

RESOLUTION 07-01-2021

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 70641 as follows:

1 § 70641

2 (a) In the City and County of San Francisco, the Clerk of the Superior Court may impose
3 a reasonable surcharge to print paper copies of any electronically filed document for which the
4 Uniform Local Rules of Court of the Superior Court of San Francisco would otherwise require
5 the delivery of a paper courtesy copies to the Court by the party, to the extent that a party
6 requests that the Court print courtesy copies in lieu of the party delivering paper courtesy copies
7 to the Court. Notwithstanding this section, parties may deliver paper courtesy copies to the Court
8 in lieu of paying this surcharge.

9 (b) If the Court adopts the procedure described in subdivision (a), for purposes of that
10 subdivision:

11 (i) The amount of the reasonable surcharge shall be determined by the Clerk of the Court
12 from time to time on a per page basis taking into account all of the costs of printing the
13 document, which amount shall be multiplied by the number of pages necessary to print two
14 copies of the document. The Court shall post the amount of the reasonable surcharge in a
15 conspicuous place in its courthouses and on its website.

16 (ii) The Presiding Judge of the Court shall designate the Court personnel authorized to
17 print the copies described in subdivision (a).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Jim Lamping, David Bigeleisen, James Brosnahan, Frank Leidman, Joachim Steinberg, Ciaran O’Sullivan, Ujvala Singh, Alicia Gamez, Melissa Allain, Jeff Heyden

STATEMENT OF REASONS

The Problem (including Existing Law): The San Francisco Superior Court has adopted an electronic filing system; however, the local rules still require parties to deliver paper courtesy copies of pleadings after they have been filed. This is required because hard copies are needed to review certain lengthy pleadings, such as accountings. The current rules require that parties hand deliver the courtesy copies to the Court. In many instances, there are continuances if the courtesy copies are misplaced or otherwise do not find their way to the appropriate court personnel. Additionally, the delivery of these documents requires parties to travel to the courthouse (or arrange for a runner to do so), resulting in an increase in the carbon footprint associated with this process. The Court does not have funding to print all of the pleadings filed with it and may not charge for printing the documents in the absence of an authorizing statute.

The Solution: This proposal would authorize the Court to charge a reasonable fee to those parties who elect to have the Court print their documents in lieu of delivering hard copy courtesy copies to the Court.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: James P. Lamping

RESOLUTION 07-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Gov. Code section 69954, to read as follows:

1 §69954

2 (a) Transcripts prepared by a reporter using computer assistance and delivered on a
3 medium other than paper shall be compensated at the same rate set for paper transcripts, except
4 the reporter may also charge an additional fee not to exceed the cost of the medium or any copies
5 thereof.

6 (b) The fee for a second copy of a transcript on appeal in computer-readable format
7 ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the
8 original transcript shall be compensated at one-third the rate set forth for a second copy of a
9 transcript as provided in Section 69950. A reporter may also charge an additional fee not to
10 exceed the cost of the medium or any copies thereof.

11 (c) The fee for a computer-readable transcript shall be paid by the requesting court, party,
12 or person, unless the computer-readable transcript is requested by a party in lieu of a paper
13 transcript required to be delivered to that party by the rules of court. In that event, the fee shall be
14 chargeable as statute or rule provides for the paper transcript.

15 (d) Any court, party, or person who has purchased a transcript ~~may, without paying a~~
16 ~~further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court~~
17 ~~order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any~~
18 other party or person.

(Proposed new language underlined; language to be deleted stricken)

PROPONENTS: H. Thomas Watson, Barry R. Levy, David M. Axelrad, David S. Ettinger, Lisa Perrochet, John A. Taylor, Robert H. Wright, Jason R. Litt, Karen M. Bray, Brad S. Pauley, Dean A. Bochner, Steven S. Fleischman, Mark A. Kressel

STATEMENT OF REASONS

The Problem: AB 3125 (1991), which enacted Gov. Code section 69954 and Code of Civil Procedure section 269, stated that “[t]he purpose of this bill is to allow courts and other parties more access to transcripts in computer-readable form.” (8/17/93 Cal. Bill Analysis, Senate Com. on Judiciary; accord, 8/19/93 Cal. Bill Analysis, Senate Floor.) Electronic transcripts have always been useful; they are now essential. The COVID pandemic has forced attorneys and courts to work remotely, and many will continue to do so after the pandemic subsides. While existing law allows litigants to secure electronic transcripts, it prohibits them from *sharing* them with others without the reporter’s permission. This delays access to transcripts and often increases the cost of litigation, such as when reporters (who have already been fully compensated) demand additional payment for granting permission to share transcripts. This statutory prohibition against sharing transcripts is in tension with California Rules of Court, rule 8.153, which *mandates lending* the record on appeal to another litigant upon a timely request.

The proposed amendment eliminates that tension, and also promotes access to justice for litigants who have difficulty paying for transcripts but do not qualify for waiver of the transcript fee.

The Solution: Amend subdivision (d) of Gov. Code section 69954 so that it only prohibits persons who have purchased a reporters' transcript from selling it to others, but does not prohibit the sharing of transcripts. The deletion of the language regarding not having to pay a further fee to the reporter when reproducing a copy etc., is not intended to create an inference that any fee would be owed in those circumstances. This amendment help realize the purpose of allowing the "courts and other parties more access to transcripts in computer-readable form." Because the reporter will have already been paid in full for preparing the electronic transcript, there is no reason why it should not be freely shared without any delay or additional cost.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: H. Thomas Watson

RESOLUTION 07-03-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code 905.2, to read as follows:

1 § 905.2

2 (a) This section shall apply to claims against the state filed with the Department of
3 General Services except as provided in subparagraph (B) of paragraph (2) of subdivision (b).

4 (b) There shall be presented in accordance with this chapter and Chapter 2 (commencing
5 with Section 910) all claims for money or damages against the state:

6 (1) For which no appropriation has been made or for which no fund is available but the
7 settlement of which has been provided for by statute or constitutional provision.

8 (2) (A) For which the appropriation made or fund designated is exhausted.

9 (B) Claims for reissuance of stale, dated, or replacement warrants shall be filed with the
10 state entity that originally issued the warrant and, if allowed, shall be paid from the issuing
11 entity's current appropriation or from any funds that are otherwise legally available to the entity
12 to be used for that purpose. If an issuing entity determines that it is unable to issue a replacement
13 warrant from its current appropriation or from any funds that are otherwise legally available to
14 the entity to be used for that purpose, that entity may submit a request to include a claim for
15 reimbursement of that warrant in a claims bill referenced in Section 14659.10 pursuant to a
16 process prescribed by the Department of General Services.

17 (3) For money or damages on express contract, or for an injury for which the state is
18 liable.

19 (4) For which settlement is not otherwise provided for by statute or constitutional
20 provision.

21 (c) Claimants shall pay a filing fee of twenty-five dollars (\$25) for filing a claim
22 described in subdivision (b), except for claims for reissuance of stale, dated, or replacement
23 warrants as described in subparagraph (B) of paragraph (2) of subdivision (b). This fee shall be
24 deposited into the Service Revolving Fund and shall only be available for the support of the
25 Department of General Services upon appropriation by the Legislature.

26 (1) The fee shall not apply to the following persons:

27 (A) Persons who are receiving benefits pursuant to the Supplemental Security Income
28 (SSI) and State Supplementary Payment (SSP) programs (Article 5 (commencing with Section
29 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code), the California
30 Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2
31 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code),
32 the federal Supplemental Nutrition Assistance Program (SNAP; 7 U.S.C. Sec. 2011 et seq.), or
33 Section 17000 of the Welfare and Institutions Code.

34 (B) Persons whose monthly income is 125 percent or less of the current monthly poverty
35 line annually established by the Secretary of California Health and Human Services pursuant to
36 the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended. If their
37 income is less than \$100 above 125 percent of the current monthly poverty line, the fee assessed
38 shall be 25 percent of the difference between their income and 125 percent of the current
39 monthly poverty line.

40 (C) Persons who are sentenced to imprisonment in a state prison or confined in a county
41 jail, or who are residents in a state institution and, within 90 days prior to the date the claim is
42 filed, have a balance of one hundred dollars (\$100) or less credited to the inmate's or resident's
43 trust account. A certified copy of the statement of the account shall be submitted. If the inmate's
44 or resident's trust account, within 90 days before the date the claim is filed, has a balance greater
45 than \$100 and less than \$200, the fee assessed shall be 25 percent of the difference between the
46 inmate's or resident's balance and \$100.

47 (2) Any claimant who requests a fee waiver shall attach to the application a signed
48 affidavit requesting the waiver and verification of benefits or income and any other required
49 financial information in support of the request for the waiver.

50 (3) Notwithstanding any other law, an applicant shall not be entitled to a hearing
51 regarding the denial of a request for a fee waiver.

52 (d) The time for the Department of General Services to determine the sufficiency,
53 timeliness, or any other aspect of the claim shall begin when any of the following occur:

54 (1) The claim is submitted with the filing fee.

55 (2) The fee waiver is granted.

56 (3) The filing fee is paid to the department upon the department's denial of the fee waiver
57 request, so long as payment is received within 10 calendar days of the mailing of the notice of
58 the denial.

59 (e) Upon approval of the claim by the Department of General Services, the fee shall be
60 reimbursed to the claimant, except that no fee shall be reimbursed if the approved claim was for
61 the payment of an expired warrant. Reimbursement of the filing fee shall be paid by the state
62 entity against which the approved claim was filed. If the claimant was granted a fee waiver
63 pursuant to this section, the amount of the fee shall be paid by the state entity to the department.
64 The reimbursement to the claimant or the payment to the department shall be made at the time
65 the claim is paid by the state entity, or shall be added to the amount appropriated for the claim in
66 an equity claims bill.

67 (f) The Department of General Services may assess a surcharge to the state entity against
68 which the approved claim was filed in an amount not to exceed 15 percent of the total approved
69 claim. The department shall not include the refunded filing fee in the surcharge calculation. This
70 surcharge shall be deposited into the Service Revolving Fund and may be appropriated in support
71 of the department in the annual Budget Act.

72 (1) The surcharge shall not apply to approved claims to reissue expired warrants.

73 (2) Upon the request of the department in a form prescribed by the Controller, the
74 Controller shall transfer the fees from the state entity's appropriation to the appropriation for the
75 support of the department. However, the department shall not request an amount that shall be
76 submitted for legislative approval pursuant to Section 14659.10.

77 (g) The filing fee required by subdivision (c) shall apply to all claims filed after June 30,
78 2004, or August 16, 2004. The surcharge authorized by subdivision (f) may be calculated and
79 included in claims paid after June 30, 2004, or August 16, 2004.

80 (h) This section shall not apply to claims made for a violation of the California
81 Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of
82 Division 1 of Title 2).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): In 2004, a \$25 fee was enacted for those who file a California Government Claims Form, or a form to preserve state-law claims against a governmental entity or employee (SB 1102). A year later, a fee waiver was enacted for those who meet certain conditions (AB 346). Namely, those whose monthly income is under 125% of the “current monthly poverty line,” and inmates whose trust account balance is up to \$100 for the past 90 days. If their monthly income or trust balance is above those thresholds at all, a full \$25 fee is assessed. For these purposes, that renders someone better off with less money. For example, if an inmate’s balance is \$110, paying the full \$25 brings it down to \$85. By contrast, at \$100, the inmate pays \$0. Fee waivers should not be implemented so they make people better off with less money.

The Solution: This resolution implements a sliding scale for the fee assessed on those whose income or balance is just above the threshold. The fee would be 25% of their income or balance above the threshold, until it maxes out at \$25. An inmate with a balance of \$110 would pay \$2.50 instead of \$25 now. An inmate with a \$100 balance or less would still pay \$0. An inmate with a balance of \$200 and above would still pay \$25.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

SB 1102 (2004), AB 2116 (2004), AB 346 (2005), SB 496 (2013).

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 07-04-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Elections Code section 6906, to read as follows:

1 § 6906

2 (a) The electors, when convened, if both candidates are alive, shall vote by ballot for that
3 person for President and that person for Vice President of the United States, who are,
4 respectively, the candidates of the political party which they represent, one of whom, at least, is
5 not an inhabitant of this state.

6 (1) The Secretary of State or designee shall not accept and shall not count an elector’s
7 presidential or vice-presidential ballot if the elector has not marked both ballots, or has marked a
8 ballot in violation of this section.

9 (2) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a
10 ballot marked in violation of this law vacates the office of elector, and creates an absence of the
11 elector under Elections Code section 6905. If the elector cannot physically complete a ballot, the
12 elector may direct another individual in the elector’s presence to complete the ballot.

13 (3) The Secretary of State or designee shall distribute ballots to and collect ballots from
14 an elector newly elected under this section and Elections Code section 6905 and repeat the
15 process under this section of examining ballots, declaring an absence of electors as required, and
16 recording appropriately completed ballots from the newly elected elector until all of California’s
17 electoral votes have been cast and recorded.

18 (4) After the vote of this state’s electors is completed, if the final list of electors differs
19 from any list previously included on a certificate of ascertainment prepared and transmitted
20 under 3 U.S.C. Section 6, the Secretary of State or designee shall immediately prepare an
21 amended certificate of ascertainment and transmit it to the Governor for the Governor’s
22 signature.

23 (5) The Governor shall immediately deliver the signed amended certificate of
24 ascertainment to the Secretary of State or designee and a signed duplicate original of the
25 amended certificate of ascertainment to all individuals entitled to receive this state’s certificate of
26 ascertainment, indicating that the amended certificate of ascertainment is to be substituted for the
27 certificate of ascertainment previously submitted.

28 (6) The Secretary of State or designee shall prepare a certificate of vote. The electors on
29 the final list shall sign the certificate. The Secretary of State or designee shall process and
30 transmit the signed certificate with the amended certificate of ascertainment under 3 U.S.C.
31 Sections 9, 10, and 11.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Like many states, California has a law prohibiting faithless electors, or presidential electors who vote for someone other than the presidential or vice presidential candidates who received the most votes. Unlike many states, a faithless elector's vote in California remains counted as cast, and the faithless elector is instead penalized. Most states with faithless elector laws cancel the votes of faithless electors and replace them. This election showed we cannot take for granted cracks in our institutions. The day the electors officially vote has been a formality for most of our modern history, but this year, it was a day to watch closely. The possibility of electors being threatened into voting for someone else was real, and had the electoral vote count been closer, that possibility is conceivable to have occurred and made the difference. Although penalties exist in California for faithless electors, duress could negate such a penalty, or the threats to not comply might be greater than the penalty for not complying. Preventing the effects of faithless electors is far more important than punishing them.

The Solution: This resolution prohibits counting as cast the votes of faithless electors, and establishes that if an elector votes faithlessly, an absence is automatically created and that elector is replaced with a faithful one. That not only prevents any negative effects of a faithless elector, but it removes any incentive to threaten them because of the impossibility that the threat can amount to anything.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 07-05-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 11517, to read as follows:

1 § 11517

2 (a) A contested case may be originally heard by the agency itself and subdivision (b) shall
3 apply. Alternatively, at the discretion of the agency, an administrative law judge may originally
4 hear the case alone and subdivision (c) shall apply.

5 (b) If a contested case is originally heard before an agency itself, all of the following
6 provisions apply:

7 (1) An administrative law judge shall be present during the consideration of the case and,
8 if requested, shall assist and advise the agency in the conduct of the hearing.

9 (2) No member of the agency who did not hear the evidence shall vote on the decision.

10 (3) The agency shall issue its decision within 100 days of submission of the case.

11 (c) (1) If a contested case is originally heard by an administrative law judge alone, he or
12 he shall prepare within 30 days after the case is submitted to him or her a proposed decision in a
13 form that may be adopted by the agency as the final decision in the case. Failure of the
14 administrative law judge to deliver a proposed decision within the time required does not
15 prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the
16 proposed decision, a copy of the proposed decision shall be filed by the agency as a public record
17 and a copy shall be served by the agency on each party and his or her attorney. The filing and
18 service is not an adoption of a proposed decision by the agency.

19 (2) Within 100 days of receipt by the agency of the administrative law judge's proposed
20 decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency
21 fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the
22 proposed decision, the proposed decision shall be deemed adopted by the agency. The agency
23 may do any of the following:

24 (A) Adopt the proposed decision in its entirety.

25 (B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the
26 proposed decision.

27 (C) Make technical or other minor changes in the proposed decision and adopt it as the
28 decision. Action by the agency under this paragraph is limited to a clarifying change or a change
29 of a similar nature that does not affect the factual or legal basis of the proposed decision.

30 (D) Reject the proposed decision and refer the case to the same administrative law judge
31 if reasonably available, otherwise to another administrative law judge, to take additional
32 evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he
33 or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the
34 additional evidence and the transcript and other papers that are part of the record of the prior
35 hearing. A copy of the revised proposed decision shall be furnished to each party and his or her
36 attorney as prescribed in this subdivision.

37 (E) Reject the proposed decision, and decide the case upon the record, including the
38 transcript, or upon an agreed statement of the parties, with or without taking additional evidence.
39 By stipulation of the parties, the agency may decide the case upon the record without including

40 the transcript. The agency shall review the proposed decision, and record, utilizing
41 appellate standards of review. The findings of fact shall be reviewed using the substantial
42 evidence standard; discretionary decisions shall be reviewed for an abuse of discretion; and,
43 the conclusions of law shall be reviewed de novo. Rationale for the agencies' rejection must be
44 in writing with reference to specific evidence and be supported by the record. If the agency acts
45 pursuant to this subparagraph, all of the following provisions apply:

46 (i) A copy of the record shall be made available to the parties. The agency may require
47 payment of fees covering direct costs of making the copy.

48 (ii) The agency itself shall not decide any case provided for in this subdivision without
49 affording the parties the opportunity to present either oral or written argument before the agency
50 itself. If additional oral evidence is introduced before the agency itself, no agency member may
51 vote unless the member heard the additional oral evidence.

52 (iii) The authority of the agency itself to decide the case under this subdivision includes
53 authority to decide some but not all issues in the case.

54 (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its
55 final decision not later than 100 days after rejection of the proposed decision. If the agency elects
56 to proceed under this subparagraph, and has ordered a transcript of the proceedings before the
57 administrative law judge, the agency shall issue its final decision not later than 100 days after
58 receipt of the transcript. If the agency finds that a further delay is required by special
59 circumstance, it shall issue an order delaying the decision for no more than 30 days and
60 specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section
61 11523.

62 (d) The decision of the agency shall be filed immediately by the agency as a public record
63 and a copy shall be served by the agency on each party and his or her attorney.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS:

The Problem (including Existing Law): Various governmental agencies are tasked with the issuing and regulating California's professional licensees. The Administrative Procedures Act, the Government Code, the Business & Professions Code, and the California Code of Regulations collectively govern how these agencies issue professional licenses and discipline licensees.

Once formal disciplinary proceedings are initiated against licensees or license applicants, those individuals have a right to an administrative hearing. The agencies have the discretion to either hear the matter themselves or delegate this authority to an Administrative Law Judge ("ALJ.") When agencies delegate their authority, the ALJ acts as the neutral arbiter of the facts and issues a rational and logical Proposed Decision and Order which is based on the legal principles, facts, and evidence adduced at the hearing.

However, Government Code §11517(c)(2)(E) permits the Boards, Departments, Bureaus and Committees ("Boards") of these licensing agencies to reject the ALJ's Proposed Decision and Order without providing justification or meeting any legal standard. The agencies' board members can override an experienced ALJ's learned application of legal principles and thoughtful weighing of the evidence. Because the licensing agencies may recoup the costs of

handling these administrative cases when any level of discipline is imposed on the licensees or applicants, there is a financial incentive for the Boards to unfairly disregard an ALJ's rational and reasoned Proposed Decision and Order. They have a financial interest to impose harsher discipline, which subverts justice and casts doubt on the legitimacy of proceedings. This subversion is even more egregious given that many of these Board members are individuals with very little to no legal experience or training and have not received any evidence. When this happens, the agency's actions completely undermine the fairness and validity of the entire administrative disciplinary hearing process.

The Solution: The resolution requires government agencies to utilize the appellate standards of review when rejecting the ALJ's Proposed Decision and Order after a hearing on the merits of the case to ensure there is no incorrect or erroneous legal basis for their rejection, and that their rejection is consistent with and supported by the law and facts.

IMPACT STATEMENT

This resolution may require additional statutory changes. This statutory change would require state agencies to adopt conforming changes to applicable sections of the California Code of Regulations and Business and Professions Code.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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