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1. [Cal Rules of Court, Rule 2.1040](#)

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Cal Rules of Court, Rule 2.1040

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COURT > Title 2. Trial Court Rules > Division 8. Trials >
Chapter 3. Testimony and Evidence

Rule 2.1040. Electronic recordings presented or offered into evidence

(a) Electronic recordings of deposition or other prior testimony

(1) Before a party may present or offer into evidence an electronic sound or sound-and-video recording of deposition or other prior testimony, the party must lodge a transcript of the deposition or prior testimony with the court. At the time the recording is played, the party must identify on the record the page and line numbers where the testimony presented or offered appears in the transcript.

(2) Except as provided in (3), at the time the presentation of evidence closes or within five days after the recording in (1) is presented or offered into evidence, whichever is later, the party presenting or offering the recording into evidence must serve and file a copy of the transcript cover showing the witness name and a copy of the pages of the transcript where the testimony presented or offered appears. The transcript pages must be marked to identify the testimony that was presented or offered into evidence.

(3) If the court reporter ***takes down*** the ***content*** of all portions of the recording in (1) that were presented or offered into evidence, the party offering or presenting the recording is not required to provide a transcript of that recording under (2).

(Subd (a) adopted effective July 1, 2011.)

(b) Other electronic recordings

(1) Except as provided in (2) and (3), before a party may present or offer into evidence any electronic sound or sound-and-video recording not covered under (a), the party must provide to the court and to opposing parties a transcript of the electronic recording and provide opposing parties with a duplicate of the electronic recording, as defined in [Evidence Code section 260](#). The transcript may be prepared by the party presenting or offering the recording into evidence; a certified transcript is not required.

(2) For good cause, the trial judge may permit the party to provide the transcript or the duplicate recording at the time the presentation of evidence closes or within five days after the recording is presented or offered into evidence, whichever is later.

(3) No transcript is required to be provided under (1):

(A) In proceedings that are uncontested or in which the responding party does not appear, unless otherwise ordered by the trial judge;

(B) If the parties stipulate in writing or on the record that the sound portion of a sound-and-video recording does not contain any words that are relevant to the issues in the case; or

(C) If, for good cause, the trial judge orders that a transcript is not required.

(Subd (b) amended and relettered effective July 1, 2011; adopted as part of unlettered subd effective July 1, 1988; amended and lettered as subd (a) effective January 1, 2003.)

(c) Clerk's duties An electronic recording provided to the court under this rule must be marked for identification. A transcript provided under (a)(2) or (b)(1) must be filed by the clerk.

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(Subd (c) amended and relettered effective July 1, 2011; adopted as part of unlettered subd effective July 1, 1988; amended and lettered as subd (a) effective January 1, 2003.)

(d) Reporting by court reporter Unless otherwise ordered by the trial judge, the court reporter need not **take down** the **content** of an electronic recording that is presented or offered into evidence.

(Subd (d) amended and relettered effective July 1, 2011; adopted as part of unlettered subd. effective July 1, 1988; amended and lettered as subd. (b) effective January 1, 2003.)

History

Rule 2.1040 amended effective July 1, 2011; adopted as rule 203.5 effective July 1, 1988; previously amended effective January 1, 1997; previously amended and renumbered as rule 243.9 effective January 1, 2003, and as rule 2.1040 effective January 1, 2007.

Annotations

Commentary

Advisory Committee Comment

This rule is designed to ensure that, in the event of an appeal, there is an appropriate record of any electronic sound or sound-and-video recording that was presented or offered into evidence in the trial court. The rules on felony, misdemeanor, and infraction appeals require that any transcript provided by a party under this rule be included in the clerk's transcript on appeal (see rules 8.320, 8.861, and 8.912). In civil appeals, the parties may designate such a transcript for inclusion in the clerk's transcript (see rules 8.122(b) and 8.832(a)). The transcripts required under this rule may also assist the court or jurors during the trial court proceedings. For this purpose, it may be helpful for the trial court to request that the party offering an electronic recording provide additional copies of such transcripts for jurors to follow while the recording is played. **Subdivision (a).** Note that, under [Code of Civil Procedure section 2025.510\(g\)](#), if the testimony at a deposition is recorded both stenographically and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

Subdivision (a)(2). The party offering or presenting the electronic recording may serve and file a copy of the cover and of the relevant pages of the deposition or other transcript; a new transcript need not be prepared.

Subdivision (b). Note that, with the exception of recordings covered by [Code of Civil Procedure section 2025.510\(g\)](#), the recording itself, not the transcript, is the evidence that was offered or presented (see [People v. Sims \(1993\) 5 Cal.4th 405, 448](#)). Sometimes, a party may present or offer into evidence only a portion of a longer electronic recording. In such circumstances, the transcript provided to the court and opposing parties should contain only a transcription of those portions of the electronic recording that are actually presented or offered into evidence. If a party believes that a transcript provided under this subdivision is inaccurate, the party can raise an objection in the trial court.

Subdivision (b)(3)(C). Good cause to waive the requirement for a transcript may include such factors as (1) the party presenting or offering the electronic recording into evidence lacks the capacity to prepare a transcript or (2) the electronic recording is of such poor quality that preparing a useful transcript is not feasible. **Subdivision**

(c). The requirement to file a transcript provided to the court under (a)(2) or (b)(1) is intended to ensure that the transcript is available for inclusion in a clerk's transcript in the event of an appeal. **Subdivision (d).** In some

circumstances it may be helpful to have the court reporter **take down** the **content** of an electronic recording. For example, when short portions of a sound or sound-and-video recording of deposition or other testimony are played to impeach statements made by a witness on the stand, the best way to create a useful record of the proceedings may be for the court reporter to **take down** the portions of recorded testimony that are interspersed with the live testimony.

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Deering's California Codes Annotated

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