision (d) or for accuracy under subdivision (g), and shall identify those cases, and its reasons, for which it has granted an extension of time. The Judicial Council shall include this information in its annual report to the Legislature.

(i) As used in this section, "trial counsel" means both the prosecution and the defense counsel in the trial in which the sentence of death has been imposed.

(j) This section shall be implemented pursuant to rules of court adopted by the Judicial Council.

(k) This section shall only apply to those proceedings in which a sentence of death has been imposed following a trial that was commenced on or after January 1, 1997.

#### **190.9.**

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

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the clerk shall order the transcription and preparation of the record of all proceedings prior to and including the preliminary hearing in the manner prescribed by the Judicial Council in the rules of court. The record of

all proceedings prior to and including the preliminary hearing shall be certified by the court no later than 120 days following notification unless the time is extended pursuant to rules of court adopted by the Judicial Council. Upon certification, the record of all proceedings is incorporated into the superior court record.

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

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

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

### **632.**

(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by violation of both that fine and imprisonment. If the person has previously been convicted of a this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) The term “person” includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) The term “confidential communication” includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

#### **704.**

When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence shall be reduced to writing and subscribed by the witnesses. The magistrate may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witnesses shall be authenticated in the form prescribed in Section 869.

#### **869.**

The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is

the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

#### **870.**

The magistrate or his or her clerk shall keep the depositions taken on the information or the examination, until they are returned to the proper court; and shall not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs

of habeas corpus, the Attorney General, district attorney, or other prosecuting attorney, and the defendant and his or her counsel; provided however, upon demand by the defendant or his or her attorney the magistrate shall order a transcript of the depositions taken on the information, or on the examination, to be immediately furnished the defendant or his or her attorney, after the commitment of the defendant as provided by Sections 876 and 877, and the reporter furnishing the depositions, shall receive compensation in accordance with Section 869.

**871.5.**

(a) When an action is dismissed by a magistrate pursuant to Section 859b, 861, 871, 1008, 1381, 1381.5, 1385, 1387, or 1389 of this code or Section 41403 of the Vehicle Code, or a portion thereof is dismissed pursuant to those same sections which may not be charged by information under Section 739, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate.

(b) Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

(c) The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refileing the dismissed action, or portion thereof.

(d) Within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney may file a written request for a transcript of the proceedings with the clerk of the magistrate. The reporter shall immediately transcribe his or her shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon his or her demand without cost.

(e) When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings and when so ordered, issue an order of commitment for the reinstated offense or offenses within 10 days after the superior court has entered an order to that effect or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

(f) Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. That review may only be sought in the event the defendant is held to answer pursuant to Section 872.

(g) Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

If the superior court grants the motion for reinstatement and orders the magistrate to issue an order of commitment, the defendant, in lieu of resumed proceedings before the magistrate, may elect to waive his or her right to be committed by a magistrate, and consent to the filing of an amended or initial information containing the reinstated charge or charges. After arraignment thereon, he or she may adopt as a motion pursuant to Section 995, the record and proceedings of the motion taken pursuant to this section and the order issued pursuant thereto, and may seek review of the order in the manner prescribed in Section 999a.

### **938.**

(a) Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented.

(b) At the request of the grand jury, the reporter shall also prepare transcripts of any testimony reported during any session of the immediately preceding grand jury.

### **938.1.**

(a) If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and deliver to the clerk of the superior court in the county an original transcription of the reporter's shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete the certification and delivery within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon receipt thereof and deliver a copy of such transcript to each such defendant or the defendant's attorney. If the copy of the testimony is not served as provided in this section, the court shall on motion of the defendant continue

the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or the defendant's attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations.

(b) The transcript shall not be open to the public until 10 days after its delivery to the defendant or the defendant's attorney. Thereafter the transcript shall be open to the public unless the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making all or any part of the transcript public may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the defendant's trial has been completed.

### **938.2.**

(a) For preparing any transcript in any case pursuant to subdivision (a) of Section 938.1, the stenographic reporter shall draw no salary or fees from the county for preparing such transcript in any case until all such transcripts of testimony in such case so taken by him are written up and delivered. Before making the order for payment to the reporter, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he has written up and delivered all testimony taken by him, in accordance with subdivision (a) of Section 938 and Section 938.1.

(b) Before making the order for payment to a reporter who has prepared transcripts pursuant to subdivision (b) of Section 938, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he has written up and delivered all testimony requested of him in accordance with that subdivision.

### **938.3.**

The services of the stenographic reporter shall constitute a charge against the county, and the stenographic reporter shall be compensated for reporting and transcribing at the same rates as prescribed in Sections 69947 to 69954, inclusive, of the Government Code, to be paid out of the county treasury on a warrant of the county auditor when ordered by the judge of the superior court.

### **1176.**

When written instructions have been presented, and given, modified, or refused, or when the charge of the court has been taken down by the reporter, the questions presented in such instructions or charge need not be excepted

to; but the judge must make and sign an indorsement upon such instructions, showing the action of the court thereon.

**1218.**

The judge of the court at which a judgment of death is had, must, immediately after the judgment, transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and a complete transcript of all the testimony given at the trial including any arguments made by respective counsel and a copy of the clerk's transcript.

**1239.**

(a) Where an appeal lies on behalf of the defendant or the people, it may be taken by the defendant or his or her counsel, or by counsel for the people, in the manner provided in rules adopted by the Judicial Council.

(b) When upon any plea a judgment of death is rendered, an appeal is automatically taken by the defendant without any action by him or her or his or her counsel. The defendant's trial counsel, whether retained by the defendant or court appointed, shall continue to represent the defendant until completing the additional duties set forth in paragraph (1) of subdivision (e) of Section 1240.1.

**1240.1.**

(a) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he or she is not able to provide advice concerning his or her own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he or she has counseled the defendant as to whether arguably meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal when the attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue any relief that may be available to him or her on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper,

pleading, or transcript of oral proceedings necessary to properly present those points on appeal when the document, paper, pleading, or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of the notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless the undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon that motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him or her that the attorney has failed to do so, or at any time he or she shall become indigent if he or she was not previously indigent.

(c) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself or herself, provide counsel and advice to the prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(d) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall not foreclose any defendant from filing a notice of appeal on his or her own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his or her counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(e) (1) In order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties. Each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

(2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the

record on appeal in either the trial court or the California Supreme Court in a manner provided by rules of court adopted by the Judicial Council.

**1246.**

The record on appeal shall be made up and filed in such time and manner as shall be prescribed in rules adopted by the Judicial Council.

**1335.**

(a) When a defendant has been charged with a public offense triable in any court, he or she in all cases, and the people in cases other than those for which the punishment may be death, may, if the defendant has been fully informed of his or her right to counsel as provided by law, have witnesses examined conditionally in his or her or their behalf, as prescribed in this chapter.

(b) When a defendant has been charged with a serious felony or in a case of domestic violence, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter, if there is evidence that the life of the witness is in jeopardy.

(c) As used in this section, “serious felony” means any of the felonies listed in subdivision (c) of Section 1192.7 or any violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.

(d) If a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been or is being dissuaded by the defendant or any person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter.

(e) For the purposes of this section, “domestic violence” means any public offense arising from acts of domestic violence as defined in Section 13700.

**1336.**

(a) When a material witness for the defendant, or for the people, is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he or she will be unable to attend the trial, or is a person 65 years of age or older, or a dependent adult, the defendant or the people may apply for an order that the witness be examined conditionally.

(b) When there is evidence that the life of a witness is in jeopardy, the defendant or the people may apply for an order that the witness be examined conditionally.

(c) As used in this section, “dependent adult” means any person who is between the ages of 18 and 65, who has physical or mental limitations which

restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 65, who is admitted as an inpatient to a 24-hour facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

**1337.**

The application shall be made upon affidavit stating all of the following:

- (a) The nature of the offense charged.
- (b) The state of the proceedings in the action.
- (c) The name and residence of the witness, and that his or her testimony is material to the defense or the prosecution of the action.
- (d) That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 65 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy, or that the witness is a victim or material witness in a domestic violence case who has been or is being intimidated or threatened as described in subdivision (d) of Section 1335 from cooperating with the prosecutor or testifying at trial.

**1338.**

The application may be made to the court or a judge thereof, and must be made upon three days' notice to the opposite party.

**1339.**

If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and before a magistrate designated therein.

**1340.**

(a) The defendant has the right to be present in person and with counsel at the examination, and if the defendant is in custody, the officer in whose custody he or she is, must be informed of the time and place of the examination, and must take the defendant thereto, and keep him or her in the presence and hearing of the witness during the examination.

(b) If the court determines that the witness to be examined is so sick or infirm as to be unable to participate in the examination in person, the court may allow the examination to be conducted by a contemporaneous, two-way video conference system, in which the parties and the witness can see and hear each other via electronic communication.

(c) Nothing in this section is intended to require the court to acquire two-way video conference equipment for these purposes.

**1341.**

If, at the designated time and place, it is shown to the satisfaction of the magistrate that the stated ground for conditional examination is not true or that the application was made to avoid the examination of the witness at the trial, the examination cannot take place.

**1342.**

The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

**1343.**

The testimony given by the witness shall be reduced to writing and authenticated in the same manner as the testimony of a witness taken in support of an information. Additionally, the testimony may be video-recorded.

**1344.**

The deposition taken must, by the magistrate, be sealed up and transmitted to the Clerk of the Court in which the action is pending or may come for trial.

**1345.**

The deposition, or a certified copy of it, may be read in evidence, or if the examination was video-recorded, that video-recording may be shown by either party at the trial if the court finds that the witness is unavailable as a witness within the meaning of Section 240 of the Evidence Code. The same objections may be taken to a question or answer contained in the deposition or video-recording as if the witness had been examined orally in court.

**1539.**

(a) If a special hearing is held in a felony case pursuant to Section 1538.5, or if the grounds on which the warrant was issued are controverted and a motion to return property is made (i) by a defendant on grounds not covered by Section 1538.5, (ii) by a defendant whose property has not been offered or will not be offered as evidence against the defendant, or (iii) by a person who is not a defendant in a criminal action at the time the hearing is held, the judge or magistrate shall proceed to take testimony in relation thereto, and the testimony of each witness shall be reduced to writing and authenticated by a shorthand reporter in the manner prescribed in Section 869.

(b) The reporter shall forthwith transcribe the reporter's shorthand notes pursuant to this section if any party to a special hearing in a felony case files a written request for its preparation with the clerk of the court in which the hearing was held. The reporter shall forthwith file in the superior court an original and as many copies thereof as there are defendants (other than a

fictitious defendant) or persons aggrieved. The reporter is entitled to compensation in accordance with the provisions of Section 869. In every case in which a transcript is filed as provided in this section, the clerk of the court shall deliver the original of the transcript so filed to the district attorney immediately upon receipt thereof and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon demand without cost to the defendant.

(c) Upon a motion by a defendant pursuant to this chapter, the defendant is entitled to discover any previous application for a search warrant in the case which was refused by a magistrate for lack of probable cause.

## California Rules of Court

### **Rule 2.100. Form and format of papers presented for filing in the trial courts**

#### **(a) Preemption of local rules**

The Judicial Council has preempted local rules relating to the form and format of papers to be filed in the trial courts. No trial court, or any division or branch of a trial court, may enact or enforce any local rule concerning the form or format of papers.

#### **(b) Rules prescribe form and format**

The rules in this chapter prescribe the form and format of papers to be filed in the trial courts.

### **Rule 2.102. One-sided paper**

On papers, only one side of each page may be used.

### **Rule 2.103. Quality, color, and size of paper**

All papers must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight, 8 1/2 by 11 inches.

### **Rule 2.104. Printing; type size**

All papers must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in type not smaller than 12 points.

### **Rule 2.105. Type style**

The typeface must be essentially equivalent to Courier, Times New Roman, or Arial.

### **Rule 2.106. Color of print**

The color of print must be black or blue-black.

### **Rule 2.107. Margins**

The left margin of each page must be at least one inch from the left edge of the paper and the right margin at least 1/2 inch from the right edge of the paper.

### **Rule 2.114. Exhibits**

Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to typewritten material in legibility and permanency of image.

### **Rule 2.575. Confidential information in name change proceedings under address confidentiality program**

#### **(a) Definitions**

As used in this chapter, unless the context or subject matter otherwise requires:

(1) "Confidential name change petitioner" means a petitioner who is a participant in the address confidentiality program created by the Secretary of State under chapter 3.1 (commencing with section 6205) of division 7 of title 1 of the Government Code.

(2) "Record" means all or a portion of any document, paper, exhibit, transcript, or other thing that is filed or lodged with the court.

(3) "Lodged" means temporarily placed or deposited with the court but not filed.

(b) Application of chapter

The rules in this chapter apply to records filed in a change of name proceeding under Code of Civil Procedure section 1277(b) by a confidential name change petitioner who alleges any of the following reasons or circumstances as a reason for the name change:

(1) The petitioner is seeking to avoid domestic violence, as defined in Family Code section 6211.

(2) The petitioner is seeking to avoid stalking, as defined in Penal Code section 646.9.

(3) The petitioner is, or is filing on behalf of, a victim of sexual assault, as defined in Evidence Code section 1036.2.

(c) Confidentiality of current name of the petitioner

The current legal name of a confidential name change petitioner must be kept confidential by the court as required by Code of Civil Procedure section 1277(b)(3) and not be published or posted in the court's calendars, indexes, or register of actions, or by any means or in any public forum. Only the information concerning filed records contained on the confidential cover sheet prescribed under (d) may be entered into the register of actions or any other forum that is accessible to the public.

(d) Special cover sheet omitting names of the petitioner

To maintain the confidentiality provided under Code of Civil Procedure section 1277(b) for the petitioner's current name, the petitioner must attach a completed *Confidential Cover Sheet-Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-400) to the front of the petition for name change and every other document filed in the proceedings. The name of the petitioner must not appear on that cover sheet.

(e) Confidentiality of proposed name of the petitioner

To maintain the confidentiality provided under Code of Civil Procedure section 1277(b) for the petitioner's proposed name, the petitioner must not include the proposed name on the petition for name change or any other record in the proceedings. In any form that requests the petitioner's proposed name, the petitioner and the court must indicate that the proposed name is confidential and on file with the Secretary of State under the provisions of the Safe at Home address confidentiality program.

#### **Rule 2.950. Sequential list of reporters**

During any reported court proceeding, the clerk must keep a sequential list of all reporters working on the case, indicating the date the reporter worked and the reporter's name, business address, and Certified Shorthand Reporter license number. If more than one reporter reports a case during one day, the information pertaining to each reporter must be listed with the first reporter designated "A," the second designated "B," etc. If reporter "A" returns during the same day, that reporter will be designated as both reporter "A" and reporter "C" on the list. The list of reporters may be kept in an electronic database maintained by the clerk; however, a hard copy must be available to members of the public within one working day of a request for the list of reporters.

#### **Rule 2.952. Electronic recording as official record of proceedings**

##### **(a) Application**

This rule applies when a court has ordered proceedings to be electronically recorded on a device of a type approved by the Judicial Council or conforming to specifications adopted by the Judicial Council.

##### **(b) Definitions**

As used in this rule, the following definitions apply:

- (1) "Reel" means an individual reel or cassette of magnetic recording tape or a comparable unit of the medium on which an electronic recording is made.
- (2) "Monitor" means any person designated by the court to operate electronic recording equipment and to make appropriate notations to identify the proceedings recorded on each reel, including the date and time of the recording. The trial judge, a courtroom clerk, or a bailiff may be the monitor, but when recording is of sound only, a separate monitor without other substantial duties is recommended.

##### **(c) Reel numbers**

Each reel must be distinctively marked with the date recorded, the department number of the court, if any, and, if possible, a serial number.

##### **(d) Certificate of monitor**

As soon as practicable after the close of each day's court proceedings, the monitor must execute a certificate for each reel recorded during the day, stating:

- (1) That the person executing the certificate was designated by the court as monitor;
- (2) The number or other identification assigned to the reel;
- (3) The date of the proceedings recorded on that reel;
- (4) The titles and numbers of actions and proceedings, or portions thereof, recorded on the reel, and the general nature of the proceedings; and
- (5) That the recording equipment was functioning normally, and that all of the proceedings in open court between designated times of day were recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.

#### **Rule 2.954. Specifications for electronic recording equipment**

##### **(a) Specifications mandated**

Electronic recording equipment used in making the official verbatim record of oral courtroom proceedings must conform to the specifications in this rule.

##### **(b) Sound recording only**

The following specifications for electronic recording devices and appurtenant equipment apply when only sound is to be recorded:

##### **(1) Mandatory specifications**

- (A) The device must be capable of simultaneously recording at least four separate channels or "tracks," each of which has a separate playback control so that any one channel separately or any combination of channels may be played back.
- (B) The device must not have an operative erase head.
- (C) The device must have a digital counter or comparable means of logging and locating the place on a reel where specific proceedings were recorded.
- (D) Earphones must be provided for monitoring the recorded signal.
- (E) The signal going to the earphones must come from a separate playback head, so that the monitor will hear what has actually been recorded on the tape.
- (F) The device must be capable of recording at least two hours without interruption. This requirement may be satisfied by a device that automatically switches from one recording deck to another at the completion of a reel of tape of less than two hours in duration.

(G) A separate visual indicator of signal level must be provided for each recording channel.

(H) The appurtenant equipment must include at least four microphones, which should include one at the witness stand, one at the bench, and one at each counsel table. In the absence of unusual circumstances, all microphones must be directional (cardioid).

(I) A loudspeaker must be provided for courtroom playback.

(2) *Recommended features*

The following features are recommended, but not required:

(A) The recording level control should be automatic rather than manual.

(B) The device should be equipped to prevent recording over a previously recorded segment of tape.

(C) The device should give a warning signal at the end of a reel of tape.

(c) *Audio-and-video recording*

The following specifications for electronic audio-video recording devices and appurtenant equipment apply when audio and video are to be recorded simultaneously.

(1) *Mandatory specifications*

The system must include:

(A) At least five charge-coupled-device color video cameras in fixed mounts, equipped with lenses appropriate to the courtroom. Cameras must conform to EIA standard, accept C-mount lenses, have 2000 lux sensitivity at f4.0 at 3200 degrees Kelvin so as to produce an adequate picture with 30 lux minimum illumination and an f1.4 lens, and be approximately 2.6" x 2.4" x 8.0."

(B) At least eight phase-coherent cardioid (directional) microphones, Crown PCC-160 or equivalent, appropriately placed.

(C) At least two VHS videotape recorders with hi-fi sound on video, specially modified to record 4 channels of audio (2 linear channels with Dolby noise reduction and 2 hi-fi sound on video channels), capable of recording up to 6 hours on T-120 cassettes, modified to prevent automatic rewind at end of tape, and wired for remote control. The two recorders must simultaneously record the same audio and video signals, as selected by the audio-video mixer.

(D) A computer-controlled audio-video mixer and switching system that:

(i) Automatically selects for the VCRs the signal from the video camera that is associated with the active microphone; and

(ii) Compares microphone active signal to ambient noise signal so that microphones are recorded only when a person is speaking, and so that only the microphone nearest a speaker is active, thus minimizing recording of ambient noise.

(E) A sound system that serves both as a sound reinforcement system while recording is in progress, and as a playback amplification system, integrated with other components to minimize feedback.

(F) A time-date generator that is active and records at all times the system is recording.

(G) A color monitor.

(H) Appropriate cables, distribution amplifiers, switches, and the like.

(I) The system must produce:

(i) A signal visible to the judge, the in-court clerk, and counsel indicating that the system is recording;

(ii) An audible signal at end-of-tape or if the tape jams while the controls are set to record; and

(iii) Blanking of the judge's bench monitor when the system is not actually recording.

(2) *Recommended features*

The system should normally include:

(A) A chambers camera and microphone or microphones that, when in use, will override any signals originating in the courtroom, and that will be inactivated when not in use.

(B) Two additional videocassette recorders that will produce tapes with the same video and audio as the main two, but may have fewer channels of sound, for the use of parties in cases recorded.

(d) *Substantial compliance*

A sound or video and sound system that substantially conforms to these specifications is approved if the deviation does not significantly impair a major function of the system. Subdivision (c)(1)(D)(ii) of this rule describes a specification from which deviation is permissible, if the system produces adequate sound quality.

(e) *Previous equipment*

The Administrative Director of the Courts is authorized to approve any electronic recording devices and equipment acquired before the adoption or amendment of this rule that has been found by the court to produce satisfactory recordings of proceedings.

### **Rule 2.956. Court reporting services in civil cases**

#### **(a) Statutory reference; application**

This rule is adopted solely to effectuate the statutory mandate of Government Code sections 68086(a)-(b) and must be applied so as to give effect to these sections. It applies to trial courts.

#### **(b) Notice of availability; parties' request**

##### **(1) *Local policy to be adopted and posted***

Each trial court must adopt and post in the clerk's office a local policy enumerating the departments in which the services of official court reporters are normally available, and the departments in which the services of official court reporters are not normally available during regular court hours. If the services of official court reporters are normally available in a department only for certain types of matters, those matters must be identified in the policy.

##### **(2) *Publication of policy***

The court must publish its policy in a newspaper if one is published in the county. Instead of publishing the policy, the court may:

(A) Send each party a copy of the policy at least 10 days before any hearing is held in a case; or

(B) Adopt the policy as a local rule.

##### **(3) *Requests for official court reporter for civil trials and notices to parties***

Unless the court's policy states that all courtrooms normally have the services of official court reporters available for civil trials, the court must require that each party file a statement before the trial date indicating whether the party requests the presence of an official court reporter. If a party requests the presence of an official court reporter and it appears that none will be available, the clerk must notify the party of that fact as soon as possible before the trial. If the services of official court reporters are normally available in all courtrooms, the clerk must notify the parties to a civil trial as soon as possible if it appears that those services will not be available.

##### **(4) *Notice of nonavailability of court reporter for nontrial matters***

If the services of an official court reporter will not be available during a hearing on law and motion or other nontrial matters in civil cases, that fact must be noted on the court's official calendar.

(c) Party may procure reporter

If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is that party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law.

(d) No additional charge if party arranges for reporter

If a party arranges and pays for the attendance of a certified shorthand reporter at a hearing in a civil case because of the unavailability of the services of an official court reporter, none of the parties may be charged the reporter's attendance fee provided for in Government Code sections 68086(a)(1) or (b)(1).

(e) Definitions

As used in this rule and in Government Code section 68086:

(1) "Civil case" includes all matters other than criminal and juvenile matters.

(2) "Official reporter" and "official reporting services" both include an official court reporter or official reporter as those phrases are used in statutes, including Code of Civil Procedure sections 269 and 274c and Government Code section 69941; and include an official reporter pro tempore as the phrase is used in Government Code section 69945 and other statutes, whose fee for attending and reporting proceedings is paid for by the court or the county, and who attends court sessions as directed by the court, and who was not employed to report specific causes at the request of a party or parties. "Official reporter" and "official reporting services" do not include official reporters pro tempore employed by the court expressly to report only criminal, or criminal and juvenile, matters. "Official reporting services" include electronic recording equipment operated by the court to make the official verbatim record of proceedings where it is permitted.

**Rule 2.958. Assessing fee for official reporter**

The half-day fee to be charged under Government Code section 68086 for the services of an official reporter must be established by the trial court as follows: for a proceeding or portion of a proceeding in which a certified shorthand reporter is used, the fee is equal to the average salary and benefit costs of the reporter, plus indirect costs of up to 18 percent of salary and benefits. For purposes of this rule, the daily salary is determined by dividing the average annual salary of temporary and full-time reporters by 225 workdays.

**Rule 2.1040. Electronic recordings presented or offered into evidence**

(a) Electronic recordings of deposition or other prior testimony

(1) Before a party may present or offer into evidence an electronic sound or sound-and-video recording of deposition or other prior testimony, the party must lodge a transcript of the deposition or prior testimony with the court. At the time the recording is played, the party must identify on the record the page and line numbers where the testimony presented or offered appears in the transcript.

(2) Except as provided in (3), at the time the presentation of evidence closes or within five days after the recording in (1) is presented or offered into evidence, whichever is later, the party presenting or offering the recording into evidence must serve and file a copy of the transcript cover showing the witness name and a copy of the pages of the transcript where the testimony presented or offered appears. The transcript pages must be marked to identify the testimony that was presented or offered into evidence.

(3) If the court reporter takes down the content of all portions of the recording in (1) that were presented or offered into evidence, the party offering or presenting the recording is not required to provide a transcript of that recording under (2).

**(b) Other electronic recordings**

(1) Except as provided in (2) and (3), before a party may present or offer into evidence any electronic sound or sound-and-video recording not covered under (a), the party must provide to the court and to opposing parties a transcript of the electronic recording and provide opposing parties with a duplicate of the electronic recording, as defined in Evidence Code section 260. The transcript may be prepared by the party presenting or offering the recording into evidence; a certified transcript is not required.

(2) For good cause, the trial judge may permit the party to provide the transcript or the duplicate recording at the time the presentation of evidence closes or within five days after the recording is presented or offered into evidence, whichever is later.

(3) No transcript is required to be provided under (1):

(A) In proceedings that are uncontested or in which the responding party does not appear, unless otherwise ordered by the trial judge;

(B) If the parties stipulate in writing or on the record that the sound portion of a sound-and-video recording does not contain any words that are relevant to the issues in the case; or

(C) If, for good cause, the trial judge orders that a transcript is not required.

**(c) Clerk's duties**

An electronic recording provided to the court under this rule must be marked for identification. A transcript provided under (a)(2) or (b)(1) must be filed by the clerk.

(d) Reporting by court reporter

Unless otherwise ordered by the trial judge, the court reporter need not take down the content of an electronic recording that is presented or offered into evidence.

**Rule 3.1310. Reporting of proceedings on motions**

A court that does not regularly provide for reporting or electronic recording of hearings on motions must so state in its local rules. The rules must also provide a procedure by which a party may obtain a reporter or a recording of the proceedings in order to provide an official verbatim transcript.

**Rule 4.431. Proceedings at sentencing to be reported (Criminal)**

All proceedings at the time of sentencing must be reported.

**Rule 5.123. Reporting of hearing proceedings (Family Law Court)**

A court that does not regularly provide for reporting of hearings on a request for order or motion must so state in its local rules. The rules must also provide a procedure by which a party may obtain a court reporter in order to provide the party with an official verbatim transcript.

**Rule 5.530. Persons present (Juvenile Proceedings)**

(a) Separate session; restriction on persons present

All juvenile court proceedings must be heard at a special or separate session of the court, and no other matter may be heard at that session. No person on trial, awaiting trial, or accused of a crime, other than a parent, de facto parent, guardian, or relative of the child, may be present at the hearing, except while testifying as a witness.

(b) Persons present

The following persons are entitled to be present:

- (1) The child or nonminor dependent;
- (2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or their places of residence are not known, any adult relative residing within the county or, if none, the adult relative residing nearest the court;
- (3) Counsel representing the child or the parent, de facto parent, guardian, adult relative, or Indian custodian or the tribe of an Indian child;
- (4) The probation officer or social worker;
- (5) The prosecuting attorney, as provided in (c) and (d);

- (6) Any CASA volunteer;
- (7) In a proceeding described by rule 5.480, a representative of the Indian child's tribe;
- (8) The court clerk;
- (9) The official court reporter, as provided in rule 5.532;
- (10) At the court's discretion, a bailiff; and
- (11) Any other persons entitled to notice of the hearing under sections 290.1 and 290.2.

### **Rule 5.532. Court reporter; transcripts (Juvenile Proceedings)**

#### **(a) Hearing before judge**

If the hearing is before a judge or a referee acting as a temporary judge by stipulation, an official court reporter or other authorized reporting procedure must record all proceedings.

#### **(b) Hearing before referee**

If the hearing is before a referee not acting as a temporary judge, the judge may direct an official court reporter or other authorized reporting procedure to record all proceedings.

#### **(c) Preparation of transcript**

If directed by the judge or if requested by a party or the attorney for a party, the official court reporter or other authorized transcriber must prepare a transcript of the proceedings within such reasonable time after the hearing as the judge designates and must certify that the proceedings have been correctly reported and transcribed. If directed by the judge, the official court reporter or authorized transcriber must file the transcript with the clerk of the court.

### **Rule 5.552. Confidentiality of records (Juvenile Proceedings)**

#### **(a) Definitions**

For the purposes of this rule, "juvenile case file" includes:

- (1) All documents filed in a juvenile court case;
- (2) Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers;
- (3) Documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court;

(4) Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers;

(5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and

(6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

(b) General provisions

(1) The following individuals and entities may inspect, receive, and copy the juvenile case file without an order of the juvenile court:

(A) Court personnel;

(B) The district attorney, a city attorney, or a city prosecutor authorized to prosecute criminal or juvenile cases under the law;

(C) The child who is the subject of the proceeding;

(D) The child's parents;

(E) The child's guardians;

(F) The attorneys for the parties, including any trial court or appellate attorney representing a party in the juvenile proceeding or related appellate proceeding;

(G) Judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;

(H) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action;

(I) Members of child protective agencies as defined in Penal Code section 11165.9; and

(J) The California Department of Social Services in order to carry out its duty to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out- of-state placements.

(2) The following individuals and entities may inspect the juvenile case file without a court order and may receive a copy of the juvenile case file pursuant to a court order:

(A) All persons and entities listed in Welfare and Institutions Code sections 827 and 828 who are not listed in (b)(1) above; and

(B) An Indian child's tribal representative if the tribe has intervened in the child's case.

(3) Authorization for any other person or entity to inspect, obtain, or copy juvenile case files may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court.

(4) Juvenile case files may not be obtained or inspected by civil or criminal subpoena.

(5) When a petition is sustained for any offense listed in section 676, the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition that are contained in the juvenile case file must be available for public inspection, unless the court has prohibited disclosure of those records under that section.

(c) Petition

With the exception of those persons permitted to inspect juvenile court records without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile court records must petition the court for authorization using *Petition for Disclosure of Juvenile Court Records* (form JV-570).

(1) The specific records sought must be identified based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought.

(2) Petitioner must describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.

(d) Notice of petition for disclosure

(1) At least 10 days before the petition is submitted to the court, the petitioner must personally or by first-class mail serve *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), and a blank copy of *Objection to Release of Juvenile Case File* (form JV-572) on the following:

(A) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action if the child's petition was filed under section 300;

(B) The district attorney if the child's petition was filed under section 601 or 602;

(C) The child;

(D) The attorney of record for the child who remains a ward or dependent of the court;

(E) The parents of the child if:

(i) The child is under 18 years of age; or

- (ii) The child's petition was filed under section 300;
  - (F) The guardians of the child if:
    - (i) The child is under 18 years of age; or
    - (ii) The child's petition was filed under section 300;
  - (G) The probation department or child welfare agency, or both, if applicable;
  - (H) The Indian child's tribe; and
  - (I) The child's CASA volunteer.
- (2) The petitioner must complete *Proof of Service-Request for Disclosure* (form JV-569) and file it with the court.
- (3) If the petitioner does not know the identity or address of any of the parties in (d)(1) above, the clerk must:
- (A) Serve personally or by first-class mail to the last known address a copy of *Request for Disclosure of Juvenile Case File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), and a blank copy of *Objection to Release of Juvenile Case File* (form JV-572); and
  - (B) Complete *Proof of Service-Request for Disclosure* (form JV-569) and file it with the court.
- (4) For good cause, the court may, on the motion of the person seeking the order or on its own motion, shorten the time for service of the petition for disclosure.
- (e) Procedure
- (1) The court must review the petition and, if petitioner does not show good cause, deny it summarily.
  - (2) If petitioner shows good cause, the court may set a hearing. The clerk must notice the hearing to the persons and entities listed in (d)(1) above.
  - (3) Whether or not the court holds a hearing, if the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted.
  - (4) In determining whether to authorize inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.
  - (5) If the court grants the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of

juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child.

(6) The court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.

(7) If, after in-camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it.

(8) The court may issue protective orders to accompany authorized disclosure, discovery, or access.

**(f) Reports of law enforcement agencies**

Except for records sealed under section 389 or 781, or Penal Code section 1203.45, information gathered and retained by a law enforcement agency regarding the taking of a child into custody may be disclosed without court authorization to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for the purposes of official disposition of a case.

(1) If the law enforcement agency retaining the report is notified under section 1155 that the child has escaped from a secure detention facility, the agency must release the name of the child and any descriptive information on specific request by any agency or individual whose attempts to apprehend the child will be assisted by the information requested.

(2) In the absence of a specific request, the law enforcement agency retaining the report may release information about a child reported to have escaped from a secure detention facility if the agency determines that the information is necessary to assist in the apprehension of the child or the protection of members of the public from substantial physical harm.

(3) Under section 828, all others seeking to inspect or obtain such reports must petition the juvenile court for authorization, using *Petition to Obtain Report of Law Enforcement Agency* (form JV-575).

**(g) School notification**

When a child enrolled in a public school is found to have committed one of the offenses described in section 827(b)(2), the court must provide written notice of the offense and the disposition to the superintendent of the school district within seven days. The superintendent must disseminate information to the principal of the school the child attends, and the principal may

disseminate information to any teacher or administrator for the purposes of the rehabilitation of the child or the protection of other students and staff.

(h) Other applicable statutes

Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law, including Penal Code section 11165 et seq., except as provided in those statutes, or to limit access to or release of records permitted under any other federal or state statute, including Government Code section 13968.

### **Rule 8.23. Sanctions to compel compliance**

The failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court's proceedings. It may be treated as an interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty. This rule does not limit the reviewing court's power to define and remedy any other interference with its proceedings.

### **Rule 8.45. General provisions**

(a) Application

The rules in this article establish general requirements regarding sealed and confidential records in appeals and original proceedings in the Supreme Court and Courts of Appeal. Where other laws establish specific requirements for particular types of sealed or confidential records that differ from the requirements in this article, those specific requirements supersede the requirements in this article.

(b) Definitions

As used in this article:

- (1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court.
- (2) A "lodged" record is a record temporarily deposited with the court but not filed.
- (3) A "sealed" record is a record that is closed to inspection by the public or a party by order of a court under rules 2.550-2.551 or rule 8.46.
- (4) A "conditionally sealed" record is a record that is filed or lodged subject to a pending application or motion to file it under seal.
- (5) A "confidential" record is a record that, in court proceedings, is required by statute, rule of court, or other authority except a court order under rules 2.550-2.551 or rule 8.46 to be closed to inspection by the public or a party.

(6) A "redacted version" is a version of a filing from which all portions that disclose material contained in a sealed, conditionally sealed, or confidential record have been removed.

(7) An "unredacted version" is a version of a filing or a portion of a filing that discloses material contained in a sealed, conditionally sealed, or confidential record.

(c) Format of sealed and confidential records

(1) Unless otherwise provided by law or court order, sealed or confidential records that are part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be kept separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court.

(A) If the records are in paper format, they must be placed in a sealed envelope or other appropriate sealed container. This requirement does not apply to a juvenile case file but does apply to any record contained within a juvenile case file that is sealed or confidential under authority other than Welfare and Institutions Code section 827 et seq.

(B) Sealed records, and if applicable the envelope or other container, must be marked as "Sealed by Order of the Court on (Date)."

(C) Confidential records, and if applicable the envelope or other container, must be marked as "Confidential (Basis)-May Not Be Examined Without Court Order." The basis must be a citation to or other brief description of the statute, rule of court, case, or other authority that establishes that the record must be closed to inspection in the court proceeding.

(D) The superior court clerk or party transmitting sealed or confidential records to the reviewing court must prepare a sealed or confidential index of these materials. If the records include a transcript of any in-camera proceeding, the index must list the date and the names of all parties present at the hearing and their counsel. This index must be transmitted and kept with the sealed or confidential records.

(2) Except as provided in (3) or by court order, the alphabetical and chronological indexes to a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court that are available to the public must list each sealed or confidential record by title, not disclosing the substance of the record, and must identify it as "Sealed" or "Confidential"-May Not Be Examined Without Court Order."

(3) Records relating to a request for funds under Penal Code section 987.9 or other proceedings the occurrence of which is not to be disclosed under the court order or applicable law must not be bound together with other sealed or

confidential records and must not be listed in the index required under (1)(D) or the alphabetical or chronological indexes to a clerk's or reporter's transcript, appendix, supporting documents to a petition, or other records sent to the reviewing court.

(d) Transmission of and access to sealed and confidential records

(1) Unless otherwise provided by (2)-(4) or other law or court order, a sealed or confidential record that is part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be transmitted only to the reviewing court and the party or parties who had access to the record in the trial court or other proceedings under review and may be examined only by the reviewing court and that party or parties. If a party's attorney but not the party had access to the record in the trial court or other proceedings under review, only the party's attorney may examine the record.

(2) Except as provided in (3), if the record is a reporter's transcript or any document related to any in-camera hearing from which a party was excluded in the trial court, the record must be transmitted to and examined by only the reviewing court and the party or parties who participated in the in-camera hearing.

(3) A reporter's transcript or any document related to an in-camera hearing concerning a confidential informant under Evidence Code sections 1041-1042 must be transmitted only to the reviewing court.

(4) A probation report must be transmitted only to the reviewing court and to appellate counsel for the People and the defendant who was the subject of the report.

**Rule 8.46. Sealed records**

(a) Application

This rule applies to sealed records and records proposed to be sealed on appeal and in original proceedings, but does not apply to confidential records.

(b) Record sealed by the trial court

If a record sealed by order of the trial court is part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court:

(1) The sealed record must remain sealed unless the reviewing court orders otherwise under (e). Rule 8.45 governs the form and transmission of and access to sealed records.

(2) The record on appeal or supporting documents filed in the reviewing court must also include:

- (A) The motion or application to seal filed in the trial court;
  - (B) All documents filed in the trial court supporting or opposing the motion or application; and
  - (C) The trial court order sealing the record.
- (c) Record not sealed by the trial court

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

(d) Record not filed in the trial court; motion or application to file under seal

(1) A record not filed in the trial court may be filed under seal in the reviewing court only by order of the reviewing court; it must not be filed under seal solely by stipulation or agreement of the parties.

(2) To obtain an order under (1), a party must serve and file a motion or application in the reviewing court, accompanied by a declaration containing facts sufficient to justify the sealing. At the same time, the party must lodge the record under (3), unless good cause is shown not to lodge it.

(3) To lodge a record, the party must transmit the record separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule 8.40(c) and labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper format, it must be placed in a sealed envelope or other appropriate sealed container.

(4) If necessary to prevent disclosure of material contained in a conditionally sealed record, any motion or application, any opposition, and any supporting documents must be filed in a redacted version and lodged in a complete unredacted version conditionally under seal. The cover of the redacted version must identify it as "Public-Redacts material from conditionally sealed record." In juvenile cases, the cover of the redacted version must identify it as "Redacted version-Redacts material from conditionally sealed record." The cover of the unredacted version must identify it as "May Not Be Examined Without Court Order-Contains material from conditionally sealed record." Unless the court orders otherwise, any party that had access to the record in the trial court or other proceedings under review must be served with a complete, unredacted version of all papers as well as a redacted version.

(5) On receiving a lodged record, the clerk must note the date of receipt on the cover sheet and retain but not file the record. The record must remain conditionally under seal pending determination of the motion or application.

(6) The court may order a record filed under seal only if it makes the findings required by rule 2.550(d)-(e).

(7) If the court denies the motion or application, the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.

(8) An order sealing the record must direct the sealing of only those documents and pages or, if reasonably practical, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

(9) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed.

(e) Unsealing a record in the reviewing court

(1) A sealed record must not be unsealed except on order of the reviewing court.

(2) Any person or entity may serve and file a motion, application, or petition in the reviewing court to unseal a record.

(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must mail notice to the parties. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is mailed, and any other party may file a response within 5 days after an opposition is filed.

(4) If necessary to prevent disclosure of material contained in a sealed record, the motion, application, or petition under (2) and any opposition, response, and supporting documents under (2) or (3) must be filed in both a redacted version and a complete unredacted version. The cover of the redacted version must identify it as "Public-Redacts material from sealed record." In juvenile cases, the cover of the redacted version must identify it as "Redacted version-Redacts material from sealed record." The cover of the unredacted version must identify it as "May Not Be Examined Without Court Order-Contains material from sealed record." Unless the court orders otherwise, any party that had access to the sealed record in the trial court or other proceedings under review must be served with a complete, unredacted version of all papers as well as a redacted version. If a party's attorney but not the party had access to the record in the trial court or other proceedings under review, only the party's attorney may be served with the complete, unredacted version.

(5) In determining whether to unseal a record, the court must consider the matters addressed in rule 2.550(c)-(e).

(6) The order unsealing a record must state whether the record is unsealed entirely or in part. If the order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both.

(7) If, in addition to the record that is the subject of the sealing order, a court has previously ordered the sealing order itself, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(f) Disclosure of nonpublic material in public filings prohibited

(1) Nothing filed publicly in the reviewing court-including any application, brief, petition, or memorandum-may disclose material contained in a record that is sealed, lodged conditionally under seal, or otherwise subject to a pending motion to file under seal.

(2) If it is necessary to disclose material contained in a sealed record in a filing in the reviewing court, two versions must be filed:

(A) A public redacted version. The cover of this version must identify it as "Public-Redacts material from sealed record." In juvenile cases, the cover of the redacted version must identify it as "Redacted Version-Redacts material from sealed record."

(B) An unredacted version. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order-Contains material from sealed record." Sealed material disclosed in this version must be identified and accompanied by a citation to the court order sealing that material.

(C) Unless the court orders otherwise, any party who had access to the sealed record in the trial court or other proceedings under review must be served with both the unredacted version of all papers as well as the redacted version. Other parties must be served with only the public redacted version. If a party's attorney but not the party had access to the record in the trial court or other proceedings under review, only the party's attorney may be served with the unredacted version.

(3) If it is necessary to disclose material contained in a conditionally sealed record in a filing in the reviewing court:

(A) A public redacted version must be filed. The cover of this version must identify it as "Public-Redacts material from conditionally sealed record." In

juvenile cases, the cover of the redacted version must identify it as "Redacted version-Redacts material from conditionally sealed record."

(B) An unredacted version must be lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order-Contains material from conditionally sealed record." Conditionally sealed material disclosed in this version must be identified.

(C) Unless the court orders otherwise, any party who had access to the conditionally sealed record in the trial court or other proceedings under review must be served with both the unredacted version of all papers as well as the redacted version. Other parties must be served with only the public redacted version.

(D) If the court denies the motion or application to seal the record, the clerk must not place the unredacted version lodged under (B) in the case file but must return it to the party who filed the application or motion to seal unless that party notifies the clerk that the record is to be publicly filed, as provided in (d)(7).

#### **Rule 8.47. Confidential records**

##### **(a) Application**

This rule applies to confidential records but does not apply to records sealed by court order under rules 2.550-2.551 or rule 8.46 or to conditionally sealed records under rule 8.46. Unless otherwise provided by this rule or other law, rule 8.45 governs the form and transmission of and access to confidential records.

##### **(b) Records of *Marsden* hearings and other in-camera proceedings**

(1) This subdivision applies to reporter's transcripts of and documents filed or lodged by a defendant in connection with:

(A) An in-camera hearing conducted by the superior court under *People v. Marsden* (1970) 2 Cal.3d 118; or

(B) Another in-camera hearing at which the defendant was present but from which the People were excluded in order to prevent disclosure of information about defense strategy or other information to which the prosecution was not allowed access at the time of the hearing.

(2) Except as provided in (3), if the defendant raises a *Marsden* issue or an issue related to another in-camera hearing covered by this rule in a brief, petition, or other filing in the reviewing court, the following procedures apply:

(A) The brief, including any portion that discloses matters contained in the transcript of the in-camera hearing and other documents filed or lodged in

connection with the hearing, must be filed publicly. The requirement to publicly file this brief does not apply in juvenile cases; rule 8.401 governs the format of and access to such briefs in juvenile cases.

(B) The People may serve and file an application requesting a copy of the reporter's transcript of and documents filed or lodged by a defendant in connection with the in-camera hearing.

(C) Within 10 days after the application is filed, the defendant may serve and file opposition to this application on the basis that the transcript or documents contain confidential material not relevant to the issues raised by the defendant in the reviewing court. Any such opposition must identify the page and line numbers of the transcript or documents containing this irrelevant material.

(D) If the defendant does not timely serve and file opposition to the application, the reviewing court clerk must send to the People a copy of the reporter's transcript of and documents filed or lodged by a defendant in connection with the in-camera hearing.

(3) A defendant may serve and file a motion or application in the reviewing court requesting permission to file under seal a brief, petition, or other filing that raises a *Marsden* issue or an issue related to another in-camera hearing covered by this subdivision and requesting an order maintaining the confidentiality of the relevant material from the reporter's transcript of or documents filed or lodged in connection with the in-camera hearing.

(A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion or application under this subdivision.

(B) The declaration accompanying the motion or application must contain facts sufficient to justify an order maintaining the confidentiality of the relevant material from the reporter's transcript of or documents filed or lodged in connection with the in-camera hearing and sealing of the brief, petition, or other filing.

(C) At the time the motion or application is filed, the defendant must:

(i) File a public redacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The cover of this version must identify it as "Public-Redacts material from conditionally sealed record." The requirement to publicly file the redacted version does not apply in juvenile cases; rule 8.401 generally governs access to filings in juvenile cases. In juvenile cases, the cover of the redacted version must identify it as "Redacted version-Redacts material from conditionally sealed record."

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container.

The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order-Contains material from conditionally sealed record."

(D) If the court denies the motion or application to file the brief, petition, or other filing under seal, the clerk must not place the unredacted brief, petition, or other filing lodged under (C)(ii) in the case file but must return it to the defendant unless the defendant notifies the clerk in writing that it is to be filed. Unless otherwise ordered by the court, the defendant must notify the clerk within 10 days after the order denying the motion or application.

(c) Other confidential records

Except as otherwise provided by law or order of the reviewing court:

(1) Nothing filed publicly in the reviewing court-including any application, brief, petition, or memorandum-may disclose material contained in a confidential record, including a record that, by law, a party may choose be kept confidential in reviewing court proceedings and that the party has chosen to keep confidential.

(2) To maintain the confidentiality of material contained in a confidential record, if it is necessary to disclose such material in a filing in the reviewing court, a party may serve and file a motion or application in the reviewing court requesting permission for the filing to be under seal.

(A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion or application under this subdivision.

(B) The declaration accompanying the motion or application must contain facts sufficient to establish that the record is required by law to be closed to inspection in the reviewing court and to justify sealing of the brief, petition, or other filing.

(C) At the time the motion or application is filed, the party must:

(i) File a redacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The cover of this version must identify it as "Public-Redacts material from conditionally sealed record," In juvenile cases, the cover of this version must identify it as "Redacted version-Redacts material from conditionally sealed record."

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order-Contains material from conditionally sealed record." Material from a confidential record disclosed in this version must be identified and accompanied by a citation to the statute, Rule of Court, case, or

other authority establishing that the record is required by law to be closed to inspection in the reviewing court.

(D) If the court denies the motion or application to file the brief, petition, or other filing under seal, the clerk must not place the unredacted brief, petition, or other filing lodged under (C)(ii) in the case file but must return it to the lodging party unless the party notifies the clerk in writing that it is to be filed. Unless otherwise ordered by the court, the party must notify the clerk within 10 days after the order denying the motion or application.

#### **Rule 8.120. Record on appeal**

Except as otherwise provided in this chapter, the record on an appeal in a civil case must contain the records specified in (a) and (b), which constitute the normal record on appeal.

##### **(a) Record of written documents**

(1) A record of the written documents from the superior court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.122;

(B) An appendix under rule 8.124;

(C) The original superior court file under rule 8.128, if a local rule of the reviewing court permits this form of the record;

(D) An agreed statement under rule 8.134(a)(2); or

(E) A settled statement under rule 8.137.

(2) If an appellant intends to raise any issue that requires consideration of the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the superior court, the record on appeal must include that administrative record, transmitted under rule 8.123.

##### **(b) Record of the oral proceedings**

If an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings in the form of one of the following:

(1) A reporter's transcript under rule 8.130;

(2) An agreed statement under rule 8.134; or

(3) A settled statement under rule 8.137.

#### **Rule 8.124. Appendixes**

##### **(a) Notice of election**

(1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the notice of appeal is filed and no waiver of the fee for a clerk's transcript is granted to the appellant.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix.

(b) Contents of appendix

(1) A joint appendix or an appellant's appendix must contain:

(A) All items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2);

(B) Any item listed in rule 8.122(b)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;

(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix may incorporate by reference all or part of the record on appeal in another case pending in the reviewing court or in a prior appeal in the same case.

(A) The other appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified both in the body of the appendix and in a separate section at the end of the index.

(B) If the appendix incorporates by reference any such record, the cover of the appendix must prominently display the notice "Record in case number:\_\_\_\_ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the court or another party or lend them for copying as provided in (c).

(3) An appendix must not:

(A) Contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues.

(B) Contain transcripts of oral proceedings that may be designated under rule 8.130.

(C) Contain the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the trial court. Any such administrative record must be transmitted to the reviewing court as specified in rule 8.123.

(D) Incorporate any document by reference except as provided in (2).

(4) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

(5) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

(6) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(c) Document or exhibit held by other party

If a party preparing an appendix wants it to contain a copy of a document or an exhibit in the possession of another party:

(1) The party must first ask the party possessing the document or exhibit to provide a copy or lend it for copying. All parties should reasonably cooperate with such requests.

(2) If the attempt under (1) is unsuccessful, the party may serve and file in the reviewing court a notice identifying the document or specifying the exhibit's trial court designation and requesting the party possessing the document or exhibit to deliver it to the requesting party or, if the possessing party prefers, to the reviewing court. The possessing party must comply with the request within 10 days after the notice was served.

(3) If the party possessing the document or exhibit sends it to the requesting party, that party must copy and return it to the possessing party within 10 days after receiving it.

(4) If the party possessing the document or exhibit sends it to the reviewing court, that party must:

(A) Accompany the document or exhibit with a copy of the notice served by the requesting party; and

(B) Immediately notify the requesting party that it has sent the document or exhibit to the reviewing court.

(5) On request, the reviewing court may return a document or an exhibit to the party that sent it. When the remittitur issues, the reviewing court must return all documents or exhibits to the party that sent them.

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144(a)-(c) for a clerk's transcript.

(2) In addition to the information required on the cover of a brief by rule 8.204(b)(10), the cover of an appendix must prominently display the title "Joint Appendix" or "Appellant's Appendix" or "Respondent's Appendix" or "Appellant's Reply Appendix."

(3) An appendix must not be bound with a brief.

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(f) Cost of appendix

(1) Each party must pay for its own appendix.

(2) The cost of a joint appendix must be paid:

(A) By the appellant;

(B) If there is more than one appellant, by the appellants equally; or

(C) As the parties may agree.

(g) Inaccurate or noncomplying appendix

Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court

may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule.

### **Rule 8.130. Reporter's transcript**

#### **(a) Notice**

(1) A notice under rule 8.121 designating a reporter's transcript must specify the date of each proceeding to be included in the transcript and may specify portions of designated proceedings that are not to be included. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on ***Appellant's Notice Designating Record on Appeal (Unlimited Civil)*** (form APP-003) or, if that form is not used, placing an asterisk before that proceeding in the notice.

(2) If the appellant designates less than all the testimony, the notice must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise.

(3) If the appellant serves and files a notice designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) or, if that form is not used, placing an asterisk before that proceeding in the notice.

(4) If the appellant elects to proceed without a reporter's transcript, the respondent cannot require that a reporter's transcript be prepared. But the reviewing court, on its own or the respondent's motion, may order the record augmented under rule 8.155 to prevent a miscarriage of justice. Unless the court orders otherwise, the appellant is responsible for the cost of any reporter's transcript the court may order under this subdivision.

(5) Except when a party submits a certified transcript that contains all the designated proceedings under (b)(3)(C) with the notice of designation, the notice of designation must be served on each known reporter of the designated proceedings.

#### **(b) Deposit or substitute for cost of transcript**

(1) With its notice of designation, a party must deposit with the superior court clerk the approximate cost of transcribing the proceedings it designates and a fee of \$50 for the superior court to hold this deposit in trust. The deposit must be either:

(A) The amount specified in the reporter's written estimate; or

(B) An amount calculated as follows:

(i) For proceedings that have not previously been transcribed: \$325 per fraction of the day's proceedings that did not exceed three hours, or \$650 per day or fraction that exceeded three hours.

(ii) For proceedings that have previously been transcribed: \$80 per fraction of the day's proceedings that did not exceed three hours, or \$160 per day or fraction that exceeded three hours.

(2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails the notice under (d)(1) the reporter may file with the clerk and mail to the designating party an estimate of the transcript's total cost at the statutory rate, showing the additional deposit required. The party must deposit the additional sum within 10 days after the reporter mails the estimate.

(3) Instead of a deposit under (1), the party may substitute:

(A) The reporter's written waiver of a deposit. A reporter may waive the deposit for a part of the designated proceedings, but such a waiver replaces the deposit for only that part.

(B) A copy of a Transcript Reimbursement Fund application filed under (c)(1).

(C) A certified transcript of all of the proceedings designated by the party. The transcript must comply with the format requirements of rule 8.144.

(c) Transcript Reimbursement Fund application

(1) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(2) Within 90 days after the appellant serves and files a copy of its application to the Court Reporters Board, the appellant must either file with the superior court a copy of the Court Reporters Board's provisional approval of the application or take one of the following actions:

(A) Deposit the amount required under (b) or the reporter's written waiver of this deposit;

(B) File an agreed statement or a stipulation that the parties are attempting to agree on a statement under rule 8.134;

(C) File a motion to use a settled statement instead of a reporter's transcript under rule 8.137;

(D) Notify the superior court clerk that it elects to proceed without a record of the oral proceedings; or

(E) Serve and file an abandonment under rule 8.244.

(3) Within 90 days after the respondent serves and files a copy of its application to the Court Reporters Board, the respondent must either file with the superior court a copy of the Court Reporters Board's provisional approval of the application or take one of the following actions:

(A) Deposit the amount required under (b) or the reporter's written waiver of this deposit; or

(B) Notify the superior court clerk that it no longer wants the additional proceedings it designated for inclusion in the reporter's transcript.

(4) If the appellant fails to timely take one of the actions specified in (2) or the respondent fails to timely make the deposit or send the notice under (3), the superior court clerk must promptly issue a notice of default under rule 8.140.

(5) If the Court Reporters Board provisionally approves the application, the reporter's time to prepare the transcript under (f)(1) begins when the reporter receives notice of the provisional approval from the clerk under (d)(2).

(d) Superior court clerk's duties

(1) The clerk must file a party's notice of designation even if the party does not present the required deposit under (b)(1) or a substitute under (b)(3) with its notice of designation.

(2) The clerk must promptly mail the reporter notice of the designation and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was mailed to the reporter, when the court receives:

(A) The required deposit under (b)(1);

(B) A reporter's written waiver of a deposit under (b)(3); or

(C) A copy of the Court Reporters Board's provisional approval of the party's application for payment from the Transcript Reimbursement Fund under (c).

(3) If the appellant does not present the deposit under (b)(1) or a substitute under (b)(3) with its notice of designation or does not present an additional deposit required under (b)(2):

(A) The clerk must promptly notify the appellant by mail that, within 15 days after the notice is mailed, the appellant must take one of the following actions or the court may dismiss the appeal:

(i) Deposit the amount required or a substitute permitted under (b);

(ii) File an agreed statement or a stipulation that the parties are attempting to agree on a statement under rule 8.134;

(iii) File a motion to use a settled statement instead of a reporter's transcript under rule 8.137;

(iv) Notify the superior court clerk that it elects to proceed without a record of the oral proceedings; or

(v) Serve and file an abandonment under rule 8.244.

(B) If the appellant elects to use a reporter's transcript and fails to take one of the actions specified in the notice under (A), rule 8.140(b) and (c) apply.

(4) If the respondent does not present the deposit under (b)(1) or a substitute under (b)(3) with its notice of designation or does not present an additional deposit required under (b)(2), the clerk must file the notice of designation and promptly issue a notice of default under rule 8.140.

(5) The clerk must promptly notify the reporter if a check for a deposit is dishonored or an appeal is abandoned or is dismissed before the reporter has filed the transcript.

(e) Contents of transcript

(1) Except when a party deposits a certified transcript of all the designated proceedings under (b)(3)(C), the reporter must transcribe all designated proceedings that have not previously been transcribed and include in the transcript a copy of all designated proceedings that have previously been transcribed. The reporter must note in the transcript where any proceedings were omitted and the nature of those proceedings. The reporter must also note where any exhibit was marked for identification and where it was admitted or refused, identifying such exhibits by number or letter.

(2) If a party designates a portion of a witness's testimony to be transcribed, the reporter must transcribe the witness's entire testimony unless the parties stipulate otherwise.

(3) The reporter must not copy any document includable in the clerk's transcript under rule 8.122.

(f) Filing the transcript; copies; payment

(1) Within 30 days after notice is mailed under (d)(2), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

(2) When the transcript is completed, the reporter must notify all parties to the appeal that the transcript is complete, bill each designating party at the statutory rate, and send a copy of the bill to the superior court clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a

multiple reporter case, the clerk must pay each reporter who certifies under penalty of perjury that his or her transcript portion is completed.

(3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the superior court clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(4) On request, and unless the superior court orders otherwise, the reporter must provide the Court of Appeal or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(g) Disputes over transcript costs

Notwithstanding any dispute that may arise over the estimated or billed costs of a reporter's transcript, a designating party must timely comply with the requirements under this rule regarding deposits for transcripts. If a designating party believes that a reporter's estimate or bill is excessive, the designating party may file a complaint with the Court Reporters Board.

(h) Agreed or settled statement when proceedings cannot be transcribed

(1) If any portion of the designated proceedings cannot be transcribed, the superior court clerk must so notify the designating party by mail; the notice must show the date it was mailed. The party may then substitute an agreed or settled statement for that portion of the designated proceedings by complying with either (A) or (B):

(A) Within 10 days after the notice is mailed, the party may file in superior court, under rule 8.134, an agreed statement or a stipulation that the parties are attempting to agree on a statement. If the party files a stipulation, within 30 days thereafter the party must file the agreed statement, move to use a settled statement under rule 8.137, or proceed without such a statement; or

(B) Within 10 days after the notice is mailed, the party may move in superior court to use a settled statement. If the court grants the motion, the statement must be served, filed, and settled as rule 8.137 provides, but the order granting the motion must fix the times for doing so.

(2) If the agreed or settled statement contains all the oral proceedings, it will substitute for the reporter's transcript; if it contains a portion of the proceedings, it will be incorporated into that transcript.

(3) This remedy supplements any other available remedies.

#### **Rule 8.144. Form of the record**

(a) Paper and format

(1) In the clerk's and reporter's transcripts:

(A) The paper must be white or unbleached, 8 1/2 by 11 inches, and of at least 20-pound weight;

(B) The text must be reproduced as legibly as printed matter;

(C) The contents must be arranged chronologically;

(D) The pages must be consecutively numbered, except as provided in (e);

(E) The margin must be at least 1 1/4 inches on the bound edge of the page.

(2) In the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1 1/4 inches on each edge.

(3) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

(4) The clerk's and reporter's transcripts must comply with rules 8.45-8.47 relating to sealed and confidential records.

(b) Indexes

Except as provided in rule 8.45, at the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(c) Binding and cover

(1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2) Each volume's cover must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

(3) In addition to the information required by (2), the cover of each volume of the reporter's transcript must state the dates of the proceedings reported in that volume.

(d) Daily transcripts

Daily or other certified transcripts may be used for all or part of the reporter's transcript, but the pages must be renumbered consecutively and the required indexes and covers must be added.

(e) Pagination in multiple reporter cases

(1) In a multiple reporter case, each reporter must estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment.

(2) If a segment exceeds the assigned number of pages, the reporter must number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively.

(3) If a segment has fewer than the assigned number of pages, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number, and state in parentheses "(next page number is \_\_\_\_)."

(f) Agreed or settled statements

Agreed or settled statements must conform with this rule insofar as practicable.

**Rule 8.147. Record in multiple or later appeals in same case**

(a) Multiple appeals

(1) If more than one appeal is taken from the same judgment or a related order, only one record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

(2) If there is more than one separately represented appellant, they must equally share the cost of preparing the record, unless otherwise agreed by the appellants or ordered by the superior court. Appellants equally sharing the cost are each entitled to a copy of the record.

(b) Later appeal

In an appeal in which the parties are using either a clerk's transcript under rule 8.122 or a reporter's transcript under rule 8.130:

(1) A party wanting to incorporate by reference all or parts of a record in a prior appeal in the same case must specify those parts in its designation of the record.

(A) The prior appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified in a separate section at the end of the designation of the record.

(B) If the transcript incorporates by reference any such record, the cover of the transcript must prominently display the notice "Record in case number: \_\_\_ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the reviewing court or another party or lend them as provided in rule 8.153.

(2) A party wanting any parts of a clerk's transcript or other record of the written documents from a prior appeal in the same case to be copied into the clerk's transcript in a later appeal must specify those parts in its designation of the record as provided in (1). The estimated cost of copying these materials must be included in the clerk's estimate of the cost of preparing the transcript under rule 8.122(c)(1). On request of the trial court clerk, the designating party must provide a copy of or lend the materials to be copied to the clerk. The parts of any record from a prior appeal that are copied into a clerk's transcript under this rule must be placed in a separate section at the end of the transcript and identified in a separate section at the end of the indexes.

#### **Rule 8.304. Filing the appeal; certificate of probable cause Criminal, Felony)**

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the superior court in a felony case-other than a judgment imposing a sentence of death-the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(2) As used in (1), "felony case" means any criminal action in which a felony is charged, regardless of the outcome. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a. A felony case includes an action in which the defendant is charged with:

(A) A felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;

(B) A felony, but is convicted of only a lesser offense; or

(C) An offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

(3) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(4) The notice of appeal must be liberally construed. Except as provided in (b), the notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court-with the notice of appeal required by (a)-the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

(2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.

(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:

(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or

(B) Grounds that arose after entry of the plea and do not affect the plea's validity.

(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files

a statement under (b)(1), the clerk must not mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented defendant.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b), and the sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

#### **Rule 8.480. Appeal from order establishing conservatorship**

(a) Application

Except as otherwise provided in this rule, rules 8.304-8.368 and 8.508 govern appeals from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea;

(3) Any written motion with supporting and opposing memoranda and attachments;

(4) Any filed medical or social worker reports;

(5) All court minutes;

(6) All instructions submitted in writing, each noting the party requesting it;

- (7) Any verdict;
- (8) Any written opinion of the court;
- (9) The judgment or order appealed from;
- (10) The notice of appeal; and
- (11) Any application for additional record and any order on the application.

(c) Reporter's transcript

The reporter's transcript must contain all oral proceedings, excluding the voir dire examination of jurors and any opening statement.

(d) Sending the record

The clerk must not send a copy of the record to the Attorney General or the district attorney unless that office represents a party.

(e) Briefs

The parties must not serve copies of their briefs:

- (1) On the Attorney General or the district attorney, unless that office represents a party; or
- (2) On the Supreme Court under rule 8.44(b)(1).

**Rule 8.600. In general (Death Penalty Cases)**

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

(c) Extensions of time

When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.

(d) Supervising preparation of record

The Supreme Court clerk, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does

not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(e) Definitions

For purposes of this part:

- (1) The delivery date of a transcript sent by mail is the mailing date plus five days; and
- (2) "Trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

**Rule 8.610. Contents and form of the record (Death Penalty)**

(a) Contents of the record

- (1) The record must include a clerk's transcript containing:
  - (A) The accusatory pleading and any amendment;
  - (B) Any demurrer or other plea;
  - (C) All court minutes;
  - (D) All instructions submitted in writing, each one indicating the party requesting it;
  - (E) Any written communication between the court and the jury or any individual juror;
  - (F) Any verdict;
  - (G) Any written opinion of the court;
  - (H) The judgment or order appealed from and any abstract of judgment or commitment;
  - (I) Any motion for new trial, with supporting and opposing memoranda and attachments;
  - (J) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;
  - (K) Any application for additional record and any order on the application;
  - (L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments;
  - (M) If related to a motion under (L), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;
  - (N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term;

- (O) The probation officer's report; and
  - (P) Any other document filed or lodged in the case, including each juror questionnaire, whether or not the juror was selected.
  - (2) The record must include a reporter's transcript containing:
    - (A) The oral proceedings on the entry of any plea other than a not guilty plea;
    - (B) The oral proceedings on any motion in limine;
    - (C) The voir dire examination of jurors;
    - (D) Any opening statement;
    - (E) The oral proceedings at trial;
    - (F) All instructions given orally;
    - (G) Any oral communication between the court and the jury or any individual juror;
    - (H) Any oral opinion of the court;
    - (I) The oral proceedings on any motion for new trial;
    - (J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;
    - (K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;
    - (L) The closing arguments;
    - (M) Any comment on the evidence by the court to the jury;
    - (N) The oral proceedings on motions in addition to those listed above; and
    - (O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.
  - (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.634.
  - (4) The superior court or the Supreme Court may order that the record include additional material.
    - (b) Confidential records
- Rules 8.45-8.47 govern sealed and confidential records in appeals under this chapter.
- (c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 8.332. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together, must be included in the record sent to the Supreme Court.

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rules 8.45-8.47, relating to sealed and confidential records, and rule 8.144.

**Rule 8.613. Preparing and certifying the record of preliminary proceedings (Death Penalty)**

(a) Definitions

For purposes of this rule:

- (1) The "preliminary proceedings" are all proceedings held before and including the filing of the information or indictment, whether in open court or otherwise, and include the preliminary examination or grand jury proceeding;
- (2) The "record of the preliminary proceedings" is the court file and the reporter's transcript of the preliminary proceedings;
- (3) The "responsible judge" is the judge assigned to try the case or, if none is assigned, the presiding superior court judge or designee of the presiding judge; and
- (4) The "designated judge" is the judge designated by the presiding judge to supervise preparation of the record of preliminary proceedings.

(b) Notice of intent to seek death penalty

In any case in which the death penalty may be imposed:

- (1) If the prosecution notifies the responsible judge that it intends to seek the death penalty, the judge must notify the presiding judge and the clerk. The clerk must promptly enter the information in the court file.
- (2) If the prosecution does not give notice under (1)-and does not give notice to the contrary-the clerk must notify the responsible judge 60 days before the first date set for trial that the prosecution is presumed to seek the death penalty. The judge must notify the presiding judge, and the clerk must promptly enter the information in the court file.

(c) Assignment of judge designated to supervise preparation of record of preliminary proceedings

- (1) Within five days after receiving notice under (b), the presiding judge must designate a judge to supervise preparation of the record of the preliminary proceedings.

(2) If there was a preliminary examination, the designated judge must be the judge who conducted it.

(d) Notice to prepare transcript

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(e) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original to the designated judge and one copy to each trial counsel. If a different attorney represented the defendant or the People in the preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) Review the reporter's transcript for errors or omissions;

(B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed;

(C) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(D) Review the court file to determine whether it is complete.

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the transcript, each trial counsel must serve and file a declaration stating that counsel or another person

under counsel's supervision has performed the tasks required by (f), and must serve and file either:

(A) A request for corrections or additions to the reporter's transcript or court file; or

(B) A statement that counsel does not request any corrections or additions.

(2) If a different attorney represented the defendant in the preliminary proceedings, that attorney must also file the declaration required by (1).

(3) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(4) If any counsel fails to timely file a declaration under (1), the designated judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(h) Corrections or additions to the record of preliminary proceedings

If any counsel files a request for corrections or additions:

(1) Within 15 days after the last request is filed, the designated judge must hold a hearing and order any necessary corrections or additions.

(2) If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(3) Within 20 days after the hearing under (1), the original reporter's transcript and court file must be corrected or augmented to reflect all corrections or additions ordered. The clerk must promptly send copies of the corrected or additional pages to trial counsel.

(4) The judge may order any further proceedings to correct or complete the record of the preliminary proceedings.

(5) When the judge is satisfied that all corrections and additions ordered have been made and copies of all corrected or additional pages have been sent to the parties, the judge must certify the record of the preliminary proceedings as complete and accurate.

(6) The record of the preliminary proceedings must be certified as complete and accurate within 120 days after the presiding judge orders preparation of the record.

(i) Computer-readable copies

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-

readable copies for each codefendant against whom the death penalty is sought.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(j) Delivery to the superior court

Within five days after the reporter delivers the computer-readable copies, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) The certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel, including the computer-readable copies; and

(2) The complete court file of the preliminary proceedings or a certified copy of that file.

(k) Extension of time

(1) Except as provided in (2), the designated judge may extend for good cause any of the periods specified in this rule.

(2) The period specified in (h)(6) may be extended only as follows:

(A) The designated judge may request an extension of the period by presenting a declaration to the responsible judge explaining why the time limit cannot be met; and

(B) The responsible judge may order an extension not exceeding 90 additional days; in an exceptional case the judge may order an extension exceeding 90 days, but must state on the record the specific reason for the greater extension.

(l) Notice that the death penalty is no longer sought

After the presiding judge has ordered preparation of the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

### **Rule 8.616. Preparing the trial record (Death Penalty)**

#### **(a) Clerk's duties**

- (1) The clerk must promptly-and no later than five days after the judgment of death is rendered-notify the reporter to prepare the reporter's transcript.
- (2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death.
- (3) The clerk must certify the original and all copies of the clerk's transcript as correct.

#### **(b) Reporter's duties**

- (1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant sentenced to death.
- (2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.
- (3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

#### **(c) Sending the record to trial counsel**

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts to each trial counsel, retaining the original transcripts and the remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

#### **(d) Extension of time**

- (1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30 days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.
- (2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.
- (3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

### **Rule 8.619. Certifying the trial record for completeness (Death Penalty)**

#### **(a) Review by counsel during trial**

During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

(b) Review by counsel after trial

When the clerk delivers the clerk's and reporter's transcripts to trial counsel, each counsel must promptly:

(1) Review the docket sheets and minute orders to determine whether the reporter's transcript is complete;

(2) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(3) Review the court file to determine whether the clerk's transcript is complete.

(c) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (b), and must serve and file either:

(A) A request to include additional materials in the record or to correct errors that have come to counsel's attention; or

(B) A statement that counsel does not request any additions or corrections.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(3) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(d) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly-and in any event within five days-notify the reporter of an order under (2). If any portion of the proceedings cannot be

transcribed, the judge may order preparation of a settled statement under rule 8.346.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within 90 days after the judgment of death is rendered.

(e) Computer-readable copies

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(f) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 30-day period to review the record under (c) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(g) Sending the certified record

When the record is certified as complete, the clerk must promptly send:

(1) To each defendant's appellate counsel and each defendant's habeas corpus counsel: one paper copy of the entire record and one computer-readable copy of the reporter's transcript. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(2) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: one paper copy of the clerk's transcript and one computer-readable copy of the reporter's transcript.

(h) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the Supreme Court clerk.

**Rule 8.622. Certifying the trial record for accuracy (Death Penalty)**

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel, any party may serve and file a request for corrections or additions.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619(d)(1)-(5) must be followed.

(2) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

(3) The judge must certify the record as accurate within 120 days after it is delivered to appellate counsel.

(c) Computer-readable copies

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six computer-readable copies of the reporter's transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) In preparing the computer-readable copies, the procedures and time limits of rule 8.619(e)(2)-(5) must be followed.

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 90-day period to request corrections or additions under (a) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge's certificate of accuracy, and a computer-readable copy of the reporter's transcript.

(2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a computer-readable copy of the reporter's transcript.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

### **Rule 8.830. Record on appeal (Civil)**

(a) Normal record

Except as otherwise provided in this chapter, the record on an appeal to the appellate division in a civil case must contain the following, which constitute the normal record on appeal:

(1) A record of the written documents from the trial court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.832;

(B) If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file under rule 8.833; or

(C) An agreed statement under rule 8.836.

(2) If an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, the record on appeal must include a record of these oral proceedings in the form of one of the following:

(A) A reporter's transcript under rule 8.834 or a transcript prepared from an official electronic recording under rule 8.835;

(B) If the court has a local rule for the appellate division permitting this form of the record, an official electronic recording of the proceedings under rule 8.835;

(C) An agreed statement under rule 8.836; or

(D) A statement on appeal under rule 8.837.

(b) Presumption from the record

The appellate division will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.

### **Rule 8.831. Notice designating the record on appeal**

(a) Time to file

Within 10 days after filing the notice of appeal, an appellant must serve and file a notice in the trial court designating the record on appeal. The appellant may combine its notice designating the record with its notice of appeal.

(b) Contents

The notice must specify:

(1) The date the notice of appeal was filed;

(2) Which form of the record of the written documents from the trial court proceedings listed in rule 8.830(a)(1) the appellant elects to use. If the appellant elects to use a clerk's transcript, the notice must also:

(A) Provide the filing date of each document that is required to be included in the clerk's transcript under 8.832(a)(1) or, if the filing date is not available, the date it was signed; and

(B) Designate, as provided under 8.832(b), any documents in addition to those required under 8.832(a)(1) that the appellant wants included in the clerk's transcript;

(3) Whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court;

(4) If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use;

(5) If the appellant elects to use a reporter's transcript, the notice must designate the proceedings to be included in the transcript as required under rule 8.834;

(6) If the appellant elects to use an official electronic recording, the appellant must attach a copy of the stipulation required under rule 8.835(c); and

(7) If the appellant elects to use an agreed statement, the appellant must attach to the notice either the agreed statement or stipulation as required under rule 8.836(c)(1).

### **Rule 8.834. Reporter's transcript**

#### **(a) Notice**

(1) A notice designating a reporter's transcript under rule 8.831 must specify the date of each proceeding to be included in the transcript and may specify portions of the designated proceedings that are not to be included. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on ***Appellant's Notice Designating Record on Appeal (Limited Civil Case)*** (form APP-103) or, if that form is not used, placing an asterisk before that proceeding.

(2) If the appellant designates less than all the testimony, the notice must state the points to be raised on the appeal; the appeal is then limited to those points unless, on motion, the appellate division permits otherwise.

(3) If the appellant serves and files a notice under rule 8.831 designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in the trial court designating any additional proceedings the respondent wants included in the reporter's transcript. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on ***Respondent's Notice Designating Record on Appeal (Limited Civil Case)*** (form APP-110) or, if that form is not used, placing an asterisk before that proceeding.

(4) Except when a party deposits a certified transcript of all the designated proceedings under (b)(2)(D) with the notice of designation, the clerk must promptly mail a copy of each notice to the reporter. The copy must show the date it was mailed.

#### **(b) Deposit or substitute for cost of transcript**

(1) Within 10 days after the clerk mails a notice under (a)(4), the reporter must file the estimate with the clerk-or notify the clerk in writing of the date that he or she notified the appellant directly-of the estimated cost of preparing the reporter's transcript at the statutory rate.

(2) Within 10 days after the clerk notifies the appellant of the estimated cost of preparing the reporter's transcript-or within 10 days after the reporter notifies the appellant directly-the appellant must do one of the following:

(A) Deposit with the clerk an amount equal to the estimated cost and a fee of \$50 for the superior court to hold this deposit in trust;

(B) File with the clerk a written waiver of the deposit signed by the reporter;

(C) File a copy of a Transcript Reimbursement Fund application filed under (3);

(D) File a certified transcript of all of the designated proceedings. The transcript must comply with the format requirements of rule 8.144; or

(E) Notify the clerk that:

(i) He or she now elects to use a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.837;

(ii) He or she now elects to proceed without a record of the oral proceedings in the trial court; or

(iii) He or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.825.

(3) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(A) Within 90 days after the appellant serves and files a copy of its application to the Court Reporters Board, the appellant must either file with the court a copy of the Court Reporters Board's provisional approval of the application or take one of the following actions:

(i) Deposit the amount required under (2) or the reporter's written waiver of this deposit;

(ii) Notify the superior court that he or she now elects to use a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.837;

(iii) Notify the superior court that that he or she elects to proceed without a record of the oral proceedings; or

(iv) Notify the superior court that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.825.

(B) Within 90 days after the respondent serves and files a copy of its application to the Court Reporters Board, the respondent must either file with the court a copy of the Court Reporters Board's provisional approval of the application or take one of the following actions:

(i) Deposit the amount required under (2) or the reporter's written waiver of this deposit; or

(ii) Notify the superior court that the respondent no longer wants the additional proceedings it designated for inclusion in the reporter's transcript.

(C) If the appellant fails to timely take one of the actions specified in (A) or the respondent fails to timely make the deposit or send the notice under (B), the clerk must promptly issue a notice of default under rule 8.842.

(D) If the Court Reporters Board provisionally approves the application, the reporter's time to prepare the transcript under (d)(1) begins when the clerk mails notice of the provisional approval under (4).

(4) The clerk must promptly notify the reporter to prepare the transcript when the court receives:

(A) The required deposit under (2)(A);

(B) A waiver of the deposit signed by the reporter under (2)(B); or

(C) A copy of the Court Reporters Board's provisional approval of the party's application for payment from the Transcript Reimbursement Fund under (3).

(c) Contents of reporter's transcript

(1) Except when a party deposits a certified transcript of all the designated proceedings under (b)(2)(D), the reporter must transcribe all designated proceedings that have not previously been transcribed and provide a copy of all designated proceedings that have previously been transcribed. The reporter must note in the transcript where any proceedings were omitted and the nature of those proceedings. The reporter must also note where any exhibit was marked for identification and where it was admitted or refused, identifying such exhibits by number or letter.

(2) The reporter must not transcribe the voir dire examination of jurors, any opening statement, or the proceedings on a motion for new trial, unless they are designated.

(3) If a party designates a portion of a witness's testimony to be transcribed, the reporter must transcribe the witness's entire testimony unless the parties stipulate otherwise.

(4) The reporter must not copy any document includable in the clerk's transcript under rule 8.832.

(d) Filing the reporter's transcript; copies; payment

(1) Within 20 days after the clerk notifies the reporter to prepare the transcript under (b)(2), the reporter must prepare and certify an original of the reporter's transcript and file it in the trial court. The reporter must also file one copy of the original transcript or more than one copy if multiple appellants equally share the cost of preparing the record.

(2) When the transcript is completed, the reporter must notify all parties to the appeal that the transcript is complete, bill each designating party at the statutory rate, and send a copy of the bill to the clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a multiple reporter case, the clerk must pay each reporter who certifies under penalty of perjury that his or her transcript portion is completed.

(3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(4) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(e) Disputes over transcript costs

Notwithstanding any dispute that may arise over the estimated or billed costs of a reporter's transcript, a designating party must timely comply with the requirements under this rule regarding deposits for transcripts. If a designating party believes that a reporter's estimate or bill is excessive, the designating party may file a complaint with the Court Reporters Board.

(f) Notice when proceedings cannot be transcribed

(1) If any portion of the designated proceedings were not reported or cannot be transcribed, the trial court clerk must so notify the designating party by mail; the notice must show the date it was mailed.

(2) Within 10 days after the notice under (1) is mailed, the designating party must notify the court whether the party elects to proceed with or without a record of the oral proceedings that were not reported or cannot be transcribed. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule

8.830(a)(2) other than a reporter's transcript the party elects to use. The party must comply with the requirements applicable to the form of the record elected.

(3) This remedy supplements any other available remedies.

**Rule 8.835. Record when trial proceedings were officially electronically recorded**

(a) Application

This rule applies only if:

(1) The trial court proceedings were officially recorded electronically under Government Code section 69957; and

(2) The electronic recording was prepared in compliance with applicable rules regarding electronic recording of court proceedings.

(b) Transcripts from official electronic recording

Written transcripts of official electronic recordings may be prepared under rule 2.952. A transcript prepared and certified as provided in that rule is prima facie a true and complete record of the oral proceedings it purports to cover and satisfies any requirement in these rules or in any statute for a reporter's transcript of oral proceedings.

(c) Use of official recording as record of oral proceedings

If the court has a local rule for the appellate division permitting this, on stipulation of the parties or on order of the trial court under rule 8.837(d)(6), the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. Such an official electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(d) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant by mail if any portion of the designated proceedings was not officially electronically recorded or cannot be transcribed. The notice must show the date it was mailed.

(2) Within 10 days after the notice under (1) is mailed, the appellant must notify the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule

8.830(a)(2) other than an electronic recording the appellant elects to use. The appellant must comply with the requirements applicable to the form of the record elected.

### **Rule 8.837. Statement on appeal**

#### **(a) Description**

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. An appellant can elect under rule 8.831 to use a statement on appeal as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

#### **(b) Preparing the proposed statement**

(1) If the appellant elects in its notice designating the record under rule 8.831 to use a statement on appeal, the appellant must serve and file a proposed statement within 20 days after filing the notice under rule 8.831. If the appellant does not file a proposed statement within this time, the trial court clerk must promptly notify the appellant by mail that it must file the proposed statement within 15 days after the notice is mailed and that failure to comply will result in the appeal being dismissed.

(2) Appellants who are not represented by an attorney must file their proposed statement on *Statement on Appeal (Limited Civil Case)* (form APP-104). For good cause, the court may permit the filing of a statement that is not on form APP-104.

#### **(c) Contents of the proposed statement**

The proposed statement must contain:

(1) A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's holding and judgment. Subject to the court's approval, the appellant may present some or all of the evidence by question and answer.

(2) A statement of the points the appellant is raising on appeal. If the condensed narrative under (A) covers only a portion of the oral proceedings, then the appeal is limited to the points identified in the statement unless, on motion, the appellate division permits otherwise.

(A) The statement must specify the intended grounds of appeal by clearly stating each point to be raised but need not identify each particular ruling or matter to be challenged.

(B) The statement must include as much of the evidence or proceeding as necessary to support the stated grounds. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(C) If one of the grounds of appeal is insufficiency of the evidence, the statement must specify how it is insufficient.

(D) If one of the grounds of appeal challenges the giving, refusal, or modification of a jury instruction, the statement must include any instructions submitted orally and identify the party that requested the instruction and any modification.

(d) Review of the appellant's proposed statement

(1) Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) No later than 10 days after the respondent files proposed amendments or the time to do so expires, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

(3) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date.

(4) Except as provided in (6), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings. If a hearing is ordered, the trial court judge must make any corrections or modifications to the statement within 10 days after the hearing.

(5) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(6) If the trial court proceedings were reported by a court reporter or officially electronically recorded under Government Code section 69957 and the trial court judge determines that it would save court time and resources, instead of correcting a proposed statement on appeal:

(A) If the court has a local rule for the appellate division permitting the use of an official electronic recording as the record of the oral proceedings, the trial court judge may order that the original of an official electronic recording of the trial court proceedings, or a copy made by the court, be transmitted as the record of these oral proceedings without being transcribed. The court will pay for any copy of the official electronic recording ordered under this subdivision; or

(B) Unless the court has a local rule providing otherwise, the trial court judge may order that a transcript be prepared as the record of the oral proceedings. The court will pay for any transcript ordered under this subdivision.

### **Rule 8.838. Form of the record**

#### **(a) Paper and format**

Except as otherwise provided in this rule, clerk's and reporter's transcripts must comply with the paper and format requirements of rule 8.144(a).

#### **(b) Indexes**

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused.

#### **(c) Binding and cover**

(1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2) Each volume's cover must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

(3) In addition to the information required by (2), the cover of each volume of the reporter's transcript must state the dates of the proceedings reported in that volume.

### **Rule 8.839. Record in multiple appeals**

#### **(a) Single record**

If more than one appeal is taken from the same judgment or a related order, only one record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

#### **(b) Cost**

If there is more than one separately represented appellant, they must equally share the cost of preparing the record, unless otherwise agreed by the appellants or ordered by the trial court. Appellants equally sharing the cost are each entitled to a copy of the record.

Rule 8.304. Filing the appeal; certificate of probable cause

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented defendant.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b), and the sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

## Evidence Code

### 1042.

(a) Except where disclosure is forbidden by an act of the Congress of the United States, if a claim of privilege under this article by the state or a public entity in this state is sustained in a criminal proceeding, the presiding officer shall make such order or finding of fact adverse to the public entity bringing the proceeding as is required by law upon any issue in the proceeding to which the privileged information is material.

(b) Notwithstanding subdivision (a), where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to reveal to the defendant official information or the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it.

(c) Notwithstanding subdivision (a), in any preliminary hearing, criminal trial, or other criminal proceeding, any otherwise admissible evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense charged, is admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court, out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure.

(d) When, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure. Such hearing shall be conducted outside the presence of the jury, if any. During the hearing, if the privilege provided for in Section 1041 is claimed by a person authorized to do so or if a person who is authorized to claim such privilege refuses to answer any question on the ground that the answer would tend to disclose the identity of the informant, the prosecuting attorney may request that the court hold an in camera hearing. If such a request is made, the court shall hold such a hearing outside the presence of the defendant and his counsel. At the in camera hearing, the prosecution may offer evidence which would tend to disclose or which discloses the identity of the informant to aid the court in its determination whether there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial. A reporter shall be present at the in camera hearing. Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents. The court shall not order disclosure, nor strike the testimony of the witness who invokes the privilege, nor dismiss the criminal proceeding, if the party

offering the witness refuses to disclose the identity of the informant, unless, based upon the evidence presented at the hearing held in the presence of the defendant and his counsel and the evidence presented at the in camera hearing, the court concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial.

**1062.**

(a) Notwithstanding any other provision of law, in a criminal case, the court, upon motion of the owner of a trade secret, or upon motion by the People with the consent of the owner, may exclude the public from any portion of a criminal proceeding where the proponent of closure has demonstrated a substantial probability that the trade secret would otherwise be disclosed to the public during that proceeding and a substantial probability that the disclosure would cause serious harm to the owner of the secret, and where the court finds that there is no overriding public interest in an open proceeding. No evidence, however, shall be excluded during a criminal proceeding pursuant to this section if it would conceal a fraud, work an injustice, or deprive the People or the defendant of a fair trial.

(b) The motion made pursuant to subdivision (a) shall identify, without revealing, the trade secrets which would otherwise be disclosed to the public. A showing made pursuant to subdivision (a) shall be made during an in camera hearing with only the owner of the trade secret, the People's representative, the defendant, and defendant's counsel present. A court reporter shall be present during the hearing. Any transcription of the proceedings at the in camera hearing, as well as any articles presented at that hearing, shall be ordered sealed by the court and only a court may allow access to its contents upon a showing of good cause. The court, in ruling upon the motion made pursuant to subdivision (a), may consider testimony presented or affidavits filed in any proceeding held in that action.

(c) If, after the in camera hearing described in subdivision (b), the court determines that exclusion of trade secret information from the public is appropriate, the court shall close only that portion of the criminal proceeding necessary to prevent disclosure of the trade secret. Before granting the motion, however, the court shall find and state for the record that the moving party has met its burden pursuant to subdivision (b), and that the closure of that portion of the proceeding will not deprive the People or the defendant of a fair trial.

(d) The owner of the trade secret, the People, or the defendant may seek relief from a ruling denying or granting closure by petitioning a higher court for extraordinary relief.

(e) Whenever the court closes a portion of a criminal proceeding pursuant to this section, a transcript of that closed proceeding shall be made available to

the public as soon as practicable. The court shall redact any information qualifying as a trade secret before making that transcript available.

(f) The court, subject to Section 867 of the Penal Code, may allow witnesses who are bound by a protective order entered in the criminal proceeding protecting trade secrets, pursuant to Section 1061, to remain within the courtroom during the closed portion of the proceeding.

## Government Code

### 68086.

The following provisions apply in superior court:

(a) In addition to any other fee required in civil actions or cases:

(1) For each proceeding anticipated to last one hour or less, a fee of thirty dollars (\$30) shall be charged for the reasonable cost of the court reporting services provided at the expense of the court by an official court reporter pursuant to Section 269 of the Code of Civil Procedure.

(A) The fee shall be charged to the party, or parties if filing jointly, that filed the paper that resulted in the proceeding being scheduled. If no fee has been charged, and a party subsequently requests a court reporter, that party shall be charged the fee if a reporter is to be provided by the court.

(B) All parties paying the fee shall deposit the fee with the clerk of the court as specified by the court, but not later than the conclusion of each day's court session.

(C) The fee shall be charged once per case for all proceedings conducted within the same hour if the total time taken by those proceedings is one hour or less. If the total time taken exceeds one hour, the fee shall be charged and collected pursuant to paragraph (2).

(D) The fee shall be deposited into the Trial Court Trust Fund and distributed back to the court from which the fee was collected on a dollar-for-dollar basis.

(E) The fee shall be refunded as soon as practicable to the remitting party or parties if no court reporting services were provided.

(2) For each proceeding lasting more than one hour, a fee equal to the actual cost of providing that service shall be charged per one-half day of services to the parties, on a pro rata basis, for the services of an official court reporter on the first and each succeeding judicial day those services are provided pursuant to Section 269 of the Code of Civil Procedure.

(A) All parties shall deposit their pro rata shares of these fees with the clerk of the court as specified by the court, but not later than the conclusion of each day's court session.

(B) For purposes of this paragraph, "one-half day" means any period of judicial time, in excess of one hour, but not more than four hours, during either the morning or afternoon court session.

(b) The fee shall be waived for a person who has been granted a fee waiver under Section 68631.

(c) The costs for the services of the official court reporter shall be recoverable as taxable costs by the prevailing party as otherwise provided by law.

(d) The Judicial Council shall adopt rules to ensure all of the following:

(1) That parties are given adequate and timely notice of the availability of an official court reporter.

(2) That if an official court reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefor recoverable as provided in subdivision (c).

(3) That if the services of an official pro tempore reporter are utilized pursuant to paragraph (2), no other charge shall be made to the parties.

(e) The fees collected pursuant to this section shall be used only to pay the cost for services of an official court reporter in civil proceedings.

(f) The Judicial Council shall report on or before February 1 of each year to the Joint Legislative Budget Committee on the fees collected by courts pursuant to this section and Section 68086.1 and on the total amount spent for services of official court reporters in civil proceedings statewide in the prior fiscal year.

#### **68105.**

Notwithstanding any other provision of law to the contrary, the Supreme Court, any court of appeal, or any superior court may appoint as an official phonographic reporter or as an official phonographic reporter pro tempore a person who has declared the intention to become a citizen and who is a certified shorthand reporter.

“A person who has declared the intention to become a citizen,” as used in this section, means a person who has either (1) filed the declaration of intention to become a citizen of the United States, or petition for naturalization, or comparable document prescribed by federal law or (2) filed an affidavit with the court, in the form prescribed by the court, that the person will, at the first opportunity at which the applicable federal law permits, file such a declaration of intention to become a citizen of the United States, petition for naturalization, or comparable document. If the court determines that an individual who has filed under alternative (2) of the preceding sentence, has, without good cause, failed at the first opportunity provided under federal law to file one of the specified documents prescribed by federal law, it shall forthwith revoke the appointment.

#### **69941.**

A superior court may appoint as many competent phonographic reporters, to be known as official reporters of such court, and such official reporters pro tempore, as are deemed necessary for the performance of the duties and the exercise of the powers conferred by law upon the court and its members.

**69942.**

No person shall be appointed to the position of official reporter of any court unless the person has first obtained a license to practice as a certified shorthand reporter from the Court Reporters Board of California.

**69944.**

Until an official reporter of any court or official reporter pro tempore has fully completed and filed all transcriptions of the reporter's notes in any case on appeal which the reporter is required by law to transcribe, the reporter is not competent to act as official reporter in any court. Violation of subdivision (e) of Section 8025 of the Business and Professions Code shall also render an official reporter or official reporter pro tempore incompetent to act as official reporter in any court.

**69946.**

Before entering upon the duties of his office, the official reporter of any court or official reporter pro tempore shall take and subscribe the constitutional oath of office.

**69947.**

Except in counties where a statute provides otherwise, the official reporter shall receive for his services the fees prescribed in this article.

**69948.**

(a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars (\$55) a day, or any fractional part thereof.

(b) In San Joaquin County, the compensation for superior court reporters shall be that prescribed by Section 69993.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred forty dollars (\$140) a day, or any fractional part thereof.

(e) In Mariposa County, the board of supervisors may, by ordinance or resolution, prescribe the rate of compensation for superior court reporters.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars (\$75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars (\$110) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(l) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars (\$75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars (\$75) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars (\$75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars (\$75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is one hundred twenty-five dollars (\$125) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars (\$90) per day, or fifty-five dollars (\$55) per half day or fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

#### **69948.5.**

Notwithstanding Section 69948, in Modoc County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

#### **69949.**

The fee for reporting each default or uncontested action or proceeding is ten dollars (\$10). If more than four defaults or uncontested matters are reported in any one day, or two or more defaults are reported in conjunction with any contested case, the fee is forty-five dollars (\$45) a day, or any fractional part thereof.

#### **69950.**

(a) The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words.

(b) The fee for a first copy to any court, party, or other person who does not simultaneously purchase the original shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, purchased at the same time, fifteen cents (\$0.15) for each 100 words.

(c) Notwithstanding subdivisions (a) and (b), if a trial court had established transcription fees that were in effect on January 1, 2012, based on an estimate or assumption as to the number of words or folios on a typical transcript page, those transcription fees shall be the transcription fees for proceedings in those trial courts, and the policy or practice for determining transcription fees in those trial courts shall not be unilaterally changed.

#### **69951.**

For transcription, in civil cases, the reporter may charge an additional 50 percent for special daily copy service.

**69952.**

(a) The court may specifically direct the making of a verbatim record and payment therefor shall be from the county treasury on order of the court in the following cases:

- (1) Criminal matters.
- (2) Juvenile proceedings.
- (3) Proceedings to declare a minor free from custody.
- (4) Proceedings under the Lanterman-Petris-Short Act, (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).
- (5) As otherwise provided by law.

(b) Except as otherwise authorized by law, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Section 269 of the Code of Civil Procedure. When there is no official reporter in attendance and a reporter pro tempore is appointed, his or her reasonable expenses for traveling and detention shall be fixed and allowed by the court and paid in like manner. When the court orders a daily transcript, necessitating the services of two phonographic reporters, the reporting fee for each of the reporters and the transcript fee shall be proper charges against the county treasury, and the daily transcript shall be pursuant to Section 269 of the Code of Civil Procedure. When the daily transcript is prepared by a single reporter, an additional fee for technological services, as set by the court with the agreement of the reporter, may be imposed. However, the total of the fee for a single reporter and the fee for technological services shall be less than the total fee for two reporters.

**69953.**

In any case where a verbatim record is not made at public expense pursuant to Section 69952 or other provisions of law, the cost of making any verbatim record shall be paid by the parties in equal proportion; and either party at his option may pay the whole. In either case, all amounts so paid by the party to whom costs are awarded shall be taxed as costs in the case. The fees for transcripts and copies ordered by the parties shall be paid by the party ordering them. Except as provided in Section 69952, no reporter shall perform any service in a civil action other than transcriptions until his fee for it has been deposited with the clerk of the court or with the reporter.

**69953.5.**

Notwithstanding any other provision of law, whenever a daily transcript is ordered in a civil case requiring the services of more than one phonographic reporter, the party requesting the daily transcript, in addition to any other required fee, shall pay a fee per day, or portion thereof, equal to the per diem rate for pro tempore reporters established by statute, local rule, or ordinance

for the services of each additional reporter for the first day and each subsequent day the additional reporters are required. This fee shall be distributed to the court in which it was collected to offset the cost of the additional reporter.

**69954.**

(a) Transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper shall be compensated at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(b) The fee for a second copy of a transcript on appeal in computer-readable format ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the original transcript shall be compensated at one-third the rate set forth for a second copy of a transcript as provided in Section 69950. A reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(c) The fee for a computer-readable transcript shall be paid by the requesting court, party, or person, unless the computer-readable transcript is requested by a party in lieu of a paper transcript required to be delivered to that party by the rules of court. In that event, the fee shall be chargeable as statute or rule provides for the paper transcript.

(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.

**69955.**

(a) As used in this section, “reporting notes” are the reporting notes of all court reporters employed to report in the courts of California, who may be known as official reporters and official reporters pro tempore. Reporting notes are official records of the court. Reporting notes shall be kept by the reporter taking the notes in a place designated by the court, or, upon order of the court, delivered to the clerk of the court.

(b) The reporting notes may be kept in any form of communication or representation including paper, electronic, or magnetic media or other technology capable of reproducing for transcription the testimony of the proceedings according to standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. Reporting notes shall be stored in an environment free from excessive moisture, temperature variation, and electromagnetic fields if stored on a medium other than paper.

(c) The reporting notes shall be labeled with the date recorded, the department number of the court, and the name of the court reporter. The reporting notes shall be indexed for convenient retrieval and access. Instructions for access to data stored on a medium other than paper shall be documented.

(d) If the reporting notes are kept in any form other than paper, one duplicate backup copy of the notes shall be stored in a manner and place that reasonably assures its preservation.

(e) Reporting notes produced under subdivision (b) may be destroyed upon the order of the court after 10 years from the taking of the notes in criminal proceedings and after five years from the taking of the notes in all other proceedings, unless the notes report proceedings in capital felony cases including the preliminary hearing. No reporting notes in a capital felony case proceeding shall be destroyed until such time as the Supreme Court on request by the court clerk authorizes the destruction.

(f) A periodic review of the media on which the reporting notes are stored shall be conducted to assure that a storage medium is not obsolete and that current technology is capable of accessing and reproducing the records for the required retention period.

(g) If the reporting notes of an official reporter or official reporter pro tempore have not been delivered to the clerk of the court, the notes shall be delivered by the reporter to the clerk of the court upon the reporter's retirement, resignation, dismissal, termination of appointment, or in the case of any other absence for a period of more than 30 days or longer as designated by the court. Upon the order of the court, the notes shall be returned to the reporter upon the reporter's return from such absence. In the event of the reporter's death, the notes shall be delivered to the clerk of the court by the reporter's personal representative.

(h) If reporting notes delivered to the clerk of the court are to be transcribed, the court reporter who took the notes shall be given the first opportunity to make the transcription, unless the reporter cannot be located, refuses to transcribe the notes, or is found to be incompetent to transcribe the notes.

(i) A court reporter shall be reimbursed for the actual cost of the medium on which the reporting notes are kept, whether on paper, diskette, or other media in compliance with this section.

#### **69956.**

The official reporter shall perform the duties required of him by law. When not actually engaged in the performance of any other duty imposed on him by this code, he shall render stenographic or clerical assistance, or both, to the judge or judges of the superior court as such judge or judges may direct. In addition to the compensation otherwise provided by law, any reporter

required to render such stenographic or clerical assistance shall receive such compensation therefor as the superior court may prescribe, not to exceed the sum of twenty dollars (\$20) a day, which shall be payable by the county in the same manner and from the same funds as other salary demands against the county.

**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.

**69958.**

Each superior court shall report to the Judicial Council on or before October 1, 2004, and semiannually thereafter, and the Judicial Council shall report to the Legislature on or before December 31, 2004, and semiannually thereafter, regarding all purchases and leases of electronic recording equipment that will be used to record superior court proceedings, specifying all of the following:

- (a) The Superior Court in which the equipment will be used.
- (b) The types of trial court proceedings in which the equipment will be used.
- (c) The cost of purchasing, leasing, or upgrading the equipment.
- (d) The type of equipment purchased or leased.

**69990.**

In each county with a population of more than 70,000 and less than 100,000, as determined by the 1940 federal census, to assist the court in the transaction of its judicial business, a majority of the judges of the superior court for such county may appoint as many regular official phonographic reporters as necessary to report the proceedings in the court. The number of reporters so appointed shall not exceed at any one time the number of offices of judge provided by law for the court. The reporters shall hold office during the pleasure of a majority of the judges of said court.

**69991.**

The duties of official reporters appointed pursuant to Section 69990 shall be performed as elsewhere provided by law. As full compensation for taking notes in criminal cases in the superior court each reporter shall receive a monthly salary of one thousand eighty-one dollars (\$1,081), and the fee for reporting testimony and proceedings in civil contested cases is seventy-five dollars (\$75) a day, or any fractional part thereof, and for the purposes of retirement, the compensation of each reporter shall be deemed to be the total of all per diem and transcription fees paid by the county to all of the reporters of the superior court for all phonographic reporting services, divided by the number of superior court official reporters, plus his salary. All other fees of such reporters shall be as elsewhere provided by law. In cases where it is necessary to appoint a pro tempore reporter, he shall be allowed the fees elsewhere provided by law.

**69992.**

This article applies to counties containing a population of 750,000 and under 1,070,000 according to the 1970 federal census.

**69992.2.**

The fee required by Section 69992.1 shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgment of the

court. Such fee shall not be subject to the provisions of Section 6103 of the Government Code.

**69993.**

In San Joaquin County, each superior court reporter shall be paid a salary to be established by the San Joaquin County Board of Supervisors.

The number of superior court reporters shall not be less than the number of San Joaquin County Superior Court judicial positions.

**69994.**

This article shall apply in a county having a population of more than 490,000 and less than 503,000, as determined by the 1960 federal census. The judges of the superior and municipal courts of such county, a majority concurring, may appoint as many regular official phonographic reporters as may be necessary to report the proceedings in the courts of the county and to perform such other duties as are prescribed by law. The number of reporters so appointed shall not exceed the number of offices of judges provided by law for superior and municipal courts of such county. Such reporters shall hold office during the pleasure of the judges of such court, a majority concurring.

**69994.1.**

When needed in order that the judicial business of the courts in such county may be carried on without delay, the judges of such courts may appoint as many additional phonographic reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall be compensated at the same rate of compensation as official phonographic reporters in such county would be compensated for the first year of service computed on a daily basis.

**69994.2.**

The regular official phonographic reporters shall be compensated at an annual salary of forty-seven thousand seven hundred eleven dollars (\$47,711), except that these reporters may be employed at an annual salary of thirty-nine thousand two hundred thirty-four dollars (\$39,234) for the first year of service, at an annual salary of forty-one thousand one hundred ninety-six dollars (\$41,196) for the second year of service, at an annual salary of forty-three thousand two hundred sixty-three dollars (\$43,263) for the third year of service, and at an annual salary of forty-five thousand four hundred thirty-five dollars (\$45,435) for the fourth year of service. The judges of the superior and municipal courts of such county, a majority concurring, may appoint a supervising phonographic reporter at an annual salary of forty-nine thousand six hundred fifty-three dollars (\$49,653) except that such reporter may be employed at an annual salary of forty-five thousand thirty-eight dollars (\$45,038) for the first year of service and at an annual salary of forty-seven thousand two hundred ninety-three dollars (\$47,293) for the second year of service.

**69994.3.**

In addition to the compensation provided in this article, each salaried official reporter shall be entitled to, and shall receive, vacation and sick leave allowances, retirement, and other privileges and benefits as are now, or may hereafter be provided for the employees of the County of Sacramento, including the right to participate in any group accident, health, or life insurance plan adopted by the board of supervisors of the county.

For the purpose of such retirement system, the salary or compensation provided for reporters in this article shall be deemed their entire compensation.

**69994.4.**

No further fee than that herein provided shall be collected from, or assessed against, any party to any proceeding for the services of a phonographic reporter in taking down in shorthand the testimony and other proceedings in the trial or hearing of any matter as required by law or by order of the court, except that in a civil case when a daily transcript is ordered by a party, such party shall pay for the services of a pro tempore reporter if required; but a phonographic reporter shall be allowed, and shall receive, unless waived by him, the fees allowed by law for transcribing his shorthand notes of the testimony and proceedings reported by him, and such fees for transcription shall be paid as provided by law.

**69994.5.**

The salaries provided for in this article shall be paid in biweekly installments from the general fund of the county, and shall be allowed and audited in the same manner as other salary demands against the county.

**69994.8.**

All reporters appointed pursuant to this article shall be known as official court reporters of the County of Sacramento. As attachés of the court, official reporters shall not be subject to the authority of any county administrative office or civil service commission.

**69994.9.**

With the approval of the board of supervisors the court may establish such additional classifications and rates of compensation as are required. Rates of compensation of regular official phonographic reporters may be adjusted by approval of the board of supervisors and a majority of the judges of the courts. Such appointments or changes in compensation made pursuant to this paragraph shall be on an interim basis and shall expire 60 days after the final adjournment of the next regular session of the Legislature unless ratified at such session.

**69995.**

(a) In Ventura County, a majority of the judges of the superior court may appoint as many competent official phonographic reporters as the business of the superior court requires, and as required to provide court reporting service to the municipal court of the county as provided in subdivision (c). The court may additionally employ as many pro tempore phonographic reporters as may from time to time be required to supplement the services of the official court reporters. The court may further appoint one of the official court reporters to serve as senior superior court reporter to coordinate and supervise the activities of official and pro tempore court reporters.

Official reporters of the superior court shall be exempt from the provisions of any civil service system as employees of the court. They shall serve at the pleasure of a majority of the judges thereof, subject to such court rules and policy as may be adopted by the judges for regulation of superior court personnel. Official and pro tempore superior court reporters shall provide court reporting services for such departments of the superior court and divisions of the municipal court, for such criminal, juvenile and civil proceedings, and proceedings before the grand jury, as directed by the presiding judges of the respective courts, subject to the provisions of this section.

(b) The salary paid to official full-time superior court reporters for services in reporting any and all testimony and proceedings in the superior and municipal courts and before the grand jury, shall be a five-step salary range with biweekly amounts equivalent to ninety percent (90%) of the corresponding steps in the established salary range for official superior court reporters in Los Angeles County. The initial hiring rate for official superior court reporters shall be the first step of the salary range, and subsequent increases within the range shall be at intervals of six months from the first to second step, and one year between each succeeding step, as determined by the court, based on satisfactory performance. Nothing herein shall prohibit the initial appointment or subsequent elevation of a reporter's salary from the steps herein specified, as may be determined by the court on the basis of experience, qualifications and meritorious performance. The salary of the official court reporter who is appointed to serve as senior superior court reporter, shall be fixed at ten percent (10%) above the biweekly salary steps specified for official superior court reporters.

The salary range of official court reporters may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the superior court. Such changes in compensation made pursuant to this provision shall be on an interim basis and shall expire January 1 following adjournment of the next regular session of the Legislature unless ratified at such session.

The per diem compensation for pro tempore reporters serving the superior or municipal court or the grand jury shall be established at one-tenth ( $\frac{1}{10}$ ) of the top step in the biweekly salary range established for official superior court reporters, for each day of service or any portion thereof.

Official reporters of the superior court shall be entitled to all benefits provided for the employees of the county, including, but not limited to, participation in county retirement plans, vacation, holiday and sick leave benefits, and insurance plans. These benefits shall also include the same lump-sum payments for benefit accrual balances upon separation from service, as are made to employees of the county. All other compensation, fees, and benefits for official and pro tempore superior court reporters shall be as elsewhere provided by law.

(c) Upon request of the Presiding Judge of the Municipal Court of Ventura County, official and pro tempore reporters of the superior court shall act as pro tempore reporters in the municipal court in all proceedings of the municipal court where their services may be required. Official superior court reporters who are assigned to serve as pro tempore municipal court reporters under this provision, shall receive no additional compensation for such services, and pro tempore superior court reporters who are assigned to serve as pro tempore municipal court reporters shall not receive compensation in excess of one per diem fee for service in either or both of such courts on any single court day. Requests to provide the municipal court with the services of superior court reporters shall be directed to either the presiding judge or the executive officer of the superior court by either the presiding judge or the executive officer of the municipal court, and shall be effective only during the pleasure of the judges of both courts, a majority of the judges of each court concurring.

**69998.**

No further fee than that prescribed in this article shall be collected from, or assessed against, any party to any proceeding for the services of a phonographic reporter in taking down in shorthand the testimony and other proceedings in the trial or hearing of any matter as required by law or by order of the court, but a phonographic reporter shall be allowed and unless waived by him shall receive the fees allowed for transcribing his shorthand notes of the testimony and proceedings reported by him, as elsewhere provided by law.

**69999.**

Any fee required by this article shall be taxed as costs in favor of any party paying it and to whom costs are awarded by the judgment of the court. Such fee shall not be subject to the provisions of Section 6103 of this code. Such fee shall not be required of any party who is exempted from the payment of costs by any statute other than Section 6103 of this code.

On or before the first day of each calendar month, the county clerk shall transmit to the county treasurer all money paid to him pursuant to this article during the preceding calendar month, or up to the day immediately preceding that on which he transmits the money. The money shall be deposited in the general fund of the county.

**70000.**

In each county with a population of more than 10,000 and less than 10,500, as determined by the 1960 federal census, to assist the court in the transaction of its judicial business, a majority of the judges of the superior court for such county may appoint one official phonographic reporter to report the proceedings in the court. The reporter shall hold office during the pleasure of a majority of the judges of the court. The reporter shall perform the duties and be allowed the fees as elsewhere provided by law.

**70010.**

In each county having a population of 210,000 inhabitants and less than 220,000 inhabitants, as determined by the 1950 federal census, the judges of the superior court of such county, a majority concurring, to assist the court in the transaction of the judicial business of such court, by having performed the duties of phonographic reporters as elsewhere in this code defined, may appoint as many regular official phonographic reporters as may be necessary to report the proceedings in such court and to perform such duties, except that the number of reporters so appointed shall equal the number of offices of judge provided by law for such court. Such reporters shall hold office during the pleasure of the judges of such court, a majority concurring.

**70011.**

When needed in order that the judicial business of the superior court in such county may be diligently carried on and a particular matter or matters may proceed to trial or hearing without delay, a pro tempore official reporter may be appointed to perform the duties of a phonographic reporter in such matter or matters, or until a regular official reporter becomes available for such service.

**70012.**

The regular official phonographic reporters and phonographic reporters pro tempore shall be compensated at the same rate as reporters in counties having a population over 2,000,000.

**70013.**

No further fee than that hereinabove provided shall be collected from, or assessed against, any party to any proceeding for the services of a phonographic reporter in taking down in shorthand the testimony and other proceedings in the trial or hearing of any matter as required by law or by order of the court; but a phonographic reporter shall be allowed, and shall receive, unless waived by him, the fees allowed by law for transcribing his

shorthand notes of the testimony and proceedings reported by him, and such fees for transcription shall be paid as provided by Sections 69947 to 69953, inclusive, and by any other law of this State pertinent to the case.

**70014.**

The salaries provided for in this article shall be paid in monthly installments out of the salary fund of the county, and shall be allowed and audited in the same manner as for salary demands against the county are required by law to be allowed and audited.

**70016.**

The fees required by Sections 70015 and 70015.5 shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgment of the court. Such fee shall not be subject to the provisions of Section 6103 of the Government Code.

**70017.**

The county clerk shall, on or before the first day of each calendar month, transmit to the county treasurer all money paid to him pursuant to this article during the preceding calendar month, or up to the day immediately preceding the day on which he transmits such money, and such money shall be deposited in the salary fund of such county.

**70025.**

In Riverside County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than an annual salary of twenty thousand two hundred ten dollars (\$20,210) and the compensation of official reporters pro tempore, which shall be at a rate not less than seventy-five dollars and twenty-five cents (\$75.25) a day, for reporting in shorthand all proceedings in the superior court as required by law or the order of the superior court.

**70040.**

Unless otherwise specifically provided, the determination of whether a county has the population prescribed in this article shall be made on the basis of the 1950 federal census.

**70041.**

Unless otherwise specifically provided, the provisions of this article apply in each county described as follows:

- (a) A county with a population of 70,000 or less, as determined by the 1940 federal census, and having two or more superior court judges.
- (b) A county with a population of 280,000 and under 285,000.
- (c) A county with a population of over 295,000 and under 500,000.
- (d) A county with a population of 500,000 and under 700,000.

(e) A county with a population of 700,000 or over.

**70041.1.**

Unless otherwise specifically provided the provisions of this article apply in a county with a population of 290,000 or more and under 295,000.

**70041.5.**

Unless otherwise specifically provided, the provisions of this article apply to a county with a population of over 45,000 and under 46,750, as determined on the basis of the 1950 federal census.

**70042.**

The provisions of this article are applicable in a county described in subdivisions (a) and (c) of Section 70041 only if the board of supervisors of such county by resolution adopts the procedure for the appointment and compensation of official phonographic reporters provided for in this article.

**70043.**

To assist the court in the transaction of its judicial business by having the duties of phonographic reporters performed, a majority of the judges of the superior court of the county may appoint as many regular official phonographic reporters as necessary to report the proceedings in the court and to perform such duties. The number of reporters so appointed shall not exceed at any one time the number of offices of judge provided by law for the court. The reporters shall hold office during the pleasure of a majority of the judges of the court. The number of reporters and compensation of reporters in counties over 2,000,000 population shall be as provided in Section 69894.1. The number of official reporters in a county of the 2nd class as provided in Section 28023 shall be but shall not exceed at any one time the total number of judges provided by law for the court and the number of referees appointed pursuant to Section 553 of the Welfare and Institutions Code.

**70044.**

When needed in order that the judicial business of the superior court in the county may be diligently carried on and a particular matter may proceed to trial or hearing without delay, a pro tempore official reporter may be appointed to perform the duties of a phonographic reporter in such matter, or until a regular official reporter becomes available for such service. A pro tempore official reporter for such service may be appointed by the presiding judge of the court and the judge presiding in the department where such reporter will serve. If such appointment is made for service in a contested matter, it shall be made only pursuant to a written stipulation of the parties appearing at the trial or hearing or other proceeding to be reported by such pro tempore reporter.

A pro tempore official reporter who has passed the test on qualifications and has a certificate thereof on file among the records of the court as prescribed

by Section 69943, and who has been appointed a pro tempore official reporter by a majority of the judges of such court pursuant to Section 69941, may serve in any matter without further order of the court or stipulation of the parties.

**70044.1.**

In any county having a population of over 250,000 and under 277,000, as determined by the 1950 federal census, the fee for reporting testimony and proceedings in contested cases is thirty-five dollars (\$35) a day, and the fee for reporting each default or uncontested action or proceeding is seven dollars (\$7).

The official reporter shall report to the court when ordered to do so by any judge of the court, and when not ordered to so report, the reporter may be employed in his professional capacity elsewhere.

**70044.5.**

In San Mateo County, official reporters shall be appointed by the judges of the consolidated superior and municipal courts pursuant to the provisions of Section 70043 or 72194 and shall serve at the pleasure of the judges.

(a) The biweekly salary of each regular official reporter for the performance of duties required of each such reporter by law shall be at the rates specified in salary range number 3007 of the salary schedule set forth in Section 73525.

At the time each reporter is hired, the salary of that reporter shall be fixed in the same manner as provided for classified or unclassified employees of the county under the authority of the county charter. A step advancement from step A to step B may be granted on the first day of the pay period following the completion of 26 full weeks of service in the position. A person may advance to steps C, D, and E upon completion of successive 52-week periods of service. All merit increases as provided herein shall be made at the determination of the judges of the court.

In addition to new employees, the salaries herein provided for shall be applicable to regular official reporters employed by the county on the effective date of this section and for the purpose of determining the salaries to be paid after this section becomes effective, all years of service rendered by reporters to the county prior to the effective date of this section shall be counted in determining the salary to which they are entitled under the salary schedule above mentioned.

The per diem compensation for pro tempore reporters shall be one-tenth of step E in the appropriate biweekly salary range established for official reporters, provided, however, that that rate of per diem compensation shall be prorated on the basis of one-half day of compensation if the pro tempore reporter renders only one-half day of service.

Vacation allowances and sick leave allowances for official reporters shall be the same as provided for classified or unclassified employees of the county under the authority of the county charter.

(b) If the Board of Supervisors of San Mateo County provides by ordinance or by agreement pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, for a rate of compensation which is higher than that provided by subdivision (a), the higher rate of compensation shall be effective at the same time and in the same manner as other rates of pay for San Mateo County employees generally. Those higher rates shall be payable by the county in the same manner and from the same funds as other salary demands against the county. Any change in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 after the adjournment of the next regular session of the Legislature unless ratified or superseded by a statute enacted at the session.

(c) During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

Each official reporter shall perform the duties required of him or her by law. In addition, he or she shall render stenographic or clerical assistance, or both, to the judge or judges of the consolidated superior and municipal courts as the judge or judges may direct.

#### **70045.**

In a county having a population of 70,000 or less, as determined by the 1940 federal census, and having two or more superior court judges, each regular official reporter shall be paid an annual salary of four thousand two hundred dollars (\$4,200), and each pro tempore official reporter shall be paid fifteen dollars (\$15) a day for the days he actually is on duty under order of the court.

#### **70045.1.**

Notwithstanding the provisions of Section 70045 of this code, in Trinity County, each regular official court reporter shall receive an annual salary of ten thousand dollars (\$10,000) unless the board of supervisors shall by ordinance provide for compensation in excess of that amount, payable in monthly installments out of the salary fund of the county, for the reporting and taking notes in criminal cases and juvenile court cases in the superior court, and in preliminary examinations of those accused of crime before magistrates, and of proceedings before the grand jury and at coroner's inquests when requested by the coroner, and for other services such reporters shall receive the fees provided for in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8, such fees in civil cases to be paid by the litigants as provided by law.

Reporters pro tempore may be paid a per diem of seventy-five dollars (\$75) as provided in Section 69948 and other fees set forth in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties, but a reporter pro tempore shall be paid a per diem or expenses by the county only when the regular official court reporters are occupied in the superior court, or at preliminary examinations, grand jury hearings or coroner's inquests.

The board of supervisors of such a county may provide the court reporters with equipment for the performance of their duties.

#### **70045.2.**

Notwithstanding Section 70045, in Modoc County each regular official court reporter shall receive an annual salary to be determined by ordinance by the board of supervisors, payable in monthly installments out of the salary fund of the county, for the reporting and taking notes in criminal cases and juvenile court cases in the superior court, and in preliminary examination of those accused of crime before magistrates, and of proceedings before the grand jury and at coroner's inquests when requested by the coroner.

In Modoc County, reporters pro tempore shall be paid a per diem, as set by law, and shall receive from the county their necessary traveling and other expenses when called from other counties. However, a reporter pro tempore shall be paid a per diem or expenses by the county only when the regular official court reporters are occupied in the superior court, or at preliminary examinations, grand jury hearings, or coroner's inquests.

For all reporter's services in Modoc County in civil cases as set forth in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8, litigants shall pay such fees as are provided by law to the county clerk for deposit in the county general fund.

The Board of Supervisors of Modoc County may provide court reporters with equipment for the performance of their duties.

#### **70045.4.**

Notwithstanding the provisions of Section 70045 or any other provision of this article, in Merced County:

(a) The regular full-time official court reporters shall perform the following duties:

(1) Report all criminal proceedings in the superior court.

(2) Report all civil commitment proceedings and all contempt proceedings in the superior court.

- (3) Report all juvenile proceedings in the superior court other than those heard by a juvenile court referee or traffic hearing officer.
- (4) Report all family law proceedings in the superior court.
- (5) Report all civil jury trials in the superior court.
- (6) Report all hearings on petitions for extraordinary relief, including but not limited to proceedings for injunctions, mandate, prohibition, certiorari, review, habeas corpus, and coram nobis in the superior court.
- (7) Report any other court proceedings in the superior court when a party requests a court reporter in accordance with the rules of court.
- (8) Report all criminal proceedings of the grand jury.
- (9) Report proceedings for the board of equalization, when requested by the board.

(b) Each regular full-time court reporter shall be paid an annual salary of sixteen thousand seven hundred thirty-five dollars and ninety-four cents (\$16,735.94), unless the board of supervisors of the county provides for compensation in excess of that amount.

The foregoing salary is for compensation for reporting services under subdivision (a). For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941).

The regular full-time official court reporters shall be entitled to the same privileges with respect to group insurance and retirement as other employees of that county. Retirement contributions shall be based upon the annual salary provided for in subdivision (b).

The salary range of official court reporters may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the superior court. Those changes in compensation made pursuant to this provision shall be on an interim basis and shall expire January 1 following adjournment of the next regular session of the Legislature unless ratified at that session.

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts and county may require, in order that the business of the courts and county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941). That per diem,

traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

**70045.5.**

In a county with a population of 74,492 and not over 76,000 as determined by the 1970 federal census, each regular official reporter shall be paid an annual salary of twenty-one thousand seven hundred dollars (\$21,700) and each pro tempore official court reporter shall be paid seventy dollars (\$70) a day for the days he is actually on duty under order of the court.

Notwithstanding any other provision to the contrary, one year after the operative date of this section and thereafter, the salary range of official court reporters may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the superior court. Such changes in compensation made pursuant to these provisions shall be on an interim basis and shall expire on January 1 of the second year after the calendar year in which the change occurs, unless ratified by the Legislature.

The presiding judge of the superior court may, upon request of the presiding judge of the municipal court, assign an official superior court reporter to the municipal court during such times as the business of the municipal court requires. Official superior court reporters who are so assigned shall receive no additional compensation for such service.

Regular official reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave and other benefits allowed to employees of the county.

Each official reporter shall perform the duties required of him by law. In addition, reporters shall render stenographic or clerical assistance, or both, to the judges of the superior court, as any such judge may direct.

**70045.6.**

(a) In Kern County each regular reporter shall be paid the biweekly salary specified in range 52.4 of the salary schedule. The court reporter shall be paid biweekly pursuant to the payroll procedures in effect in the County of Kern.

(b) Beginning January 1, 1980, the board of supervisors may adjust the salary of each regular official reporter as part of its county employee compensation plan. Any adjustment to reporter salaries shall be effective on the same date as the effective date of the board's action to adjust compensation of other county employees. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

(c) In addition to the compensation provided for in this section, each regular official reporter shall be entitled to and shall receive, on the same basis as other county employees, the same benefits and privileges with respect to retirement, group insurance, sick leave, and vacations. Court reporters shall

observe the same holidays as other court employees. For the purposes of determining participation in the county retirement system, the salary provided for such reporters in this section shall be deemed their entire compensation.

(d) Each pro tempore official reporter shall be paid one hundred fifty dollars (\$150) a day for the days he or she is actually on duty under order of the court.

#### **70045.7.**

In Napa County, each regular official reporter shall be paid an annual salary of twenty-five thousand dollars (\$25,000), and each pro tempore official reporter shall be paid one hundred ten dollars (\$110) a day for the days he actually is on duty under order of the court. However, the board of supervisors, by ordinance, may establish a higher annual salary for each regular official reporter or a higher per diem for each pro tempore official reporter, or both.

#### **70045.75.**

Notwithstanding any other provision of law including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the full-time official court reporters, if any, in Nevada County:

(a) The regular full-time official court reporters shall perform the following duties:

- (1) Report all criminal proceedings.
- (2) Report all civil commitment proceedings and all contempt proceedings.
- (3) Report all juvenile proceedings, other than those heard by a juvenile court referee or traffic hearing officer.
- (4) Report all family law proceedings.
- (5) Report all civil jury trials.
- (6) Report all hearings on petitions for extraordinary relief, including but not limited to, proceedings for injunctions, mandate, prohibition, certiorari review, habeas corpus, and coram nobis.
- (7) Report all proceedings of the grand jury when requested by the foreman, or by the district attorney or by the county counsel.
- (8) Report any other court proceedings when a party requests a court reporter in accordance with rules of the court.
- (9) Report the preliminary examination of those accused of crimes before magistrates within Nevada County. Report coroner's inquests when requested by coroner.

(b) Each regular full-time court reporter shall be paid at a monthly salary rate established according to the following salary schedule:

(Range)	(Month)	(Annual)
Step A .....	\$1,271	\$15,246
Step B .....	1,334	16,012
Step C .....	1,400	16,804
Step D .....	1,471	17,648
Step E .....	1,546	18,546

Each such reporter shall receive a monthly salary under the schedule corresponding to the length of time that as an official court reporter he has been included within either directly or indirectly by contract the Public Employees' Retirement System of the State of California. Except as provided herein, the initial hiring rate for each position shall be step A; provided further, however, the judges of the superior court may appoint any such court reporter at a higher initial step if in the opinion of the judges of the superior court an individual to be appointed has such experience and qualifications as to entitle that individual to such higher initial step. A step advancement from step A to step B may be granted on the first day of the month following the completion of six full months of service in the position. A person may advance to steps C, D, and E upon completion of successive 12-month periods of service. All merit increases as provided herein shall be made at the determination of the judges of the superior court.

The foregoing salary is for compensation for reporting services in the superior court under subdivision (a) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

In the event a cost-of-living increase is given to the employees of Nevada County on or after July 1, 1979, the aforementioned salary schedule shall be deemed amended so as to give the court reporters the same cost-of-living increase as is given Nevada County employees.

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave, and group insurance, which either now or hereafter may be provided by ordinance to other employees of the county.

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters

pro tempore, as the business of the courts may require in order that the judicial business of the court in such county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. Such per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

**70045.77.**

Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the full-time official court reporters, if any, in El Dorado County:

(a) The regular full-time official court reporters shall perform the following duties:

- (1) Report all criminal proceedings.
- (2) Report all civil commitment proceedings and all contempt proceedings.
- (3) Report all juvenile proceedings, other than those heard by a juvenile court referee or traffic hearing officer.
- (4) Report all family law proceedings.
- (5) Report all civil jury trials.
- (6) Report all hearings on petitions for extraordinary relief, including, but not limited to, proceedings for injunctions, mandate, prohibition, certiorari, review, habeas corpus, and coram nobis.
- (7) Report all proceedings of the grand jury when requested by the foreman, or by the district attorney or by the county counsel.
- (8) Report any other court proceedings when a party requests a court reporter in accordance with rules of the court.
- (9) Report the preliminary examination of those accused of crimes before magistrates within El Dorado County.
- (10) Report coroner's inquests when requested by the coroner.
- (11) Report proceedings for the El Dorado County Board of Equalization when requested by the board.

(b) The regular full-time official court reporter shall be compensated at a range recommended by the judges of the superior court and approved by the board of supervisors by ordinance or resolution.

The foregoing salary is for compensation for reporting services in the superior court under subdivision (a) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave, and group insurance, which either now or hereafter may be provided by ordinance to other employees of the county.

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the court in such county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. Such per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

#### **70045.8.**

(a) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in Butte County Superior Court:

(1) The regular full-time official court reporters under the direction of the presiding judge of the superior court shall perform the following duties:

(A) Report all criminal proceedings.

(B) Report all civil commitment proceedings and all contempt proceedings.

(C) Report all juvenile proceedings other than those heard by juvenile court referee or traffic hearing officer.

(D) Report all civil jury trials.

(E) Report all hearings on petitions for extraordinary relief, including, but not limited to, proceedings for injunctions, mandate, prohibition, certiorari, review, habeas corpus, and coram nobis.

(F) Report all proceedings of the grand jury when requested by the foreman, or by the district attorney or by the county counsel.

(G) Report any other court proceedings when a party requests a court reporter in accordance with rules of court.

(H) Report coroner's inquests when requested by the coroner.

(I) Report proceedings for the Butte County Board of Equalization when requested by the board.

(J) When not occupied with the above duties, and upon request of a presiding judge of the municipal court and approval of the presiding judge of the

superior court, he or she shall report matters listed under paragraph (1) of subdivision (b).

(b) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in the Butte County Municipal Courts:

(1) The regular full-time official municipal court reporters under the direction of the presiding judges of the municipal courts shall perform the following duties:

(A) Report the preliminary examination of those accused of crimes before magistrates within Butte County.

(B) Report all felony pleas.

(C) Report any other court proceeding as required by law.

(D) When not occupied with the above duties, and upon request of the presiding judge of the superior court and approval of a presiding judge of the municipal court, he or she shall report matters listed under paragraph (1) of subdivision (a) above.

(c) The board of supervisors shall, by ordinance, specify the salary rates for official court reporters in Butte County.

In addition to the aforementioned compensation, each official court reporter shall receive twenty-five dollars (\$25) per month as reimbursement for the cost of necessary supplies.

The foregoing salary established pursuant to county ordinance is for compensation for reporting services in the superior and municipal courts under subdivisions (a) and (b) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave, and group insurance, which either now or hereafter may be provided by ordinance to other employees of the county.

(d) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to subdivisions (a) and (b), the judge or judges of the superior and municipal courts may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the courts in the county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this

chapter. The per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

**70045.9.**

Notwithstanding any other provision of law, the provisions of this section shall apply to the official court reporters in Shasta County:

(a) The regular full-time official court reporters shall perform the following duties:

- (1) Report all criminal proceedings in superior court.
- (2) Report all juvenile proceedings other than those heard by juvenile court referee or traffic hearing officer.
- (3) Report all civil jury trials in superior court, unless the court determines it is not required.
- (4) Report any other proceeding in the superior court at the request of the judge of the superior court.
- (5) Report any superior court proceeding when a party requests a court reporter in accordance with the rules of court.
- (6) Report all criminal investigations of the grand jury, when requested by the foreman, or by the district attorney.
- (7) Report the preliminary examination of those accused of crime before magistrates or municipal court judges within Shasta County, or before both.
- (8) Report coroner's inquests, when requested by the coroner.
- (9) Report hearings of the Board of Equalization of the County of Shasta, as requested by that board.
- (10) Other reporting or related services, as directed by the judges of the superior court.
- (11) When not occupied with the above duties, and upon request of the board of supervisors and approval of the presiding judge of the superior court, he or she shall report matters before the board of supervisors.

(b) Each regular full-time court reporter shall be paid a monthly salary of one thousand four hundred seventy dollars (\$1,470), unless the Board of Supervisors of Shasta County provides for compensation in excess of that amount, in which event the amount set shall apply. The salary is for compensation for reporting services set forth under subdivision (a). For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941).

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation (upon approval of judge to whom assigned), sick leave, and group insurance, which either now or hereafter may be provided by ordinance or resolution to other comparable employees of the County of Shasta.

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the court may be carried on without delay. In the event the board of supervisors has entered into a contract for supplemental reporter services with a qualified person or persons first approved by the presiding judge of the superior court, the person or persons shall be appointed as reporter pro tempore. However, if the person or persons are not reasonably available, the judge may appoint any qualified person. Notwithstanding other provisions of this section, when an assignment of a pro tempore reporter is made to proceedings in the superior court, the assignment shall be deemed to run to the completion of the proceeding.

Reporters pro tempore shall be paid in accordance with the contract with the board of supervisors or, in absence thereof, with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941). Such per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

(d) During the hours during which the court is open as prescribed by the Shasta County Superior Court for the transaction of judicial business, official court reporters shall devote full time to the performance of the duties required of them by law and shall not engage or solicit to engage in any other employment in their professional capacity.

(e) Court reporters pro tempore serving in the superior and municipal courts shall receive a per diem equal to the base wage of the official court reporter for an eight-hour day, excluding benefits. This fee shall be adjusted by the same, general across-the-board salary adjustment enacted by the county in any salary ordinance applicable to official court reporters. For services of less than four hours in any day, the pro tempore reporter will receive a per diem equal to 65 percent of the base wage.

#### **70045.10.**

Notwithstanding any other provision of law, the provisions of this section shall apply to the official court reporters in Tehama County.

(a) The regular full-time official court reporters shall perform the following duties:

- (1) Report all criminal proceedings in superior court.
  - (2) Report all juvenile proceedings other than those heard by the juvenile court referee or traffic hearing officer.
  - (3) Report all civil jury trials in superior court, unless the court determines it is not required.
  - (4) Report any other proceeding in the superior court at the request of the judge of the superior court.
  - (5) Report any superior court proceeding when a party requests a court reporter in accordance with the rules of court.
  - (6) Report all criminal investigations of the grand jury, when requested by the foreman or the district attorney.
  - (7) Report the preliminary examination of those accused of crime before magistrates or municipal court judges within Tehama County, or both.
  - (8) Report coroner's inquests, when requested by the coroner.
  - (9) Report hearings of the Board of Equalization of the County of Tehama, as requested by that board.
  - (10) Other reporting or related services, as directed by the judges of the superior court.
  - (11) When not occupied with the above duties, and upon request of the board of supervisors and approval of the presiding judge of the superior court, they shall report matters before the board of supervisors.
  - (12) Such other duties as are required to insure the provision of court reporter services.
- (b) Each regular full-time court reporter shall be paid a monthly salary of two thousand two hundred sixty-seven dollars (\$2,267), unless the Board of Supervisors of Tehama County, by ordinance, provides for compensation in excess of that amount, in which event the compensation set by ordinance shall apply. The salary is for compensation for reporting services set forth under subdivision (a). For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941).

The regular, full-time official court reporters shall be entitled the same privileges with respect to retirement, vacation (upon approval of judge to whom assigned), sick leave, and group insurance, which either is now, or hereafter may be, provided by ordinance to other comparable employees of the County of Tehama.

For retirement credit purposes, compensation earnable shall be deemed to be the annual total of all salary and transcription fees paid by the County of

Tehama to each regular official reporter up to a maximum of thirty-five thousand dollars (\$35,000).

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the court may be carried on without delay. Notwithstanding other provisions of this section, when an assignment of a pro tempore reporter is made to proceedings in the superior court, the assignment shall be deemed to run to the completion of the proceeding.

Reporters pro tempore shall be paid in accordance with the rate of compensation as set by the board of supervisors. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941). The per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

(d) During the hours during which the court is open, as prescribed by the Tehama County Superior Court for the transaction of judicial business, official court reporters shall devote full time to the performance of the duties required of them by law and shall not engage, or solicit to engage, in any other employment in their professional capacity unless otherwise excused by a judge of the superior court.

If the official court reporter or a pro tempore reporter serves past 5:30 p.m., he or she shall receive an additional fee equal to one-half the per diem rate established by the board of supervisors. If the official court reporter or a pro tempore reporter serves past 8:30 p.m., he or she shall receive a second additional fee equal to one-half the per diem rate. Accumulation of hours in a given day shall be without regard as to the number of courts in which the reporter provides reporting service.

In order that the salary provided for regular full-time official court reporters shall remain equitable and competitive, the salary herein provided for shall be adjusted and increased by the same salary adjustment percentage for the classification entitled the superior court clerk enacted on or before July 1, 1985, by the County of Tehama.

#### **70045.11.**

In lieu of the compensation provided for in Section 69948, the Board of Supervisors of Sutter County may, with the approval of the presiding judge of the superior court, contract with official court reporters, and reporters pro tempore, for the superior court with respect to the fee for reporting testimony and proceedings in contested cases, per diem, and traveling and other expenses, which shall be a proper county charge.

**70045.12.**

Notwithstanding any other provision of law, the following provisions shall be applicable to the official court reporters in the superior court and municipal courts of Madera County:

(a) In Madera County, official court reporters shall be appointed by the judges of the superior court pursuant to Section 70043 and shall serve at the pleasure of the judges. Official reporters shall perform the duties required of them by law. In addition, they shall render assistance to the judge or judges of the superior court as the judge or judges may direct.

(b) In Madera County, official court reporters shall be appointed by the judges of the municipal court pursuant to Section 72194 and shall serve at the pleasure of the judges. Official reporters shall perform the duties required of them by law. In addition, they shall render assistance to the judge or judges of the municipal court as the judge or judges may direct.

(c) Notwithstanding any other provision of law, the salary and benefits for official court reporters in Madera County shall be determined pursuant to Section 69908.

(d) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to this statute, the judge or judges of the superior court and the municipal court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the courts in the county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. The per diem, traveling, and other expenses, and the fees chargeable to the county under the terms of these provisions are a proper county charge.

(e) Official court reporters shall devote full time to the performance of the duties required of them by law and may not engage or solicit to engage in any other employment in their professional capacity during the normal workday.

**70046.**

In San Bernardino County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than an annual salary of twenty thousand two hundred ten dollars (\$20,210) and the compensation of official reporters pro tempore, which shall be at a rate not less than seventy-five dollars and twenty-five cents (\$75.25) a day.

During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

**70046.1.**

In Santa Clara County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than a biweekly salary of one thousand seven hundred eighty-four dollars and forty cents (\$1,784.40), and the compensation of official reporters pro tempore, which shall be at a rate not less than ninety-eight dollars and fourteen cents (\$98.14) per half day and one hundred ninety-six dollars and twenty-eight cents (\$196.28) per day.

During the hours that the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

**70046.2.**

(a) In Fresno County, the compensation of each regular official court reporter shall be determined through the collective bargaining process.

(b) For the purposes of retirement, the compensation of each regular official court reporter shall be deemed to be the total of all per diem and transcription fees paid by the county or court to that regular official court reporter for all reporting services, plus his or her salary.

**70046.4.**

(a) In Lake County, the official phonographic reporters shall perform the following duties:

- (1) Report all proceedings before the superior court.
- (2) Report all the proceedings of the grand jury.
- (3) Act as the secretary of, and render stenographic and clerical assistance to, the judge of the department to which they are assigned by the presiding judge.
- (4) Any other duties assigned by the board of supervisors upon the request of a judge of the superior court.

The official phonographic reporters of such county shall receive a salary recommended by the superior court and approved by the board of supervisors. Such salary is for compensation for reporting services in the superior court under subdivision (a) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter. Such fees shall be paid to the County of Lake when the conditions of the official phonographic reporter's employment so provide.

Any appointee to an official reporter position shall be compensated at the first step and advance to each higher step upon completion of each year of service. Upon the recommendation of the superior court and approval of the

board of supervisors, official reporters may be employed at or may be granted a special step increase to any step within the salary range on the basis of experience or qualifications.

(b) The compensation for each official reporter pro tempore shall be the equivalent of the daily wage of the first step in the salary range for full-time official reporters for each day he actually is on duty under order of the court.

(c) In addition to the compensation provided in this article, each full-time reporter of the superior court shall be entitled to, and shall receive, the same vacation, sick leave, and similar privileges and benefits as are now, or may hereafter be provided for the employees of the County of Lake including the right to participate in any group, accident, health or life insurance plan adopted by the board of supervisors of the county.

(d) Until such time as the salaries of full-time official reporters and official reporters pro tempore are approved by the board of supervisors pursuant to subdivision (a), such reporters shall receive the salaries in effect immediately prior to the effective date of this section enacted by the Legislature at its 1977-78 Regular Session.

#### **70047.**

(a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan as established by joint action and approval of the board of supervisors and a majority of the judges of the court. The step of entry shall be step one. However, the judges of the court may appoint any such reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience and qualifications to entitle that individual to a higher initial step, but in no case may the initial salary be above the third step of the salary range. Official reporters shall advance to the next higher step on the salary plan annually, upon affirmative approval of the appointing authority. The compensation of each official reporter pro tempore shall be an amount which is equivalent to 1.05 times the daily wage of the fourth step in the salary range for full-time official reporters in Contra Costa County for each day the reporter is on duty under order of the court. Additional official reporters pro tempore may also be appointed on a half-day basis as the business of the court requires. Those reporters shall be compensated at a rate which is 55 percent of the daily wage of an official reporter pro tempore for each period up to four hours that the reporter is on duty under the order of the court.

(b) During the hours which the court is open for the transaction of judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as that judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, secretary, and clerk (experienced level), and shall be effective on the same date.

**70047.1.**

Notwithstanding any other provision of law, the following provisions shall be applicable to the Stanislaus County Superior Court:

(a) In Stanislaus County, to assist the superior court in the transaction of its judicial business, a majority of the judges of the superior court, with the approval of the board of supervisors, may appoint as many regular official reporters as necessary to report the proceedings in the court.

(b) The regular official superior court reporters, unless the right to their services are waived, shall report all of the proceedings as otherwise provided by law or ordered by a superior court judge.

(c) The regular official court reporters shall be compensated at a range approved by the board of supervisors by ordinance or resolution.

In order that the salaries provided for in this section remain equitable and competitive, in the event an ordinance or resolution is adopted which provides a cost-of-living increase for employees of Stanislaus County, this salary range shall be deemed adjusted, increased, and amended by that ordinance or resolution.

(d) A regular official court reporter shall receive the same vacation, sick leave, retirement, and other benefits as are provided for county employees.

(e) For the purposes of retirement, the compensation of each reporter shall be deemed to be the total of all per diem and transcription fees paid by the county to all of the regular reporters of the superior court for all reporting services, divided by the number of superior court official reporters, plus his or her salary.

(f) The superior court executive officer shall appoint a supervising reporter to be compensated at an hourly rate that is 10 percent higher than Step 5 of the hourly rate specified in subdivision (c).

(g) For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter. A court reporter shall also be allowed his or her traveling expenses as determined by the travel policy of Stanislaus County when reporting outside of the county seat.

(h) The judges of the superior court may appoint as many official superior court reporters pro tempore as the business of the court requires. They shall

be unsalaried, but shall receive a per diem of  $\frac{1}{260}$  of Step 4 of the hourly rate set pursuant to subdivision (c).

(i) The county shall provide the official reporters with supplies for the performance of their courtroom duties, excluding hardware.

(j) The presiding judge of the superior court may, upon request of the presiding judge of the municipal court, assign an official superior court reporter to the municipal court during such times as the business of the municipal court requires. Official superior court reporters who are so assigned shall receive no additional compensation for that service.

#### **70047.5.**

(a) In Sonoma County, for the 1987–88 fiscal year each regular official reporter shall be paid an annual salary of thirty-seven thousand seven hundred forty dollars (\$37,740), which salary shall include payment for services in reporting all proceedings in the superior court, before the grand jury and the coroner. In order that the salary provided for in this section shall remain equitable and competitive, the salary provided for in this section shall be adjusted and increased by the same, general across-the-board salary adjustment enacted by the county in the salary ordinance for other unrepresented employees.

(b) Reporters pro tempore serving in the superior and municipal courts shall receive a per diem equal to 90 percent of the gross hourly wage of a regular official superior court reporter, exclusive of benefits, for each full day, and one-half the per diem rate for each half day, when actually on duty under order of the court, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties.

(c) Regular official reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave and other benefits allowed to employees in the clerical nonsupervisory representation unit of the county.

#### **70048.**

(a) In a county with a population of 1,300,000 and under 1,400,000, as determined by the 1970 federal census, regular official reporters shall be paid at a salary rate established by joint action and approval of the board of supervisors and a majority of the judges of the court.

Except as provided herein, the initial hiring rate for each position shall be step A, provided further, however, the judges of the superior court may appoint any such court reporter at a higher initial step if in the opinion of the judges of the superior court an individual to be appointed has such experience and qualification as to entitle that individual to such higher initial step. A step advancement from step A to step B may be granted on the first day of the month following the completion of 12 full months of service in the position. A person may advance to steps C, D, and E upon completion of successive 12-month periods of service. All merit increases as provided herein shall be

made at the determination of the judges of the superior court. A court reporter employed prior to November 15, 1977, and currently employed shall receive a monthly and annual salary at step E.

(b) Official phonographic reporters pro tempore shall be compensated at a rate established by joint action and approval of the board of supervisors and a majority of the judges of the court.

(c) Each reporter shall cooperate with county personnel in any random job reviews for the purpose of confirming hours spent in attendance upon the courts for the purpose of reporting proceedings.

(d) During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

#### **70049.**

In a county with a population of over 11,650 and under 12,000, as determined by the 1960 federal census, each regular official reporter shall receive as full compensation for taking notes in criminal cases an annual salary set by resolution of the board of supervisors. All other fees of such reporters shall be as elsewhere provided by law.

#### **70049.5.**

In a county with a population of over 32,000 and under 33,000, as determined by the 1960 federal census, each regular official reporter shall receive as full compensation an annual salary of ten thousand dollars (\$10,000) unless the board of supervisors of the county shall by ordinance provide for compensation in excess of that amount, in which event the amount set by ordinance shall apply.

#### **70050.**

In San Benito County, the board of supervisors shall fix the salary of regular official reporters and the compensation of official reporters pro tempore, which shall be at a rate of not more than seventy-five dollars (\$75) a day.

During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

#### **70050.5.**

In each county with a population of 730,000 and under 850,000, as determined by the 1960 federal census, the monthly salary of the regular official phonographic reporters shall be not less than that paid to regular official phonographic reporters of the superior court in counties having a population of over 6,000,000. Pro tempore reporters in each county with a population of

730,000 and under 850,000, as determined by the 1960 federal census, shall receive a daily per diem in an amount not less than that paid to pro tempore superior court reporters in counties having a population of over 6,000,000.

Length of employment for compensation purposes under this section shall mean length of employment in either the municipal court or superior court of such county.

All regular official phonographic reporters appointed prior to the effective date of this section shall receive not less than the monthly salary set forth in the maximum step of the pertinent salary schedule used in counties having a population of over 6,000,000.

Official phonographic reporters appointed subsequent to the effective date of this section shall be compensated in an amount that is not less than whatever step of the pertinent salary schedule used in counties with a population of over 6,000,000 the majority of the judges of such court may deem appropriate.

#### **70050.6.**

(a) In Tuolumne County, the official reporters of the superior court shall perform the following duties:

- (1) Report all criminal proceedings.
- (2) Report all civil proceedings.
- (3) Report all domestic relations proceedings.
- (4) Report all proceedings of the grand jury.
- (5) Report all coroner's inquests.

(b) The official reporters of Tuolumne County shall receive a salary as established by the Board of Supervisors of Tuolumne County. Such salary is for compensation for reporting services in the superior court under subdivision (a) of this section.

For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of Chapter 5 of this title. The court reporter shall also be allowed his or her actual traveling expenses when reporting outside of the county seat.

#### **70050.8.**

Notwithstanding the provisions of Sections 69948 and 69949, in counties with population of at least 62,000 and under 65,800, as determined by the 1960 federal census, the fee for official court reporters and court reporters pro tempore is seventy dollars (\$70) per day unless the board of supervisors of the county shall, by resolution, provide for fees in excess of that amount, in which event the fee set by resolution shall apply.

**70051.**

No further fee than that prescribed in Sections 70053 to 70059.5, inclusive, shall be collected from, or assessed against, any party to any proceeding for the services of a phonographic reporter in taking down in shorthand the testimony and other proceedings in the trial or hearing of any matter as required by law or by order of the court, but a phonographic reporter shall be allowed and unless waived by him shall receive the fees allowed by law for transcribing his shorthand notes of the testimony and proceedings reported by him, and such fees for transcriptions shall be paid pursuant to Article 9 of this chapter and any other law pertinent to the case.

**70052.**

The salaries provided for in this article shall be paid in monthly installments out of the salary fund of the county and shall be allowed and audited in the same manner as the law requires for other salary demands against the county.

**70056.7.**

Notwithstanding any other provision of law to the contrary, the following provisions shall be applicable to the official superior court reporters in Monterey County:

(a) Regular official court reporters shall report all criminal and civil proceedings in their respective courts and report all grand jury proceedings. When not engaged in the performance of other duties imposed on him or her by law and when approved by the presiding judge, each reporter shall render such assistance as may be required in any other court of the county to which he or she may be assigned. During hours in which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of regular duties and shall not engage in or solicit any other employment in their professional capacity.

(b) Each regular official court reporter shall be paid a salary to be established by the Monterey County Board of Supervisors upon the joint recommendation of the county administrative officer and the judges of the superior court.

(c) A regular official court reporter shall serve at the pleasure of the judge of the court for which appointed but shall receive the same vacation, sick leave, retirement, and other financial or monetary benefits as are now, or may be hereafter provided for the classification of superior court clerk. The benefits include the right to participate in any group accident, group health, or group life insurance plan adopted for and made available to the classification of superior court clerk.

For the purposes of retirement under the Public Employees' Retirement System, the salary provided for in subdivision (b) shall be deemed the entire salary for each court reporter.

(d) Judges of the superior court may appoint as many official superior court reporters pro tempore as the business of the court requires. They shall be unsalaried but shall receive a per diem at a rate to be established by joint action of the board of supervisors and a majority of the judges of the superior court.

**70059.7.**

In Santa Barbara County each regular official reporter shall be paid a biweekly salary which shall be one thousand six hundred eighty-five dollars and eighty-five cents (\$1,685.85) which salary shall include payment for services in reporting all proceedings in the superior or municipal court, before the grand jury, and before coroners' inquests.

Reporters pro tempore shall be paid at a per diem rate of up to a maximum of one hundred sixty-eight dollars (\$168) or eighty-four dollars (\$84) for each half day or four (4) hour period or portion thereof for the days they are actually on duty under order of the court, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court. However, any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1993, unless ratified by statute by the Legislature prior to that date.

**70059.8.**

(a) Notwithstanding any other provision of law, including but not limited to Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in Solano County.

(b) Regular official court reporters shall report all criminal and civil proceedings in their respective courts; all juvenile proceedings, other than those heard by referees or traffic officers when official reporters are unavailable; grand jury proceedings, coroner's inquests, and proceedings before the county board of equalization. When not engaged in the performance of other duties imposed upon him or her by law, each reporter shall render such assistance as may be required in any other court of the county to which he or she may be assigned, and perform such other verbatim reporting services as may be required such as, but not limited to, public hearings and depositions. During hours in which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of regular duties and shall not engage in any other employment in their professional capacity.

(c) In Solano County the annual salary of each official court reporter shall be based on a regular five-step plan as established by joint action and approval of the board of supervisors and a majority of the judges of the court.

(d) For all transcripts incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter. The initial hiring rate for each position shall be step 1, provided that the judges may appoint any such reporter at a higher initial step if, in the opinion of the majority of judges, an individual to be appointed has such experience and qualifications as to entitle him or her to such higher initial step.

(e) A regular official court reporter shall serve at the pleasure of the appointing judge, but shall be entitled to the same benefits and privileges respecting longevity, service credits, cost-of-living or other general pay increases, retirement, vacation, sick leave and group insurance which are provided other employees of the county. Court reporters shall be entitled to any increases provided other employees of the county respecting longevity, service credits, cost-of-living or general pay increases, retirement, vacation, sick leave and group insurance, but such increases shall be on an interim basis and remain in effect only until January 1, 1990, unless ratified by statute by the Legislature prior to that date.

(f) Judges of the court may appoint as many official reporters pro tempore as the business of the court requires. They shall be unsalaried but shall receive the fees provided by Article 9 of this chapter, which fees, upon order of the court, shall be a proper charge against the general fund of the county.

#### **70059.9.**

In San Luis Obispo County, each regular official reporter shall be paid a monthly salary which shall be recommended by the superior court and approved by the board of supervisors. This salary shall include payment for services in reporting all proceedings in the superior court, before the grand jury, and before coroner's inquests. The initial hiring rate for each position shall be step 1, provided, however, that the judges of the court may appoint a reporter at a higher step if such person has the experience and qualifications to entitle that individual to appointment at a higher initial step. Step advancement from step 1 to step 2 may be granted following completion of six full months of service in the position. Thereafter, a person may advance to each succeeding step upon completion of a 12-month period of full-time service at the previous step. All step advancements pursuant to this section shall be determined by the judges of the court. In addition to the duties required by the provisions of this section, and notwithstanding the provisions of Section 69956, regular official reporters, when not actually engaged in the performance of other lawfully imposed duties, shall, at no additional compensation, render stenographic or clerical assistance or both, to the superior court as may be directed by the presiding judge.

Reporters pro tem shall be paid at a per diem rate of seventy-six dollars (\$76) for the days they are actually on duty under order of the court, and shall receive from the county their necessary travel and other expenses when

necessarily called from other counties. Rates of compensation of official reporters pro tem may be adjusted by approval of the board of supervisors upon the recommendation of a majority of the judges of the court.

Each official court reporter shall be an attaché of the superior court and shall serve at the pleasure of the appointing judges, but shall be entitled to the same benefits and privileges respecting retirement, group insurance, social security, vacation, sick leave and other fringe benefits which are provided to county employees.

**70060.**

The fee so required shall be taxed as costs in favor of any party paying it and to whom costs are awarded by the judgment of the court. Such fee shall not be subject to the provisions of Section 6103.

**70061.**

In a county with a population of 280,000 and under 285,000, of 500,000 and under 700,000, or of 700,000 or more, the fee so required shall not be required of any party who is exempted from the payment of costs by any statute other than Section 6103.

**70062.**

On or before the first day of each calendar month, the county clerk shall transmit to the county treasurer all money paid to him pursuant to this article during the preceding calendar month, or up to the day immediately preceding that on which he transmits the money, and the money shall be deposited in the salary fund of the county.

**70063.**

In Mendocino County, the official phonographic reporters shall perform the following duties:

- (a) Report all proceedings before the superior court.
- (b) Report the proceedings of the grand jury.
- (c) Act as the secretary of, and render stenographic and clerical assistance to, the judge of the department to which they are assigned by the presiding judge.

**70064.**

In Mono County, each regular official reporter shall receive as full compensation for taking notes in criminal cases an annual salary set by resolution of the board of supervisors. All other fees of such reporters shall be as elsewhere provided by law.

**70100.**

This article applies in each county with a population of 700,000 and under 750,000, as determined by the 1950 federal census. The provisions of Article

11 of this chapter which apply in counties with a population of 750,000 or over apply in each county with a population of 700,000 and under 750,000 except as is otherwise validly provided in this article or in Section 70058.

**70101.**

If a majority of the judges of the superior court of any county with a population of 700,000 and under 750,000 concur in an order that appointments may be made pursuant to this article, they may each appoint a competent phonographic reporter, specifying that the appointment is pursuant to Article 12, Chapter 5, Title 8, of this code.

**70104.**

In such event in cases in which a phonographic reporter is requested and the fees provided for by Article 11 for counties with a population of 700,000 and under 750,000 have not been paid, the parties litigant shall pay to the clerk of the court, prior to the hearing of the cases, the phonographic reporters' fees prescribed by Article 9. Such fees shall be deposited by the clerk in the county treasury to the credit of the salary fund of the county.

**70110.**

In Tulare County, each judge of the superior court may appoint a competent phonographic reporter, to be known as a regular official reporter of that court, and such pro tempore reporters as necessary to report the proceedings of the court. Regular official reporters shall hold office during the pleasure of the appointing judge.

The duties of regular official reporters appointed pursuant to this section shall be performed as elsewhere provided by law, and shall include the reporting of every civil proceeding.

**70111.**

(a) In consideration of all reporting services, official court reporters shall be paid biweekly at Range 184 of the current Tulare County salary schedule.

The initial rate for currently appointed official superior court court reporters on the effective date of this article shall be Range 184, step "E," two thousand five hundred eighty-four dollars and five cents (\$2,584.05).

The initial hiring rate for each position shall be Range 184, step A. However, a judge of the superior court may appoint any such court reporter at a higher initial step if, in the opinion of the judge of the superior court, an individual to be appointed has such experience and qualifications to entitle that individual to the higher initial step.

The county shall provide each reporter stenographic machine paper, ink, and ribbons necessary for reporting.

(b) Where it is necessary to appoint a pro tempore reporter, the pro tempore reporter shall receive a per diem of one hundred fifteen dollars (\$115) a day

for the day the pro tempore reporter actually is on duty under order of the court.

Pro tempore reporters shall not receive more than one per diem fee a day from the county.

(c) This per diem rate shall also apply when a reporter is appointed pursuant to Section 869 of the Penal Code by a justice court judge acting as a magistrate.

(d) Each full-time official reporter and each official reporter pro tempore shall receive the salaries specified in subdivisions (a) and (b) respectively, unless the Board of Supervisors of Tulare County, by ordinance, provides for compensation in excess of the specified amounts, in which event the amount set by ordinance shall apply.

(e) For all transcripts incident to reporting services, each reporter shall receive the fees provided for in Section 69950.

#### **70112.**

In addition to the compensation provided in this article, each full-time reporter of the superior court shall be entitled to, and shall receive the same vacation, sick leave, salary step advancements, and similar privileges and benefits as are now or may hereafter be provided for the employees of the county.

Regular official reporters of the superior court shall participate in any group health, accident, life insurance, or deferred compensation plan adopted by the county.

#### **70113.**

Official superior court court reporters shall be members of any retirement system maintained by the county. For retirement credit purposes compensation earnable shall be deemed to be the annual salary paid by the county to each official superior court court reporter.

#### **70125.**

In each county having a population of more than 95,000 and less than 120,000, as determined by the 1960 federal census, to assist the court in the transaction of its judicial business, a majority of the judges of the superior court for such county may appoint as many regular official phonographic reporters as necessary to report the proceedings in the court. The number of reporters so appointed shall not exceed at any one time the number of judges provided by law for the court. The reporters shall hold office during the pleasure of a majority of the judges of the court.

**70126.**

A judge of the superior court may appoint a pro tempore official reporter, to serve as the convenience of the court may require, when an official reporter is unavailable.

**70127.**

Each regular official reporter shall be paid an annual salary of twenty thousand nine hundred eighty-three dollars and ninety-two cents (\$20,983.92). Adjustments in salary shall be made annually by the board of supervisors by an amount which is equivalent to the increase or decrease in the salary of related classes in the classified service of the county, and each pro tempore official reporter shall be paid per day the amounts prescribed in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8 for the days he is actually on duty under the order of the court.

In addition to the compensation provided in this article, the board of supervisors of Humboldt County may provide by ordinance that each regular court reporter of the superior court shall be entitled to, and shall receive, the same vacation, sick leave and similar privileges and benefits as are now, or may be hereafter, provided to employees in Humboldt County classifications serving in the superior court, including the right to participate in any group life, health, dental, or other benefit program adopted by the board of supervisors.

**70128.**

Except in criminal cases, the fees prescribed in Article 9 (commencing with Section 69941), Chapter 5, Title 8, shall be paid for the services of a court reporter. The fees for reporting testimony and proceedings in contested cases and for reporting default or uncontested actions or proceedings shall be paid to the county clerk and deposited in the county treasury. All other fees prescribed in Article 9, Chapter 5, Title 8, shall be paid to the reporter rendering the service and retained by him.

**70130.**

(a) In a county with a population of over 205,000 and not over 225,000 as determined by the 1970 federal decennial census, within which there is located a facility of the Department of Corrections of the State of California, each full-time official reporter shall receive a salary recommended by the superior court and approved by the board of supervisors.

Any appointee to an official reporter position shall be compensated at the first step and advance to each higher step upon completion of each year of service. Upon the recommendation of the superior court and approval of the board of supervisors, official reporters may be employed at or may be granted a special step increase to any step within the salary range on the basis of experience or qualifications.

(b) The compensation for each official reporter pro tempore shall be the equivalent of the daily wage of the third step in the salary range for full-time official reporters for each day he actually is on duty under order of the court.

(c) In addition to the compensation provided in this article, each full-time reporter of the superior court shall be entitled to, and shall receive, the same vacation, sick leave, and similar privileges and benefits as are now, or may hereafter be provided for the employees of the County of Marin, including the right to participate in any group, accident, health or life insurance plan adopted by the board of supervisors of the county.

(d) Until such time as the salaries of full-time official reporters and official reporters pro tempore are approved by the board of supervisors pursuant to subdivision (a), such reporters shall receive the salaries in effect immediately prior to the effective date of the amendments to this section enacted by the Legislature at its 1975–76 Regular Session.

#### **70130.5.**

No further fee, charge or salary other than the salary or compensation provided by Section 70130 shall be collected from, or assessed against, any party to any proceeding for the services of an official reporter in taking down in shorthand the testimony and other proceedings in the trial or hearing of any matter as required by law or by order of the court; but an official reporter shall be allowed, and shall receive, unless waived by him, the fees allowed by law for transcribing his shorthand notes of the testimony and proceedings reported by him, and such fees for transcription shall be paid as provided by Sections 69947 to 69953, inclusive, and by any other law of this state pertinent to the case.

#### **70131.**

In criminal cases in which the court specifically so directs, the fee for a transcript ordered by the court to be made shall be paid out of the county treasury on the order of the court. The court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Code of Civil Procedure Section 269. When the court orders a daily transcript, necessitating the services of two official reporters, the reporting fee for each of the reporters and the transcript fee shall be proper charges against the county treasury, and such daily transcript shall be pursuant to Code of Civil Procedure Section 269.

#### **70131.5.**

Fees for transcription of testimony and proceedings in the court shall be paid by the litigants to full-time official reporters and official reporters pro tempore as otherwise provided by law. In all cases where by law the court may direct the payment of transcription fees out of the county treasury, such fees shall, upon order of the court, be paid from the general fund including fees for transcription of testimony and proceedings in criminal cases as

provided in Sections 69947 to 69953, inclusive, which shall be paid from the county treasury.

**70132.**

The official reporters of the court, if otherwise eligible, shall be members of any retirement system maintained by the county that includes attachés of the court. For the purposes of such retirement system, the salary or compensation provided for reporters in this article shall be deemed their entire compensation, except that where credit is claimed for service rendered prior to the establishment of such salary or compensation, the actual compensation paid to them by the county shall be the basis for contributions for such prior service, and continuous employment of the court, prior to membership in such retirement system, shall be considered as “prior service” therein upon the payment by the reporters of the sums due, if any, under the retirement system.

**70132.5.**

(a) The official reporter shall perform the duties required of him by law. When not actually engaged in the performance of any other duty imposed on him by law, he shall render stenographic or clerical assistance, or both, to the judge or judges of the department to which he is assigned as such judge or judges may direct. This subdivision shall not apply to reporters who elect to be paid on a per diem and fee basis.

(b) The official reporter in each department shall be selected by, and serve solely and directly under the authority and control of, the judge thereof, and shall not be subject to the authority of any county administrative office or personnel commission.

**70133.**

Nothing in any county ordinance or in any state law disqualifying employees at any age from further employment, shall affect any reporter employed on the effective date of this article, or for a period of 10 years thereafter.

**70134.**

The official reporters of the court, in addition to membership in any appropriate county retirement system, unless otherwise specified in this article, shall be bound by the same restrictions applicable to other county employees. Such reporters shall not use county equipment or county premises or county working hours for the purpose of doing work not in the service of the county or the court.

**70136.**

(a) Notwithstanding any other provision of law, the monthly salary of each full-time official reporter of the Superior Court in Santa Cruz County shall be as follows:

Step 1:\$1,614

Step 2:\$1,685

Step 3:\$1,758

Step 4:\$1,834

Step 5:\$1,941

The initial hiring rate for each position shall be step 1. However, the judges of the superior court may appoint any such court reporter at a higher initial step if, in the opinion of the judges of the superior court, an individual to be appointed has such experience and qualifications to entitle that individual to such higher initial step.

In addition to the compensation provided in this article, each full-time reporter of the superior court shall be entitled to, and shall receive the same vacation, sick leave, salary step advancements, and similar privileges and benefits as are now or may hereafter be provided for the employees of the county.

(b) Notwithstanding any other provision of the law, compensation for each official reporter pro tempore shall be sixty-five dollars (\$65) a day for each day such reporter pro tempore is on duty under order of the court. Each reporter pro tempore shall receive from the county the necessary traveling and other expenses when necessarily called from other counties.

(c) Each full-time official reporter and each official reporter pro tempore shall receive the salaries specified in subdivisions (a) and (b), respectively, unless the board of supervisors of Santa Cruz County by ordinance provides for compensation in excess of the specified amounts, in which event the amount set by ordinance shall apply.

#### **70137.**

Fees for transcription of testimony and proceedings in the court shall be paid by the litigant to full-time official reporters or to official reporters pro tempore as otherwise provided by law. In all cases where by law the court may direct the payment of transcription fees out of the county treasury, such fees shall, upon order of the court, be paid from the General Fund, including fees for transcription of testimony of proceedings in criminal cases as provided in Sections 69947 to 69953, inclusive, of this code, which shall be paid from the county treasury.

#### **70138.**

(a) The official reporter shall perform the duties required by law. When not actually engaged in the performance of any other duty imposed by law, the official reporter shall render stenographic or clerical assistance, or both, to the judge or judges of the department to which such reporter is assigned as such judge or judges may direct.

(b) The official reporter in each department shall be selected by and serve directly under the authority and control of the judge thereof, provided, however, that whenever the services of an official reporter are not required in the actual prosecution of the business of his department, the presiding judge of the superior court may temporarily assign any such reporter to act as an official reporter for another department of the superior court or as an official reporter of a municipal court within the same county.

**70139.**

(a) A reporter's filing fee of twelve dollars (\$12) shall be paid in actions and proceedings as specified in Section 68090.5 in the Santa Cruz County Superior Court.

(b) In addition to any fee otherwise required, in civil cases that last longer than one judicial day, a fee per day equal to the per diem rate for official reporters pro tempore shall be charged to the parties for the services of an official reporter for the second and each successive day a reporter is required.

(c) In addition to any fee otherwise required, in a civil case in which a court orders a daily transcript necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for official reporters pro tempore for the services of the second reporter for the first and each successive day.

**70313.**

This chapter may not be construed as authorizing a county, a city and county, a court, the Judicial Council, or the state to supply to the official reporters of the courts stenography, stenotype, or other shorthand machines, or as authorizing the supply to the official reporters of the courts, for use in the preparation of transcripts, of typewriters, transcribing equipment, supplies, or other personal property. The enactment of this provision is a statement of existing law under former subdivision (f) of Section 68073 and is not a modification of the prior law.

## Welfare & Institutions Code

### 252.

At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor or his or her parent or guardian or, in cases brought pursuant to Section 300, the county welfare department may apply to the juvenile court for a rehearing. That application may be directed to all or to any specified part of the order or findings, and shall contain a statement of the reasons the rehearing is requested. If all of the proceedings before the referee have been taken down by an official reporter, the judge of the juvenile court may, after reading the transcript of those proceedings, grant or deny the application. If proceedings before the referee have not been taken down by an official reporter, the application shall be granted as of right. If an application for rehearing is not granted, denied, or extended within 20 days following the date of its receipt, it shall be deemed granted. However, the court, for good cause, may extend the period beyond 20 days, but not in any event beyond 45 days, following the date of receipt of the application, at which time the application for rehearing shall be deemed granted unless it is denied within that period. All decisions to grant or deny the application, or to extend the period, shall be expressly made in a written minute order with copies provided to the minor or his or her parent or guardian, and to the attorneys of record.

### 347.

At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall, and at any such hearing conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing; and, if directed by the judge, or requested by the person on whose behalf the petition was brought, or by his parent or legal guardian, or the attorneys of such persons, he must, within such reasonable time after the hearing of the petition as the court may designate, write out the same or such specific portions thereof as may be requested in plain and legible longhand or by typewriter or other printing machine and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court. Unless otherwise directed by the judge, the costs of writing out and transcribing all or any portion of the reporter's shorthand notes shall be paid in advance at the rates fixed for transcriptions in a civil action by the person requesting the same.

### 350.

(a) (1) The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the

petition is brought. Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum cooperation of the minor upon whose behalf the petition is brought and all persons interested in his or her welfare with any provisions that the court may make for the disposition and care of the minor.

(2) Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary. Notwithstanding any other provision of law, no person, except the mediator, who is required to report suspected child abuse pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code), shall be exempted from those requirements under Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code because he or she agreed to participate in a dependency mediation program established in the juvenile court.

If a dependency mediation program has been established in a juvenile court, and if mediation is requested by any person who the judge or referee deems to have a direct and legitimate interest in the particular case, or on the court's own motion, the matter may be set for confidential mediation to develop a plan in the best interests of the child, utilizing resources within the family first and within the community if required.

(b) The testimony of a minor may be taken in chambers and outside the presence of the minor's parent or parents, if the minor's parent or parents are represented by counsel, the counsel is present and any of the following circumstances exist:

- (1) The court determines that testimony in chambers is necessary to ensure truthful testimony.
- (2) The minor is likely to be intimidated by a formal courtroom setting.
- (3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(c) At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without first having reserved that right.

**395.**

(a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. However, that order or judgment shall not be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Section 300, and unless the provision is approved by an order of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.

(2) A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

(3) An appellant unable to afford counsel, shall be provided a free copy of the transcript in any appeal.

(4) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (d) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

(b) (1) In any appellate proceeding in which the child is an appellant, the court of appeal shall appoint separate counsel for the child. If the child is not an appellant, the court of appeal shall appoint separate counsel for the child if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem appointed for the child pursuant to subdivision (e) of Section 317, Section 326.5, and California Rule of Court 1448, that appointment of counsel would benefit the child. In order to assist the court of appeal in making its determination under this subdivision, the trial counsel or guardian ad litem shall make a recommendation to the court of appeal that separate counsel be appointed in any case in which the trial

counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel, and shall set forth the reasons why the appointment is in the child's best interests. The court of appeal shall consider that recommendation when determining whether the child would benefit from the appointment of counsel. The Judicial Council shall implement this provision by adopting a rule of court on or before July 1, 2007, to set forth the procedures by which the trial counsel or guardian ad litem may participate in an appeal, as well as the factors to be considered by the trial counsel or guardian ad litem in making a recommendation to the court of appeal, including, but not limited to, the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent.

(2) The Judicial Council shall report to the Legislature on or before July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing this subdivision, any recommendations regarding the representation of dependent children in appellate proceedings made by the California Judicial Council's Blue Ribbon Commission on Children in Foster Care, any actions taken, including rules of court proposed or adopted, in response to those recommendations or taken in order to comply with the Child Abuse Prevention and Treatment Act, as well as any recommendations for legislative change that are deemed necessary to protect the best interests of dependent children in appellate proceedings or ensure compliance with the Child Abuse Prevention and Treatment Act.

**677.**

At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall, and at any such hearing conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing; and, if directed by the judge, or requested by the person on whose behalf the petition was brought, or by his parent or legal guardian, or the attorneys of such persons, he must, within such reasonable time after the hearing of the petition as the court may designate, write out the same or such specific portions thereof as may be requested in plain and legible longhand or by typewriter or other printing machine and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court. Unless otherwise directed by the judge, the costs of writing out and transcribing all or any portion of the reporter's shorthand notes shall be paid in advance at the rates fixed for transcriptions in a civil action by the person requesting the same.

## **Unemployment Insurance Code Section Related to Employment of Reporters**

### **630.**

Notwithstanding subparagraph (C) of paragraph (1) of subdivision (c) of Section 621 or Section 13004, “employment” does not include service as a transcriber of depositions, court proceedings, and hearings performed away from the office of the person, firm, or association obligated to produce a transcript of these proceedings.

## Corporations Code Sections of the Moscone-Knox Act Relevant to Professional Corporations

### 13400.

This part shall be known and may be cited as the “Moscone-Knox Professional Corporation Act.”

### 13401.

As used in this part:

(a) “Professional services” means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) “Professional corporation” means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry shall not be required to obtain a certificate of registration in order to render those professional services.

(c) “Foreign professional corporation” means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) “Licensed person” means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(e) “Disqualified person” means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

**13401.3.**

As used in this part, “professional services” also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).

**13401.5.**

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation. This section does not limit employment by a professional corporation designated in this section of only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section.

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.

(9) Licensed acupuncturists.

(10) Naturopathic doctors.

- (11) Licensed professional clinical counselors.
- (12) Licensed physical therapists.
- (b) Podiatric medical corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (8) Licensed physical therapists.
- (c) Psychological corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed chiropractors.
- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.
- (10) Licensed professional clinical counselors.
- (d) Speech-language pathology corporation.
- (1) Licensed audiologists.
- (e) Audiology corporation.
- (1) Licensed speech-language pathologists.
- (f) Nursing corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.

- (3) Licensed psychologists.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed physician assistants.
- (8) Licensed chiropractors.
- (9) Licensed acupuncturists.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (g) Marriage and family therapist corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed clinical social workers.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (8) Licensed professional clinical counselors.
- (h) Licensed clinical social worker corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed marriage and family therapists.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (8) Licensed professional clinical counselors.
- (i) Physician assistants corporation.
- (1) Licensed physicians and surgeons.

- (2) Registered nurses.
- (3) Licensed acupuncturists.
- (4) Naturopathic doctors.
- (j) Optometric corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (k) Chiropractic corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage and family therapists.
- (7) Licensed clinical social workers.
- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.
- (10) Licensed professional clinical counselors.
- (l) Acupuncture corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage and family therapists.

- (7) Licensed clinical social workers.
- (8) Licensed physician assistants.
- (9) Licensed chiropractors.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (m) Naturopathic doctor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed physician assistants.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Licensed physical therapists.
- (8) Licensed doctors of podiatric medicine.
- (9) Licensed marriage and family therapists.
- (10) Licensed clinical social workers.
- (11) Licensed optometrists.
- (12) Licensed professional clinical counselors.
- (n) Dental corporation.
- (1) Licensed physicians and surgeons.
- (2) Dental assistants.
- (3) Registered dental assistants.
- (4) Registered dental assistants in extended functions.
- (5) Registered dental hygienists.
- (6) Registered dental hygienists in extended functions.
- (7) Registered dental hygienists in alternative practice.
- (o) Professional clinical counselor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.

- (3) Licensed clinical social workers.
- (4) Licensed marriage and family therapists.
- (5) Registered nurses.
- (6) Licensed chiropractors.
- (7) Licensed acupuncturists.
- (8) Naturopathic doctors.
- (p) Physical therapy corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed acupuncturists.
- (4) Naturopathic doctors.
- (5) Licensed occupational therapists.
- (6) Licensed speech-language therapists.
- (7) Licensed audiologists.
- (8) Registered nurses.
- (9) Licensed psychologists.
- (10) Licensed physician assistants.

**13402.**

(a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

**13403.**

The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

**13404.**

A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

**13404.5.**

(a) A foreign professional corporation may qualify as a foreign corporation to transact intrastate business in this state in accordance with Chapter 21 (commencing with Section 2100) of Division 1. A foreign professional corporation shall be subject to the provisions of the General Corporation Law applicable to foreign corporations, except where those provisions are in conflict with or inconsistent with the provisions of this part. The statement and designation filed by the foreign professional corporation pursuant to

Section 2105 shall contain a specific statement that the corporation is a foreign professional corporation within the meaning of this part.

(b) No foreign professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which that corporation proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code expressly authorizing those professional services to be rendered by a foreign professional corporation.

(c) If the California board, commission, or other agency that prescribes the rules or regulations governing a particular profession either now or hereafter requires that the shareholders of the professional corporation bear any degree of personal liability for the acts of the corporation, either by personal guarantee or in some other form that the governing agency prescribes, the shareholders of a foreign corporation that has been qualified to do business in this state in the same profession shall, as a condition of doing business in this state, be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, as is prescribed by the governing agency for shareholders of a California professional corporation rendering services in the same profession.

(d) Each application by a foreign professional corporation to qualify to do business in this state shall contain the following statement:

“The shareholders of the undersigned foreign professional corporation shall be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, in California as is from time to time prescribed by the agency governing the profession in this state for shareholders in a California professional corporation rendering services in the same profession. This application accordingly constitutes a submission to the jurisdiction of the courts of California to the same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business in this state.”

#### **13405.**

(a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in

this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

#### **13406.**

(a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

#### **13407.**

Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified

shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

#### **13408.**

The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

#### **13408.5.**

No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting,

kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Health Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

**13409.**

(a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign

professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

**13410.**

(a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

- (1) Being a shareholder, director, officer, or employee of the corporation.
- (2) Rendering services in any profession in which he or she is a disqualified person.
- (3) Participating in the management of the corporation.
- (4) Sharing in the income of the corporation.

## California Laws & Authority Related to Collection from Attorneys

### California Code of Civil Procedure Section 2025.510 (excerpt)

(h)(1) The requesting attorney or party appearing in propria persona shall timely pay the deposition officer or the entity providing the services of the deposition officer for the transcription or copy of the transcription described in subdivision (b) or (c), and any other deposition products or services that are requested either orally or in writing.

(2) This subdivision shall apply unless responsibility for the payment is otherwise provided by law or unless the deposition officer or entity is notified in writing at the time the services or products are requested that the party or another identified person will be responsible for payment.

(3) This subdivision does not prohibit or supersede an agreement between an attorney and a party allocating responsibility for the payment of deposition costs to the party.

(4) The requesting attorney or party appearing in propria persona, upon the written request of a deposition officer who has obtained a final judgment for payment of services provided pursuant to this subdivision, shall provide to the deposition officer an address that can be used to effectuate service for the purpose of Section 708.110 in the manner specified in Section 415.10.

(i) For purposes of this section, “deposition product or service” means any product or service provided in connection with a deposition that qualifies as shorthand reporting, as described in Section 8017 of the Business and Professions Code, and any product or service derived from that shorthand reporting.

## **State Bar Statement to DRA**

In the past, the State Bar had not considered an attorney's failure to pay court reporter fees as grounds for discipline unless there were additional acts of unethical conduct by the attorney. Rather, the Bar had treated such stand-alone complaints to be private collection issues.

It is the DRA's understanding, however, that the Office of the Chief Trial Counsel of the State Bar considers an attorney's willful or intentional failure to obey statutes, court orders, or court rules as potential grounds for disciplinary action against the attorney's license.

So, for example, the Bar may enforce complaints where the attorney has failed to pay court reporter fees and violated a court order during the court reporter's efforts to collect payment. Enforcement action may be appropriate where a civil judgment is obtained and the attorney failed to appear at a debtor's examination or where there is evidence that the attorney's client had advanced funds to pay for vendor services.

Please note that the Bar's role is not to aid reporters in the collection of debts nor does this alter the Bar's discretion to prioritize its enforcement actions, emphasizing the most egregious cases. The filing of a complaint against an attorney never guarantees the Bar will take action, however, the Bar is now receptive to complaints from court reporters where there is a final court ruling substantiating an attorney's debt for court reporter fees and the attorney is violating the law or court orders.

## NCRA's Code of Professional Ethics

### Code of Professional Ethics Preamble

The President charged COPR in 1985 to review the Code and to evaluate its various sections. Following that charge, COPR revised the Code for brevity and clarity, and the Code was changed to Code of Professional Conduct. In addition, COPR established Mediation Procedures for the Membership in an effort to resolve amicably matters in dispute arising out of the Code of Professional Conduct, and changed the title of the Enforcement and Disciplinary Procedures to Complaint Procedures.

In 1992, the President charged COPR again with the review and updating of the Code and the Standards of Professional Practice. As a result, COPR recommended (1) certain revisions to, and the retitling of, the Code as the Code of Professional Ethics; (2) certain revisions to the Complaint Procedures; (3) the corresponding change of COPR's name to the Committee on Professional Ethics (COPE); (4) the change of the title of the Standards of Professional Practice to the Guidelines for Professional Practice; and (5) the separate publication of the mediation procedures and transcript format guidelines from the Code, the Guidelines and the Complaint and Advisory Opinion Procedures. Although the mediation procedures and transcript format guidelines are still in effect, COPR believed that separate publication serves to streamline and direct proper focus to the Code, the Guidelines, and the Complaint and Advisory Opinion Procedures.

From 1994 to 2001, the Committee on Professional Ethics (COPE) recommended additional changes to the Code, including expanding the Guidelines for Professional Practice, Sections I, II and III. In 1999, the Board charged the CART (Communication Access Realtime Translation) Task Force with the duty of creating ethical guidelines for that sector of the profession and COPE to review those guidelines before acceptance by the Board. As a result of that review, Section I now covers the General Guidelines for the reporter making the official record; Section II covers the Guidelines for the Realtime Reporter in Legal Proceedings; Section III covers the Guidelines for the CART Provider in a Legal Setting; and Section IV covers the Guidelines for the CART Provider in a Nonlegal Setting. In addition, during this time period, changes were made to the Complaint Procedures, Advisory Opinion Procedures, and Transcript Format Guidelines.

The mandatory Code of Professional Ethics defines the ethical relationship the public, the bench, and the bar have a right to expect from a Member. The Code sets out the conduct of the Member when dealing with the user of reporting services and acquaints the user, as well as the Member, with guidelines established for professional behavior. The Guidelines for Professional Practice, on the other hand, are goals which every Member should strive to attain and maintain. Members are urged to comply with the

Guidelines and must adhere to local, state and federal rules and statutes. It should be noted that these guidelines do not exhaust the moral and ethical considerations with which the Member should conform, but provide the framework for the practice of reporting. Not every situation a Member may encounter can be foreseen, but a Member should always adhere to fundamental ethical principles. By complying with the Code of Professional Ethics and Guidelines for Professional Practice, Members maintain their profession at the highest level.

### **Code of Professional Ethics**

#### **A Member Shall:**

1. Be fair and impartial toward each participant in all aspects of reported proceedings, and always offer to provide comparable services to all parties in a proceeding.
2. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the Member shall disclose that conflict or potential conflict.
3. Guard against not only the fact but the appearance of impropriety.
4. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the Member by any of the parties in a proceeding.
5. Be truthful and accurate when making public statements or when advertising the Member's qualifications or the services provided.
6. Refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations.
7. Determine fees independently, except when established by statute or court order, entering into no unlawful agreements with other reporters on the fees to any user.
8. Refrain from giving, directly or indirectly, any gift or anything of value to attorneys or their staff, other clients or their staff, or any other persons or entities associated with any litigation, which exceeds \$100 in the aggregate per recipient each year. Nothing offered in exchange for future work is permissible, regardless of its value. Pro bono services as defined by the NCRA Guidelines for Professional Practice or by applicable state and local laws, rules and regulations are permissible in any amount.
9. Maintain the integrity of the reporting profession.
10. Abide by the NCRA Constitution & Bylaws.

## **DRA's Code of Professional Ethics**

DRA strives to preserve and enhance the freelance stenographic reporting profession, ensure its integrity, and maintain its high standards and impartiality wherever stenographic services are required. DRA is committed to ensuring that the freelance stenographic reporting profession remains a viable and integral part of the legal system.

- (1) Make truthful and accurate public statements when advertising professional qualifications and competence and/or services offered to the public.
- (2) Maintain confidentiality of information which is confidential as a result of rule, regulation, statute, court order, or deposition proceedings.
- (3) Perform professional services within the scope of one's competence.
- (4) Comply with the requirements of all applicable laws, including antitrust laws, for deposition reporters.
- (5) Act without bias toward, or prejudice against, any parties and/or their attorneys.
- (6) Do not enter into or participate in a business arrangement that compromises the impartiality of a certified shorthand reporter, that creates the appearance of impartiality of a certified shorthand reporter, that is improper or that creates the appearance of impropriety of the certified shorthand reporter, including but not limited to a business arrangement in which compensation for reporting services is based upon the outcome of the proceeding or may otherwise create the appearance of partiality.
- (7) Do not give, directly or indirectly, any gift to attorneys or their staff, other clients or their staff, law firms or any other persons or entities associated with current or future litigation, which exceeds \$100 in the aggregate per recipient each year. Nothing offered in exchange for future work is permissible, regardless of its value.

A membership application may be denied or a member may be expelled, suspended, or sanctioned by the Board of Directors at the discretion of the Board including, but not limited to, when the Board is of the opinion that the applicant for membership, the member, or the company by which the member is employed by has failed to observe DRA's Code of Professional Ethics and rules of conduct or has engaged in conduct prejudicial to the purposes, interests, and effectiveness of the Association. The process for application, expulsion, and suspension of a member is set forth in Article III, Section 12 of the bylaws.