S288176

In Supreme Court of California

FAMILY VIOLENCE APPELLATE PROJECT, et. al,
Petitioners
v.
SUPERIOR COURT OF CONTRA COSTA COUNTY et. al.
Respondents
LEGISLATURE OF THE STATE OF CALIFORNIA
Real Party in Interest.

Original Petition for Mandate Relief

AMICUS CURIAE BRIEF ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS SOUTHERN CALIFORNIA CHAPTER AND SAN DIEGO FAMILY LAW BAR ASSOCIATION IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
INTRODUCTION	6
I. RELIEF IS NECESSARY FOR ALL FAMILY LAW LITIGANTS	10
A. The *Jameson* Model Does Not Provide Effective Relief Because There are Not Enough Court Reporters	10
B. All Family Law Litigants Need Electronic Transcription When No Court Reporter is Available.	12
C. This Court Should Not Limit Back Up Electronic Reporting to Fee Wavier Litigants Alone Because Litigants Who Cannot Pay For The Necessities of Life are Entitled to No-Charge Reporter's As Well.	17
D. The Need for a Verbatim Record In Family Law Proceedings Extends Far Beyond Appellate Remedies; Recording of All Family Court Proceedings Where the Court Cannot Supply a Reporter Significantly Furthers Judicial Economy and Reduces Calendar Load	20
CONCLUSION	24
CERTIFICATE OF COMPLIANCE	26
PROOF OF SERVICE	27

TABLE OF AUTHORITIES

CASES **page**

Casas v. Thompson (1986) 42 Cal.3d 131 22

In re Marriage of Burwell (2013) 221 Cal.App.4th 1 21

In re Marriage of Cecelia & David W. (2015) 241 Cal.App.4th 127 22

In re Marriage of Destiny and Justin C. (2023) 87 Cal.App.5th 766 16

In re Marriage of Melton (1994) 28 Cal.App.4th 931 22

In re Marriage of Minkin (2017) 11 Cal.App.5th 939 21

In re Marriage of Pruitt (2021, No. F076661) 2021 WL 2449860 21

*In re Marriage of Prentis-Margulis & Margulis (*2011) 198 Cal.App.4th 1252 22

In re Marriage of Seagondollar (2006) 139 Cal.App.4th 1116 23

Jameson v. Desta (2018) 5 Cal.5th 594 7, 10, 11

Michael H. v. Gerald D. (1989) 491 U.S. 110 [109 S.Ct. 2333, 105 L.Ed.2d 91] 20

Menezes v. McDaniel (2019) 44 Cal. App. 5th 340 24

Molinaro v. Molinaro (2019) 33 Cal.App.5th 824 21

Protect Our Water v. County of Merced (2003) 110 Cal.App. 4th 362 6

Reno v. Flores (1993) 507 U.S. 292 [113 S.Ct. 1439, 123 L.Ed.2d 1] 21

Troxel v. Granville (2000) 530 U.S. 57 [120 S.Ct. 2054, 147 L.Ed.2d 49] 21

Washington v. Glucksberg (1997) 521 U.S. 702, 719 [117 S.Ct. 2258, 123 L.Ed.2d 1] 21

STATUTES

Government Code section 68634	17, 18
Government Code section 69957	8-10
Family Code section 2108	16
Family Code section 2556	21
Family Code section 3407	16

CAL. RULES OF COURT

Rule 2.952	25
Rule 2.954	25
Rule 2.956(b)(3)	12
Rule 2.956(C)(2)(b)	12

OTHER AUTHORITY

San Mateo County Superior Court Local Rule 2.12(d)(ii)	11, 12
Sen. Bill No. 663 (2023-2034 Reg. Sess); Original bill February 16, 2023 text archived at https://legiscan.com/CA/text/SB662/id/2794076	11
42 U.S.C. § 9902 (2)	17

INTRODUCTION

The first thing every appellate lawyer learns is that "if it is not in the record, it did not happen." (*Protect Our Water v. County of Merced* (2003) 110 Cal.App. 4th 362, 364.)

Access to a verbatim record in family law proceedings is an intrinsic element of due process, and a necessary element for management of heavy and complex family court calendars. Courts and litigants need access to a verbatim record of every family court proceeding to determine, with certainty, what happened at each hearing. When the existing statutes and practices shift the burden to locate and hire a court reporter from the court to family law litigants, they deprive those litigants of the due process guarantees of the state and federal constitutions.

The shortage of court reporters across California has created significant barriers for litigants, particularly in family law cases where proceedings can have life-altering consequences. Petitioners Family Violence Appellate Project, et. al (FVAP) propose that the family courts use recording where a litigant qualifies for a fee waiver. That approach creates unnecessary burdens for the court and the litigants in a system where up to 70% of the litigants are self-represented. Those self-represented litigants often learn after the fact that there is no verbatim record and they cannot reconstruct what happened.

Consider the self-represented litigant who appears at an initial hearing to establish child support and a parenting plan. The setting and vocabulary are unfamiliar, and the entire experience is emotionally fraught. The court makes orders from the bench, which the litigant only partially understands. Later the fact that the orders were made in open court suffice to impute knowledge of the

order to the litigant in a contempt proceeding. Or the other litigant offers a proposed written order after hearing that doesn't comport with one's memory of the occasion. Counsel and judges trying to develop a settled statement absent a transcript face the fragility of human memory as well.

The only efficient and cost-effective solution is to use the digital devices already installed in California family courts to record *all* family court proceedings where the court cannot provide a certified court reporter. If all proceedings are recorded, the court need not spend clerical and calendar time determining who is eligible for a fee waiver before deciding whether to record. The digital recording can be supplied to counsel and litigants for a minimal charge. Most litigants will continue pay for a certified transcript when needed, and the court will continue to waive transcript fees for those who qualify.

Despite the California Supreme Court's decision in *Jameson v. Desta* (2018) 5 Cal.5th 594 (*Jameson*) (fee waiver litigants must have access to an official verbatim record), the practical reality is that court reporters are often unavailable, leaving many with no means of preserving a record for appeal. This systemic failure disproportionately affects vulnerable litigants and undermines the fairness of the judicial process.

The current approach to mitigating this issue—requiring litigants to secure their own court reporters—places an undue burden on litigants who cannot afford such costs. The situation is exacerbated by restrictive local rules, such as those in Riverside and San Mateo counties, which create procedural hurdles that make it nearly impossible for litigants to obtain a transcript, particularly in urgent matters like domestic violence restraining order hearings. In smaller counties such as Santa Cruz, a private court reporter is rarely to be found without a week's notice. Even for those who do not qualify for fee waivers, the financial strain of hiring a private court reporter is often prohibitive, forcing

some litigants to choose between legal representation and a verbatim record. Often the need for a record only becomes apparent when an issue arises after the fact. This imbalance in access to justice requires a broader solution.

Electronic recording presents a viable and necessary alternative to address the court reporter shortage. Without a reliable means of recordkeeping, courts face increased inefficiencies, as disputes or uncertainty over earlier proceedings arise, leading to unnecessary delays and more litigation costs. The lack of an official record affects both appellate rights and the management of long-term family law cases —where custody, support, and property disputes may evolve over years or even decades. Digital electronic recording will provide consistency, protect litigants' rights, and reduce the administrative burden on the courts.

A narrow approach that limits relief to only low-income litigants is not enough. Government Code section 68632 creates a fee waiver system based on strict financial thresholds, yet many litigants who do not qualify under these guidelines still struggle to afford the high costs of court reporting. The "necessities of life" standard, while broader, is impractical to apply in live proceedings, leading to delays and inefficiencies that further strain an already overburdened family court system. A uniform policy ensuring electronic transcription for all family law litigants—regardless of income—when a court reporter is unavailable is essential to due process and meaningful access to justice.

The FVAP Petition for Mandate relief (The Petition) focuses on Government Code section 69957. That section recognizes electronic recording may substitute for "an official reporter or an official reporter pro tempore's" absence when the courtroom possesses "approved equipment and equipment monitors." But section 69957 only provides for electronic recording "in a limited civil case, or in misdemeanor or infraction cases." The statute's

unlimited civil case preclusion has resulted in unequal access to a verbatim record necessary for appeal. The Petition primarily seeks a ruling limiting when section 69957 can "constitutionally be applied to preclude the use of electronic recording …." (Pet. ¶ 63.a.) Nonethless, the Petition focuses on access to court reporter's for low-income family law litigants when a court reporter unavailable. This scope is too limited.

The Petition for Mandate Relief requests:

> b. An order mandating that, for any civil proceeding, a litigant who cannot afford to pay for a private court reporter is entitled to have an official verbatim recording created at no charge, including by electronic reporting if a court reporter is not available, and prohibiting Respondents from relying upon Section 69957 as a basis for depriving such civil litigants of access to an official verbatim recording of any such proceeding. (Petition p. 48.)

The Petition defines low-income litigants.

> "In this Petition, the term "low-income litigant" refers to litigants who cannot afford the cost of a private court reporter. This includes, at a minimum, those who are eligible for waivers of court fees and costs pursuant to any subdivision of Government Code section 68632, including the "means" test in subdivision (c), as applied to include the cost of a private court reporter. (Petition p. 15, fn. 1.)

How would this work in the real world? Would the court calendar come to a halt while a determination is made whether the litigant qualifies for recording? Or would the family go without orders for interim child support and a parenting plan for months so the matter can be continued for an application for a fee waiver? Wouldn't the litigant have to abandon the recording in favor of orders stabilizing the family pendente lite?

Amici urge this Court to expand the Petition's remedy and order electronic recording to include all family law litigants, not just low income litigants. Amici do not ask this Court to replace certified stenographic

reporters (court reporters) with digital recording. Rather, Amici propose a remedy that applies only when a court-employed reporter is unavailable. In that instance, this Court should allow litigants and superior courts access to electronic recording. As the exhibits to the Petition establish, Los Angeles County is using extraordinary methods to recruit court reporters, but cannot provide them for most family court proceedings.

I. RELIEF IS NECESSARY FOR ALL FAMILY LAW LITIGANTS

A. The *Jameson* Model Does Not Provide Effective Relief Because There are Not Enough Court Reporters

The Association of Family Law Specialists (ACFLS) and the American Academy of Matrimonial Lawyer, Southern California Chapter (AAML) are both specialist organizations, which require state bar specialist certification in family law. These organizations' membership include the most experienced family law practitioners in the state. These family lawyers have a broad perspective because they represent adult parties, serve as court-appointed minor's counsel, mediate, volunteer to sit pro tem in family law departments, volunteer at nonprofit legal services programs, hear cases as privately compensated temporary judges, and serve as justice partners on various bench-bar committees. They see first-hand the injustices and miscarriages of justice that Government Code section 69957 causes in a time where there is a shortage of certified court reporters.

In *Jameson v. Desta*, *supra*, at p. 599, this Court stated,

> "[W]e conclude that the court policy in question is invalid as applied to plaintiff and other fee waiver recipients, and that an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to in forma pauperis litigants upon request.

Despite *Jamison's* clear holding, the fact remains court reporters are simply unavailable to fee waiver litigants.[1] This occurs regularly. Parties who have secured fee waivers (and others) arrive at a hearing or trial only to find no court reporter present. The Superior Court often wants to comply with *Jamison* but simply cannot due to state wide absence of court reporters. Despite *Jameson's* holding, these litigants have to secure their own private reporter instead if they want any chance to preserve the record on review. This situation is intolerable. In fact, the post *Jamison* situation is arguably worse that prior. *Jamison* falsely leads litigants to believe they will have a reporter only to have their hopes dashed at the last second when they appear and there is no reporter available.[2] In Amici's experience, this scenario plays out across the state countless times every day, including Domestic Violence Prevention Act (DVPA) and child custody proceedings which cannot wait and be continued to another month or three down the road.

[1] In 2023, the Legislature considered the crisis caused by a lack of court reporters. (Senate Bill No. 662 (2023-2024 Reg. Sess.) "SB662 was not enacted but the legislative findings provide support for Amici's brief "Although indigent litigants have the right to a CSR for free, courts cannot fulfill those requests." (Sen. Bill No. 663 (2023-2034 Reg. Sess); Original bill February 16, 2023 text archived at https://legiscan.com/CA/ text/SB662 /id/2794076 at section (g) [hereinafter" SB662 text, ( )"].)

[2] Despite the urgent need to proceed in many family law matters, in some counties the impact of *Jameson* has unfortunately been to add to delay. See, for example, Superior Court Local Rule 2.12(d)(ii) from San Mateo County, which provides: "If a fee waiver litigant requests the presence of an official court reporter and it appears that none can be made available, the proceeding will be continued until such time as an official court reporter can be provided."

Many local rules severely hinder *"Jameson* litigants" the ability to obtain an oral record. For example, in Riverside County, the court does not provide official court reporters for any family law case, including domestic violence restraining order matters, as a standing rule. However, the court's website states that in civil proceedings, a party who has received a fee waiver may request an official court reporter under Cal. Rules of Court, Rule 2.956(b)(3). This request must be made "at least 10 calendar days prior to a trial or hearing" by submitting a particular Judicial Council form (FW-020). This means that for ex parte hearings set on a shortened time of less than ten days' notice, parties have no right to a record. Note that the court website further states: "Given the general unavailability of official court reporters, final notice of the availability of a court reporter may not be known until the day of the hearing." See also San Mateo Local Superior Court Rule 2.12(d)(ii) which also requires that a request is filed at least 10 days before a hearing.

However, these strict local rules conflict with Cal. Rule of Court, Rule 2.956(C)(2)(b) which recognized the problems that a strict 10-day rule created, and instead provides that a fee-waiver party must file a request for a reporter ten-days before the proceeding, "or as soon as practicable if the proceeding is set with less than 10-days' notice."

B. All Family Law Litigants Need Electronic Transcription When No Court Reporter is Available.

The harm arising from the shortage of court reporters is not limited to fee waiver litigants either – it extends to all family law litigants no matter their income.[3] The need for back up electronic reporting is necessary anytime

[3] On March 21, 2025, Respondent Counties filed a Response to the Petition. The Counties also recognized the scope of the reporter crisis extends to all California family law litigants, not just low income litigants.

a court reporter is unavailable.[4] A court reporter's absence causes a cascade of problems including excess costs, time delays, and more legal fees. It appears that this crisis will expand to more family law courtrooms as fewer and fewer court reporters become available. The inability of the courts to fill court reporting positions indicates that the possible candidates are making other career choices.[5]

For example in a Los Angeles DVPA case, the survivor asked for a court reporter before the hearing. When she arrived at court, no reporter was

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> "The Petition invokes core principles shared by all stakeholders in California's court system: fundamental rights must be protected; access to justice should be open and equal; and verbatim records of proceedings are essential to full appellate review. Unquestionably, the shortage of court reporters in California has created a crisis that impacts these shared values— primarily for parties who depend on a verbatim record of proceedings to secure their rights, ..." (Response p. 4.)

[4] It is not generally possible to predict in advance which family law hearings will raise "significant legal or factual issues" (element 5 in the General Orders), particularly in family law where a high percentage of litigants are unrepresented and hearings are therefore less predictable.

[5] In 2022, there were 5,605 active CSRs of whom 4,829 listed an address in California. The number of licensed CSRs has been steadily dropping from 8,004 in 2000, to 7,503 in 2010, to 6,085 in 2020, representing a 30-percent decline since 2000. (SB662 text, (j)"]).)) Applications to take the CSR licensing exam have declined, and the passage rate is low. In 2018, 369 individuals took the licensing exam, and in 2021, only 175 individuals took the exam. Of those, only 40 individuals passed. In 2015, 96 licenses were issued, and in 2021, only 39 licenses were issued. Only 8 court reporter training programs remain in California, down from 16 programs in 2011. (SB662 text, (l).) In January and February of 2023 alone, the Los Angeles County Superior Court could not provide a CSR in 52,000 nonmandated civil, family, and probate cases. According to calculations by the court, this will result in over 300,000 cases going without a record this year. (SB662 text (m).)

present. The survivor asked that the court to use electronic recording under the L.A. General Order. The trial court denied the request for E-reporting because the request was not made in advance. The lack of reporters, as discussed next, creates many problems.

Many trial courts have required an agreement before a party permitted to use a private reporter. Amici members have experienced cases where an attorney has secured a private reporter, only to have the trial court decline to permit that reporter to report the hearing or trial, because the other side refused to so stipulate. (Note that the 2021 amendments to California Rule of Court, Rule 2.956 should have solved this problem because the Rule clarifies that parties may arrange for a private reporter.)

In one particular case, a mother with sole custody sought a relocation order letting her and the child relocate to the mother's home town. The trial court previously found the father committed abuse and was subject to the presumption against a custody award to abusers. (Fam. Code § 3044.) At the unreported hearing, the trial court relied on the policy of "frequent and continuing contact" to deny the move. This was reversible error, but mother could not afford a privately-compensated court reporter. Nor did the court provide a court-employed court reporter. Mother could not appeal. She could not present a record of exactly what basis the trial court denied her move away request.

One ACFLS member described a situation where court reporters were unavailable, and this forced her client "to choose between having a privately compensated, expensive court reporter or an attorney; the client could not afford both."

Another attorney scheduled and paid for a court supplied reporter to go to trial. However, a couple days before trial, the court told counsel the

previously scheduled reporter was no longer available. This forced the attorney to hire a private reporter for nearly three times the cost.

In one Sacramento County case, an attorney reserved a county court reporter for a law and motion hearing by paying the $30 fee. At the last minute, the court advised counsel no reporter was available and counsel had to pay $700 for a private reporter.

In another matter, counsel arranged for a private reporter. The other side, who was self-represented, refused to sign the trial court's required stipulation to use a private reporter. Even after the judge's encouragement, the self-represented litigant refused to stipulate. The reporter could not transcribe the hearing, yet counsel still had to pay the private reporter's appearance fee.

In San Mateo County, where counsel were advised that private reporters were not permitted, the official court reporters are so backlogged that it took until March 2025 to receive a transcript of a November 2024 proceeding.

Amici have found the settled statement process does not mitigate the harm caused by unavailable reporters. In one case without a reporter the client appealed and sought a settled statement. The trial court could not provide the settled statement, however, because it had no memory of the proceeding, In Mono County a young mother who was supporting herself and her child waiting tables wanted to attend nursing school in a nearby state. She sought moveaway orders and child support. Her lawyer, a certified family law specialist, took detailed notes of the trial testimony and exhibits. The bench officer struck much of the proposed settled statement. He specifically pointed to one incident, saying he would have remembered that

testimony if it had occurred. However, that incident was described in a declaration that the court had admitted into evidence and read.

In another matter, the trial court ordered a prejudgment sale of the marital home, despite no showing of market risk, no showing of danger of loss, and without completed required financial disclosures. The order violated Family Code section 2108. The client had to spend $2,000 to obtain a settled statement for the appeal because the other side refused to cooperate to prepare an agreed statement.

Family law appellate lawyers are usually retained to appear in the Court of Appeal. They seldom represent clients in the Superior Court. Pro pers, and, often trial counsel, are unfamiliar and unable to obtain an adequate settled statement.

When it comes to child custody and visitation matters, delay is not in the children's best interests, "Moreover, we have no doubt the family court understands its responsibility to make timely custody decisions in the best interests of the children consistent with the due process rights of the parties." (*In re Marriage of Destiny and Justin C.* (2023) 87 Cal.App.5th 766, 769 citing Fam. Code § 3023, subd. (a) [calendar preference for custody cases]; See also Fam, Code § 3407 [short time lines, calendar priority, for UCCJEA custody jurisdiction disputes].)[6]

While the parties may have a right to continue their proceeding when an official reporter is unavailable, in most family law cases to do so is highly

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[6] Custody is almost always unsuitable for further delay to wait for a court reporter to become available (element 6 in the General Orders), since each day involves the best interests of children and also establishes the status quo which is harder to change with the passage of time.

prejudicial. Family law courtrooms throughout the State are short staffed and litigants often wait months for regular hearings, and many months or even years for longer trials. Often, parties simply cannot delay their custody, visitation, support, property, or other urgent matters.

Continuances also drive up attorney's fees. For example, attorneys charge to appear at the initial hearing, but need to get back up to speed when an unavailable reporter triggers a continuance. Attorneys (and self-represented litigants) must then update Income & Expense declarations, file supplement declarations and update the trial court for a second, later hearing. Continuances also cause hardships on litigants who may have prepared for a hearing, taken off work, incurred transportation costs, and arranged for childcare.

C. This Court Should Not Limit Back Up Electronic Reporting to Fee Wavier Litigants Alone Because Litigants Who Cannot Pay For The Necessities of Life are Entitled to No-Charge Reporter's As Well.

Government Code section 68632 grants fee relief to applicants receiving benefits under the following programs. (SSI, CalWorks, Tribal Assistance, Supplemental Nutrition Assistance program, County Relief Cash Assistance to the Aged Blind (CAPI), In Home Supportive services (IHSS), Unemployment Compensation, MediCal, and for those whose monthly income is 200 percent or less of the current poverty guidelines. (42 U.S.C. § 9902 (2).) Section 68632 subdivision (c) provides a means test that grants the trial judge discretion to waive fees if the applicant cannot pay "without using moneys that normally would pay for the common necessaries of life for the applicant and the applicant's family. Government Code section 68634, subdivision (d), provides for a hearing if the court does not grant the fee waiver. The fee waiver is filed with the clerk of court and has delegated authority to grant a waiver." An application for an

initial fee waiver is deemed granted five court days after it is filed, unless before that time, the court gives notice of action on the application as provided in subdivision (e).) Government Code section 68634 subdivision(e)(5), provides for a hearing, with 10 days' notice, if the fee waiver is not granted. Section 68633 provides the Judicial Council will prepare a form for fee waiver application. (FW 001.) The FW 001 form includes a chart with income and family size to determine eligibility.

For example, and according to the chart on form FW 001, if this Court limits its reporter remedy to approved low-income litigants, the cut off for a family of four is gross income of only $64,000 a year. A family of four with a combined $65,000 gross income involved in a divorce and having to stretch available funds across two households must hire a private court reporter if none are available. Under the narrow approach, limiting relief to approved low income litigants, the second family does not receive an electronic transcript, but a family of four making $63,500 receives an electronic transcript. This approach is far too narrow. The entirety of the Petition for Mandate relief provides the constitutional basis and the due process reasons the remedy must be broader. The Petition states the average cost for a court reporter for one day of trial is $3,500. (Petition, p. 34, para. 43.) The point is, neither family could afford a reporter, or the **necessities of life,** but only one family would receive a court reporter. The necessities of life test is much *broader* than the FW 001 litigant class. *Because he necessities of life test will prove too burdensome for trial courts to apply*[7] and because it costs the court nothing to turn on the digital

[7] In 2022, the CEO of almost every superior court – including Respondents – signed a Joint Statement titled, "There Is a Court Reporter Shortage Crisis in California." It stated that "[e]very litigant in California should have access to the record" and "[i]deally, this would be provided by a court reporter but when none are available, other options need to be available to the courts. (Petition p. 33, para. 41.)

recorder, this Court should direct the use of digital recording in family courts whenever the superior court cannot provide a reporter.

Consider the following, the means test (necessities of life) under Government Code section 68632 subdivision (c) may be prove workable when a party files their original Petition for Dissolution, but cumbersome and unworkable in a live proceeding context when a reporter is needed immediately and none is available.[8] All the parties would have prepared and appeared, but the long awaited hearing would be delayed so litigants could fill out a fee waiver form. A separate hearing and judicial time and expense to determine if a litigant is "low income" would be avoided if this Court grants relief to all family law litigants. This is the rare circumstance when a serious problem can be solved by the push of a button.

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[8] On March 21, 2025 the Superior Courts filed a return. In footnote 2, on page 4, the Counties suggest that receiving a fee waiver could be the dividing line of who gets electronic recording, for "administrability" purposes. In addition to the problems discussed, Amici experience concludes this proposal makes no sense in domestic violence cases, which have no fees and thus no reason to request fee waivers. It would require an unreasonable amount of foresight to expect the high number of self-represented litigants in family law (or even their lawyers) to request and obtain a fee waiver solely to be eligible for electronic recording in the future. As noted, it would also leave out many family law litigants over the very low fee waiver threshold who still cannot afford private court reporters, and who would be denied due process under the Counties' proposal.

D. The Need for a Verbatim Record In Family Law Proceedings Extends Far Beyond Appellate Remedies; Recording of All Family Court Proceedings Where the Court Cannot Supply a Reporter Significantly Furthers Judicial Economy and Reduces Calendar Load

The critical need for a verbatim record extends far beyond preserving appellate rights. Family law cases are unlike "one and done" personal injury, breach of contract or criminal cases. Family law proceedings, with ever changing complicating facts, particularly in support (child and spousal), child custody and property division case can stretch over decades with multiple judges.

A verbatim record is an indispensable component of due process in family law courts. In family courts, one's parental status, relationship with one's children, marital status, property, debts, businesses, free speech rights, protection from psychological and physical abuse, and income available to meet expenses can all be at stake.[9] Family courts adjudicate matters involving fundamental constitutionally-protected liberty interests such as the existence or non-existence of a parent-child relationship, the right to determine who has a relationship with one's child, and whether family court restrictions on speech are barred by the First Amendment. (*Michael H. v. Gerald D.* (1989) 491 U.S. 110, [109 S.Ct. 2333, 105 L.Ed.2d 91] (plurality Brennan opinion finding that child and non-marital biological and psychological father have a due process interest in seeking to protect their

[9] Financial support issues (spousal and child support, and property division) can determine families' financial well-being and stability for years, if not their lifetimes. Yet these are not recognized as "fundamental rights" as required in the General Orders to use electronic recording.

relationship); *Troxel v. Granville* (2000) 530 U.S. 57, 147 L.Ed.2d 49, 120 S.Ct. 2054;[10] *Molinaro v. Molinaro* (2019) 33 Cal.App.5th 824, 245.)

The vast majority of family law litigants are self-represented. They cannot afford counsel and expensive costs such as private court reporter at $3,500 a day.[11] Family law cases can go on for decades because spousal support may last into retirement,[12] omitted asset litigation under Family Code section 2556 may occur years after a judgment is entered, character of life insurance may be litigated after death,[13] breach of fiduciary duty may

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[10] "The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." (*Washington v. Glucksberg* (1997) 521 U.S. 702, 719 [117 S.Ct. 2258, 123 L.Ed.2d 1].) The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." (Id., at p. 720 [138 L.Ed.2d 772, 117 S.Ct. 2258]; see also *Reno v. Flores* (1993) 507 U.S. 292, 301-302 [123 L.Ed.2d 1, 113 S.Ct. 1439].)

"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." (*Troxel v. Granville*, *supra*, 530 U.S. 57,65-66 [120 S.Ct. 2054, 147 L.Ed.2d 49].)

[11] It is estimated in over 70% of proceedings in family law, the litigants have no access to an official transcript. (Petition p. 27.)

[12]See e.g. *In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 945–947 [2002 [MSA, spousal support modification & arrears litigation 12 years later in 2014, order affirmed in 2017.]

[13] See e.g. *In re Marriage of Burwell* (2013) 221 Cal.App.4th 1 [dispute over term life insurance proceeds, petition filed in 2004, trial 2010, reversal 2013, appeal after remand 16 years later in *In re Marriage of Pruitt* (2021, No. F076661) June 16, 2021, WL 2449860.]

begin only on discovery,[14] retirement funds may have been omitted from a judgment,[15] character of assets litigated years after judgment,[16] child support and custody continue until each child is 18 (or 19 if attending high school full time) and may be extended indefinitely if a child has disabilities that limit self-support.[17]

Recording all family court proceedings where the court cannot provide a reporter streamlines and simplifies the court's work. It is impractical for this or any other court to decide who is eligible for recording case by case. The way test under Government Code section 68632 subdivision (c) may be appropriate when a party files their original Petition for Dissolution, but cumbersome and unworkable in a live court proceeding when there is no reporter available. All the parties appear and are prepared, but the long-awaited hearing will be delayed/ continued for the litigants to fill out a fee waiver form. The judicial time and expense to determine if a litigant is a "low-income litigant" can be avoided if the Supreme Court grants relief to all family law litigants.

3. The absence of a verbatim record is most cases increases the courts' workload. Figuring out what happened at past hearings, what claims parties

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[14] See, e.g. *In re Marriage of Prentis-Margulis & Margulis (*2011) 198 Cal.App.4th 1252, 1259 [separation in 1996, petition filed 2002, trial 2008, 2013 order reversed and remanded 17 years later for failure to account]

[15] See e.g. *Casas v. Thompson* (1986) 42 Cal.3d 131, 137 [1966 Judgment, military pension partition action commenced 1980, re-tried in 1983, pension finally affirmed 20 years after dissolution in 1986]

[16] See e.g. *In re Marriage of Melton* (1994) 28 Cal.App.4th 931, 935 [separation in 1979, 1983 Judgment, character of pension dispute in 1992, judgment reversed and remanded in 1994]

[17] See e.g. *In re Marriage of Cecelia & David W.* (2015) 241 Cal.App.4th 1277, 1280 [child born in 1987, adult child support first sought in 2012 when the child was 24 years old, order ultimately reversed and remanded in 2015.]

made, exactly what orders were announced from the bench, whether a proposed order or judgment tracks with the oral orders, what exhibits were actually admitted into evidence, whether (absent a statement of decision) the judge explained the findings of law and fact sufficiently so that failure to state decision is not prejudicial error results in endless wasted time. Many matters do not end up back on calendar for clarification where a verbatim record exists. The court also benefits from a verbatim record's availability. Without a verbatim record, no trail exists to establish judicial estoppel, or track prior testimony for impeachment or corroboration at a subsequent hearing.

4. It is impossible for lawyers, much less self-represented litigants to predict whether something that occurs at any proceeding on the record will prove significant.[18] Look, for example, at *Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, 1127, where the Court of Appeal found that five incremental errors by various bench officers cumulatively amounted to prejudicial error. Without the transcript, there would be no record of the offer of proof that counsel made when the court denied a request to trail the matter for a few days for the availability of an expert witness. Nor would there have been a record of one of the judge's ruling that a moveaway would not be before the court unless the mother either filed her own RFO or requested that relief in her responsive pleadings. Family law matters are often heard by multiple bench officers. Further, change to support and

[18] It is not generally possible to predict in advance which family law hearings will raise "significant legal or factual issues" (element 5 in the General Orders), particularly in family law where a high percentage of litigants are unrepresented and hearings are therefore less predictable.

custody orders may turn on changed circumstances, which require knowing what circumstances existed at the time of the prior order.

5. It is difficult for counsel, and probably impossible for self-represented litigants to take complete and correct notes. (See e.g. *Menezes v. McDaniel* (2019) 44 Cal. App. 5th 340, 346 [appellant obtained a reversal on appeal because she employed a tape recording she had made of the proceeding to draft a settled statement]. Many notes are not maintained over the years family law cases are litigated. Thus, there is often confusion about what orders have been made when a Findings and Order After Hearing (FOAH) is to be prepared. That means a return trip to court to work out the written order or judgment's language. Similarly, clerks and judicial assistants do their best, but they don't always know what is significant, and they also sometimes wrong. A verbatim record provides certainty and lets minutes be corrected. The issue is compounded when previous hearing(s) were held months or even years earlier.

6. Most family law litigants cannot afford appellate remedies. If one reads the opinions (published and unpublished) one finds that the rich and those eligible for some pro bono services are overrepresented. Their cases are atypical, and the development of the caselaw rarely reflects the real issues and populations seen in the Superior Court.

CONCLUSION

Family law proceedings cry out for a verbatim record in every case because of appellate rights, the constant ever changing facts, the significant rights at stake, changing judges and extraordinary length of time involved in family law litigation.

Amici urge a remedy that helps with a solution to the many faceted court reporter crisis. If a court reporter is not available, the judge or judicial assistant merely pushes the button to permit electronic recording. The Petition states the Superior Courts infrastructure for electronic recording is widely installed throughout the court system. (Petition p. 40, paras. 52, 53, fn. 65.)[19] Since the recording equipment is already in the courtroom and will be there if this Court grants relief to low income litigants, there will be no extra cost to the Counties.

Dated: April 3, 2025

Respectfully submitted,

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[19] Extensive measures are in place to ensure the consistency and quality of these systems. Government Code section 69957, subdivision (c) requires Judicial Council approval for any recording equipment that is installed, and the rules establish detailed requirements for such equipment and its use. (See Cal. Rules of Court, rules 2.952, 2.954.)

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Brief, counsel certifies this Amicus Brief (including footnotes) was produced using 13-point type and contains 5,964 words.

Dated: April 3, 2025

Stephen Temko

Stephen Temko

PROOF OF SERVICE

I, Dennis Temko, declare: I am over 18 years of age, and not a party to the within cause. My business address is PO Box 502626 San Luis Obispo, CA 92150. I served one copy of the attached

AMICUS CURIAE BRIEF ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS SOUTHERN CALIFORNIA CHAPTER AND SAN DIEGO FAMILY LAW BAR ASSOCIATION IN SUPPORT OF PETITIONER

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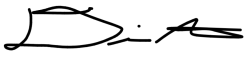
Each envelope and/or email was then, on April 4, 2025, deposited in the United States Mail and/or emailed/transmitted electronically via TrueFiling at San Luis Obispo, California, the county in which I am employed, with the postage thereon fully prepaid. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 4, 2025, at San Diego, California.



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