

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 241 (Umberg)
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Hearing Date: April 20, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Civil actions

DIGEST

This bill grants the Court Reporters Board (CRB) a method for permitting out-of-state deposition reporters to register with and be governed by the CRB; and permits witnesses to testify in court remotely via audiovisual technology under certain circumstances.

EXECUTIVE SUMMARY

Current law does not grant the CRB a means to require the certification of, and to regulate, out-of-state shorthand reporters. This bill provides CRB with that authority and sets forth the procedures for CRB to certify and regulate out-of-state reporters.

Current law does not permit witnesses to appear and testify remotely via audio-visual technology; however, this prohibition has been temporarily suspended by a COVID-19-related emergency order by the Judicial Council. This bill would permit any witness to testify remotely via audiovisual technology that provides a live connection to the court where (1) the parties stipulated to the appearance, or (2) the court grants a motion by one party to permit the remote testimony. The author has agreed to amend the bill to clarify the need for reporting remote testimony and minimum quality standards for the appearance, and to permit the court to halt remote testimony and require an in-person appearance if the court determines it is necessary.

The bill is sponsored by the California Defense Council and Consumer Attorneys of California, and supported by the Court Reporters Board of California, Deposition Reporters Association of California, and the National Court Reporters Association. It is opposed by the California Court Reporters Association, SEIU California, Protect Your Record Project, and three individuals. The bill passed out of the Senate Business, Professions and Economic Development Committee with a 13-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides the following definitions:
 - a) “The practice of shorthand reporting” is “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.” (Bus. & Prof. Code, § 8017.)
 - b) A “shorthand reporting corporation” is a corporation providing professional services 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 comply with the Moscone-Knox Professional Corporations Act (Corp. Code, tit. 1, div. 3, part 4, §§ 13400 et seq.) and other applicable laws and regulations. (Bus. & Prof. Code, § 8040.)
- 2) Establishes the Court Reporters Board (CRB) within the Department of Consumer Affairs to license and regulate certified shorthand reporters and administer the transcript reimbursement fund. The CRB is scheduled to sunset on January 1, 2024. (Bus. & Prof. Code, §§ 8000 et seq.)
- 3) Requires every director, officer, or shareholder and officer of a shorthand reporting corporation to be a licensed provider of shorthand reporting services. (Bus. & Prof. Code, § 8044; Corp. Code, §§ 13401, 13403.)
- 4) Prohibits a shorthand reporting company from doing, or failing to do, any act which would constitute unprofessional conduct under any statute, regulation, or rule that pertains to shorthand reporting. (Bus. & Prof. Code, § 8046.)
- 5) Provides that it constitutes unprofessional conduct for any person licensed under the Shorthand Reporting Act, to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision of the laws pertaining to shorthand reporting corporations, the Moscone-Knox Professional Corporations Act, or any regulations duly adopted under those laws. (Bus. & Prof. Code, § 8042.)
- 6) Specifically prohibits an individual or entity that is not a certified shorthand reporter or shorthand reporting corporation from:
 - a) Seeking compensation for a transcript that does not comport with minimum transcript format standards.
 - b) Seeking compensation for a certified court transcript that does not comport with statutory fee provisions.

- c) Making a transcript available to one party in advance of the other party, or offering or providing a service to only one party.
 - d) Failing to promptly notify a party of a request for preparation of all or any part of a transcript, excerpts, or expedites for one party without the other parties' knowledge. (Bus. & Prof. Code, § 8050(b)-(d).)
- 7) Provides that a violation of the limits set forth in Part 6) are punishable by a civil fine of up to \$10,000, which may be sought in an action brought by the Attorney General, a district attorney, a city attorney, or the CRB. (Bus. & Prof. Code, § 8050(f)-(g).)
- 8) Provides that a party who has provided the requisite notice may appear telephonically in the following proceedings:
 - a) A case management conference, provided that the party has made a good faith effort to meet and confer before the conference and has timely filed and served a case management statement.
 - b) A trial setting conference.
 - c) A hearing on law and motion, except motions in limine.
 - d) A hearing on a discovery motion.
 - e) A conference to review the status of an arbitration or mediation.
 - f) A hearing to review the dismissal of an action.
 - g) Any other hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate. (Code Civ. Proc., § 367.5(b), (e).)
- 9) Provides that, notwithstanding any party's notice of intention to appear telephonically at one of the above proceedings, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management of the particular case. (Code Civ. Proc., § 367.5(c).)
- 10) Provides that personal appearance is required for the following hearings, conferences, and proceedings:
 - a) Trials, hearings, and proceedings at which witnesses are expected to testify.
 - b) Hearings on temporary restraining orders.
 - c) Settlement conferences.
 - d) Trial management conferences.
 - e) Hearings on motions in limine.
 - f) Hearings on petitions to confirm the sale of property under the Probate Code.
 - g) Proceedings on an order to show cause as to why sanctions should not be imposed for violation of a court order, except where specifically permitted by the court.
 - h) Proceedings on an order or citation issued under the Probate Code, except where specifically permitted by the court. (Cal. Rules of Court, rule 3.670(e)-(f).)

- 11) Provides that, if at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance. (Cal. Rules of Court, rule 3.670(g).)
- 12) Provides that the court must ensure that the statements of participants are audible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant; and that all proceedings involving telephonic appearances must be reported to the same extent and in the same manner as if the participants had appeared in person. (Cal. Rules of Court, rule 3.670(n)-(o).)
- 13) Provides, on an emergency basis, that courts may require that judicial proceedings and court operations be conducted remotely, with certain limitations for remote proceedings in criminal proceedings. Conducting proceedings remotely can include the use of video, audio, and telephonic means for remote appearances; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding. The emergency rule authorizing remote appearances will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council. (Cal. Rules of Court, Appendix I, Emergency Rule 3.)

This bill:

- 1) Authorizes an entity that is not a shorthand reporting corporation, wherever incorporated in the United States, to engage in shorthand reporting services if the entity is approved for registration by the CRB after meeting all of the following requirements:
 - a) Paying an annual registration fee in an amount to be determined by the CRB, but not exceeding \$500.
 - b) Designating a CRB-certified reporter-in-charge, who must be a full-time employee of the registered entity, be a resident of California, hold a currently valid California shorthand reporting license with no restrictions, and not be subject to a pending CRB accusation or investigation at the time the entity applies for registration. The reporter-in-charge is responsible to the CRB for an entity's compliance with all specified state laws pertaining to certified shorthand reporting.
 - c) Agreeing in the registration to abide by specified laws, regulations, and standards of practice applicable to businesses that render shorthand reporting services.
- 2) Requires an entity seeking consideration for initial registration to provide the following information to the CRB:
 - a) The name and certificate number of the entity's reporter-in-charge.

- b) Whether the entity, controlling officer or parent of the entity, the entity's reporter-in-charge, or any of its officers, employees, or independent contractors has been subject to any enforcement action relating to the provision of court reporting services by a state or federal agency within five years before submitting the initial registration; if so, the entity must provide the CRB with a copy of the operative complaint(s) with the initial registration.
 - c) Whether the entity, within five years before submitting the registration, has settled or been adjudged to have liability for a civil complaint alleging the entity or the entity's reporter-in-charge engaged in misconduct relating to the provision of court reporting services in excess of \$50,000.
 - d) Any additional documentation the CRB reasonably deems necessary for consideration in the original registration.
- 3) Provides that, within 90 days of receiving a completed application for initial registration, the CRB shall either approve the entity's registration or deny the application upon a finding that a substantial risk would be posed to the public, which shall be subsequently provided to the applicant in writing with specificity as to the basis of that finding.
- 4) Provides that a registration issued by the CRB is valid for one year, at which point an entity may apply for renewal under the same criteria as the initial registration.
- 5) Requires a registered entity, within 30 days of a reporter-in-charge ceasing to act in that capacity, to notify the CRB in writing and propose another certificate holder to take over as the reporter in charge. The replacement reporter-in-charge is subject to approval by the CRB and, if not approved, the entity shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a reporter-in-charge is approved by the board.
- 6) Requires the CRB to revoke the registration of an entity if the CRB determines that the entity engaged in acts, through officers, employees, or independent contractors that are not certificate holders, that are within the scope of practice of a certificate holder, unless otherwise permitted by law; or directed or authorized the reporter-in-charge to violate state laws or regulations pertaining to shorthand reporting or offered financial incentives to the reporter-in-charge for engaging in acts that violate state law.
- 7) Provides that the CRB may revoke, suspend, deny, or restrict a registration, or subject an entity to other disciplinary action as the CRB deems fit for violations of the laws or regulations pertaining to shorthand reporting by the entity's officers, employees, or independent contractors, including the issuance of citations and fines. If an entity's reporter-in-charge's license is suspended or revoked more than twice in a consecutive five-year period, the CRB must consider suspending the registration of an entity for a minimum of one year.

- 8) Prohibits a shorthand reporter from engaging in the practice of shorthand reporting on behalf of any entity that the reporter knows, or should know is not registered with the CRB.
- 9) Requires the CRB to create and make available on its internet website a directory registered entities, as specified, and prohibits the CRB from taking action against a shorthand reporter who reasonably relies on the CRB's directory.
- 10) Requires a court to allow a witness to appear and give testimony by remote electronic means that provide a live audiovisual connection to the court in any trial or hearing where all the parties to the action stipulate to the remote appearance.
- 11) Permits a court to allow a witness to appear and give testimony by remote electronic means that provide a live audiovisual connection to the court in any trial or hearing upon a motion from a party requesting that the witness appear remotely. In ruling on a motion for permission to allow a witness to remotely appear, the court must consider:
 - a) Whether the witness is critical or necessary for the determination of the proceeding or the management or resolution of the action.
 - b) Whether allowing the witness to appear remotely would materially prejudice one or more parties to the action.
 - c) Whether the witness resides more than 100 miles from the place of the proceeding.
 - d) Whether the witness's circumstances would make it impossible or difficult for the witness appear in person, including whether appearing in person would present risks to the witness's health or safety.
- 12) Provides that a witness appearing and giving testimony remotely shall take an oath under penalty of perjury, administered by the court or a person authorized to take testimony in the proceeding or action, as if the witness was appearing in person.
- 13) Provides that, if a court authorizes a witness to appear remotely, the court may order the party or parties who requested or stipulated to the remote appearance to incur the costs of the remote appearance.
- 14) Provides that the bill does not prohibit or supersede a party's ability to seek authorization under Code of Civil Procedure section 2025.260 to take a deposition at a location more distant than required under Code of Civil Procedure section 2025.250.

COMMENTS

1. Author's comment

According to the author:

SB 241, which is one of many bills I am carrying this year to increase efficiency in our courts – something that was badly needed in our State, but has been exacerbated by the COVID pandemic. Specifically, this bill is designed to do two things: First, SB 241 improves efficiency and clarity in the registration of out-of-state Court Reporters. Secondly, it allows remote witnesses in some circumstances.

In regards to the former part of the bill – unclear regulation in court reporting and lack of technological flexibility in the courts are two of the most striking examples that resulted in preventable harm to those seeking access to justice.

Court reporting services are often provided through shorthand reporting corporations. Statute requires these entities to be operated exclusively by licensed professionals. The CRB has statutory authority over licensee-owned shorthand reporting corporations incorporated in California. However, the CRB does not have authority over entities incorporated and operating outside the state. After extensive negotiations with the CRB, professional stakeholders, and foreign corporations, language was drafted to create a new registration program under the CRB to provide explicit oversight over out-of-state corporations.

To ensure that the CRB has clear jurisdiction over these entities in administrative hearings to enforce causes for discipline, SB 241 creates a framework that would require each corporation to designate a California-licensed “reporter-in-charge” to hold responsibility for compliance with California law, based on the “pharmacist-in-charge” model used for regulating pharmacies.

Secondly, SB 241 allows for remote witnesses under certain circumstances. COVID-19 also highlighted unequal treatment for parties and witnesses in civil proceedings. While parties to these actions may appear telephonically, witnesses may still be required to appear in person – even if they only play a minor role in the resolution of proceedings. Witnesses may be forced to appear in person even if they must travel lengthy distances to do so, and even if appearing in person poses a risk to their health or safety. This inequitable practice can impose unnecessary hardship on witnesses and may pose health risks as courts continue to grapple with COVID. However, this is also needed beyond the COVID era due to the innumerable challenges that can arise with requiring in-person witnesses, such as: health concerns, distance, costs, & scheduling.

Existing law authorizes a party in a civil case to appear by telephone at specified conferences, hearings, and proceedings, if the party has provided notice, unless the court determines that a personal appearance would materially assist in the determination of the proceeding or in the effective management or resolution of the particular case. SB 241 changes current law by saying that the court has to allow remote testimony if both the parties agree by stipulation. Additionally, the bill changes current law by saying if one party motions that their witness be remote, then the court shall grant that motion based upon a balancing-factor test outlined in the bill.

2. The state of the law on remote testimony and the COVID-19 induced civil case backlog

As the author's statement notes, this bill contains two subjects: an expansion of the CRB's authority to permit the certification and regulation of out-of-state court reporters, and a provision allowing witness to appear and give testimony at trials under specified circumstances. For jurisdictional reasons, this analysis does not address the provisions relating to the CRB, and incorporates by reference the analysis by the Senate Committee on Business, Professions and Economic Development on those provisions.

With respect to witnesses appearing and giving testimony remotely through audiovisual means providing a live connection – such as videoconferencing applications like WebX and Zoom – current non-emergency law does not permit any remote testimony. The Legislature has authorized *telephonic* appearances in specified proceedings, such as case management conferences, hearings on motions, and hearings to review the dismissal of an action, and given the Judicial Council the discretion to provide for telephonic appearances in additional types of proceedings.¹ The Judicial Council's rules generally prohibit parties from appearing telephonically at a trial or proceeding where testimony will be given, unless the court determines that a telephonic appearance is appropriate, but it does not appear that these rules are applied to permit the testifying party to give remote testimony.² Both the statute and the rules authorizing telephonic appearances contain provisions permitting the court to require an in-person appearance if it determines an in-person appearance is necessary for, or would materially assist in, the determination of the matter.³

Anecdotally, some courts have permitted certain witnesses to appear remotely via audiovisual applications even in the absence of a clear authorizing statute. According to information received by this Committee, remote testimony was virtually always permitted only where all parties stipulated to the remote testimony and where the witness was not testifying on a matter central to the case. It is unknown how many

¹ Code Civ. Proc. § 367.5(b), (e).

² Cal. Rules of Court, rule 3.670(e), (f).

³ Code Civ. Proc., § 367.5(c); Cal. Rules of Court, rule 3.670(g).

courts permitted this practice before the COVID-19 pandemic brought on a sea change in how courts conduct their operations.

With the onset of the COVID-19 pandemic, courts had to pivot to remote proceedings in order to process cases while still complying with state and local health and safety orders. Emergency Rule 3, adopted by the Judicial Council on April 6, 2020, authorizes courts to require judicial and court operations to be conducted remotely, which can include the use of video, audio, and telephonic means for appearances, remote interpreting, and remote reporting and recording to make an official record.⁴ The rule requires the consent of the defendant to conduct proceedings remotely in criminal proceedings, but requires no party consent in civil proceedings.⁵

Under Emergency Rule 3, most of California's superior courts moved to holding at least some proceedings remotely.⁶ Some courts have even adopted procedures for remote trials.⁷ Emergency Rule 3 is set to sunset 90 days after the Governor lifts the COVID-19 state of emergency, or upon amendment or revision by the Judicial Council.⁸

While remote proceedings prevented civil law from coming to a complete standstill during the pandemic, there nevertheless remains an enormous civil case backlog due to the COVID-19-induced slowdowns. As this Committee heard at its joint informational hearing with the Assembly Judiciary Committee on February 23, 2021, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward*, virtually all civil case types in virtually all counties have been substantially slowed down by the constraints of the pandemic.⁹ According to data provided by the Judicial Council, civil and criminal case dispositions were down more than 49 percent during the first ten months of the pandemic than they were during the same ten-month period in 2019.¹⁰ The effects of this backlog are likely to last for years.

Remote proceedings have also presented their own problems. As explained in greater detail in the background paper for the February 23, 2021, informational hearing –

⁴ Cal. Rules of Court, Appendix I, Emergency Rule 3; California Courts Newsroom, *Judicial Council Adopts New Rules to Lower Jail Population, Suspend Evictions and Foreclosures* (Apr. 6, 2020), available at <https://newsroom.courts.ca.gov/news/judicial-council-adopts-new-rules-lower-jail-population-suspend-evictions-and-foreclosures> [last visited Apr. 7, 2021].

⁵ See Cal. Rules of Court, Appendix I, Emergency Rule 3(a)(2).

⁶ See California Courts Newsroom, *Court Services and Operations*, <https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations> [last visited Apr. 7, 2021] (all but four counties report remote proceedings).

⁷ E.g., Superior Court of California, County of Orange, *Transition to Zoom for Remote Civil Court Trials Beginning February 16, 2021* (rev. Feb. 11, 2021), available at <https://www.occourts.org/media-relations/civil.html> [last visited Apr. 7, 2021].

⁸ Cal. Rules of Court, Appendix I, Emergency Rule 3(b).

⁹ See California State Assembly Media Archives, *Joint Hearing Assembly Judiciary and Senate Judiciary, Tuesday, February 23rd, 2021*, <https://www.assembly.ca.gov/media/joint-hearing-assembly-judiciary-senate-judiciary-20210223/video> [last visited Apr. 7, 2021].

¹⁰ *Trial Court Budget: \$50 Million COVID-19 Backlog Funding*, Report to the Judicial Council, Item 21-21-016 (Jan. 12, 2021).

incorporated here by reference – disparities in access to the internet, or access to high-quality service, have made remote appearances functionally impossible for some litigants. Most of the audiovisual applications used by courts have sound-quality issues, particularly when participants have background noise at their remote locations; this can make it difficult or impossible for court translators and reporters to accurately translate or record the proceedings, which harms participants and prevents the creation of an accurate record. Remote proceedings also present risks of witness coaching, tampering, and intimidation, as seen in the dramatic case of a preliminary hearing that was continued when the prosecutor figured out that the defendant, accused of assault, was appearing remotely from the same apartment as the victim.¹¹

3. This bill would allow remote testimony by stipulation, or by motion where deemed appropriate by the court

This bill would establish two permanent methods through which a witness can appear and give testimony through remote audiovisual technology providing a live connection to the court. First, the bill permits any witness to give remote testimony if all the parties to the action stipulate to the remote appearance; the court does not have the discretion to deny such a stipulation. Second, the bill permits a party to request remote testimony by motion. In deciding whether to grant the motion, the court should consider (1) whether the witness is critical or necessary for the determination of the proceeding or the management or resolution of the action; (2) whether allowing the witness to appear remotely would materially prejudice one or more of the parties to the action; (3) whether the witness resides more than 100 miles from the place of the proceeding; and (4) whether the witness's circumstances would make it impossible or difficult for the witness to appear in person, including whether appearing in person would present risks to the witness's health or safety. The bill provides that, under both methods, the remotely appearing witness must take the oath as if in person, and that the court may order the party or parties requesting or stipulating to the remote appearance to incur the costs associated with the appearance. The bill further provides that it does not affect the law governing depositions outside the normal range, as set forth in Code of Civil Procedure section 2025.260.

With respect to the first method – remote appearance by stipulation – the bill would shift the discretion to present remote testimony from the court to the parties. As noted above, even before the COVID-19 pandemic, some courts would permit remote appearances, but many would not. During the COVID-19 pandemic, the balance shifted the other way: in many courts, parties have no choice but to present their cases remotely. This bill would provide that parties could stipulate to present any witness remotely, and that the court has no discretion to reject such a stipulation.

¹¹ E.g., Cherry, *Michigan Zoom hearing adjourned when attorney spots alleged assaulter, victim in same home*, USA Today (Mar. 10, 2021), <https://www.usatoday.com/story/news/nation/2021/03/10/michigan-zoom-court-hearing-adjourned-defendant-victim-same-home/6936887002/> [last visited Apr. 7, 2021].

With respect to the second method – remote appearance by motion – the bill would retain an element of judicial discretion in the form of permitting the court to grant or deny a party’s motion for remote testimony. The bill sets forth factors that the court should consider in deciding whether to grant such a motion, which focus on whether the remote appearance would be prejudicial to the non-moving parties or to the witness. Presumably, courts would be more likely to grant a motion to have an incidental witness, such as a custodian of witness, testify remotely than a key eyewitness; however, the enumerated factors allow the court to make its ruling based on the specific facts of the case.

The bill does not, as currently drafted, provide specifications for reporting remote testimony as part of the official record, minimum standards for the quality of the audiovisual connection to the court, or any means by which the court can end a remote appearance and require a witness to appear in person if it appears the interests of justice so require. As discussed above, litigants, translators, and court staff have had mixed experiences with remote court proceedings, a fact also noted by opponent of the bill SEIU of California. While one hopes all parties would stipulate to stop a remote witness whose testimony was plagued by technical issues or could not be picked up by the court reporter, the bill does not make clear that a stipulating party can withdraw its stipulation for a remote witness, and the bill does not give the court any discretion to decide that a remote appearance is not working out or is not producing an adequate record. To provide a measure of protection for the parties and for the record – which is essential to a party if they need to appeal – the author has agreed to amendments to address these issues.

4. Amendments

As noted above, the bill does not currently contain protections for the integrity of remote testimony akin to those in place for telephonic appearances. Without such protections, a court would be powerless to require in-person testimony in circumstances where it becomes clear that a remote appearance is insufficient, due to quality issues with the audiovisual technology or other concerns about the integrity of the testimony. The author has therefore agreed to the following amendments, modeled after similar provisions for telephonic appearances:

Amendment 1

On page 8, between lines 5 and 6, insert

“(d) Any part of a proceeding in which a witness appears remotely shall be recorded, including by a court reporter if applicable, to the same extent and in the same manner as if the witness had appeared in person.

(e) The court shall ensure that the testimony of a witness appearing remotely is audible to all other participants and the court staff, and that a witness appearing remotely is clearly visible on the live audiovisual connection to the court.

(f) If, at any time during a witness's remote appearance, the court determines that a personal appearance is necessary, the court may continue the matter and require the witness to appear and testify in person. The court may make this determination on its own motion or on a motion from any party to the action."

Amendment 2

On page 8, in line 6, strike out "(d)" and insert "(g)"

Amendment 3

On page 8, in line 10, strike out "(e)" and insert "(h)"

6. Arguments in Support

According to sponsor Consumer Attorneys of California:

In light of the current crisis in the courts due to the pandemic closures and ever-growing backlog, we must embrace technological efficiencies. These efficiencies will also be critical even after the crisis subsides. Often witnesses that are not primary or critical must appear in court to testify at trial. Witnesses line the halls of the courts, waiting half a day or an entire day to testify although they are not a primary witness in the case. For example, a non-primary witness could be a medical provider testifying to treating the injured plaintiff or a first responder testifying as to the condition of the passengers in an auto accident. Due to safety concerns and convenience for the witnesses SB 241 would allow these witnesses to appear by live remote video.

Not only is it an inconvenience to the witnesses to dedicate a day away from work to testify, now with COVID-19 there are safety concerns as well. As we are increasing the usage of remote hearings in order to keep in person court appearances to a minimum, SB 241 will similarly reduce the number of individuals in our court rooms.

Remote live witnesses are currently allowed upon agreement of the parties and judges. SB 241 solidifies this practice in statute to ensure our courts can function efficiently and safely. For these reasons, Consumer Attorneys of California is pleased to co-sponsor SB 241.

5. Arguments in Opposition

According to bill opponent SEIU of California:

Our experience during the pandemic with remote appearances has given us great cause for concern as it relates to the ability of our court reporters to

maintain the sanctity of the official verbatim record, and as it relates to equal access to justice.

We have all experienced any manner of ineffective technology from dropped calls, to unintelligible speech, to people talking over one another, to facilitators not recognizing those who wish to speak, throughout the pandemic. Imagine now, a court reporter attempting to hear and transcribe what witnesses are saying over this faulty technology; imagine a court reporter trying to get the attention of the judge that there are technological or audibility concerns, and not being able to; imagine that you are statutorily obligated with maintaining the sanctity of the verbatim record, and are unable to fulfill the responsibilities with which you are tasked. Just a few of the myriad examples of problems we've experienced under the existing emergency order, which, it should be noted is not slated to expire until six months after the end of the pandemic. In one court house, at 4:00 each day, all calls drop. In one instance we had a witness who slowly and conscientiously stated and then repeated each word, one by one, and the court reporter still couldn't make out what was being said. Imagine when we go back to jury trials, and a court reporter is trying to hear a remote witness, even with non-faulty technology, but over the din of 50 people in a court room. It should be noted that there has been at least one situation of reported witness tampering, resulting in a case having to be halted in another state...

We recognize that there may be benefits to establishing some permanency to remote access after the pandemic is over, and after we have had the chance to look back at all of the substantive and complicated problems which must be addressed. However, now, while the emergency order is still in place, and while we are still in the midst of the pandemic, is not the time. We urge the committee instead to establish a working group to look at this and all issues related to remote proceedings, so that whatever is implemented permanently does not inadvertently exacerbate the dynamic of two separate and unequal justice systems.

SUPPORT

California Defense Counsel (co-sponsor)
Consumer Attorneys of California (co-sponsor)
Court Reporters Board of California
Deposition Reporters Association of California
National Court Reporters Association

OPPOSITION

California Court Reporters Association
Protect Your Record Project
SEIU of California

Three individuals

RELATED LEGISLATION

Pending Legislation:

SB 538 (Rubio, 2021) permits a party or witness in a hearing on a petition for a domestic violence restraining order to appear remotely, and requires each superior court to develop rules and instructions for such remote appearances. SB 538 is pending before the Senate Public Safety Committee.

AB 1093 (Jones-Sawyer, 2021) authorizes California notaries public to register as remote online notaries public, and requires the Secretary of State to adopt rules necessary to implement the process. AB 1093 is pending before the Assembly Judiciary Committee.

AB 583 (Chiu, 2021) permits a county clerk to issue a marriage license or solemnize a marriage via remote technology. AB 583 is pending before the Assembly.

Prior Legislation:

AB 1469 (Low, 2020) would have established certification and employment requirements corporations providing court reporting services similar to the ones established in this bill, and made other technical and clarifying changes. AB 1469 was held in the Senate Appropriations Committee.

AB 1520 (Low, Ch. 463, Stats. 2019) extended the operation of the CRB until January 1, 2024; extended the operation of the Transcript Reimbursement Fund and the provisions relating to reimbursement from the fund by the board until January 1, 2024; and made changes to the laws regarding shorthand reporting in response to issues raised during sunset review.

AB 2084 (Kalra, Ch. 648, Stats. 2018) prohibited specified individuals or entities who provide, or contract to provide, shorthand reporting services from engaging in specified business practices; authorized the Attorney General, a city attorney, district attorney or the CRB to bring a civil action for a violation and permits a civil fine up to \$10,000 for a violation; and adds intent language related to the regulation of licensed shorthand reporters and shorthand reporting corporations.

AB 1660 (Kalra, 2017) would have authorized, beginning January 1, 2019, an individual or entity to engage in the business of providing or arranging for shorthand reporting services if specified conditions are met, including if an individual or entity is registered with the CRB; provided a definition of a "court reporter provider", as specified; and, placed certain prohibitions on engaging in the practice of shorthand reporting with an individual or entity that is not registered with the CRB. AB 1660 was vetoed by

Governor Brown, who did not want to sign the bill while it could affect matters under review by an appellate court.

SB 484 (Roth, 2017) would have made it unlawful for a person who is employed by or who independently contracts with an entity that arranges for deposition officers to give or receive any gift, incentive, reward, or anything of value as inducement or compensation in connection with the provision of services by a deposition officer. Although these practices are already prohibited under California regulatory law for covered persons and entities, the bill would have empowered the Attorney General, a district attorney, or a city attorney to enforce this professional standard of conduct against all specified persons engaging in this conduct. SB 484 died in the Assembly Judiciary Committee.

AB 2192 (Salas, Ch. 567, Stats. 2016) extended to January 1, 2020, the provisions establishing the CRB, its executive officer, and the Transcript Reimbursement Fund (TRF), and raised the statutory fee limit for the license renewal fee, as recommended by the legislative sunset review committee.

SB 270 (Mendoza, 2015) would have would have provided the CRB with broad powers of enforcement, as specified, over foreign or domestic corporations that offer or arrange for shorthand reporting services, as specified, in California; and clarified that the provisions of the bill would not regulate the setting of negotiated transcript fees and reasonable fees for non-contracting parties. SB 270 died in the Assembly.

AB 1461 (Ruskin, 2009) would have prohibited a firm, partnership, sole proprietorship, or other business entity providing or arranging for shorthand reporting services, from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. AB 1461 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 13, Noes 0)
