

Statutory Transcription Rates Do Not Apply to Private Court Reporters

TO COPE WITH THE UNPRECEDENTED budget cuts beginning in 2008, some California courts, including Los Angeles, have limited the availability of official reporters for civil proceedings. In these courts, parties are free to arrange for private reporters as long as the reporters are appointed as “official reporters *pro tempore*.”¹ Unlike official reporters employed by the court, official reporters *pro tempore* do not receive employment benefits such as paid time off or health insurance. Their compensation is generally limited to appearance and transcript fees.

In May 2014, attorney Tara Burd filed a class action complaint against Barkley Court Reporters alleging violations of Government Code Sections 69950 (Transcription Fees) and 69954 (Transcripts Prepared with Computer Assistance Fees), which limit the transcription rates that official reporters may charge.² Burd contended that these sections are not limited to official reporters but also apply to private court reporters or official reporters *pro tempore*, such as the Barkley court reporters she hired.

In January 2016, Los Angeles Superior Court Judge Amy D. Hogue rejected Burd’s arguments and granted Barkley’s motion for judgment on the pleadings. The court noted that Article 9 of the Government Code was enacted when the courts were fully staffed with salaried court reporters. The provisions, when written, did not anticipate that salaried court reporters would be eliminated and replaced by private reporters hired by litigants on a case-by-case basis. Nevertheless, a plain reading of Article 9 indicates that the statutory rates govern only court reporters employed by the courts.

Section 69947, which governs the fees set forth in Sections 69950 and 69954, states that “the official reporter shall receive for his services the fees prescribed in this article.”³ By referring only to the official reporter, the legislature intended for the statutory fee provisions to apply only to salaried official reporters and not to private reporters *pro tempore*.⁴ In coming to this conclusion, the court recited six sections of Article 9⁵ that distinguished between official reporters and official reporters *pro tempore*, observing that “[t]he use of these two distinct terms indicates that the Legislature intentionally used the term ‘official reporter *pro tempore*’ to distinguish privately employed court reporters appointed *pro tempore* from official reporters employed by the court.”⁶

The court also rejected the plaintiff’s argument that California Rule of Court 8.130 is rendered ineffective if Sections 69950 and 69954 do not apply to official reporters *pro tempore*. Rule 8.130 governs the filing of reporters’ transcripts on appeals. Among other things, it provides that when a transcript is completed, a reporter must bill each party at the statutory rate.⁷ However, this rule also provides for the court of appeal, on its own or the respondent’s motion, to order the record augmented to include the transcript and makes the appellant responsible for its costs.⁸ Such a rule, therefore, reasonably sets a cap for transcripts that may be compulsory. The court stated that it “does not follow, from this rule, that the Legislature

intended to regulate rates for all transcripts prepared by *pro tempore* reporters in the trial courts ordered by the respective parties to the proceedings.⁹ Finally, the court rejected the plaintiff’s argument that public policy supports regulating the transcription rates of private court reporting firms. Unlike criminal cases, civil litigants do not have a constitutional, statutory, or common law right to court reporting services.¹⁰ Further, the Rules of Court provide for alternative procedures for making a record for appeal.¹¹ The court expressed concern that government regulation of private court reporting firms “compromises strong countervailing public policies favoring free enterprise and com-

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petition,” which may in turn disincentivize highly qualified private reporters from agreeing to serve as official reporters *pro tempore*.¹² Finally, the court noted: “With taxpayers no longer providing official court reporting services to all litigants and private reporters generating their own salaries, insurance and benefits, it is difficult to justify regulating private reporter rates as a matter of public policy.”

Burd has appealed the court’s order so the final word has yet to be reported. ■

¹ See, e.g., Los Angeles Superior Court Policy re: Normal Availability of Official Court Reporters and Privately Arranged Court Reporters (May 1, 2012), available at <http://www.lacourt.org/generalinfo/courtreporter/pdf/CourtReporterPolicy.pdf> [hereinafter LASC Policy]

² Burd v. Barkley Court Reporters, Inc., No. BC556703 (L. A. Super. Ct. Sept. 12, 2014).

³ GOV’T CODE §§69947, 69950, 69954.

⁴ See Klein v. United States, 50 Cal. 4th 68, 80 (2010).

⁵ See GOV’T CODE §§69941, 6944, 69946, 69952(b), 6955(a), 69957.

⁶ See Order Granting Def’s Motion for Judgment on the Pleadings at 5, Burd, No. BC556703 (Jan. 8, 2016) [hereinafter Order]; see also Pasadena Police Officers Assn’ v. City of Pasadena 51 Cal. 3d 564, 576 (1990).

⁷ CAL. R. CT. 8.130(f)(2). The Advisory Committee Comments provide that “[t]he fee for reporter’s transcripts are established by Government Code sections 69950 and 69554.”

⁸ CAL. R. CT. 8.130(a)(4).

⁹ See Order, *supra* note 5, at 9.

¹⁰ See LASC Policy, *supra* note 1.

¹¹ See CAL. R. CT. 8.134, 8.137.

¹² See Order, *supra* note 5, at 10.

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