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## **BY HAND**

June 20, 2019

Hon. Miguel Santiago  
Member of the Assembly  
State Capitol, Room 6027  
Sacramento, CA 94249

Re: Opposition to Assembly Bill 1385

Dear Assemblymember Santiago,

The California Academy of Appellate Lawyers is opposed to Assembly Bill 1385 as currently drafted.

The Academy is a nonprofit elective organization of experienced appellate practitioners. Its goals include promoting and encouraging sound appellate practice and procedures designed to ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation.

AB 1385 would, over a less than three-year period, increase by 30 percent or more the cost of reporter's transcripts, including those for appeals. Also, as the Court of Appeal recently explained in *Burd v. Barkley Court Reporters, Inc.* (2017) 17 Cal.App.5th 1037, 1041, the transcription rates that the bill proposes to raise "apply to any court reporter producing a transcript of a civil court proceeding, regardless of whether the reporter is employed by the superior court or privately retained by a party."

**1. An obstacle to equal access to appellate justice.**

To begin with, the Academy shares the concerns expressed by the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association in its June 12, 2019, memorandum about the negative impact that AB 1385 would have on indigent appellate litigants. Without substantial additional resources for the Transcript Reimbursement Fund, the bill will further push out of reach the goal of “equal access to appellate justice in California” that the Supreme Court spoke of in *Jameson v. Desta* (2018) 5 Cal.5th 594, 608.

**2. The need for a fair and accurate fee calculation method.**

Even with an adequate Transcript Reimbursement Fund, the Academy still objects to AB 1385 because it perpetuates an unfair method for calculating a transcript’s costs.

Government Code section 69950, subdivisions (a) and (b), bases transcription fees on set prices for each 100 transcribed words. But the bill leaves untouched subdivision (c) of that statute, which, instead of calculating a transcript fee on an accurate word count, allows a fee determination according to an “estimate or assumption as to the number of words or folios on a typical transcript page.” (See Gov. Code § 27360.5 [“As used in this code, the word ‘folio’ means 100 words”].)

Appellate lawyers have found that the “estimate[s] or assumption[s]” permitted by subdivision (c) can lead to fees significantly higher than would be charged based on actual word counts. Moreover, the “estimate[s] or assumption[s]” are not made known to the public.

“Estimate[s] or assumption[s]” might have been appropriate in the days before computer word processing, but they are no longer justified. Attorneys and even pro per litigants are now required to provide an accurate count, not an estimate, of the number of words in their appellate briefs. (Cal. Rules of Court, rule 8.204(c)(1) [“a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare

the brief”].) The experience of Academy members is that using a computer word count to comply with the rule is not at all burdensome.

If the Legislature is to increase the transcript rate per 100 words, then it should also reform the manner in which the words are counted. This is a change that is overdue in any event. The Academy thus urges that any increase in fees be accompanied by the repeal of subdivision (c) of section 69950 and by a replacement requirement that transcript fees can be charged based only on an accurate computer word count.

### **3. The need for an explanation of the fee increase.**

Section 1, subdivision (d), of AB 1385 states a fee increase is necessary “to ensure full and fair compensation” of court reporters. But the bill includes no explanation of why an increase less than the substantial one proposed would not be adequate.

The bill also states that transcript fees have not been changed in many years. However, during that period there have been significant changes in technology that presumably have reduced the time and effort needed for a reporter to prepare a transcript. AB 1385 should demonstrate that the Legislature has investigated the various factors relevant to a determination that the proposed fee increase and nothing less is required for the fair compensation of court reporters.

### **4. The need for legislation to permit electronic recording.**

Government Code section 69957 prohibits in most cases the electronic recording of court proceedings as an alternative to a court reporter’s notes. The Academy favors eliminating this prohibition.

A 2017 report to Chief Justice Tani Cantil-Sakauye includes an extensive discussion of electronic recording, which it recommends implementing as an effective and important cost-savings measure and one that would “enable greater access to the record by all parties.” (Report to the Chief Justice: Commission on the Future of California’s Court System (2017), pp. 238-251.) The report complements similar findings made earlier by the Legislative

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Analyst's Office. (Judicial & Criminal Justice (2008-09 Analysis) pp. D-42 – D-45.)

Significantly, the Supreme Court in *Jameson* highlighted the recommendation made by the Future's Commission. Chief Justice Cantil-Sakauye, writing for a unanimous court, said that the Commission's report "contains an informative discussion of recent technological advances in digital recording of court proceedings and of the considerable potential benefits, both economic and otherwise, of such technology for parties, courts, and the judicial system as a whole." (*Jameson, supra*, 5 Cal.5th at p. 598, fn. 2; see *id.* at pp. 608, fn. 10, 618, fn. 17.) The court's opinion also specifically recognized, however, that "legislative authorization is required to proceed with this recommendation." (*Id.* at p. 598, fn. 2.)

Electronic recording should have been adopted in California long ago, as it has been in most states. (See 2017 Futures Com. Rep., *supra*, at pp. 244-245.) This is especially so if the cost of a reporter's transcript will increase substantially.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Taylor, Jr.", written in a cursive style.

John A. Taylor, Jr.  
President

cc: Senator Hannah-Beth Jackson, Chair Senate Judiciary Committee  
(by hand)