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Why You Need a Court Reporter To Set the Record Straight

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Court reporters—who used to be a regular presence in every courtroom in the state, preserving every word for the record—are now conspicuously absent from many California courtrooms. This change is widespread throughout California, but varies from county to county. Several of California's largest counties, including Los Angeles, San Francisco and San Diego, no longer provide court reporters in either Civil Law & Motion or Civil Trial courtrooms. Privately arranging and paying for court reporters is now the new normal.

California's ongoing budget woes are the primary reason for this change. In 2013 alone, the courts absorbed nearly a half-billion-dollar cut. Chief Justice Tani Cantil-Sakauye has estimated that the courts need at least \$266 million just to tread water this year. The Chief Justice also outlined a Three-Year Blueprint for a Fully Functioning Judicial Branch, which does not even mention the return of reporters to the courtroom. See <http://www.courts.ca.gov/documents/JudicialBranchBlueprint.pdf>.

The court's inability to provide court reporters for civil litigants has serious implications for civil appeals. This is because in the Court of Appeal, there are only three "immutable" rules to remember: "first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two." *Protect Our Water v. County of Merced*, 110 Cal. App. 4th 362, 364 (2003).

Without a court reporter at your trial court proceeding, it will be extremely difficult to prepare an adequate record for appeal. And an inadequate record may be fatal to an appeal and may be grounds for dismissal. *Foust v. San Jose Constr. Co.*, 198 Cal. App. 4th 181, 185-86 (2011) ("In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided.")

In light of these circumstances, the best practice is to arrange privately for a court reporter for all trials and hearings regarding dispositive issues. If you have inadvertently failed to arrange for a private court reporter, ask for a continuance until you can get one to court, even if the

hearing is routine or if you don't expect it to result in a final order. For example, you may attend a demurrer hearing with the expectation that the demurrer will be denied or sustained with leave to amend. If the court instead sustains the demurrer without leave to amend and enters judgment in your client's favor, that judgment is appealable. If the plaintiff appeals, you have no record of what transpired at the hearing, including if the plaintiff asked for leave to amend at the hearing.

If a hearing occurs without a court reporter, trial courts may approve a "settled statement"—a very detailed narrative summary of an oral proceeding. Cal. Rule of Court 8.137. The settled statement must describe all of the testimony that occurred—if it describes less than all of the testimony, the appellant must state the points to be raised on appeal, and the appeal is limited to those points. Id. This can be a contentious and costly process, as the other side can object to your version of events, and the trial court will have to make a decision—sometimes months after the fact, when memories have faded. In short, settled statements are no real substitute for a reporter's transcript on appeal.

Win or lose the battle in the trial court, without a record on appeal, you risk losing the war. Thus, the burden to set the record straight falls on you.

When making arrangements for a court reporter, keep the following in mind:

- Call the courthouse to confirm whether the county in which you are appearing provides court reporters. The availability of court reporters is changing on a monthly basis, county-by-county. Indeed, sometimes there are variations within a single county, where some departments provide court reporters and others do not. For example, on August 25, 2014, Orange County Superior Court initiated a Court Reporter Pooling Pilot Project, in which court reporters will now only be provided in certain departments and for certain matters.
- The trial court must appoint any private court reporter you arrange as an official court reporter pro tempore. If your private court reporter is on an approved list, then this prior approval is sufficient. If your private court reporter is not pre-approved, you need a written stipulation signed by all parties, in addition to a court order of approval. A Court Reporter Directory listing approved court reporters is typically available on superior court webpages for each county. See <http://www.lasuperiorcourt.org/courtreporter/pdf/CourtReporterDirectory.pdf>.
- Coordinate with opposing counsel and any other parties so that only one court reporter appears at the hearing or trial. Courts generally will not allow multiple court reporters to transcribe proceedings. And this way, the expense can be shared.

- Once you obtain a reporter, ask him or her to consecutively paginate all trial court proceedings, so that you do not have to pay to have them re-numbered on appeal. The certified original trial transcripts can be lodged with the Court of Appeal only if the transcripts are already consecutively paginated.

[Click here](#) to view our county-by-county California Court Reporter Survey.

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