



CASE ALERT (July 5, 2018)

All California Trial Courts Are Required to Provide Court Reporters Free of Charge to Low-Income People with a Fee Waiver

In *Jameson v. Desta*, 5 Cal.5th 594 (2018), the California Supreme Court said that low-income people with a court fee waiver are entitled to a free court reporter provided by the court. *Jameson* struck down the policy of many trial courts to deny official court reporters in civil cases, including family law cases. Thank you to the 30 organizations that joined FVAP's friend-of-the-court brief that helped the Supreme Court reach this landmark decision!

How Could This Case Help Your Clients?

If you are working with a low-income client who has received a fee waiver order from a court (form FW-003), then the trial court is now required to provide your client with an official court reporter at civil hearings and trials if your client asks for one. This includes, but is not limited to, restraining order, custody, and other family law matters. This is important because court reporters transcribe what is said in court into written form, and not having a court reporter often means your client cannot succeed in appealing an unfavorable trial court decision. Also, a transcript can help if your client wants to modify a trial court decision, like a custody or visitation decision, at a later date.

Summary of the Case

**The facts of this case are not related to domestic violence, but this case is relevant to your work because the Supreme Court's decision also applies in civil cases related to domestic violence.*

In this case, a prisoner sued a prison doctor for medical malpractice, claiming the doctor negligently prescribed him a drug that caused irreversible damage to his eyesight. Over the course of a decade, on three separate occasions, the trial court ruled in favor of the doctor and dismissed the prisoner's case before having a trial. The prisoner appealed each decision, and each time the Court of Appeal ruled in his favor and sent the case back to the trial court to continue the case.

After the third time the case was sent back, a trial was finally scheduled. Despite having been granted a fee waiver, the prisoner was not provided with a court reporter at trial, and he could not afford to hire his own private court reporter at a cost of about \$800/day. Like many other counties (30 out of 58 counties), San Diego County had eliminated court reporters in most civil cases due to budget cuts by the California Legislature.

During the trial, the trial court dismissed the prisoner's case and he appealed again. The Court of Appeal said that it could not analyze some of the prisoner's arguments because there was no record of what happened during the trial, so it ruled in favor of the doctor. The prisoner appealed to the California Supreme Court.

The California Supreme Court ruled for the prisoner, striking down San Diego’s policy that eliminated court reporters from civil cases because the policy did not have an exception for low-income litigants who had received fee waivers. This decision therefore requires trial courts to provide free official court reporters to low-income litigants with fee waivers. In its opinion, the Court said that court reporters play a crucial role in protecting people’s legal rights by providing them with a verbatim record of their trial court proceedings. Failing to provide a verbatim record denied low-income litigants equal access to the appellate process, given that not having a court reporter will often doom an appeal. Moreover, the Court said that a “settled” or “agreed statement,” which are alternatives to a verbatim transcript, are insufficient to provide the litigant with a verbatim record, and thus, do not eliminate the need for a court reporter.

Practice Tips

- 1.** Low-income survivors of domestic violence with a civil case, for example, a restraining order, custody, or other family law case should seek a fee waiver, requesting that all court fees and costs be waived in their civil matter, even in domestic violence restraining order cases with no filing fees.
- 2.** Use Judicial Council form FW-001 to request a fee waiver. This is a confidential form that asks for information about the person’s household income and finances. If the fee waiver is granted, the person will be issued an order from the court on form FW-003. This is also a confidential form that is only filed with the court, not provided to the other party in the case. These forms are available at <http://www.courts.ca.gov/forms.htm?filter=FW>.
- 3.** If the survivor is granted a fee waiver, advise them that they are entitled to, and should request, an official court reporter for all hearings in their civil case.
- 4.** To request a court reporter, the survivor can complete the attached form, “Request for Court Reporter Pursuant to Jameson v. Desta.” The survivor can file this form with the court clerk before the next hearing in their case. If not filed before the hearing, the next best thing is to give the document to the judge and/or court clerk to be filed during the hearing, or to ask the judge orally during the hearing.
- 5.** Print a copy of the *Jameson* case for the survivor to bring with them to court. This way, the survivor can have it readily available in the event the court does not agree to provide them with an official court reporter.
- 6.** If the survivor requests a court reporter in this way and the court does not grant one, call FVAP to discuss your options as soon as possible.

For questions or clarifications, contact Family Violence Appellate Project: info@fvapl.org or (510) 858-7358. Thank you!