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5 SUPERIOR COURT OF CALIFORNIA

6 COUNTY OF DEL NORTE
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9 In re Findings Concerning Availability
10 of Court Reporters for Del Norte County Superior
11 Court and Standing Order re Electronic Recording
12

STANDING ORDER 25-002

RECORDING OF JUVENILE MATTERS AND
OTHER STATUTORIALLY MANDATED
MATTERS DUE TO COURT REPORTER
SHORTAGE

13 I.

14 FACTUAL BACKGROUND
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16 A. STATEWIDE AND NATIONAL SHORTAGE OF COURT REPORTERS

17 As set forth in the report prepared by the California Trial Court Consortium ("CTCC") dated January 25,
18 2022 entitled, "The Causes, Consequences and Outlook of the Court Reporter Shortage in California and Beyond"
19 there is a shortage of certified shorthand reporters ("CSR") in California and nationally¹. These findings were
20 bolstered by the Judicial Council's January 2024 publication, "Fact Sheet: Shortage of Certified Shorthand Reporters
21 in California."

22 Since 2012, the number of court reporters in the United States has decreased by 20 percent. By 2028, the
23 number of court reporters will have decreased by half. This decrease is largely attributed to attrition in the reporter
24 workforce due to retirement. For example, nationally, 1,120 reporters retire each year, while only 200 new reporters
25 enter the market, a loss of over 80 percent.

26 The reduction of students entering the workforce to become a CSR has impacted court reporter schools
27 nationwide. Between 2012 and 2021, the number of court reporter schools approved by the National Court Reporters

28 ¹ The findings concerning the statewide and national shortage of court reporters summarized herein, and the data which supports those findings, are set forth in the CTCC report and the Judicial Council's fact sheet and are adopted herein by reference.

1 Association reduced from 54 to 26. Students currently enrolled to become CSRs represent only 2.5 percent of the
2 anticipated labor force need².

3 In California, court reporting programs have reduced from 16 in 2011 to 9 in 2021, a 44% decline. The
4 California exam for licensure is also rigorous. Between 2018 and 2021, the dictation passage rate for the exam
5 ranged from 8 to 21 percent. In 2019-20, the Court Reporters Board of California issued licenses to 66 new
6 reporters; in 2020-21, only 39 new court reporters were licensed while millions of new cases were filed. (In FY
7 2021–22, over 4.4 million cases were filed statewide in the superior courts.) No reciprocity exists in California for
8 reporters licensed in other states. Between 2014 and 2021, the total number of licensed court reporters declined
9 from 7,058 to 5,728, of which only 5,043 reside in California.³

10 California courts employ approximately 1,200 full-time equivalent court reporters, and it is estimated that
11 California courts may need an additional 650 full-time reporters. The ever-decreasing number of California-licensed
12 court reporters and difficulty competing with private employers, and one another, in the labor market make reaching
13 these standards seemingly impossible. A vast majority of trial courts have implemented a variety of incentives to
14 recruit and retain court reporters. Incentives include signing bonuses, retention and longevity bonuses, increased
15 salaries, and more - to no avail.

16 Legal changes have also impacted the ability of a court to hire a CSR. In 2019, ABS was adopted
17 establishing limits on the ability of an employer to classify a temporary employee as an independent contractor. This
18 reduced access to freelance reporters willing to work on a part-time or on-call basis for the Court. In addition,
19 changes to the Public Employment Retirement System also impacted retirees, including limiting the number of
20 hours a retired annuitant can work and the date on which a retired annuitant can first commence work. As a result of
21 these changes, access to reporters who might desire to work intermittently or after retirement was reduced or
22 eliminated.

23 Finally, the Legislature limited the ability of a court reporter to appear using remote technology starting in
24 January of 2020 (Government Code§ 69959), in January of 2022 (Code of Civil Procedure§ 367.75 (d)(2)), and
25 again in June of 2022 (Penal Code§ 977 (g)(2)). In conclusion, a court reporter shortage exists both in California and
26 nationally, which is unlikely to be resolved in the immediate future.

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28 ²The findings concerning the statewide and national shortage of court reporters summarized herein, and the data which supports
those findings, are set forth in the CTCC report and the Judicial Council's fact sheet and are adopted herein by *reference*.

³ Judicial Branch of California 2024 Court Statistic Report

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2 **B. COURT REPORTER AVAILABILITY FOR THE DEL NORTE SUPERIOR COURT**

3 Despite its best efforts, Del Norte County Superior Court has not had a full staff of CSRs for many years.
4 To address this problem, the Court has posted hiring advertisements on its website, professional job boards, and
5 various other methods. It has also increased CSR compensation by 12.5% since 2023 and offered sign on bonuses
6 and incentive pay.

7 The Court currently only employed one (1) full-time CSR and has used up to (3) CSRs with less than full-
8 time positions. The Court would employ part-time CSRs, but there have not been any qualified applicants. The only
9 currently CSR employed by the Court is set to retire in December of 2025.

10 Due to the reduction in the number of CSRs the Court restricted the cases in which it would provide
11 reporters. Since then, the Court has only provided reporters in statutorily mandated cases: death penalty proceedings,
12 juvenile proceedings, felonies, and proceedings regarding withdrawal of consent to adopt. To free up CSRs to cover
13 these areas, they are no longer provided in limited civil and family matters, as needed.

14 Overall, the Court is faced with this critical shortage and currently is unable to employ an adequate number
15 of CSRs. And, as with any workforce, there are times when one or more of the Court's CSRs are simply unavailable
16 due to the circumstances of life. In those circumstances, the Court has no choice but to forego having assigned CSRs
17 for matters, even those required by statute, and must record proceedings to preserve an adequate record.

18 **II.**

19 **LEGAL FINDING**

20 **A. THE LEGISLATURE IS PRESUMED TO NOT HAVE INTENDED THE IMPOSSIBLE AND THE**
21 **COURT'S INABILITY TO PROVIDE A CSR IS LEGALLY EXCUSED**

22 The requirement to have CSR in juvenile justice matters is excused due to impossibility or impracticability.
23 "[W]here strict compliance with the terms of a statute is impossible, compliance as near as can be has been
24 permitted on the principle that the law does not require impossibilities." (Board of Supervisors v. McMachon (1990)
25 219 Cal.App.3d 286, 300, quoting 73 Am.Jur.2d, Statute, § p. 278.) Here, despite diligent and significant effort, the
26 Court is unable to provide a CSR in this matter due to the local, statewide, and national shortage of CSRs. However,
27 the Court must continue to fulfill its core judicial functions.
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1 Refusing to proceed with a detention hearing until a CSR is available would have the following results: The
2 Court would fail to hold the detention hearing as soon as possible, as mandated by law. The Court would also lose
3 the power to detain the minor if warranted .

4 If the Court could not proceed with a statutorily mandated hearings, it would fail to meet the strict deadlines and
5 deny legally protected rights. Delay is presumed to be more prejudicial against minors than adult defendants. If the
6 juvenile is detained either through dependency or delinquency, the Court could be obligated to release the juvenile,
7 potentially jeopardizing the safety of the juvenile and/or the community.

8 Waiting until a CSR is available is likely to increase the backlog and worsen the delay for litigants now and in
9 the future. The CSR shortage is more likely to worsen than improve. The Court therefore finds that the statutory
10 obligation to provide a CSR is excused as an impossible or impractical act.

11 **B. STATUTES MANDATING A CSR AT THESE HEARINGS ARE VOID AS APPLIED TO THE**
12 **PRESENT SITUATION DUE TO CONFLICT WITH STATE AND FEDERAL**
13 **CONSTITUTIONAL PROVISIONS**

14 Statutory provisions mandating a CSR at these hearings are invalid as applied to the present situation because
15 those requirements are in conflict with state and federal constitutional provisions. The state and federal constitutions
16 guarantee rights including due process and prompt adjudication. (Cal. Const. , art. I, § 7, 15, 28, 29; U.S. Const., 5th
17 6th, 14th Amends, In re Gault (1967) 387 U.S.1 , Richard N. v. Sup. Ct. (1981) 116 Cal.App.3d 579, 585.) As the
18 CSR shortage is predicted to worsen, delaying hearings until CSRs might be available will simply exacerbate the
19 problem. These litigants, and others, would be more likely to be deprived of their constitutional rights. The Court
20 therefore finds statutory provisions mandating CSR reporting, including but not limited to, Welfare and Institutions
21 Code section 677, are invalid and in conflict with constitutional provisions. (See Punsly v. Ho (2001) 87
22 Cal.App.4th 1099, 1104), internal quotation marks removed : "The practical effect of holding a statute
23 unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly
24 inoperative.")

25 **C. AN ADEQUATE RECORD WILL BE PRESERVED IN THE ABSENCE OF A CSR USING**
26 **MODERN TECHNOLOGY**


27 While balancing interests, due process requires the availability of an adequate record to afford appellate review.
28 Further, the absence of a record can impact the ability of the assigned judicial officer to recall the proceedings,
evidence, or to testimony, or to undertake functions such as preparation of a settled statement. Electronic recording

1 is currently authorized by statute for use in certain matters, including misdemeanor criminal matters, limited
2 jurisdiction matters, traffic and infractions. In the absence of an available CSR, use of electronic recording provides
3 an adequate record to ensure the parties are afforded due process and to permit the Court to fulfill its core function:
4 the administration of justice. Despite statutory limits on the use of electronic recording, due process requires that
5 electronic recording be utilized in the absence of a CSR.

6 **THEREFORE, THE COURT FINDS AND ORDERS:**

- 7 1. The Court has confirmed that the services of an in-person CSR are not available for these proceedings;
- 8 2. By law, the Court is mandated to provide an adequate record to ensure the opportunity for meaningful
9 appellate review in a matter in which the state initiates an action to which a litigant is entitled to due
10 process that may result in the deprivation of liberty or property;
- 11 3. Electronic reporting is authorized by statute for other matters in which the state has initiated action which
12 may result in deprival of liberty or property;
- 13 4. Further delay of these proceedings for the prospect of securing the services of an in-person reporter is not
14 appropriate as such prospect is uncertain and such delay does not serve the interests of justice; and
- 15 5. Electronic reporting will provide the litigants with an adequate record to ensure meaningful appellate review.

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17 IT IS SO ORDERED.

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20 HON. D. DARREN MCELFRISH,
21 Presiding Judge
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