



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-086

For business meeting on: September 25, 2020

Title

Civil Practice and Procedure: Requesting
Court Reporters for Civil Proceedings

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 2.956;
approve form FW-020; and revise form
FW-001-INFO

Date of Report

August 19, 2020

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

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Executive Summary

The California Supreme Court recently held that courts that do not provide official court reporters in civil proceedings must, if requested by an indigent party, use court reporters or other means to make a verbatim record available. (*Jameson v. Desta* (2018) 5 Cal.5th 594.) The Civil and Small Claims Advisory Committee recommends a new court reporter request form, revisions to the fee waiver information form, and amendments to California Rules of Court, rule 2.956, to help fee waiver recipients avail themselves of rights recognized in *Jameson*. The proposal would also further amend that rule of court to reflect recent changes to Government Code section 68086.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend California Rules of Court, rule 2.956;
2. Approve *Request for Court Reporter by Party with Fee Waiver* (form FW-020); and

3. Revise *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).

The text of the amended rule and the new and revised forms is attached at pages 11–15.

Relevant Previous Council Action

Effective January 1, 2020, the Judicial Council amended California Rules of Court, rules 2.956 (regarding obtaining court reporters in civil actions) and 3.55 (listing which fees are automatically waived when a fee waiver is granted) to make changes consistent with *Jameson v. Desta* (2018) 5 Cal.5th 594. The amendment to rule 2.956 provided that a party with a fee waiver could, if there was not an electronic recording being made of a hearing, request that the court provide a court reporter. It did not set out a statewide process for how to make or act on such a request.

At the same time, the council revised the following forms to make changes consistent with *Jameson* and recent legislation by, among other things, replacing the existing language concerning a waiver of reporter's fees: forms FW-001-INFO, FW-003, FW-003-GC, FW-005, FW-005-GC, FW-008, FW-008-GC, FW-012, and FW-012-GC.¹

Analysis/Rationale

Background

Jameson v. Desta (2018) 5 Cal.5th 594 (*Jameson*) involved a plaintiff who had been granted a fee waiver under Government Code section 68631. Such a litigant is entitled to a waiver of court fees for the attendance of an official court reporter at a court proceeding (Gov. Code, § 68086(b).) In *Jameson*, however, the plaintiff was not provided a court reporter at his civil trial because the superior court, as a result of a reduction in its budget, had adopted a policy under which no official court reporters were provided at most civil trials, even for persons who qualified for a fee waiver. Under the policy, a party could hire and pay for a private court reporter. (*Jameson*, at p. 598.) It was undisputed that if an official court reporter had been made available for the trial in this case, the plaintiff would have been entitled to the court reporter's attendance at the trial without the payment of a fee. (*Id.* at p. 600.) The Supreme Court concluded that the superior court policy was inconsistent with general principles discussed in prior in forma pauperis judicial decisions and with the public policy of facilitating equal access to the courts. (*Id.* at p. 599.) It stated:

[I]n order to satisfy the principles underlying California's in forma pauperis doctrine and embodied in the legislative public policy set forth in [Government Code] section 68630, subdivision (a), when a superior court adopts a general policy under which official court reporters are not made available in civil cases

¹ A copy of the 2019 report may be viewed at <https://jcc.legistar.com/View.ashx?M=F&ID=7521735&GUID=933697EE-6331-4566-8CF5-EB25AAFIDA33>.

but parties who can afford to pay for a private court reporter are permitted to do so, the superior court must include in its policy an exception for fee waiver recipients that assures such litigants the availability of a verbatim record of the trial court proceedings, which under current statutes would require the presence of an official court reporter.

(*Jameson*, at p. 623.)

The Supreme Court concluded that a superior court must generally make available to fee waiver recipients an official court reporter or other valid means to create an official verbatim record, for purposes of appeal, upon request. (*Jameson*, *supra*, 5 Cal.5th 594 at p. 599.)

As noted above, last year the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revisions to several fee waiver forms and to rule 2.956² so that they would reflect the *Jameson* holding. At the time the recommendation was made, the advisory committee noted that this year it would develop and recommend a statewide form that could be used by a fee waiver recipient to ask for a court reporter.

Also at that time, the council received comments from several legal service organizations asserting that the recommendation did not go far enough and asking that the council make further rules. The commenters proposed, among other things, that courts should be required to provide court reporters automatically at any hearing in which a fee waiver recipient is a party, with no request required. The council directed the committee to consider the suggestions made by the commenters, and the committee has done so.

After thorough consideration of the proposals, the advisory committee divided the proposals into two groups. The first group consists of items the committee concluded could be addressed along with the planned form proposal. These included the following proposals, all but one of which were accepted by the committee:

- That, if a request for a court reporter is required, rules provide a uniform statewide process for making and acting on that request, rather than leaving it up to each court.
- That, if a request is required, it be included on the fee waiver application form itself, rather than on a separate form;
- That it be made clear that a court reporter requested by a fee waiver recipient should be at no cost to that party; and
- That rule 2.956, which was revised last year to include the fee waiver recipient's right to ask for a court reporter, include a mandate that the court must grant that request.

² All references to rules in this document are to the California Rules of Court, unless otherwise indicated.

The other group of proposals included those items that the committee concluded are not best addressed by Civil and Small Claims Advisory Committee on its own. These proposals include:

- That the council should adopt a rule requiring that courts automatically, whenever a fee waiver recipient is a party to an action, provide a court reporter at all hearings and proceedings in that action; and
- That a copy of any electronic recordings made by the court be provided to a fee waiver recipient at no charge.

The committee believes that the suggestion to require a court reporter in all courtrooms where a fee waiver recipient appears, without any request, would expand the holding of *Jameson*. In determining whether to adopt such a rule, the council will need to consider the possibility and practicability of providing court reporters for all such hearings and proceedings where electronic recording is either not permitted or not available, in the many different types of non-criminal cases handled by the courts. These issues will likely involve several different advisory bodies in addition to Civil and Small Claims and will require more consideration and work than can be addressed at this time, given the current challenges the judicial branch is facing with the public health issues raised by the COVID-19 pandemic. While the advisory committee recognizes that the proposal does not address all the issues raised, the committee believes it will provide a consistent state-wide process that will benefit both courts and litigants.

The proposal

The advisory committee recommends moving forward with the planned statewide court reporter request form and with revisions to an information sheet provided to fee waiver applicants. In addition, in light of the comments received last year, the committee is recommending statewide rules for the process of requesting and providing a court reporter.

Rule 2.956

Rule 2.956 was originally adopted to implement the mandate in Government Code section 68086 that the council adopt rules to ensure that:

- The parties are given adequate and timely notice of the availability of an official court reporter (rule 2.956(b));
- If no official court reporter is available, a party is authorized to arrange for a certified shorthand reporter to serve as a court reporter pro tem at that party's expense (rule 2.956(c)); and
- None of the other fees in the statute are to be charged if the party arranges for and pays for the court reporter pro tem (rule 2.956(d)).

Last year, at this committee's recommendation, the council revised subdivision (c) of the rule to reflect the *Jameson* holding, by dividing it into two parts. The rule currently provides that in the instance where there is no official court reporter at a hearing or trial in a civil case, a party could either (1) arrange for one at the party's expense; or (2) if a fee waiver recipient, ask the court to

provide one. The current rule also notes that the request should be made in compliance with local rules.

Amendments relating to fee waiver recipients

The commenters who addressed the council last year urged the council that, if a request is to be required to ensure the presence of a court reporter, then there should be a statewide process for doing so, in order to provide consistency across the state. They asserted that this would simplify the process for fee waiver recipients, who are frequently self-represented, and for the legal service agencies and self-help centers who provide information to those parties. The committee agrees, and the proposed amendments to rule 2.956 prescribe such a process, identifying a form that should be used to request a court reporter and setting out the recommended, albeit not mandatory, timeline: the request should be made 10 days before the proceeding for which court reporter is wanted, or, if the proceeding is set on a shorter time frame, as soon as practicable. (See recommended rule 2.956(c)(2)(A) and (B).)

The rule also provides that once a request for a court reporter for a trial is made, it does not have to be repeated if the trial is continued to a later date. (See recommended rule 2.956(c)(2)(C).) In addition, because the commenters asserted that, as drafted, the rule may be unclear as to whether the court would not only provide a court reporter for a fee waiver recipient who asked for one, but do so at no charge to that party, a statement to that effect has been added. (See recommended rule 2.956(c)(2)(D).)

Commenters last year also asserted that if the rule is to require that a fee recipient has to request a court reporter, then it should also mandate that the request must be granted. They asserted that, as it currently stands, rule 2.956(c) leaves the decision up to the court. As currently written, the rule is focused on the party's action. As to the court's action, the rule (and this committee) assumes that the court will follow the law under *Jameson*. However, in light of the concerns raised, the requested mandate has been included in the proposed amendments. (See recommended rule 2.956(c)(2).)³

Amendments relating to other parties

Government Code section 68086(d)—the provision requiring the council to adopt certain rules regarding court reporters—was amended effective January 1, 2019. The primary amendment of the statute was to provide that if an official court reporter is not available and a party arranges for the presence of a certified shorthand reporter in the courtroom, the court *shall* appoint that reporter as the pro tem court reporter unless there is good cause shown for the court to refuse to appoint the appointment. The rule has been amended to reflect this mandate. (See recommended rule 2.956(c)(1).)

³ In light of the changes to the rule to add provisions arising from the *Jameson* decision, the beginning of the rule has also been amended to reflect that it no longer is based solely on Government Code section 68086.

New and revised forms

The proposed *Request for Court Reporter by Party with Fee Waiver* (form FW-020) is based on several current local court forms. It contains instructions at the top, including a statement of the recommended timeline for filing included in the proposed rule of court, and a request for a court reporter for a particular hearing or trial date at the bottom. It also asks the party to confirm that the party has received a fee waiver in the case, or is filing a request for such a waiver concurrently with filing the form.

In light of the concerns raised by the commenters last year that fee waiver recipients would not know to ask for a court reporter and that they might not understand that the court reporter would be free if requested, the committee is also proposing the addition of a new paragraph for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to provide more information to all fee waiver recipients about obtaining a record, including how to request a court reporter at no charge and how to find out about obtaining a transcript (for which generally there will be a charge). In addition, a cross-reference to the new request form has been added to item 1 on the first page of that form, to the item for court reporter fees in the list of waived fees.

Policy implications

This proposal would expand access to justice by providing a consistent process and form that fee waiver recipients across the state will be able to use to request that a court reporter be provided to make a record of court proceedings. Having the same process across all courts will also make it easier for legal service providers and self-help centers to advise self-represented parties on how to exercise their rights in this area.

Comments

The proposed amendments to rule 2.956, the new *Request for Court Reporter by Party with Fee Waiver* (form FW-020), and the revised form FW-001-INFO were circulated for comments from April 10, 2020, to June 9, 2020. Twenty-four comments were received on the proposal:

- Four from Superior Courts of Los Angeles, Orange (two separate comments), and San Diego Counties.
- A comment from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (Joint Rules Subcommittee).
- A comment from the California Commission of Access to Justice.
- Eleven almost identical comments from a variety of legal service providers, public interest advocates, and a law firm. Because some of these comments (those from the Family Violence Appellate Project, Legal Aid Association of California, and Western Center for Law and Poverty) were made on behalf of multiple groups, these comments actually come from a total of 33 groups. (These comments are referred to hereafter as the Legal Service Providers comments.)
- Two from legal service groups with individual technical comments.
- Three from professional bar associations (two different sections of California Lawyers Association and Orange County Bar Association).

- Two from child support services groups.

Other than the Legal Service Providers comments, the comments either agreed with the proposed rule and form, agreed with minor modifications requested, or did not indicate a position. The Legal Service Providers comments did not indicate a position, but within the text of the comments, they indicated support for a statewide process and the rule that courts must provide a court reporter if requested by a fee waiver recipient, while at the same time stating that they would prefer there being no requirement for a request at all.⁴ A summary of the most substantive comments is included here.

Legal Service Providers comments on proposal as a whole

The Legal Service Providers comments each supported a statewide process for providing court reporters to indigent parties but proposed that the process be for courts to automatically provide court reporters or electronic recordings in all proceedings involving a party who has received a fee waiver. As a second choice, if a request is required, they wanted the request for a court reporter to be included on the fee waiver application form. (The committee notes that while identified in the letters as an “alternative” proposal, this essentially amounts to the same thing as requiring the courts to automatically provide court reporters in all proceedings in which a party has a fee waiver.) The Legal Service Providers comments repeated the assertions made last year as to why verbatim records are important to providing access to justice for indigent parties: because such records aid in crafting accurate orders after hearings, provide a clear history in cases involving custody and visitation that can take place over many years, and can be used to successfully appeal bad orders and judgments.

The committee notes that to the extent the comment extolls the value of court reporters for all proceedings, the committee agrees that the ideal situation would be to provide electronic recordings or court reporters in all cases. This proposal, however, is limited to new statewide rules setting out a process for indigent parties’ requesting a court reporter when electronic recording is not available, and for courts’ providing a reporter in response to such a request. To the extent the comment asks for a rule that court reporters be provided automatically for all proceedings in all civil actions with indigent parties, that is outside the scope of the current proposal and will be considered separately as time and resources allow.

⁴ A comment chart showing all commenters is attached. Because the 11 Legal Service Providers comments are almost identical and lengthy, the comment chart includes the complete text of only the first two comments (in alphabetical order) from that group, the first with an emphasis on domestic violence cases and the second with an emphasis on unlawful detainers. Copies of all the Legal Service comments received, which contain almost identical information, are provided separately from the chart. All other comments are contained within the attached chart, along with the committee’s responses.

Comments on amendments to rule 2.956

The only comments received on rule 2.956 addressed only subdivision (c)(2) of the rule.⁵ That subdivision prescribes a statewide process for requests for court reporters, in order to promote consistency across the state.

Comments on rule generally

All commenters agreed with the concept of a statewide rule, for reasons of consistency.⁶ The Department of Child Support Services and Child Support Services Directors Association, however, commented that the entire process will not work well in situations where parties do not have to pay fees, and so do not have fee waivers. They focused on title IV-D proceedings (certain child support enforcement proceedings), in which they said the rule may also be problematic because in some instances interested parties (custodial parents) are not actually made parties to the proceedings until after the first set of hearings. They suggested that a separate process be added for requesting court reporters for title IV-D hearings, either in this rule or elsewhere, that addresses these issues or that the council recommend that electronic recording be permitted in such cases. The committee concluded that those specific suggestions are outside the scope of the current proposal, and the purview of this committee, and will forward the suggestions to the Family and Juvenile Law Advisory Committee for consideration as time and resources permit. In the meantime, the committee does agree with another solution suggested by the commenters, and has modified the rule and form FW-020 to provide that an indigent party without a fee waiver, such as party in a title IV-D hearing or in a domestic violence proceeding, may use the process by filing a request for a fee waiver concurrently with the request for a court reporter. *Jameson* provides that a court reporter be provided for indigent parties, and evaluation of the fee waiver application is the method by which courts generally determine indigency.

Comments re subdivision (c)(2)(A)—that parties should use form FW-020

As noted above, the Legal Service Providers comments argued against having to use any form, or at least any form beyond the fee waiver request itself. On the other hand, the Joint Rules Subcommittee suggested that the form be made mandatory, and the rule state that parties must use this form. The committee declines both suggestions. It concluded that *Jameson* assumes a request be made, but also concluded that under that case a court must provide a court reporter no

⁵ In addition to the amendment noted in footnote 2, rule 2.956(c)(1) was amended to reflect changes to Government Code section 68086(d)—the section requiring the council to adopt certain rules re court reporters—amended by Assembly Bill 2664 effective January 1, 2019. The primary amendment of the statute was to mandate that, if an official court reporter is available and a party arranges for the presence of a certified shorthand reporter in the courtroom, the court *shall* appoint that reporter as the pro tem court reporter unless there is good cause shown for the court to refuse to appoint the appointment. That statutory amendment is now reflected in the proposed amendment to rule 2.956(c)(1).

No comments were received addressing either the proposed amendments described in footnote 2 or here.

⁶ The Legal Service Provider commenters assert that the rule should, however, mandate that a court reporter be required for a fee waiver recipient in all instances, without any request required. As previously discussed, that is not being addressed as part of this proposal.

matter how the request is made. As a result, the recommended form is optional; the rule encourages but does not mandate its use.

Comments re subdivision (c)(2)(B)—that the request should be made 10 calendar days in advance or as soon as practicable if proceeding is set with less than 10 days’ notice

The Superior Court of San Diego County suggested this time frame be made mandatory, to provide more notice to the court, while the Legal Service Providers comments were concerned that the 10-day time frame is too far in advance of the hearing date, asserting that self-represented parties may not know that soon that they need to ask for a court reporter.⁷ The committee concluded that 10-days’ notice is preferred in order for courts to have sufficient notice to schedule court reporters without having to continue a hearing or trial date, but also noted that the 10 days is not mandated, and a later request must be accepted. Without the notice, a court may not be able to provide a court reporter for the scheduled date, and a continuance may be required if the party wants to ensure a record is made. A warning to that effect is included on the form.

One Legal Service Providers commenter, Asian-Americans Advancing Justice—Asian Law Caucus, suggested listing factors for the court to consider in determining whether a matter should be continued to obtain a court reporter. The committee concluded that there was no reason to provide factors for a court to consider in continuing a proceeding to provide a court reporter, because the court is required under *Jameson* to provide a court reporter if one is requested by an indigent party and no electronic recording is available. If that means that a continuance is needed to provide the court reporter, the court will have to provide such a continuance if the party desires it—the only factor to be considered is the party’s request.

Comments on form FW-020

As noted above, the recommended form has been modified in light of comments received, so that it can be used by an indigent party who does not have a fee waiver at the time the party is making the request. In this way, a party to a proceeding in which filing fees are not required—and so who would not otherwise have sought a fee waiver—will be able to request and qualify for a court reporter. It has also been modified so that it can be signed by either a self-represented party or counsel for a party, at the suggestion of the California Lawyers Association.

There were several comments that the first bullet point in the instructions on this form should say the party “should,” rather than must, make a request 10 days in advance, to be consistent with the rule. The committee agrees and the modification has been made. Similarly, in the last bullet point, a few commenters noted that it should state the parties are not guaranteed a “free” transcript. This has now been added along with information and a link to a self-help webpage where a party can learn more about records and obtaining transcripts.

⁷ These comments also point out that in some proceedings (such as motions in unlawful detainer cases and emergency protective order proceedings), the party may not have 10-days’ notice. The committee notes, however, that shorter notice periods are already provided for in the rule.

That last modification is the result of a comment from the California Commission on Access to Justice, which also suggested adding more explanation to the beginning of the instruction about why a party who wishes to appeal an order will need a transcript. The committee declined to add all the suggested language to form FW-020 both because it is incomplete—as the Legal Service Providers comments noted, there are several good reasons for wanting a record of the proceedings—and because adding a full explanation of those reasons would make the instructions on this form overly wordy and thus more difficult for self-represented parties to use.

Comments on form FW-001-INFO

Specific comments were requested on whether the cross-reference on this form to form FW-020, the new court reporter request form, would be helpful or confusing. One superior court thought it was confusing, but everyone else who addressed this point thought it was helpful. The Legal Service Providers comments pointed out that the language used (“See form FW-020”) is legalistic and suggested instead, “Use form FW-020 to ask for a court reporter.” The committee agrees and has added that suggested language to the form.

The Commission on Access to Justice suggested that additional language be added to the new paragraph on the form about obtaining a record, to include advice about the importance of making a record for an appeal. The committee notes that while there are several reasons for wanting a record of a court hearing or trial, the ability to have a transcript for an appeal is indeed an important reason. While not including all the language proposed by the commission, the committee has added information regarding the advisability of having a record for an appeal to form FW-001-INFO, along with information on how to learn about making a record and obtaining a transcript.

Alternatives considered

The committee considered not recommending statewide rules and forms for the process of requesting a court reporter, instead leaving it to each court to develop its own process, to allow the courts more flexibility, particularly considering the severe shortage of court reporters in many areas. However, advisory committee members from legal service organizations pointed out that without a statewide procedure, it could be difficult for fee waiver recipients—or those that advise them—to determine how to request a court reporter. The committee concluded it should develop the rule and forms to aid self-represented parties.

The committee considered including the request for a court reporter as an integral part of the request that fees be waived, on forms FW-001 and FW-001-GC, rather than developing a separate request form. The committee rejected this alternative because, as noted above, such an alternative is essentially the same thing as a rule requiring that a court reporter be provided in all proceedings in every case with a party who has been granted a fee waiver—a rule which the committee declined to make as part of this proposal.

In addition to considering the alternatives raised in the comments, the committee considered but did not include in the request form a statement contained on several of the local court forms currently in use, that a party to the action who is not a fee waiver recipient will be responsible for

a proportionate share of the cost of the court reporter's attendance at the hearing. While this statement is correct for long cause matters (see Gov. Code, § 68068(a)(2)), the committee concluded it is not information that needs to be included on a form being filed by the fee waiver recipient.

Fiscal and Operational Impacts

The primary fiscal and operational impacts are from the requirement laid out in *Jameson* that court reporters be provided upon request of an indigent party. The impact of this rule setting out a statewide process and providing an optional form for parties to use will not significantly change that impact. The Superior Courts of Orange and San Diego Counties both noted that the time and effort to implement the proposal would be minimal. A system update will be required to configure the new form and modify docket codes in electronic case management systems. Staff who will need to be informed include legal processing specialists, courtroom clerks, court reporter staff, court reporters, management, and judicial officers.

Attachments and Links

1. Cal. Rules of Court, rule 2.956, at pages 12–13
2. Forms FW-001 INFO and FW-020, at pages 14–16
3. Chart of comments, at pages 17–62
4. Attachment A: Copies of Legal Service Providers comments

Rule 2.956 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 2.956. Court reporting services in civil cases

(a) Statutory reference; application

This rule implements and must be applied so as to give effect to ~~is adopted to effectuate the statutory mandate of Government Code sections 68086(a)–(b)(c) and must be applied so as to give effect to these sections. It applies to trial courts.~~

(b) * * *

(c) Party may procure reporter or request reporter if granted fee waiver

If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may:

(1) Arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, whom the court must appoint unless there is good cause shown to refuse to do so. It is that party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law; or

(2) If the party has been granted a fee waiver, ~~In compliance with any local court rules,~~ request that the court provide an official reporter for attendance at the proceedings. The court must provide an official reporter if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial.

(A) The request should be made by filing a *Request for Court Reporter by a Party with a Fee Waiver* (form FW-020). If the requesting party has not been granted a fee waiver, a completed *Request to Waive Court Fees* (form FW-001 or form FW-001-GC in guardianship or conservator cases) must be filed at the same time as the request for court reporter.

(B) The party should file the request 10 calendar days before the proceeding for which a court reporter is desired, or as soon as practicable if the proceeding is set with less than 10-days' notice.

(C) If the party has requested a court reporter for a trial, that request remains in effect if the trial is continued to a later date.

1 (D) The court reporter's attendance is to be provided at no fee or cost to the
2 fee waiver recipient.

3
4 (d)-(e) * * *
5

INFORMATION SHEET ON WAIVER OF SUPERIOR COURT FEES AND COSTS

If you have been sued or if you wish to sue someone, if you are filing or have received a family law petition, or if you are asking the court to appoint a guardian for a minor or a conservator for an adult or are an appointed guardian or conservator, and if you (or your ward or conservatee) cannot afford to pay court fees and costs, you may not have to pay them in order to go to court. If you (or your ward or conservatee) are getting public benefits, are a low-income person, or do not have enough income to pay for your (or his or her) household's basic needs *and* your court fees, you may ask the court to waive all or part of those fees.

1. To make a request to the court to waive your fees in superior court, complete the *Request to Waive Court Fees* (form FW-001) or, if you are petitioning for the appointment of a guardian or conservator or are an appointed guardian or conservator, complete the *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you qualify, the court will waive all or part of its fees for the following:
 - Filing papers in superior court (other than for an appeal in a case with a value of over \$25,000)
 - Making and certifying copies
 - Sheriff's fee to give notice
 - Court fee for telephone hearing
 - Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter (use form FW-020 to ask for a court reporter)
 - Assessment for court investigations under Probate Code section 1513, 1826, or 1851
 - Preparing, certifying, copying, and sending the clerk's transcript on appeal
 - Holding in trust the deposit for a reporter's transcript on appeal under Cal. Rules of Court, rule 8.833 or 8.834
 - Making a transcript or copy of an official electronic recording under Cal. Rules of Court, rule 8.835
 - Giving notice and certificates
 - Sending papers to another court department
2. You may ask the court to waive other court fees during your case in superior court as well. To do that, complete a *Request to Waive Additional Court Fees (Superior Court)* (form FW-002) or *Request to Waive Additional Court Fees (Superior Court) (Ward or Conservatee)* (form FW-002-GC). The court will consider waiving fees for items such as the following, or other court services you need for your case:
 - Jury fees and expenses
 - Fees for court-appointed experts
 - Other necessary court fees
 - Fees for a peace officer to testify in court
 - Court-appointed interpreter fees for a witness
3. If you want the Appellate Division of the Superior Court or the Court of Appeal to review an order or judgment against you and you want the court fees waived, ask for and follow the instructions on *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO).

IMPORTANT INFORMATION!

- **You are signing your request under penalty of perjury. Answer truthfully, accurately, and completely.**
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability, or the ability of your ward or conservatee, to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you or your ward or conservatee are granted may be ended if you do not go to court when asked. You or your ward's or conservatee's estate may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **Public benefits programs listed on the application form.** In item 5 on the *Request to Waive Court Fees* (item 8 of the *Request to Waive Court Fees (Ward or Conservatee)*), there is a list of programs from which you (or your ward or conservatee) may be receiving benefits, listed by the abbreviations they are commonly known by. The full names of those programs can be found in Government Code section 68632(a), and are also listed here:
 - Medi-Cal
 - Food Stamps—California Food Assistance Program, CalFresh Program, or SNAP
 - SSP—State Supplemental Payment
 - Supp. Sec. Inc.—Supplemental Security Income (not Social Security)
 - County Relief/Gen. Assist.—County Relief, General Relief (GR), or General Assistance (GA)

- IHSS—In-Home Supportive Services
- CalWORKs—California Work Opportunity and Responsibility to Kids Act
- Tribal TANF—Tribal Temporary Assistance for Needy Families
- CAPI—Cash Assistance Program for Aged, Blind, or Disabled Legal Immigrants

• **If you receive a fee waiver, you must tell the court if there is a change in your finances, or the finances of your ward or conservatee.** You must tell the court within five days if those finances improve or if you, or your ward or conservatee, become able to pay court fees or costs during this case. (File *Notice to Court of Improved Financial Situation or Settlement* (form FW-010) or *Notice to Court of Improved Financial Situation or Settlement (Ward or Conservatee)* (form FW-010-GC) with the court.) You may be ordered to repay any amounts that were waived after your eligibility, or the eligibility of your ward or conservatee, came to an end.

• **If you receive a judgment or support order in a family law matter:** You may be ordered to pay all or part of your waived fees and costs if the court finds your circumstances have changed so that you can afford to pay. You will have the opportunity to ask the court for a hearing if the court makes such a decision.

• **If you win your case in the trial court:** In most circumstances the other side will be ordered to pay your waived fees and costs to the court. The court will not enter a satisfaction of judgment until the court is paid. (This does not apply in unlawful detainer cases. Special rules apply in family law cases and in guardianships and conservatorships. (Gov. Code, § 68637(d), (e); Cal. Rules of Court, rule 7.5).)

• **If you settle your civil case for \$10,000 or more:** Any trial court-waived fees and costs must first be paid to the court out of the settlement. **The court will have a lien on the settlement in the amount of the waived fees and costs.** The court may refuse to dismiss the case until the lien is satisfied. A request to dismiss the case (use form CIV-110) must have a declaration under penalty of perjury that the waived fees and costs have been paid. Special rules apply to family law cases.

• **The court can collect fees and costs due the court.** If waived fees and costs are ordered paid to the trial court, or if you fail to make the payments over time, the court can start collection proceedings and add a \$25 fee plus any additional costs of collection to the other fees and costs owed to the court.

• **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or earlier if a court finds that you or your ward or conservatee are not eligible for a fee waiver. If the case is a guardianship or conservatorship proceeding, see California Rules of Court, rule 7.5(k) for information on the final disposition of that matter.

• **If you are in jail or state prison:** Prisoners may be required to pay the full cost of the filing fee in the trial court but may be allowed to do so over time. See Government Code section 68635.

• **If you want a record made of your court hearing or trial:** There are various reasons why you may want a record of the hearing or trial. Among other reasons, you may want to have a record for an appeal if you disagree with a court order or judgment. If you receive a fee waiver and if the court is not electronically recording the proceeding, you may ask the court to have an official court reporter attend your hearing or trial at no cost to you, so there can be a record of the proceeding. You should use form FW-020 to make the request, which you should file at least 10 calendar days before a scheduled court date, or as soon as you can if the court date is set with less than 10-days' notice.

If you want a written transcript after the hearing or trial, you will need to pay the court reporter separately, or arrange to get the transcript in another way. To learn about ways to do that, talk with the court's Self Help Center or read the information about appeals on the self-help webpages at <https://courts.ca.gov/selfhelp-appeals.htm>.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT 08.12.20 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff/Petitioner: _____ Defendant/Respondent: _____ Other Party: _____	
REQUEST FOR COURT REPORTER BY PARTY WITH FEE WAIVER	
CASE NUMBER: _____	

INSTRUCTIONS

If you have been granted, or are applying for, a waiver of court fees and costs, you may use this form to request the services of an official court reporter for a hearing or trial for which a court reporter is not otherwise provided and for which electronic recording is not provided.

- You should make a request 10 calendar days before any court date for which you want a reporter. If the court date is scheduled with less than 10-days' notice, you should file the request as soon as you can.
- If you do not file the request on time, the court may be unable to provide a court reporter on the date requested and may have to reschedule the hearing or trial.
- There will be no fee to you for the court reporter being at the hearing if you have a fee waiver.
- **Note:** Having a court reporter does not guarantee the right to get a free transcript. To learn more about transcripts and records for an appeal, read the Self Help webpages for civil appeals, particularly courts.ca.gov/designating-record.

If you are eligible, the court will try to schedule a court reporter for the court proceeding but cannot guarantee that one will be available at that time.

REQUEST FOR COURT REPORTER

1. (Name of party making request): _____

- ☐ a. has received a waiver of court fees and costs in this action.
- ☐ b. is filing a *Request to Waive Court Fees* (form FW-001 or FW-001-GC) with this form.

2. An official court reporter is requested for ☐ trial ☐ hearing on (date): _____.

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY OR PARTY WITHOUT ATTORNEY)



(SIGNATURE)

SPR20-07

Civil Practice and Procedure: Court Reporters for Civil Proceedings (Amend Cal. Rules of Court, rule 2.956; approve form FW-020; revise form FW-001- INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
1.	ADZ Law, LLP San Mateo, CA By Raquel Ocon	NI	<p>ADZ Law, LLP is a law firm which specializes in Family Law and Civil Litigation. We represent victims of domestic violence and sexual assault in civil claims against their abusers and third-party defendants. Our law firm appreciates this opportunity to speak on the importance of court reporter accessibility for survivors of abuse and low-income litigants.</p> <p>ADZ Law, LLP was founded in 2015. Since 2015, we have represented many clients and/or victims in the following cases: domestic violence restraining order, dissolution proceeding, pro-bono, civil sexual assault, child custody, and spousal/child support. We strongly believe that all victims should receive resources through the court and access to a court reporter regardless of their economic status.</p> <p>While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FYAP, to the W19-06 Invitation to Comment on previous <i>Jameson</i> implementation measures, we still strongly believe that the best and most effective way to implement <i>Jameson</i> is to provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form indicating that they are affirmatively requesting a court reporter with fees waived.</p> <p>Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box</p>	<p>The committee appreciates the comments. The committee notes that to the extent the comment extolls the value of court reporters for all proceedings, the committee agrees that the ideal situation would be to provide court reporters or electronic recording in all cases. This proposal, however, is limited to a new process for indigent parties' requesting a court reporter when electronic recording is not available, and for court's providing a reporter in response to such a request. To the extent the comment asks for a rule that court reporters be provided automatically for all proceedings in all civil actions with indigent parties, that is outside the scope of this proposal and will be addressed by appropriate council advisory bodies as time and resources permit.</p> <p>Similarly, to the extent the comment asks for allowing a fee waiver to simply check a box on the fee waiver application to indicate that the party wants a court reporter in all proceedings, that is essentially the same as requiring courts to provide court reporters automatically for all proceedings in all civil actions with fee waiver recipients, which is outside the scope of this proposal.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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		<p>should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing.</p> <p><u>Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.</u></p> <p>The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.</p> <p>Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. Without a verbatim record of the unlawful detainer</p>	<p>As noted above, the committee agrees with the importance of access to verbatim records.</p>
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		<p>proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.</p> <p>Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States. Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.</p> <p>California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.</p> <p>Finally, a verbatim record is especially critical on appeal. As the <i>Jameson</i> court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (<i>Jameson, supra</i>, 5 Cal.5th at p. 608.)</p>	
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		<p><u>Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.</u></p> <p>For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the <i>Jameson</i> decision. We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2) to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.</p> <p>However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:</p> <p>The party should file the request as soon as</p>	<p>The committee acknowledges the commenters support for new subdivision (c)(2).</p> <p>The committee has considered this comment but declines to follow the suggestion. The committee notes that the rule's 10-day timeline for filing a request for a court reporter is advisory rather than mandatory. The 10-days' advance notice is to give the court sufficient time to arrange for the presence of a court reporter on the scheduled hearing date, which is increasingly difficult to do with the shortage of court reporters, a shortage which has intensified with the COVID-19 pandemic. Making a request outside the desired time frame will not preclude an indigent party from obtaining a court reporter, although it may mean that a hearing will have to be continued in order to do so. That is noted on the request form.</p>
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		<p>practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.</p> <p><u>Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.</u></p> <p>Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.</p> <p>Below, we answer each of the Committee's questions, with the above background in mind.</p> <p>1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?</p> <p>While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can - and we believe should - require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as</p>	<p>As noted above, the council is aware of this issue and will continue to consider it as time and resources allow.</p> <p>See first part of response above.</p>
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		<p>opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter - as opposed to a mere calendaring or administrative matter that does not - would be a better use of court resources resulting in better access to justice for low-income litigants.</p> <p>Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter-and at the right time, and on a separate form-only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in <i>Jameson</i>. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of <i>Jameson</i>, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in</p>	
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		<p>California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish, as described in Jameson. (<i>Jameson, supra</i>, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.</p> <p>We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors and clients we work with, we attend their court hearings, depositions, short and long cause trials. It is extremely crucial to have a court reporter available and present during hearings, depositions, and trials. The court should be able to provide a court reporter when requested.</p> <p>2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?</p> <p>The addition does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW- 020)." The use of the term "see" is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either</p>	<p>The committee appreciates the comment and has made modified the information sheet in light of this comment.</p>
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			<p>superior court fees or appellate court fees.</p> <p>This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection (4) "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and " Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter ' s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under (6).</p> <p>In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the <i>Jameson</i> decision and the long line of access-to-justice cases upon which it rests. Full implementation of <i>Jameson</i> is paramount to ensuring all low- income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.</p>	<p>The court reporters fees are included among the fees to be waived if the request is granted, so need not be listed separately. As noted above, to the extent this comment is intended to have a request to waive court reporters fees be the equivalent of a request to provide a court reporter, that is essentially a request to automatically provide a court reporter in every hearing in every civil case in which a fee waiver recipient is a party, and is outside the scope of this proposal.</p>
2.	Asian Americans Advancing Justice– Asian Law Caucus San Francisco, CA By Tiffany L. Hickey, Esq. Housing Rights Program	NI	Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC) submits this letter in response to the Judicial Council’s invitation to comment on the proposed rules implementing <i>Jameson v. Desta</i> , 5 Cal.5th 594 (2018). Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation’s first legal and civil rights organization serving the low-income Asian Pacific	The committee appreciates this comment, which raises essentially all the points raised in the ADZ Law comment. See responses to the comment 1, by ADZ Law above. The committee also adds a specific response below to the one different point raised by this commenter.

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		<p>American communities. We focus on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, we also help to set national policies in affirmative action, voting rights, Census, and language rights.</p> <p>Our housing advocacy focuses on gateway communities for new immigrants, such as San Francisco Chinatown, where large numbers of tenants and seniors are in danger of displacement due to gentrification and other economic pressures. Our clients are low-income, often live with disabilities, and have limited English proficiency. We believe that the proposed rules implementing <i>Jameson</i> will have a particularly significant impact on our clients facing eviction through unlawful detainer litigation.</p> <p>While we appreciate that the proposals address concerns raised by legal services organizations on the prior round of <i>Jameson</i> implementation measures, we strongly believe that the most efficient and effective way to implement <i>Jameson</i> is to provide court reporters or an electronic record in all proceedings where a litigant has been granted a fee waiver. If not, the second best form of implementation would be to amend the existing fee waiver form to include a check box indicating that they are requesting a court reporter. Creating an additional form, while still preferable to having no state-wide system at all, increases the administrative burden for courts, gives discretion to courts to deny "untimely" requests, and creates an additional burden for low-income litigants who</p>	
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		<p>often lack access to legal representation and do not know about the importance of a verbatim record.</p> <p>1. The Court System Cannot Provide Meaningful Access to Justice for Low- Income Litigants Without Providing Verbatim Records.</p> <p>In <i>Jameson</i>, the California Supreme Court recognized “the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant’s legal rights and in providing such a litigant equal access to appellate justice in California.” (<i>Jameson, supra</i>, 5 Cal.5th at p. 608.) Verbatim records are especially critical for our clients in unlawful detainer proceedings, where an unfavorable ruling means the loss of their home, community, and support network. Many end up homeless or are forced to move far from San Francisco because they cannot afford a market-rate unit. Even though San Francisco passed Tenant Right to Counsel, there are still not enough lawyers to represent every tenant facing eviction. Moreover, 90% of tenants facing the loss of their home across the state are unrepresented while almost all landlords have representation. Without a verbatim record of unlawful detainer proceedings, tenants are unable to create a record of their proceedings for appeal and such appeal is likely to be denied or dismissed without such a record. (<i>See Jameson, supra</i>, 5 Cal.5th at p. 608.) Lack of a record also makes it more difficult to seek other post judgment relief from eviction.</p> <p>2. Proposed Changes to Rule of Court 2.956 Should Fully Protect Tenants</p>	
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Civil Practice and Procedure: Court Reporters for Civil Proceedings (Amend Cal. Rules of Court, rule 2.956; approve form FW-020; revise form FW-001- INFO)

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		<p>We support the proposal to amend Rule of Court 2.956(c)(2) to clearly establish that when a fee-waiver recipient requests a court reporter one must be provided by the court for free, and for the duration of the trial. However, we are concerned that the proposed 10-day timeline to request a court reporter may bar indigent litigants, particularly defendants in unlawful detainer matters, from accessing this vital service. Most tenants facing eviction are unrepresented or do not find legal representation until shortly before their trial. They are unlikely to know that they should request a court reporter without advice of counsel and will be disadvantaged due to this strict 10-day timeline. Moreover, some motions in an unlawful detainer proceeding only require 5-day notice to the opposing party, such as a motion for summary judgment. It would then be impossible for any indigent litigant to comply with the proposed rule and obtain a record of the proceeding. Therefore, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:</p> <p><i>The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording, considering factors such as the amount of notice received, a litigant's disability, or other factors that may have affected the party's ability to timely make the request.</i></p> <p>3. A Court Reporter or Electronic Recording Should be Automatically Provided to Fee Waiver Recipients.</p>	<p>See responses to the comment above as to why the committee declines to follow this suggestion and instead will recommend the rule as proposed, to encourage parties to request a court reporter 10 days before a hearing. In addition, the committee concluded that there was no reason to provide factors for a court to consider in continuing a proceeding to provide a court reporter, because the court is <i>required</i> under <i>Jameson</i> to provide a court reporter if one is requested by an indigent party and no electronic recording is available. If that means that a continuance is needed to provide the court reporter, the court will have to provide such a continuance if the party desires it—the only factor to be considered is the party's request.</p>
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		<p>Finally, while we commend that the Council’s effort to seek more information about the fiscal effects of automatically providing court reporters for fee waiver recipients, the right to a verbatim record, without a request, should not be denied during this period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form or why a record is important, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms while facing short deadlines pursuant to the unlawful detainer process and the potential loss of their home.</p> <p>Below, we answer each of the Committee’s questions, with the previous comments and concerns as background.</p> <p>1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?</p> <p>While this proposal is more consistent than the current individual court processes, it does not adequately ensure indigent litigants will have access to the verbatim records to which they are entitled. The proposed process also adds increased burden to the courts and self-help centers by creating another form and procedure. Instead, we believe the Council should require a court reporter, or at least an electronic recording in all courtrooms where a fee waiver recipient is a party. Moreover, the committee points out in the Executive Summary and Origin that this Council can</p>	
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		<p>approve such a slight expansion of the <i>Jameson</i> holding as a matter of policy and we believe that the Council should take this action. (Invitation to Comment SPR20-07, p. 2)</p> <p>As cited above, the great majority of tenants facing eviction in California defend their homes without the benefit of legal representation. They are forced to navigate the court system and attempt to understand the rules and procedures on an expedited timeline alone. This can be a daunting enough task for someone who speaks English or has experience with the court system. However, the communities that AAAJ-ALC serves also often have limited English proficiency and come from cultures with vastly different court systems. Many have escaped serious abuse and suffered trauma or live with other disabilities that make navigating the court system even more difficult. For the majority who go unrepresented, the self-help centers in many counties are overwhelmed with the volume of need and cannot assist everyone. Imposing additional burdens on these individuals to 1) affirmatively request a court reporter, 2) at the right time, and 3) on a third and separate form specific to indigent litigants decreases the likelihood that they will be able to exercise their rights as outlined by the Supreme Court in <i>Jameson</i>.</p> <p>The proposed process adds yet another procedural hurdle for low-income litigants to scale when they are already in unfamiliar territory and the stakes are high – such as losing their home. We believe that many of these individuals will be unable to exercise their right to a record at all, resulting in the opposite result prescribed by the Supreme Court, “creat[ing] the type of restriction of meaningful access to the civil judicial process that the relevant California in</p>	
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		<p>forma pauperis precedents and legislative policy render impermissible.” (<i>Jameson, supra</i>, 5 Cal.5th at p. 598.) California can provide truly meaningful access to the courts by providing verbatim records to all litigants with fee waivers.</p> <p>Superior Courts’ responses to a recent public records inquiry reveal that this approach is even feasible for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the <i>Jameson</i> decision came down it has never refused a fee waiver recipient’s request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective and efficient way to implement <i>Jameson</i>.</p> <p>2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?</p> <p>Adding this cross-reference does not make the list more confusing. However, it would be more clear to change the parenthetical to “(use form FW-020 to make this request)” rather than “(see form FW-020).” The use of the term “see” is legalese but does not make it clear to a lay person that this is the form to complete.</p> <p>As discussed above, we believe that this separate form will</p>	
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		<p>make it more difficult for indigent litigants to exercise their right to a verbatim record and are concerned that many pro se litigants do not read the instruction sheet when filling out the fee waiver forms. Therefore, it is much simpler to allow litigants to see the option of the court reporter on the fee waiver application itself in the form of a check-box like the existing boxes for waiving superior court fees or appellate court fees.</p> <p>This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.</p> <p>In conclusion, we believe the Council should create a process with fewer rather than more barriers for low-income litigants to exercise their right to verbatim recordings. This would better fulfill the spirit of the <i>Jameson</i> decision and the long line of access-to-justice cases that it follows. This is key to ensuring all low-income</p>	
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			Californians have access to justice, and for my clients, have a meaningful opportunity to defend their homes. Thank you for your time and consideration.	
3.	Bay Area Legal Aid San Francisco, CA By Ariella Hyman Director of Program Advocacy	NI	<p>*While BayLegal commends the Judicial Council's steps to adopt a uniform state-wide implementation of <i>Jameson</i>, we strongly urge that a court reporter or electronic record be made available in all proceedings involving indigent litigants as a matter of right. This change would follow the California Supreme Court's sentiment in <i>Jameson</i> that litigants of limited means must have access to verbatim records to have meaningful access to the judicial system. In the alternative, we support adding a checkbox on the existing fee waiver form to permanently request a court reporter, so long as courts develop a plan to administratively identify cases where a <i>Jameson</i> request was made at the filing of FW-001. We are concerned the Judicial Council's proposed changes, as they currently stand, create additional burdens for low-income litigants and may create more administrative burden for the courts.</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	The committee appreciates this comment, which is essentially the same as comment 1. See responses to comment 1.
4.	California Commission on Access to Justice Oakland, CA By Judge Mark A. Juhas, Chair	AM	The California Commission on Access to Justice appreciates the opportunity to comment on the Judicial Council of California's proposed amendment adding Rule 2.956 to the Rules of Court and revised form FW-001-INFO and form FW-020. The Access Commission supports Rule 2.956 and proposes additions to the forms to increase indigent litigants' understanding that they can make a request for a court reporter to be provided free of charge, why a court reporter is needed, and how to learn more about obtaining a transcript.	The committee appreciates the comments.

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		<p>In addition, the Access Commission supports future steps including providing a court reporter (or other means of generating an official record), without request, in appropriate circumstances as a matter of policy as well as further investigation of other ways of providing low-cost or free access to verbatim transcripts.</p> <p>For 23 years, the Access Commission has worked to advance access to justice for all Californians using broad-based strategies informed by diverse stakeholders. The Access Commission proposes innovative solutions and oversees efforts to increase resources and improve methods of helping the poor, those of moderate-income, and others struggling to address legal problems and vindicate legal rights.</p> <p>The Amicus Curiae Committee of the Access Commission) submitted a brief as amicus curiae in <i>Jameson v. Desta</i> (2018) 5 Cal.5th 594, supporting the recognition of a right of litigants to obtain a transcript of civil proceeding without imposition of a cost the litigant could not afford. The Access Commission supports full implementation of the <i>Jameson</i> decision, and continued and increased efforts by the courts to preserve a record of trial-court proceedings, and to generate a verbatim transcript of those proceedings for fee waiver recipients.</p> <p>Support for Proposed Rule 2.956: The proposed rule is consistent with the Supreme Court's holding in <i>Jameson</i>. (See 5 Cal.5th at 693.) Providing for the presence of a court reporter at the litigant's request without requiring payment from indigent litigants is a significant improvement. We note that the Judicial Council is studying proposals to make the provision of court reporters automatic in certain circumstances. The Access Commission supports this potential expansion as consistent with the public policy of facilitating equal access to the courts.</p>	<p>The committee acknowledges the commenter's support for the new rule for this process.</p>
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		<p>Comments on Form FW-001-INFO and Form FW-020:</p> <p>Self-represented indigent litigants may not understand that they have a right to a court reporter or why they should exercise that right. As long as proceedings are not transcribed or recorded unless a litigant makes a request, fairness and due process require, at a minimum, that litigants with fee waivers be informed that they may make a request for a court reporter to be provided free of charge. They should also be told why they should make that request — because a transcript is most often essential for an effective appeal — and they should be told that they may need to take additional steps to obtain the transcript that the reporter creates.</p> <p>There is a statement at the bottom of page 2 of FW-001-INFO that:</p> <p style="padding-left: 40px;">The fee for the court reporter being at your hearing will be waived (there will be no cost to you), <u>but note that having a court reporter does not guarantee the right to get a free transcript.</u></p> <p>Similar language is in the FW-020 Form.</p> <p>These statements leave readers uncertain about what they may be required to do to obtain a transcript and how much it may cost. We recognize that no simple description can be given, under current procedures, of how litigants can obtain a</p>	<p>The committee notes that there are several reasons for wanting a record of a court hearing or trial, as outlined in the comments received from many commenters on this proposal. The ability to have a transcript for an appeal is just one of those reasons. However the committee agrees that it is an important reason, and so has added information regarding the advisability of having a record for an appeal to form FW-001-INFO. The committee decided not to add this suggested text to the request form, because of concern that the form would become too busy and difficult to understand.</p>
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		<p>transcript if they cannot afford to pay the reporter's fee. Options to obtain or borrow a transcript exist, but differ for different circumstances. However, the forms should at least inform the reader about where to seek more information.</p> <p>We therefore suggest reducing the reading level of the explanation so that it is more understandable by indigent parties with limited literacy as follows:</p> <p>The court reporter's fee for being at your hearing will be waived. (You will not pay for the court reporter to attend the hearing). To get the transcript for an appeal, you may need to pay the court reporter's fee or get the transcript in another way. To learn about the ways to do that, talk with the staff of the court's Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr.</p> <p>Form FW-001-INFO should include the following explanatory language, perhaps as an addition after the phrase "If you want a record made of your court hearing or trial:" a statement such as: "A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial." The same explanatory statement should also be added to form FW-020.</p> <p>We suggest another wording change to avoid confusion. Form FW-020 states that "you may use this form to request the services of an official court reporter for a hearing or trial <u>for which a court reporter is not normally available</u>. . . ." The underlined phrase is confusing and might be misunderstood as meaning that a request for a court reporter is not needed</p>	<p>The committee agrees and has added a sentence to both the request form and the information sheet as to how the party can obtain information about obtaining transcripts from either a court's self-help center or from the council's self-help webpages.</p> <p>As noted above, the form has been modified in light of this comment.</p> <p>Although the committee does not agree with the proposed language in full, the committee has modified the information form in light of this comment to reflect the importance of a record for purposes of an appeal.</p> <p>The committee has modified the language on form FW-020 in light of this comment, to state "not otherwise available" rather than "not normally available".</p>
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		<p>for certain hearings where court reporters are typical and recommended, or, conversely, that the form is limited to certain proceedings that are not normally transcribed. Further, the language could be interpreted to mean the right to a free court reporter exists for proceedings, such as conferences regarding scheduling or settlement, in which a court reporter often does not participate because the proceeding has no bearing on an appeal. We believe that would be beyond the holding of <i>Jameson</i> and could impose unnecessary costs on the courts. Please consider deleting the underlined phrase.</p> <p>According to our suggestions, the relevant portion of FW-001-INFO would read:</p> <p>A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial. If you receive a fee waiver and if the court is not going to make an electronic recording of the hearing or trial, you may ask the court to have an official court reporter attend your hearing or trial at no cost to you. You should use form FW-020 to make the request, which you should file at least 10 calendar days before a scheduled court date, or as soon as you can if the court date is set with less than 10-days' notice.</p> <p>The court reporter's fee for being at your hearing will be waived. (You will not pay for the court reporter to attend the hearing). To get the transcript for an appeal, you may need, as a second step, to pay the court reporter's fee for the transcript or get it in another way. To learn about the ways to get a transcript for appeal, talk with the staff of the court's</p>	<p>See responses above to the suggested language changes.</p>
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		<p>Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr.</p> <p>According to our suggestions, the initial paragraph of FW-020 would read:</p> <p>A party who wishes to appeal an order may need to provide a court reporter's transcript to prove to the court of appeal why the party believes the order was wrong—the law may require the court to deny an appeal if there is no transcript. The first step is that a court reporter must record the court hearing or trial. If you have been granted a waiver of court fees and costs, and if the court is not going to make an electronic recording of the hearing or trial, you may use this form to request the services of an official court reporter for a hearing or trial for which a court reporter is not normally available and for which the court will not make an electronic recording.</p> <p>The final bullet point of FW-020 would read:</p> <p>Note: To get the transcript for an appeal, you may need to pay the court reporter's fee for the transcript or get it in another way. To learn about the ways to get a transcript for appeal, talk with the staff of the court's Self Help Center or read the information at https://www.courts.ca.gov/12666.htm?rdeLocaleAttr.</p> <p>Response to a specific question:</p> <p>You have asked whether it is helpful, or too confusing, to include in form FW-001-INFO the cross- reference to the new court reporter request form, FW-020. We think that cross-reference is helpful and does not make FW-001-INFO too confusing.</p>	<p>See responses above to the suggested language changes.</p> <p>The committee agrees, although the language has been modified somewhat in light of other comments.</p>
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			<p>Suggestions for the future:</p> <p>The presence of a court reporter is not sufficient to vindicate the interests addressed in <i>Jameson</i>. Litigants also need to be able to obtain the official record, even if they are unable to pay for it. We recognize that this goal requires more than a change to the Rules of Court, and is beyond the scope of the current proposal. The Access Commission would support future measures as part of the Judicial Council's legislative agenda, such authorizing the use of electronic recordings of proceedings as the official record, increasing funding for the a Transcript Reimbursement Fund established by Business & Professions Code Section 8030.2, or other means for indigent litigants to actually obtain the official record, which is the unstated policy driver beneath the <i>Jameson</i> decision.</p>	<p>The committee acknowledges this suggestion and the fact that it is beyond the scope of this proposal.</p>
5.	<p>California Lawyers Association- - Committee on Administration of Justice of the Litigation Section San Francisco, CA By Saul Bercovitch Director of Governmental Affairs</p> <p>Christopher Fredrich Committee on Administration of Justice</p>	A	<p>The Committee on Administration of Justice (CAJ) agrees with this proposal. CAJ notes that proposed form FW-020 is set up to be signed by a party only, and recommends that the form be modified to account for situations where a party with a fee waiver is also represented by an attorney.</p>	<p>The committee agrees with the suggestion and the form has been revised to provide for signatures of attorneys as well as parties.</p>
6.	<p>California Lawyers Association- -Family Law Section of the California Lawyers Association (FLEXCOM) San Francisco, CA</p>	A	<p>FLEXCOM agrees with this proposal. As to the specific request for comment, on form FW-001-INFO, it might be helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees.</p>	<p>The committee agrees and the cross-reference will remain in the form.</p>

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	<p>By Justin M. O'Connell FLEXCOM Legislation Chair</p> <p>Saul Bercovitch Director of Governmental Affairs</p>			
7.	<p>California Partnership to End Domestic Violence Sacramento, CA By Krista Niemczyk Public Policy Manager</p>	NI	<p>*The California Partnership to End Domestic Violence (the Partnership) greatly appreciates the opportunity to comment on the above listed rules, and forms proposed, each of which is discussed below:</p> <p>The Partnership is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups. With offices in Sacramento, the Partnership's diverse membership spans the entire state. Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. The Partnership believes that by sharing expertise, advocates and policy-makers can end domestic violence. Working at the state and national levels for nearly 40 years, the Partnership has a long track record of successfully passing over 200 pieces of legislation addressing domestic violence.</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.
8.	<p>Centro Legal de la Raza Oakland, CA By Monique Berlanga (Farris) Directing Attorney, Tenants' Rights Practice</p>	NI	<p>*Centro Legal de la Raza submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing <i>Jameson v. Desta</i>, 5 Cal.5th 594 (2018).</p> <p>Founded in 1969, Centro Legal de la Raza is a comprehensive legal services agency protecting</p>	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

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			<p>and advancing the rights of low-income communities through bilingual legal representation, education, and advocacy for thousands of individuals and families each year throughout Northern California. Centro Legal de la Raza's Tenants' Rights Practice provides free legal services to low-income tenants in the Bay Area, including legal representation for tenants in unlawful detainer proceedings. In 2019, Centro Legal de la Raza's Tenants' Rights Program provided legal services to 1,724 low-income tenants in Alameda County. Our role as a direct legal services provider uniquely positions us to assess the impact of the Judicial Council's proposed changes to the court rules, particularly as they will apply in unlawful detainer litigation.</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	
9.	<p>Child Support Directors Association Sacramento, CA By Ronald Ladage Chair, CSDA Judicial Council Forms Committee Director/Chief Attorney, El Dorado County DCSS</p>	NI	<p>The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee's feedback is set forth below.</p> <p><u>SPR20-07 Civil Procedure and Procedure: Court Reporters for Civil Proceedings</u></p> <p>By law, in California IV-D litigants are all exempted from paying court fees in IV-D matters. Unlike other civil matters, no fee waivers are required to be filed in IV-D cases. The proposed statewide process does not take into account IV-D cases in which fee waivers are not required. The proposed statewide process assumes that a fee waiver has been filed and granted by the court. It would be inefficient and unnecessarily time consuming for these parties to file a separate request for a fee waiver from the court for</p>	<p>Proposed form FW-020 has been revised to provide that an indigent party who has not previously received a fee waiver may request one at the same time as making the request for a court reporter. The <i>Jameson</i> decision provides that a court reporter be provided for a fee waiver recipient, and evaluation of the fee waiver request is the</p>

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		<p>nonexistent fees. The proposed form to request a court reporter states that the party already has a fee waiver.</p> <p>The inherent requirements of the proposed process and form do not provide an efficient avenue for IV-D litigants to request a court reporter. Under this process, litigants would be required to file an unnecessary separate fee waiver in order to use the proposed Request For Court Reporter By A Party With A Fee Waiver form. Aside from the obvious inefficiency, this process will cause confusion and unnecessary work for litigants and court staff. Furthermore, an unsophisticated litigant may not have sufficient time or understanding to request a needless fee waiver in addition to a separate request for a court reporter. This could result in a burden on court facilitators, court clerk staff and cause unnecessary continuances. Without accounting for IV-D cases, some pro per litigants may not understand that they have a right to a court reporter and thus, the proposed process may limit their access to justice.</p> <p>In the short term, along with the change we propose to the language in Rule of Court 2.956 (see below), we suggest the proposed Request For Court Reporter By A Party With A Fee Waiver form be modified to allow for the concurrent filing of the Request To Waive Court Fees form. The long-term solution for this issue would be a change in statutory law that would allow electronic recording in all IV-D court hearings. The Committee respectfully request the Judicial Council explore the long-term option of statutory change.</p> <p>Rule 2.956 – The Committee recommends modifying the language as follows:</p>	<p>method by which courts generally determine indigency.</p> <p>The committee agrees with the short-term proposal and has so modified the form. The long-term solution of allowing electronic recording in Title IV-D court hearings is outside the scope of this proposal and the purview of this advisory committee, and is better raised with the Legislature. The issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow.</p>
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			<p>(c) (2) <i>A party may, in compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings. If the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial, the court must provide the official reporter.</i></p> <p>Additionally, we suggest the proposed form's caption box be modified to include "Other Parent". (See attached FW-020 draft example)</p> <p>Our proposed changes to both the Rule of Court and the form will provide for a greater efficiency and enhanced access to justice for litigants.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.</p>	<p>The committee agrees with the suggestion to break the one long sentence at the beginning of subdivision (c)(2) into two sentences.</p> <p>"Other Party" has been added to the caption box in light of this comment, which can be used by parents and other third parties.</p>
10.	Department of Child Support Services Sacramento, CA Shannon Richards, Attorney III	NI	<p>The California Department of Child Support Services (department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the rules and forms with potential impacts to the department and its stakeholders follows.</p> <p>As written, the proposal does provide a statewide process for parties with fee waivers to apply for a court reporter. Although the department welcomes a unified process for all persons involved in litigation, and applauds the effort to create one, it is incumbent upon us to state that the proposed process does not assist in our cases in IV-D courts and the population we serve. Concerns arise with both the forms and the language of the proposed rule 2.956 which include:</p>	<p>The committee appreciates the comment.</p>

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		<p>1. The forms presume a fee waiver has already been filed. The vast majority of IV-D case participants do not file fee waivers, so the forms are worded in a way that excludes them from using the form without first filing a fee waiver, which they do not need in a IV-D case.</p> <p>2. In the early stages of a IV-D action, the parties are typically the local child support agency and the noncustodial parent. The custodial parent is not joined until after a Judgment is filed. [Family Code Section 17404(e)(1)] It appears that no process is available to these unjoined parents to request court reporters, since they aren't yet parties to a case in which to file a fee waiver or a request for a hearing, including one of the most fundamental hearings -- the motion for judgment on paternity. The proposed process leaves these parents without a methodology to obtain court reporters.</p> <p>3. The modified language of proposed Rule 2.956 is a bit awkward at subdivision (c)(2). The department therefore proposes a slight change in the wording as follows:</p> <p>Instead of: "If the party has been granted a fee waiver, in compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings, whom the court must provide if the party has been granted a fee waiver and if the court is not electronically recording the hearing or trial."</p> <p>Proposed Revision: <i>A party may, in compliance with any local court rules, request that the court provide an official reporter for attendance at the proceedings. If the party has been granted a fee waiver and the court is not electronically</i></p>	<p>The form has been revised in light of this comment to allow a party asking for a court reporter to file a fee waiver request along with the court reporter request.</p> <p>It is outside the scope of this proposal to provide court reporters for non-parties. The issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow.</p> <p>The committee agrees with the suggestion to break the one long sentence at the beginning of subdivision (c)(2) into two sentences.</p>
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		<p><i>recording the hearing or trial the court must provide the official reporter.</i></p> <p>Again, this rule provides that a “party” may request a court reporter. As stated above, there are many unjoined persons involved in IV-D actions who may wish to obtain a court reporter but would be unable to do so under the present proposal.</p> <p>A large percentage of the IV-D courts are persons who are on state aid and would likely qualify for a fee waiver, but participants in IV-D courts do not typically file fee waivers. Parties to IV-D actions file their responses to these actions as well as motions solely to modify child support without a fee. [Government Code section 70672 allows local child support agencies to file actions without fees.]</p> <p>The confusion that may be created by providing fee waiver applications to persons in cases where fees are not required creates a bigger concern than a statewide process -- that the IV-D population will go unserved due to the confusion. The burden then, will fall to local child support agencies, family law facilitators and the courts to explain to the IV-D participants why they should participate, creating a labor intensive process where one previously did not exist. Absent an effort to educate the IV-D population many who may qualify for fee waivers and court reporters will likely not receive the services they are entitled to, as they will not file for fee waivers (as is done in the beginning of other types of civil cases who have filing fees). Ultimately, these litigants may attend hearings not understanding why they are not given court reporters or will have to hustle just ahead of a hearing, creating a challenging scheduling issue for courts, litigants, and reporters.</p>	<p>The suggestion of a separate process for Title IV-D proceedings or for allowing electronic recording in Title IV-D court hearings is outside the scope of this proposal and the purview of this advisory committee. As noted above, the issue will be referred to the Family and Juvenile Law Advisory Committee for consideration if appropriate for council recommendation, as time and resources allow.</p>
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			<p>The department suggests the Council resolve these issues in the immediate future by having a separate process for those involved in courtroom activity in IV-D courts. This too, has its challenges and would create the labor intensive educational process outlined above. Given these challenges, the department believes it is time to revisit electronic reporting in IV-D cases.</p> <p>The long term solution may be provided by creating a rule of court and/or seeking statutory change to allow electronic recording in all IV-D courts. By doing so, IV-D courts will automatically be exempted from the proposed statewide process to apply for court reporters, there would be no confusion for IV-D litigants and both courts and local child support agencies would avoid the labor intensive process to educate IV-D litigants on why a fee waiver may be necessary in cases where no filing fees are taken. In addition, this option will free up the limited number of certified court reporters for other criminal and civil actions, while maintaining work for court reporters when transcripts are needed. We encourage the Judicial Council and its committees to explore this option for the benefit of the IV-D participants.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed rules and form changes.</p>	
11.	Desert Sanctuary Inc. Barstow CA By Peggi Fries, Executive Director	NI	<p>*Desert Sanctuary Inc. is a domestic violence shelter program in the small, rural community of Barstow California. We have been providing shelter and all related services to victims of domestic violence and their children since 1982. We have very little access to attorneys, legal assistance or</p>	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

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			<p>advice. The FVAP came into our lives a few years ago when the California Partnership to End Domestic Violence and Cal-OES had them provide a training to the field. Since that time, they have responded to each and every question we have asked. They have provided assistance to clients who felt completely unheard by the courts. They have helped us to understand how to respond to ICE, CFS, Law Enforcement and property managers/owners. Our ability to provide for our clients and to protect our agency has been improved exponentially due to the valuable relationship we have formed. We greatly appreciate the opportunity to support FVAP as they seek to further define the importance of the above referenced rules and forms proposed, each of which are discussed below.</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	
12.	<p>Eviction Defense Collaborative San Francisco, CA By Martina I. Cucullu Lim Executive Director</p>	NI	<p>*The Eviction Defense Collaborative, San Francisco's Lead Agency for implementing its Right to Counsel for tenants in eviction cases law, greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below.</p> <p>As the lead agency implementing San Francisco's Right to Counsel law we assist tenants with pro per first responses while their cases are being referred to lawyers at one of the nine legal services agencies for full scope legal representation (including our own agency). Unfortunately, the funding for Right to Counsel has still not been enough to cover all litigants and about 1/3 of tenants have to proceed through their eviction cases without an attorney. This makes the need for the requesting of court reporters or electronic recordings for fee waiver clients to be something easy and simple.</p>	<p>The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.</p>

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			*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	
13.	Family Assistance Program Victorville, CA By Darryl Evey, Executive Director	NI	<p>*Family Assistance Program is fortunate to have the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below.</p> <p>Family Assistance Program was founded in 1985, formerly known as High Desert Domestic Violence Program, and has been providing shelter and advocacy services to individuals experiencing domestic violence. Through the years, the agency has grown. We now operate shelters, transitional housing, and have offices in Victorville, Hesperia, San Bernardino, Redlands, and Fontana. Family Assistance Program offers various classes (parenting, anger management, substance abuse, and domestic violence support groups), legal advocacy services, and a variety of other services. Our agency assists clients with initial requests for domestic violence restraining orders, provides court support and continuous support for our clients throughout the restraining order and/or child custody process. It is our goal and continued effort to build stronger families by offering services that can benefit all community members. Our agency will continue growing to meet the needs of the community as they arise.</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.
14.	Family Violence Appellate Project	NI	*Family Violence Appellate Project (FVAP) greatly appreciates the opportunity to comment on the above-listed	The committee appreciates this comment, which contains all the points raised in the

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	<p>Oakland CA By Jennafer Dorfman Wagner, Esq. Director of Programs</p> <p>Joined by: Haven Women’s Center of Stanislaus, CA</p> <p>MAITRI, Santa Clara, CA</p> <p>Monarch Services, Santa Cruz, CA</p> <p>and Shalom Bayit. Berkeley, CA</p>		<p>rules, and forms proposed, each of which is discussed below. We are joined in these comments by Haven Women’s Center of Stanislaus, MAITRI, Monarch Services, and Shalom Bayit. (*Statements of Interest below.)</p> <p>FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including <i>Jameson v. Desta</i>, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.)</p> <p>*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]</p>	ADZ Law comment. See the committee’s responses to comment 1.
15.	<p>Harriett Buhai Center for Family Law Los Angeles, CA By Rebecca L. Fischer Staff Attorney</p>	AM	<p>Request for Specific Comments:</p> <ul style="list-style-type: none"> • Does the proposal appropriately address the stated process? In general, yes. <p>There is a slight inconsistency from the proposed rule to the proposed form in language. The proposed rule in (c)(2)(B) provides "The party <i>should</i> file the request [for a court reporter] 10 calendar days before the proceeding for which a</p>	The committee appreciates the comment. The form has been revised to reflect the language of the rule, replacing the word “must” with “should”.

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			<p>court reporter is desired, or as soon as practicable if the proceeding is set with less than 10-days' notice" (emphasis added) and the proposed revision to the information sheet is similar. However, but the proposed form says in the first bullet point, "You <i>must</i> make a request 10 calendar days before any court date for which you want a reporter. If the court date is scheduled with less than 10-days notice, you should file the request as soon as you can." The language should be consistent from rule to form.</p> <p>• On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?</p> <p>No comment</p>	No response required.
16.	<p>Legal Aid Association of California Oakland, CA By Salena Copeland Executive Director</p> <p>Community Legal Aid SoCal Kate Marr ,Executive Director</p> <p>Mental Health Advocacy Services Jenny Farrell, Executive Director</p> <p>The Public Interest Law Project Michael Rawson, Director</p>	NI	<p>* The Legal Aid Association of California (LAAC) greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below. LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.</p>	The committee appreciates this comment, which contains all the points raised in the ADZ Law comment. See the committee's responses to comment 1.

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Legal Aid Foundation of Los Angeles Barbara J. Schultz Director of Litigation & Policy Public Counsel Los Angeles, CA Cindy Pánuco, Vice President & Chief Program Officer San Diego Volunteer Lawyer Program Amy Fitzpatrick Chief Executive Officer Coalition of California Welfare Rights Organizations Kevin Aslanian, Executive Director California Advocates for Nursing Home Reform Patricia McGinnis, Executive Director California Rural Legal Assistance Ilene Jacobs Director of Litigation, Advocacy & Training Los Angeles Center for Law and Justice Jimena Vasquez, Directing Attorney		*[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	
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	California Women's Law Center Amy Poyer, Senior Staff Attorney			
17.	Orange County Bar Association By Scott B. Garner, President	A	<p>The Judicial Council also asked for specific comments related to the following:</p> <p>Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients? Yes, however, once a litigant has been approved a fee waiver request there does not seem to be a need to require the fee waiver recipient to further request a court reporter waiver. Due to the nature of being an unrepresented litigant it would seem most appropriate to place the onus on the court to apprise the litigant of their right to have a court reporter at no expense to them.</p> <p>On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? It is helpful.</p>	<p>The committee acknowledges the commenter's agreement with the proposal.</p> <p>This point addresses issues outside the scope of this particular proposal. See response to comment 1.</p> <p>The committee agrees and has retained the cross-reference.</p>
18.	Public Law Center Santa Ana, CA By Leigh E. Ferrin Director of Litigation and Pro Bono	AM	PLC is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, veterans and health law. Additionally, PLC provides legal assistance to non-profits and low-income entrepreneurs. PLC regularly provides guidance to self-represented litigants in Superior	The committee appreciates this comment, which contains the points raised in the ADZ Law comment. See the committee's responses to comment 1.

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			<p>Court, as well as representing individuals who are eligible for a fee waiver.</p> <p>As a non-profit organization with particular funding concerns at this time, PLC does not have a budget to pay for court reporters or electronic records in all its cases. PLC was immensely grateful for the <i>Jameson</i> opinion. PLC has appealed from limited civil cases in Superior Court where the litigant had a fee waiver pre-<i>Jameson</i>. The judicial officer in one of those cases made inappropriate comments during the hearing, which we were unable to raise on appeal because we had to proceed with a settled statement, rather than with an official transcript. Based on this one case alone (as well as many others where we have faced similar challenges), we strongly support making it as simple as possible for litigants with a fee waiver to access court reporters/electronic reporting.</p> <p>From working with self-represented litigants, PLC also encourages the judicial council to consider defaulting to the provision of a court reporter/electronic recording, rather than requiring the litigant to affirmatively request it. It would be incredibly uncommon for a self-represented litigant to understand the consequences of not having a court reporter or electronic recording, which really only come when/if the litigant loses the case.</p> <p>PLC appreciates the opportunity to comment and looks forward to identifying a way to move forward that addresses the needs of the most vulnerable litigants and ensures access to justice.</p>	
19.	Superior Court of Los Angeles County	AM	The proposed new section of the FW-001 reads:	In light of this and other comments, the language in that section has been modified.

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	By Bryan Borys		<p>“The fee for the court reporter being at your hearing will be waived (there will be no cost to you), but note that having a court reporter does not guarantee the right to get a free transcript.”</p> <p>In contrast, proposed new form FW-020 reads, in the Instructions,</p> <p>“Note: Having a court reporter may not guarantee the right to get a transcript.”</p> <p>To make the two passages consistent, simpler and more appropriate, we propose the following language in both places:</p> <p>“The fee for the court reporter being at your hearing will be waived by the court (there will be no cost to you) but note that any fees or costs for a transcript of the proceedings are NOT waived.”</p> <p>• Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients? Yes</p> <p>• On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? (See footnote 3.)</p> <p>As noted by the committee, such cross-references are avoided as they tend to confuse litigants. There should not be a cross-reference here.</p> <p>• Would the proposal provide cost savings? If so, please quantify. No.</p>	<p>Form FW-001-INFO now states they will need to pay for a transcript, and tells them how to get information about getting a transcript. And form FW-020 has a shorter version of the same information.</p> <p>The committee acknowledges the comment.</p> <p>In light of other comments received, the committee is recommending that the cross-reference be included on the form.</p> <p>The committee appreciates the information provided to these final questions.</p>
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			<ul style="list-style-type: none">• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Courts that do not already have such a form in use would have to develop a procedure for handling them.• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	
20.	Superior Court of Orange County—Family Law Division	NI	<p>Comments Rule 2.956 – Court reporting services in civil cases No comments.</p> <p>NEW – Request for Court Reporter By Party With a Fee Waiver – FW-020 For Family Law, it would be a new form that we would need to decide if we want to use. At this point we are providing Court Reporters if requested by a party that was granted a fee waiver.</p> <p>REVISED – Information Sheet on Waiver of Superior Court Fees and Costs – FW-001-INFO Form titles and numbers should be in bold letters for parties to easily identify forms needed. The new paragraph that was added at the end of the form should begin with “Court Reporter.”</p>	<p>No response required.</p> <p>The committee appreciates the comments, but notes that if the council approves the form, the form must be accepted for filing by all courts. See Cal. Rules of Court, rule 1.35.</p> <p>The Judicial Council form style provides that form titles should be in italics, which is the style used in these forms.</p> <p>The committee considered but disagrees with the suggested paragraph title. It</p>

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		<p>Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients? Yes</p> <p>On form -001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? (See footnote 3) The Info Sheet itself is confusing. If there was an actual list of available forms and the description of the forms, the cross-reference would not be needed in the list of waived fees. This form needs to be revamped and maybe use the Information Mapping technique. This makes the form easier to read.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters: Would the proposal provide cost savings? If so, please quantify. No</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p>	<p>considers the emphasis on obtaining a record more accurate.</p> <p>The committee agrees.</p> <p>The committee appreciates the comment, but it is outside the scope of this proposal. The committee will consider a full redesign of the form as time and resources permit.</p> <p>The committee appreciates the court's providing the information requested in these final questions.</p>
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			<p>Our Court would update any Waiver of Fees procedure to add this new process. Event Codes for Case Manager would be created and submitted to IT for creation in the system and testing done. Once procedures and event codes are completed then training would be conducted. Identification of staff would be assessed, and training material created. Training itself would be around 1 to 2 hours.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months seems reasonable time for implementation.</p> <p>How well would this proposal work in courts of different sizes? I believe that this proposal would be able to work in any size court. The process does not seem that difficult.</p>	
21.	Superior Court of Orange County--Training and Analyst Group (TAG) Team	NI	<p>In March of 2019, OCSC adopted a local form for this same purpose.</p> <p>1. Does the proposal appropriately address the stated purpose of providing a consistent process for free waiver recipients? Yes.</p> <p>2. On form FW-001-INFO, is it helpful to add a cross reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? [] Yes, please note, near the bottom of page 2 on form FW-001-INFO it states, "You should use form FW-020..."; whereas,</p>	<p>The committee agrees.</p> <p>The committee agrees with keeping the cross-reference. The language noted in the</p>

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		<p>form FW-020 states “you may use this form...”. Consider revising FW-001-INFO to “may use this form...” to be consistent with the new form.</p> <p>3. Would the proposal provide cost savings? If so, please quantify. The proposal would provide cost savings only to the extent that continuances are reduced for parties who otherwise might have to ask for time to arrange for a court reporter. But some courts will see an increase in court reporter costs to the extent staff reporters are not available.</p> <p>4. What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system. The local form will need to be replaced with the new JCC form. A system update will be required to configure the new form and add/modify docket codes in civil and probate. Procedures will need to be updated. Staff who will need to be informed/trained include legal processing specialists, courtroom clerks, court reporter staff, court reporters, management and judicial officers. Time and effort to implement should be minimal.</p> <p>5. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes</p>	<p>information sheet is a summary of the rule: one should use form FW-020 if they desire to request a court reporter. The request form is pointing out that the party may request a court reporter by using this form.</p> <p>The committee appreciates the court’s providing the information requested in these final questions.</p>
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			<p>6. How well would this proposal work in courts of different sizes?</p> <p>The proposal would work well for courts that already have an established procedure and available court reporter resources, and not so well in those courts that do not have an established procedure and/or have a limited supply of court reporter resources, regardless of size.</p>	
22.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	NI	<p>GENERAL COMMENTS:</p> <p>Rule 2.956(c)(2)(B): Propose the following change: “<i>The party should must file the request 10 calendar days before the proceeding for which a court reporter is desired...</i>” This is consistent with the instructions included on the proposed FW-020 and ensures that the court will be provided timely notice in order to secure a court reporter for the proceeding.</p> <p>FW-001-INFO:</p> <p>If you want a record made of your court hearing or trial (Page 2): Propose replacing “should” with “must” when, as indicated above, directing the litigant to make the request 10 days before the scheduled hearing.</p> <p>FW-020:</p> <p>Instructions - Propose the following changes: Second sentence of the first bullet point: “If the court date is scheduled with less than 10-days notice, you should must file the request as soon as you can.”</p>	<p>The committee has considered this comment but declines to accept the suggested change. Ideally, the party will request the court reporter with 10-days’ notice to the court, but that may not always be possible, especially with self-represented parties who may be unaware of the need to request a court reporter until closer to the hearing. The instructions on the form have been revised to reflect the rule that encourages, but does not mandate, the 10-day notice.</p> <p>See response above.</p> <p>See response above.</p>

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		<p>Fourth bullet point: “Having a court reporter may does not guarantee the right to get a free transcript.” As written, the note implies that a litigant is not guaranteed the right to obtain a transcript, rather than clarifying there is no guarantee a transcript will be provided for free. This change is consistent with the proposed revisions to the FW-001-INFO form.</p> <p>Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients? Yes, with the proposed changes outlined.</p> <p>On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? Yes. By referencing the form, the litigant is notified that they need to submit a request to have a reporter present, rather than making an oral request.</p> <p>Would the proposal provide cost savings? If so, please quantify. No.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing</p>	<p>The form has been modified in light of this comment.</p> <p>The committee agrees.</p> <p>The committee appreciates the court’s providing the information requested.</p>
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			<p>docket codes in case management systems, or modifying case management systems?</p> <p>Minimal training for staff. Our court adopted a local form in 2019 fee waiver litigants to request the presence of a court reporter.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, provided the final version of the forms are provided to the courts at least 30 days prior to the effective date. This will give courts sufficient time to update local packets and order printed stock.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>It appears that the proposal will work for courts of various sizes.</p>	
23.	Trial Court Presiding Judges Advisory Committee and Court Executive Advisory Committee Joint Rules Subcommittee	AM	<p>The Joint Rules Subcommittee notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.). <ul style="list-style-type: none"> ○ The creation of a new form may impact Case Management Systems. The form will need to be added and mapped as events and possible work queue triggers, forms or notice generation. Online self-help or forms generators will need to be updated. 	The committee appreciates this information.

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			<ul style="list-style-type: none">• Results in additional training, which requires the commitment of staff time and court resources.<ul style="list-style-type: none">○ Small amount of training and updates to training manuals and procedures• Increases court staff workload.<ul style="list-style-type: none">○ The additional request will require intake, routing to court reporter coordinator, scheduling, filing, scanning and other clerical work. Continuance of hearings or trials will require a tracking mechanism for this waiver. <p>Suggested modification(s):</p> <ul style="list-style-type: none">• Form FW-020 should be mandatory. The optional form may set up a scenario where the petitioner uses a self-made declaration to request a reporter. This may not be recognized by the clerk and will cause delays in the proceedings.• The form should add that a “free” transcript is not guaranteed to match the instructions.• The form should add the time, and department of the hearing or trial to expedite routing for this short time frame to respond and locate a court reporter.	<p>The committee has considered this comment, but declines to make the form mandatory. A self-represented party may not know to use the form, but, under <i>Jameson</i>, should still be provided with a court reporter if one is requested.</p> <p>The committee agrees and the form has been modified in light of this comment.</p> <p>The form includes the date of the hearing or trial. The committee has concluded that, with the case number and party name, that information should be sufficient for court response.</p>
24.	Western Center on Law & Poverty,	NI	*Western Center on Law & Poverty and the undersigned organizations submit this letter in response to the Judicial	The committee appreciates this comment, which contains all the points raised in the

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Civil Practice and Procedure: Court Reporters for Civil Proceedings (Amend Cal. Rules of Court, rule 2.956; approve form FW-020; revise form FW-001- INFO)

All comments are verbatim unless indicated by an asterisk (*).

Oakland, CA By Madeline Howard, Disability Rights California By Navneet Grewal, Fair Housing Advocates of Northern CA By Caroline Peattie, Public Law Center By Ugochi Nicholson, Legal Aid Foundation of Los Angeles By Denise McGranahan Legal Aid of Marin By Lucie Hollingsworth California Rural Legal Assistance By Ilene Jacobs, East Bay Community Law Center By Meghan Gordon		Council's invitation to comment on the proposed rules implementing <i>Jameson v. Desta</i> , 5 Cal.5th 594 (2018). Western Center advocates for transformative, systemwide, public policy solutions to end poverty in California. Our housing advocacy incorporates promotion of affordable and equitable housing development, protection of tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency and low-income people. As explained in our prior comment letters on proposed rules implementing <i>Jameson</i> , our role as a legal services support center means that we are uniquely positioned to assess the impact of the Judicial Council's proposals on low-income litigants, particularly in unlawful detainer litigation. *[Remainder of comment essentially same as ADZ Law and Asian Americans Advancing Justice comments above. A copy of the full comment is provided separately.]	ADZ Law comment. See the committee's responses to comment 1.
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

From: [Raquel Ocon](#)
To: [Invitations](#)
Subject: Letter from ADZ Law, LLP re Comments on Civil Practice & Procedure
Date: Friday, May 29, 2020 4:01:55 PM
Attachments: [image001.png](#)
[2020-05-29 ADZ Law, LLP Letter to Judicial Council of California.pdf](#)

To whom this may concern:

Please see attached letter on behalf of ADZ Law, LLP.

Sincerely,

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COVID-19 Update EMAIL SERVICE: ADZ Law, LLP remains open, conducting business, and has no plans to close. Due to Shelter-in-Place orders, our physical office is currently closed to the public though a skeleton crew remains on-site. During the length of the Shelter-in-Place order, ADZ Law, LLP **will accept email service** of all case related documents, including pleadings, discovery, restraining order responses, and ex parte filings to the following address: service@adzlaw.com.

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May 29, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

ADZ Law, LLP is a law firm which specializes in Family Law and Civil Litigation. We represent victims of domestic violence and sexual assault in civil claims against their abusers and third-party defendants. Our law firm appreciates this opportunity to speak on the importance of court reporter accessibility for survivors of abuse and low-income litigants.

ADZ Law, LLP was founded in 2015. Since 2015, we have represented many clients and/or victims in the following cases: domestic violence restraining order, dissolution proceeding, pro-bono, civil sexual assault, child custody, and spousal/child support. We strongly believe that all victims should receive resources through the court and access to a court reporter regardless of their economic status.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on**

their fee waiver form indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in proper, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States.² Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.³

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

² See ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

³ Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied

court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish, as described in *Jameson*. (*Jameson, supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors and clients we work with, we attend their court hearings, depositions, short and long cause trials. It is extremely crucial to have a court reporter available and present during hearings, depositions, and trials. The court should be able to provide a court reporter when requested.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

ADZ Law, LLP



Raquel Ocon
Office Manager/Legal Secretary



June 9, 2020

By Email invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC) submits this letter in response to the Judicial Council’s invitation to comment on the proposed rules implementing *Jameson v. Desta*, 5 Cal.5th 594 (2018). Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation’s first legal and civil rights organization serving the low-income Asian Pacific American communities. We focus on housing rights, immigration and immigrants’ rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, we also help to set national policies in affirmative action, voting rights, Census, and language rights.

Our housing advocacy focuses on gateway communities for new immigrants, such as San Francisco Chinatown, where large numbers of tenants and seniors are in danger of displacement due to gentrification and other economic pressures. Our clients are low-income, often live with disabilities, and have limited English proficiency. We believe that the proposed rules implementing *Jameson* will have a particularly significant impact on our clients facing eviction through unlawful detainer litigation.

While we appreciate that the proposals address concerns raised by legal services organizations on the prior round of *Jameson* implementation measures, we strongly believe that the most efficient and effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings where a litigant has

been granted a fee waiver. If not, the second best form of implementation would be to amend the existing fee waiver form to include a check box indicating that they are requesting a court reporter. Creating an additional form, while still preferable to having no state-wide system at all, increases the administrative burden for courts, gives discretion to courts to deny “untimely” requests, and creates an additional burden for low-income litigants who often lack access to legal representation and do not know about the importance of a verbatim record.

1. The Court System Cannot Provide Meaningful Access to Justice for Low-Income Litigants Without Providing Verbatim Records.

In *Jameson*, the California Supreme Court recognized “the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant’s legal rights and in providing such a litigant equal access to appellate justice in California.” (*Jameson, supra*, 5 Cal.5th at p. 608.) Verbatim records are especially critical for our clients in unlawful detainer proceedings, where an unfavorable ruling means the loss of their home, community, and support network. Many end up homeless or are forced to move far from San Francisco because they cannot afford a market-rate unit. Even though San Francisco passed Tenant Right to Counsel, there are still not enough lawyers to represent every tenant facing eviction. Moreover, 90% of tenants facing the loss of their home across the state are unrepresented while almost all landlords have representation.¹ Without a verbatim record of unlawful detainer proceedings, tenants are unable to create a record of their proceedings for appeal and such appeal is likely to be denied or dismissed without such a record. (*See Jameson, supra*, 5 Cal.5th at p. 608.) Lack of a record also makes it more difficult to seek other post judgment relief from eviction.

2. Proposed Changes to Rule of Court 2.956 Should Fully Protect Tenants

We support the proposal to amend Rule of Court 2.956(c)(2) to clearly establish that when a fee-waiver recipient requests a court reporter one must be provided by the court for free, and for the duration of the trial. However, we are concerned that the proposed 10-day timeline to request a court reporter may bar indigent litigants, particularly defendants in unlawful detainer matters, from accessing this vital service. Most tenants facing eviction are unrepresented or do not find legal representation until shortly before their trial. They are unlikely to know that they should request a court reporter without advice of counsel and will be disadvantaged due this strict 10-day timeline. Moreover, some motions in an unlawful detainer proceeding only require 5-day notice to the opposing party, such as a motion for summary judgment. It would then be impossible for any indigent

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.



litigant to comply with the proposed rule and obtain a record of the proceeding. Therefore, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording, considering factors such as the amount of notice received, a litigant's disability, or other factors that may have affected the party's ability to timely make the request.

3. A Court Reporter or Electronic Recording Should be Automatically Provided to Fee Waiver Recipients.

Finally, while we commend that the Council's effort to seek more information about the fiscal effects of automatically providing court reporters for fee waiver recipients, the right to a verbatim record, without a request, should not be denied during this period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form or why a record is important, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms while facing short deadlines pursuant to the unlawful detainer process and the potential loss of their home.

Below, we answer each of the Committee's questions, with the previous comments and concerns as background.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While this proposal is more consistent than the current individual court processes, it does not adequately ensure indigent litigants will have access to the verbatim records to which they are entitled. The proposed process also adds increased burden to the courts and self-help centers by creating another form and procedure. Instead, we believe the Council should require a court reporter, or at least an electronic recording in all courtrooms where a fee waiver recipient is a party. Moreover, the committee points out in the Executive Summary and Origin that this Council can approve such a slight expansion of the *Jameson* holding as a matter of policy and we believe that the Council should take this action. (Invitation to Comment SPR20-07, p. 2)

As cited above, the great majority of tenants facing eviction in California defend their homes without the benefit of legal representation. They are forced to



navigate the court system and attempt to understand the rules and procedures on an expedited timeline alone. This can be a daunting enough task for someone who speaks English or has experience with the court system. However, the communities that AAAJ-ALC serves also often have limited English proficiency and come from cultures with vastly different court systems. Many have escaped serious abuse and suffered trauma or live with other disabilities that make navigating the court system even more difficult. For the majority who go unrepresented, the self-help centers in many counties are overwhelmed with the volume of need and cannot assist everyone. Imposing additional burdens on these individuals to 1) affirmatively request a court reporter, 2) at the right time, and 3) on a third and separate form specific to indigent litigants decreases the likelihood that they will be able to exercise their rights as outlined by the Supreme Court in *Jameson*.

The proposed process adds yet another procedural hurdle for low-income litigants to scale when they are already in unfamiliar territory and the stakes are high – such as losing their home. We believe that many of these individuals will be unable to exercise their right to a record at all, resulting in the opposite result prescribed by the Supreme Court, “creat[ing] the type of restriction of meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy render impermissible.” (*Jameson, supra*, 5 Cal.5th at p. 598.) California can provide truly meaningful access to the courts by providing verbatim records to all litigants with fee waivers.

Superior Courts’ responses to a recent public records inquiry reveal that this approach is even feasible for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient’s request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective and efficient way to implement *Jameson*.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

Adding this cross-reference does not make the list more confusing. However, it would be more clear to change the parenthetical to “(use form FW-020 to make this request)” rather than “(see form FW-020).” The use of the term “see” is legalese but does not make it clear to a lay person that this is the form to complete.



As discussed above, we believe that this separate form will make it more difficult for indigent litigants to exercise their right to a verbatim record and are concerned that many pro se litigants do not read the instruction sheet when filling out the fee waiver forms. Therefore, it is much simpler to allow litigants to see the option of the court reporter on the fee waiver application itself in the form of a checkbox like the existing boxes for waiving superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, we believe the Council should create a process with fewer rather than more barriers for low-income litigants to exercise their right to verbatim recordings. This would better fulfill the spirit of the *Jameson* decision and the long line of access-to-justice cases that it follows. This is key to ensuring all low-income Californians have access to justice, and for my clients, have a meaningful opportunity to defend their homes. Thank you for your time and consideration.

Sincerely,



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From: [Ariella Hyman](#)
To: [Invitations; Judicial Council](#)
Subject: Bay Area Legal Aid's Comments to the Judicial Council
Date: Tuesday, June 09, 2020 4:46:48 PM
Attachments: [BayLegal Comments on Civil Practice and Procedure.pdf](#)
[BayLegal Comments on Judicial Training Regarding Bias.pdf](#)
[BayLegal Comments Regarding Remote Supervised Visitation Final.pdf](#)
[BayLegal Comments Opposing Early Discontinuation.pdf](#)

Dear Members of the Judicial Council,

Attached, please find four letters from Bay Area Legal Aid. Two of these provide comments in response to the Judicial Council's invitation for public comment on proposed changes to civil practice and procedure and forms. A third sets forth an additional proposal for your consideration concerning procedures governing supervised visitation during Covid. The fourth is in response to information we learned just today that the Judicial Council is considering early discontinuation of its emergency rules. (I emailed this a couple of hours ago but am including it again here so you have BayLegal's submissions all in one place.)

Thank you very much for the opportunity to provide our input on these matters.

Sincerely,

Ariella

Ariella Hyman | Director of Program and Advocacy | Bay Area Legal Aid | pronouns: she/her | 1800 Market Street, 3rd Floor, San Francisco, CA 94102 | 415-354-6364 (office) | ahyman@baylegal.org | www.baylegal.org

*Please join me in supporting Bay Area Legal Aid, the largest provider of free legal help to low-income Bay Area residents. Your donation translates directly into critical legal advice, counsel, and advocacy, giving people in our community the access to justice they deserve. **[Donate Today!](#)***

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June 9, 2020

By email invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

**Re: Bay Area Legal Aid's Comments on Civil Practice and Procedure:
Support for SPR 20-20;
Support and Recommendations for SPR20-19;
Support and Recommendations for SPR20-27; and
Recommendations for SPR 20-07**

Dear Members of the Judicial Council:

Bay Area Legal Aid ("BayLegal") submits this letter in response to the Judicial Council's invitation to comment on several proposed changes to civil practice and procedure as well as Judicial Council forms.

BayLegal is the largest provider of free legal services to low-income residents of seven Bay Area counties, including Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, and San Mateo. BayLegal's mission is to provide meaningful access to the civil justice system through high quality legal assistance to low-income litigants regardless of location, language, or disability. Low-income litigants in general, and BayLegal clients in particular, are frequently individuals with limited English proficiency, individuals with limited literacy, survivors of domestic violence, people with disabilities, and individuals who are housing insecure. BayLegal provides legal services to roughly 10,000 low-income residents of the Bay Area annually. The large number of individuals we serve gives us a unique insight to assess the potential impact of the Judicial Council's proposed changes on low-income California residents.

I. BayLegal's Support for Proposed Changes Outlined in SPR 20-20

BayLegal supports the Judicial Council's adoption of SPR20-20, Family Law: Changes to Child Custody Evaluations Rule and Form. This proposed change affects among the most traumatizing and contentious of family law cases. BayLegal's Family Law practice exclusively represents survivors of domestic violence, sexual assault, and human trafficking. In 2019, we provided legal advice, limited services or full representation in approximately 849 family law cases, and assisted 1,027 survivors in *pro per* to apply for restraining orders. Based on the experiences of our clients, we see how the need for conformity in drafting of reports is vital to ensuring that judges can make custody decisions based on full information and knowledge. Often interviews of parents and children can span several months. The Judicial Council's proposed modifications will go far in ensuring that each case is given the same analysis and review. We support the creation of the new Judicial Counsel FL-329 and Rule 5.220.

II. BayLegal's Support and Recommendations Regarding SPR20-19

BayLegal supports the adoption of the proposals described in SPR20-19. The change incorporates recent case law into the statewide forms and organizes them in a way that is more user-friendly while mirroring existing statutes. The proposed reform of form FL-158 directly reflects the language of Family Code 4320 in a way that is easy for litigants to understand and complete, even if all of the factors do not apply to their case.

We propose adding a box on Form FL-345 to allow for easier enforcement post-judgment in family law cases. This box would be box 2(g) and would be at the bottom of the division of community property debts section. It would read: "each spouse will be assigned the obligations listed above as their sole and separate property. The parties must execute all necessary documents to remove the other party's name from their assigned obligations." This box would mirror the language of box 1(g) in the assets section, and would help if a post-judgment motion is necessary to remove a party's name from a debt. With this change, we support the adoption of the proposals in SPR20-19.

III. BayLegal's Support and Recommendations Regarding SPR 20-27

BayLegal supports the Judicial Council's efforts to modify forms MC-410 and MC-410-INFO to provide greater access to the courts for persons with disabilities. Specifically, BayLegal supports the Judicial Council's redesign of the MC-410 form so that it complies with the Web Content Accessibility Guidelines by editing for plain language, increasing font size, and adding additional white space to increase readability. We suggest several further changes to both forms to increase accessibility.

As to Form MC-410: Disability Accommodation Request, BayLegal makes the following suggestions:

1. That the courthouse provide a fillable version of the form that may be submitted through the court's website directly to the court's ADA Coordinator. This option would be in addition to the other options to submit the form via email, fax, in person, or by mail.
2. That the MC-410 form remove the mandatory deadline that requires individuals to submit the request at least five days before the individual needs the accommodation. We suggest that the MC-410 form be amended such that the statement "Make this request at least 5 days (when court is open) before you need the accommodation" includes the phrase "if possible". This amendment is consistent with MC-410-INFO form, which already includes the "if possible" language.
3. The Judicial Council's Invitation to Comment notes that one proposed revision is to include space for the court to "optionally" explain reason for denial of a request for reasonable accommodation. We suggest that explaining the reason for denial be mandatory such that the court would be required to provide a written statement of the reasons supporting its denial.
4. That rather than providing a space on the MC-410 form that allows the requester to include information of persons who have helped the requester fill out the form, the form instead include a space that gives a user the option to list a person other than the requester as the main contact for the request, such as an attorney, caregiver, or family member.

5. That the request form continue to provide the option of an “indefinite period” as the length for duration of the accommodation.

As to Form MC-410-INFO: How to Request a Disability Accommodation for Court, BayLegal makes the following suggestions:

1. That the MC-410-INFO Form include language that explains the interactive process, which persons with disabilities are entitled to regarding their requests. We further encourage courts to engage in the interactive process when making a denial and when proposing alternative accommodations.
2. That the MC-410-INFO Form include more information regarding how to submit a reasonable accommodation request by phone or email. We recommend that the MC-410-INFO form include a phone number or email address to make the request.
3. That MC-410-INFO include more examples of accommodations that individuals can request, such as allowing persons to bring emotional support animals to court or to request continuances.

IV. BayLegal's Recommendations Regarding SPR 20-07, the proposed rules and forms to implement *Jameson v. Desta*, 5 Cal.5th 594 (2018)

While BayLegal commends the Judicial Council's steps to adopt a uniform state-wide implementation of *Jameson*, we strongly urge that a court reporter or electronic record be made available in all proceedings involving indigent litigants as a matter of right. This change would follow the California Supreme Court's sentiment in *Jameson* that litigants of limited means must have access to verbatim records to have meaningful access to the judicial system. In the alternative, we support adding a checkbox on the existing fee waiver form to permanently request a court reporter, so long as courts develop a plan to administratively identify cases where a *Jameson* request was made at the filing of FW-001. We are concerned the Judicial Council's proposed changes, as they currently stand, create additional burdens for low-income litigants and may create more administrative burden for the courts.

A. Court Reporters should be provided without requiring litigants to complete an additional form.

The California Supreme Court made clear in *Jameson* that ensuring low-income litigants have access to a court reporter or electronic recording is essential for meaningful access to justice. Verbatim records are crucial for litigants to create reliable records and to preserve access to the appellate process.

Unfortunately, the Judicial Council's proposed new form, FW-020, will create additional hurdles for indigent litigants to overcome to have access to justice. Low-income litigants already experience a difficult time navigating the civil judicial system. Before obtaining legal counsel, most, if not all, of our clients were overwhelmed and confused by unfamiliar court rules and procedures, and by the sheer number of forms required to access the civil judicial system. Additionally, most low-income litigants do not have access to an attorney and therefore are not aware of the importance of verbatim records. Without the benefit of legal counsel, we believe

that many people will not file the additional form that the Judicial Council proposes because *pro se* litigants will not recognize the importance of doing so. Accordingly, requiring fee-waiver recipients to complete an additional form and to follow more procedures to request a court reporter adds yet another, and unnecessary, administrative burden for litigants with limited means.

The proposed changes will also increase administrative burdens on courts and their staff. Because most low-income litigants do not have access to legal counsel, the burden of helping low-income litigants make an affirmative request for a court reporter will fall on the already overburdened self-help centers. In family law matters in particular, low-income litigants often have multiple unrelated hearings. Requiring litigants to affirmatively file a form to request a court reporter or recording every time there is a hearing will also increase the strain on courts and court staff.

The best way to ensure meaningful access to justice is to require courts to provide a court reporter or electronic recording in all hearings, and to provide them at no cost for low-income litigants. However, if the Judicial Council will require litigants to affirmatively request a court reporter or electronic recording, we strongly recommend that the Judicial Council add check boxes to the already existing fee-waiver forms rather than require an additional form. Specifically, two new check boxes should be added to Form FW-001, subsection (4) “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under (6). These changes would allow low-income litigants to more easily request a court reporter when they file their request for other court fees and costs to be waived.

Requiring litigants to make a *Jameson* request ten days prior to every hearing is an unjustifiable burden to place upon them. When a litigant's fee waiver is approved, the court should flag or “code” cases in such a way that the court is alerted to the need for a court reporter at every subsequent hearing. By flagging or coding the case, the *Jameson* request would follow the case and the litigant so long as the fee-waiver is valid. This would ensure that when a low-income litigant has a hearing scheduled, a court report or electronic recording will automatically be provided because a fee-waiver (and *Jameson* request) is already on file.

B. Proposed Amendments to Cal. Rule of Court 2.956 Can and Should be Further Clarified to Protect Low-Income Litigants Rights.

We strongly support the amendments to Cal. Rule of Court 2.956(c)(2) which clearly explain the Court’s mandatory duty to record hearings at no cost to a litigant if that person is a fee-waiver recipient and requests a court reporter. However, we are concerned about the 10-day timeline to file such a request.

Many litigants won't know or understand that an additional form is required until much closer to the hearing/trial date. Additionally, filing such a request 10 days prior is simply not possible for many hearings, such as unlawful detainers, Civil Harassment and/or Elderly or Dependent Adult Protective Orders, and other emergency hearings. As such, we reiterate our suggestion that the Judicial Council should require courts to automatically provide court reporters or electronic recordings at all hearings, at no cost to indigent litigants, as explained above. As noted above, the second-best option is to amend FW-001 and all other fee-waiver forms already in existence, as described above. Either option would be simpler and less administratively burdensome for both litigants and courts than requiring the processing of an additional form.

C. BayLegal's Responses to Judicial Council's Request for Specific Comments

Below, we answer the specific questions posed by the Judicial Council. Our responses reflect some support for the current proposals and some additional requests.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

We acknowledge that the proposed changes will provide statewide consistency, however it will also add hurdles for low-income litigants, as described in detail above. Low-income litigants are frequently individuals with limited English proficiency and limited literacy, survivors of domestic violence, people with disabilities, insecurely housed individuals and people simply struggling to survive day-to-day. Requiring an additional form will present an unnecessary obstacle for indigent litigants to access their right to justice, and also pose an additional burden to the courts and self-help centers. Again, we strongly believe that the Judicial Council should mandate courts to provide court reporters or electronic recordings at all hearings for low-income litigants at no cost with no additional burden.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

If the Judicial Council doesn't mandate that courts provide court reporters or electronic recordings for all hearing with indigent litigants, or simply add a checkbox to the standard Fee-Waiver Form (FW-001), we acknowledge that the addition of a cross-reference to the new court reporter request form does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." However, we do not believe that many litigants can or do read the full instruction sheet before completing the fee waiver form. Depending on how they obtain forms for filing, they may never even know that an informational form exists. If they do know, they may not be literate or the form may not be in their language. As such, it will likely be far more useful to simply allow litigants to see and then mark a checkbox on the fee waiver form without an additional form.

In conclusion, we appreciate the efforts that the Judicial Council has taken to implement consistent state procedures regarding *Jameson*. We strongly recommend that court reporters or an electronic record be made available in all proceedings with indigent litigants. In the

Bay Area Legal Aid's Comments on Civil Practice and Procedure

alternative, we support adding a checkbox on the existing fee waiver form to request a court reporter and for courts to develop plans to easily identify those cases in their system.

Thank you for the opportunity to comment on these proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "Ariella Hyman".

Ariella Hyman
Director of Program Advocacy
Bay Area Legal Aid

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SPR20-07
Date: Tuesday, June 09, 2020 4:21:06 PM

Proposal: SPR20-07
Position: Agree if modified
Name: Christine Smith
Title: Public Policy Coordinator
Organization: California Partnership to End Domestic Violence
Comment on Behalf of Org.: Yes
Address: 1107 9th Street, Suite 910
City, State, Zip: Sacramento CA, 95834
Telephone: 9167439878
Email: christine@cpedv.org
COMMENT:
June 5, 2020

By email only: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The California Partnership to End Domestic Violence (the Partnership) greatly appreciates the opportunity to comment on the above listed rules, and forms proposed, each of which is discussed below:

The Partnership is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups. With offices in Sacramento, the Partnership's diverse membership spans the entire state. Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. The Partnership believes that by sharing expertise, advocates and policy-makers can end domestic violence. Working at the state and national levels for nearly 40 years, the Partnership has a long track record of successfully passing over 200 pieces of legislation addressing domestic violence.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous Jameson implementation measures, we still strongly believe that the best and most effective way to implement Jameson is to provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income

Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation. Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States. Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness. California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the Jameson court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (Jameson, supra, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the Jameson decision. We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2) to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court

reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish, as described in *Jameson*. (*Jameson*, supra, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. For the domestic violence survivors we work with, their court appearances typically only involve a short (1-2 hour) domestic violence restraining order and/or appearing 1-2 times for custody decisions. Courts should easily be able to provide court reporters at these hearings with a little bit of advance planning.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to change the parenthetical to “(use form FW-020 to make this request)” rather than “(see form FW-020).” The use of the term “see” is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection “What court's fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same

suggested change to forms FW-001-GC; FW-001GCS, would be added under .

In conclusion, creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the Jameson decision and the long line of access-to-justice cases upon which it rests. Full implementation of Jameson is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Should you have any questions or require any additional information, please contact me at krista@cpedv.org or (916) 444-7163.

Sincerely,

Krista Niemczyk
Public Policy Manager

From: [Monique Berlanga](#)
To: [Invitations](#)
Subject: Invitation to Comment SPR20-07
Date: Saturday, June 06, 2020 4:49:31 PM
Attachments: [Centro Legal Comment RE Jameson v. Desta.pdf](#)

Dear Members of the Judicial Council:

Attached, please find a comment letter from Centro Legal de la Raza in response to the Judicial Council's invitation to comment on the proposed rules implementing Jameson v. Desta, 5 Cal.5th 594 (2018). Please accept this letter as superseding our prior comment letter of May 18, 2020.

Thank you in advance for your time and consideration.

Sincerely,

Monique Berlanga

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June 6, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Centro Legal de la Raza submits this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta*, 5 Cal.5th 594 (2018). Founded in 1969, Centro Legal de la Raza is a comprehensive legal services agency protecting and advancing the rights of low-income communities through bilingual legal representation, education, and advocacy for thousands of individuals and families each year throughout Northern California. Centro Legal de la Raza's Tenants' Rights Practice provides free legal services to low-income tenants in the Bay Area, including legal representation for tenants in unlawful detainer proceedings. In 2019, Centro Legal de la Raza's Tenants' Rights Program provided legal services to 1,724 low-income tenants in Alameda County. Our role as a direct legal services provider uniquely positions us to assess the impact of the Judicial Council's proposed changes to the court rules, particularly as they will apply in unlawful detainer litigation.

While we appreciate that the proposals include discussions of concerns raised by legal services agencies on the prior round of *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings with indigent litigants. If this approach is not adopted, the second best option would be to allow fee waiver applicants to check a box on the existing fee waiver form indicating that they are requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an administrative burden for courts and a burden for low-income litigants who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. In particular, verbatim records are critical for

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tenants in unlawful detainer proceedings, where an unfavorable ruling results in the loss of the defendants' home and potential homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those without representation, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal incorrect decisions and to remain housed.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. We agree with the proposal to amend California Rules of Court, rule 2.956(c)(2) to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters from accessing a record. While unlawful detainer hearings may be scheduled more than 10 days in advance, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter until they obtain counsel. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.
3400 E. 12th St., Oakland, CA 94601



Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, the right to a record should not be denied in the interim period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms.

Below, we answer each of the Committee’s questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter in all courtrooms where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California’s courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one’s own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*.

Adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California’s court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish, as described in *Jameson*. (*Jameson, supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court’s vision by providing verbatim records to all people with fee waivers.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful **to change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection (4) “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under (6). While adding box to the general fee waiver form would result in a fee waiver litigant effectively requesting a verbatim record for all proceedings in their case, the majority of unlawful detainer cases only result in one or two hearings, so this would not create significant increased burden for the courts.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular have a meaningful opportunity to remain in their homes. Thank you for the opportunity to comment on these proposed rules.



Sincerely,

Centro Legal de la Raza

Monique Berlanga (Farris)
Directing Attorney,
Tenants' Rights Practice



Desert Sanctuary, Inc.

703 E. MAIN STREET • BARSTOW, CA 92311

PHONE: 760-256-3733 • FAX: 760-256-3793 • E-MAIL: haleyhouse@la.twcbc.com

June 3, 2020

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Desert Sanctuary Inc. is a domestic violence shelter program in the small, rural community of Barstow California. We have been providing shelter and all related services to victims of domestic violence and their children since 1982. We have very little access to attorneys, legal assistance or advice. The FVAP came into our lives a few years ago when the California Partnership to End Domestic Violence and Cal-OES had them provide a training to the field. Since that time, they have responded to each and every question we have asked. They have provided assistance to clients who felt completely unheard by the courts. They have helped us to understand how to respond to ICE, CFS, Law Enforcement and property managers/owners. Our ability to provide for our clients and to protect our agency has been improved exponentially due to the valuable relationship we have formed. We greatly appreciate the opportunity to support FVAP as they seek to further define the importance of the above referenced rules and forms proposed, each of which are discussed below.

FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including *Jameson v. Desta*, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.)

We applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar parties in domestic violence prevention and other restraining order cases from making a timely request. Domestic Violence Restraining Order petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a

victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

For the domestic violence survivors, we work with, their court appearances typically only involve a short (1-2 hour) domestic violence restraining order and/or appearing 1-2 times for custody decisions. Courts should easily be able to provide court reporters at these hearings with a little bit of advance planning.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

Peggi Fries

Executive Director

Desert Sanctuary Inc.

From: [Martina Cucullu Lim](#)
To: [Invitations](#)
Subject: Comment on Civil Practice and Procedure: Court Reporters for Civil Proceedings (SPR 20-07)
Date: Thursday, June 04, 2020 12:57:13 PM
Attachments: [M.Cucullu Lim.EDC.comments to SPR20.07.pdf](#)

To whom it may concern,

Attached please find EDC's comments on the proposed rules, forms, and standards (SPR 20-07).

Thank you,

Martina I. Cucullu Lim

Martina I. Cucullu Lim, Esq. (pronouns she/her)
Executive Director
Eviction Defense Collaborative | www.evictiondefense.org
1338 Mission St., 4th Floor, San Francisco, CA 94103
martinac@evictiondefense.org
(415) 470-5212



When I despair, I remember that all through history the way of truth and love have always won. There have been tyrants and murderers, and for a time, they can seem invincible, but in the end, they always fall. Think of it -- always. Mahatma Gandhi

Will you [help us](#) stay the course of truth and love?

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June 4, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The Eviction Defense Collaborative, San Francisco's Lead Agency for implementing its Right to Counsel for tenants in eviction cases law, greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below.

As the lead agency implementing San Francisco's Right to Counsel law we assist tenants with pro per first responses while their cases are being referred to lawyers at one of the nine legal services agencies for full scope legal representation (including our own agency). Unfortunately, the funding for Right to Counsel has still not been enough to cover all litigants and about 1/3 of tenants have to proceed through their eviction cases without an attorney. This makes the need for the requesting of court reporters or electronic recordings for fee waiver clients to be something easy and simple.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies—including LAAC, the Family Violence Appellate Project (FVAP), and the Western Center on Law & Poverty (WCLP)—to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants**. If that is not possible, the next best solution is to simply **allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an *administrative burden for courts* and a *burden for low-income litigants* who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. The creation of a verbatim record is essential for proceedings resolving critical civil legal issues, including domestic violence and unlawful detainers (evictions), two immensely important areas of civil proceedings that have life-altering—and life-threatening—consequences in which access to a verbatim record is crucial to the administration of justice.

First, creating a verbatim record is essential for proceedings involving survivors of family violence. Verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Second, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

At the intersection of these issue areas, verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.² Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.³ California has laws designed to prevent unnecessary

¹ See JUDICIAL COUNCIL OF CALIFORNIA, TASK FORCE ON SELF-REPRESENTED LITIGANTS: FINAL REPORT (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

² See ACLU WOMEN'S RIGHTS PROJECT, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. CONFERENCE OF MAYORS, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

³ Monica McLaughlin & Debbie Fox, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

We are concerned, however, that establishing a 10-day timeline to request a court reporter may *effectively bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record*. Legal aid organizations know all too well that low-income litigants often deal with these issues on a much shorter timeframe. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with

all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin, this Council can—and we believe should—require a court reporter at all hearings where a fee waiver recipient appears, without any formal request (Invitation to Comment SPR20-07, p. 2). However, we recognize concerns that not all types of proceedings need reporters, and that it cannot merely be automatic. Nonetheless, placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter—as opposed to a mere calendaring or administrative matter that does not—would be a better use of court resources resulting in improved access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings.

As a practical matter, low-income and unrepresented litigants are not able to bear the burden and forcing them to take on the full burden is effectively eliminating implementation entirely. Adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals being unable to exercise their right at all. This would result in California's court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish (*Jameson, supra*, 5 Cal.5th at p. 598). This result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

Finally, there is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For example, Mono County reports that it provides court reporters regularly, and a court reporter is typically provided regardless of whether a litigant requests one (Response to Public Records Act Request, on file with FVAP). As a second example, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter (Response to Public Records Act Request, on file with FVAP). Hence, small and rural courts are already doing it, and it is working fine.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese.

More pressingly, however, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As discussed in comments from the legal services community last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection (4) “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under (6).

4. Conclusion

In conclusion, the Eviction Defense Collaborative believes in the importance of *Jameson* and the principle that all court users—including low-income and unrepresented ones—deserve the opportunity to receive a verbatim record to utilize on appeal. Without making the request simple and clear for pro per litigants in eviction cases, there is a great chance they will lose their opportunity to make a record and they will lose their ability to appeal. Creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access to justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice and can obtain enforceable and appealable court decisions.

June 4, 2020

Page | 6

Sincerely,



Martina Cucullu Lim
Executive Director
Eviction Defense Collaborative

From: [Evelyn Magana](#)
To: [Invitations](#)
Cc: [Darryl Evey](#)
Subject: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)
Date: Monday, June 01, 2020 3:58:26 PM
Attachments: [FAPCommentsCourtReporter.pdf](#)

Good afternoon,

I hope all is well. On behalf of Family Assistance Program, I am submitting the attached letter in regards to the following: *Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)*.

Respectfully,

Evelyn Magaña

Domestic Violence/ Legal Advocate

Direct Line: 760-205-1183

Family Assistance Program

16857 C St. Victorville, Ca 92395

Office: (760)843-0701

24-Hour Hotline: (760)949-4357

www.familyassist.org

Family Assistance Program

15075 7th Street, Victorville, CA 92395

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June 1, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Family Assistance Program is fortunate to have the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below.

Family Assistance Program was founded in 1985, formerly known as High Desert Domestic Violence Program, and has been providing shelter and advocacy services to individuals experiencing domestic violence. Through the years, the agency has grown. We now operate shelters, transitional housing, and have offices in Victorville, Hesperia, San Bernardino, Redlands, and Fontana. Family Assistance Program offers various classes (parenting, anger management, substance abuse, and domestic violence support groups), legal advocacy services, and a variety of other services. Our agency assists clients with initial requests for domestic violence restraining orders, provides court support and continuous support for our clients throughout the restraining order and/or child custody process. It is our goal and continued effort to build stronger families by offering services that can benefit all community members. Our agency will continue growing to meet the needs of the community as they arise.

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived.

Since the vast majority of low-income litigation matters have one or two hearings at most, the fee waiver check-box should result in less, not more, additional administrative work for courts than the proposed option of having a separate form. For instance, unlawful detainer and

Family Assistance Program empowers all individuals and families, regardless of age or gender, by providing knowledge and skills to live a healthy, safe, fulfilled life.

Family Assistance Program

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domestic violence restraining order hearings are usually completed in less than a half-day hearing.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

The creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. Domestic violence is already a primary cause of homelessness for women and children in the United States.² Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.³ California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

² See ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

³ Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.
Family Assistance Program empowers all individuals and families, regardless of age or gender, by providing knowledge and skills to live a healthy, safe, fulfilled life.

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Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson, supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

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Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish, as described in *Jameson*. (*Jameson, supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

We are aware of smaller and more rural counties who are providing court reporters to all fee waiver recipients without any problem, including Stanislaus and Mono Counties. The domestic violence survivors that we serve and work with usually have a court appearance that typically involves a short (1-2 hour) domestic violence restraining order hearing and/or are appearing 1-2 times for child custody decisions. Courts should be able to provide court reporters at these hearings with some advance planning.

Family Assistance Program empowers all individuals and families, regardless of age or gender, by providing knowledge and skills to live a healthy, safe, fulfilled life.

Family Assistance Program

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2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

This could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Respectfully Submitted,

Family Assistance Program

Darryl Evey
Executive Director



June 9, 2020

By Email Only invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Family Violence Appellate Project (FVAP) greatly appreciates the opportunity to comment on the above-listed rules, and forms proposed, each of which is discussed below. We are joined in these comments by Haven Women's Center of Stanislaus, MAITRI, Monarch Services, and Shalom Bayit. (*Statements of Interest below.)

FVAP was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Since its inception, FVAP has handled over 2,000 requests for assistance; has represented appellants and respondents in 51 civil appeals and writs; and has filed amicus briefs in 19 cases that raised significant issues of statewide concern for domestic violence survivors. These cases have, to date, resulted in 40 published decisions interpreting the Domestic Violence Prevention Act and other California statutes, including *Jameson v. Desta*, the 2018 Supreme Court decision that prompted these proposed rule changes. (5 Cal.5th 594.)

While we are heartened that the proposals include discussions of concerns raised by legal services agencies, including FVAP, to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants. Next best is to simply allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As FVAP explained in our amicus brief in *Jameson*, filed in June 2016, our comments and testimony before the Commission on the Future of California's Court System in February 2016, and in our comments to this body last February, the creation of a verbatim record is essential for proceedings involving survivors of family violence. First, verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Second, verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Likewise, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in proper, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

Verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.² Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.³ California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

² See ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

³ Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

However, we are concerned that establishing a 10-day timeline to request a court reporter may bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied

court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice. Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter at all hearings where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2) Placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter – as opposed to a mere calendaring or administrative matter that does not – would be a better use of court resources resulting in better access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings. In addition to this unjust burden-shifting, adding another procedural hurdle to the maze of rules and procedures that low-income litigants must attempt to follow will result in many individuals failing to be able to exercise their right at all. This would result in California's court system failing to achieve “meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy” establish, as described in *Jameson*. (*Jameson, supra*, 5 Cal.5th at p. 598.) But this result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

There is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. (Response to Public Records Act Request, on file with FVAP.) And Mono County reports that it

provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. (Response to Public Records Act Request, on file with FVAP.)

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to “(use form FW-020 to make this request)”** rather than “(see form FW-020).” The use of the term “see” is legalese. However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived,” nestled underneath each of the boxes for “Superior Court” fees and costs and “Supreme Court, Court of Appeal, or Appellate Division of Superior Court” fees and costs. In both cases, the text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular that survivors of domestic violence and their children can obtain safe, enforceable, and appealable family court orders.

Sincerely,

FAMILY VIOLENCE APPELLATE PROJECT

A handwritten signature in blue ink, appearing to read 'JDWagner', with a long horizontal line extending to the right.

Jennafer Dorfman Wagner, Esq.
Director of Programs

* **Haven Women's Center of Stanislaus** provides intervention, prevention, and supportive services to over 2,000 survivors of domestic and sexual abuse each year. Originally founded as the Stanislaus Women's Refuge Center, Haven has been providing safe shelter and crisis intervention for domestic abuse victims in Stanislaus County since 1977.

MAITRI is a free, confidential, nonprofit organization based in the San Francisco Bay Area, that primarily helps families from South Asia (Bangladesh, India, Nepal, Pakistan, Sri Lanka among others) facing domestic violence, emotional abuse, cultural alienation, human trafficking or family conflict.

Monarch Services, empowering individuals, families and our communities to take action against violence and abuse since 1977, we currently serve approximate 1,500 victims of domestic violence and sexual assault each year. All of our crisis intervention and prevention services are available in Spanish and English and are culturally sensitive. Our outreach efforts have concentrated on poor Latino neighborhoods with residents that have several barriers to seeking services, including language, literacy and legal status issues, and cultural biases. We are extremely proud of our success in serving this special population.

Shalom Bayit is the Bay Area's center for domestic violence prevention and response within the Jewish community. We promote peaceful homes and families, teach skills for healthy relationships, and work to build a safe, vibrant Jewish community that is free from violence and abuse.

“The Unified Voice of Legal Services”



June 8, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

The Legal Aid Association of California (LAAC) greatly appreciates the opportunity to comment on the above-listed rules and forms proposals, each of which is discussed below.

LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California’s unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

While we are heartened that the proposals include discussions of concerns raised by LAAC and legal services agencies—including the Family Violence Appellate Project (FVAP) and the Western Center on Law & Poverty (WCLP)—to the W19-06 Invitation to Comment on previous *Jameson* implementation measures, we still strongly believe that the best and most effective way to implement *Jameson* is to **provide court reporters or an electronic record in all proceedings with indigent litigants**. If that is not possible, the next best solution is to simply **allow fee waiver applicants to check a box on their fee waiver form** indicating that they are affirmatively requesting a court reporter with fees waived. Creating an additional form, while preferable to having no system at all, creates an *administrative burden for courts* and a *burden for low-income litigants* who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.

1. Verbatim Records Are Critical to the Court System's Ability to Provide Access to Justice for Low-Income Litigants.

As the California Supreme Court recognized in *Jameson*, the creation of a verbatim record is essential for meaningful access to justice. The creation of a verbatim record is essential for proceedings resolving critical civil legal issues, including domestic violence and unlawful detainers (evictions), two immensely important areas of civil proceedings that have life-altering—and life-threatening—consequences in which access to a verbatim record is crucial to the administration of justice.

First, creating a verbatim record is essential for proceedings involving survivors of family violence. Verbatim records are needed to craft accurate post-hearing restraining orders, or child custody and visitation orders, that law enforcement officers can enforce. Verbatim records are needed because custody and visitation cases are frequently litigated and revisited over many years. The court needs a clear record of past proceedings to determine whether changed circumstances require altering custody or visitation schedules. Moreover, judges often serve only one or two years in a family court assignment, so later judges assigned to a case need a clear record of what has previously happened in a case to manage the case effectively. This is particularly important in cases where a domestic abuser is utilizing the court system to continue to exert control over their victim, through litigation abuse.

Second, verbatim records are critical for tenants in unlawful detainer proceedings, who are one unfavorable decision away from homelessness. Although the stakes for tenants facing eviction are high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of the unlawful detainer proceedings, tenants, especially those in pro per, are unable to create reliable records of their proceedings, records needed to protect them against wrongful evictions, or to successfully appeal bad decisions and to remain housed.

At the intersection of these issue areas, verbatim records of trial court proceedings are especially important for survivors of abuse facing eviction because of their abuse. For instance, FVAP is currently involved in an appeal where the court refused to issue jury instructions relating to the domestic violence defense to eviction found in Code of Civil Procedure, section 1161.3. Without a record, the appellate division could not possibly determine whether this is legal error. Domestic violence is already a primary cause of homelessness for women and children in the United States.² Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the

¹ See JUDICIAL COUNCIL OF CALIFORNIA, TASK FORCE ON SELF-REPRESENTED LITIGANTS: FINAL REPORT (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.

² See ACLU WOMEN'S RIGHTS PROJECT, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. CONFERENCE OF MAYORS, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

immediate cause of their homelessness.³ California has laws designed to prevent unnecessary homelessness caused by domestic violence, including the domestic violence eviction defense found at Code of Civil Procedure section 1161.3, but without the ability to access those protections through the court, those rights cannot be effective and survivors will continue to face homelessness at a disproportionate rate.

Finally, a verbatim record is especially critical on appeal. As the *Jameson* court pointed out, under current law, the appeal will in many cases be dismissed or denied without a reporter's transcript; the need to access to a verbatim record reflects "the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California." (*Jameson*, *supra*, 5 Cal.5th at p. 608.)

2. Proposed Changes to Rule of Court 2.956 Should be Further Strengthened to Avoid Cutting-off Unlawful Detainer and Domestic Violence Litigants from Accessing a Verbatim Record.

For these reasons, we applaud the Civil and Small Claims Advisory Committee's attention to the critical task of properly implementing the *Jameson* decision. **We strongly agree with the proposal to amend California Rules of Court, rule 2.956(c)(2)** to unequivocally establish that once a fee-waiver recipient has requested a court reporter, one must be provided by the court for free, and for the duration of the trial.

We are concerned, however, that establishing a 10-day timeline to request a court reporter may *effectively bar defendants in unlawful detainer matters or parties in restraining order cases from accessing a record*. Legal aid organizations know all too well that low-income litigants often deal with these issues on a much shorter timeframe. While unlawful detainer hearings are scheduled more than 10 days out, most defendants are unrepresented or do not find legal representation until shortly before their trial, and persons without legal assistance likely will not know to request a court reporter. The same may be true of parties in domestic violence prevention and other restraining order cases; petitioners may only obtain legal representation shortly before the hearing, and where an abuser is engaging in litigation abuse and using these statutes as a weapon against a victim, the victim is even less likely to understand the need for a record and its absence could be particularly dangerous. For that reason, we recommend proposed rule 2956(c)(2)(B) should be amended to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short while, if necessary, in order to provide a court reporter or official electronic recorder.

³ Monica McLaughlin & Debbie Fox, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

3. Fee Waiver Recipients Should Simply Receive a Court Reporter or Electronic Recording.

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, with all respect, the right to a record should not be denied for any reason. We still strongly believe that as currently implemented, and even with these proposals, indigent litigants will be denied court reporters because they will not know to ask for them. For courts to rely on litigants' ignorance for fiscal reasons is to deny justice.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide form and Rule will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin, this Council can—and we believe should—require a court reporter at all hearings where a fee waiver recipient appears, without any formal request (Invitation to Comment SPR20-07, p. 2). However, we recognize concerns that not all types of proceedings need reporters, and that it cannot merely be automatic. Nonetheless, placing the onus on the court, as opposed to the litigant, to determine whether a hearing will be going forward which requires a court reporter—as opposed to a mere calendaring or administrative matter that does not—would be a better use of court resources resulting in improved access to justice for low-income litigants.

Low-income litigants with fee waivers almost by definition cannot afford to hire attorneys to represent them before California's courts. Navigating unfamiliar court systems and trying to understand rules and procedures on one's own is an immense challenge for people with no legal expertise. Self-help centers in many counties are overwhelmed with the volume of people who need help navigating court systems and cannot help everyone. And many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it difficult for them to navigate the court system. Imposing any additional burdens on these individuals to have to affirmatively request a court reporter—and at the right time, and on a separate form—only serves to make it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*. It would shift the burden of knowing of their legal rights from the courts, which are already well aware of *Jameson*, to low-income people who are extremely unlikely to know of the change in law, especially after many years of the majority of California counties not providing any verbatim records of trial court proceedings.

As a practical matter, low-income and unrepresented litigants are not able to bear the burden and forcing them to take on the full burden is effectively eliminating implementation entirely. Adding another procedural hurdle to the maze of rules and procedures that low-income litigants

must attempt to follow will result in many individuals being unable to exercise their right at all. This would result in California's court system failing to achieve "meaningful access to the civil judicial process that the relevant California in forma pauperis precedents and legislative policy" establish (*Jameson, supra*, 5 Cal.5th at p. 598). This result is not inevitable. California can fully realize the Supreme Court's vision by providing verbatim records to all people with fee waivers.

Finally, there is no reason to believe that small or rural courts cannot fully implement *Jameson* in this way, to good effect. For example, Mono County reports that it provides court reporters regularly, and a court reporter is typically provided regardless of whether a litigant requests one (Response to Public Records Act Request, on file with FVAP). As a second example, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter (Response to Public Records Act Request, on file with FVAP). Hence, small and rural courts are already doing it, and it is working fine.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to **change the parenthetical to "(use form FW-020 to make this request)"** rather than "(see form FW-020)." The use of the term "see" is legalese.

More pressingly, however, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, it is far more useful just to allow litigants to see the option of the court reporter being requested without fee on the fee waiver application itself in the form of a check-box much like the currently existing boxes for waiving either superior court fees or appellate court fees.

As discussed in comments from the legal services community last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection (4) "What court's fees or costs are you asking to be waived," nestled underneath each of the boxes for "Superior Court" fees and costs and "Supreme Court, Court of Appeal, or Appellate Division of Superior Court" fees and costs. In both cases, the text accompanying each sub-check box should say, "including court reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding." The same suggested change to forms FW-001-GC; FW-001GCS, would be added under (6).

4. Conclusion

In conclusion, LAAC believes in the importance of *Jameson* and the principle that all court users—including low-income and unrepresented ones—deserve the opportunity to receive a verbatim record to utilize on appeal. Our members represent low-income clients who likely

otherwise would not receive representation, and who might not otherwise recognize the necessity of a record. Creating as few barriers as possible to low-income litigants' right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access to justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice and can obtain enforceable and appealable court decisions.

Sincerely,



Salena Copeland

Executive Director | Legal Aid Association of California

Kate Marr

Executive Director | Community Legal Aid SoCal

Jenny Farrell

Executive Director | Mental Health Advocacy Services

Michael Rawson

Director | The Public Interest Law Project

Barbara J. Schultz

Director of Litigation & Policy | Legal Aid Foundation of Los Angeles

Cindy Pánuco

Vice President and Chief Program Officer | Public Counsel

Amy Fitzpatrick

Chief Executive Officer | San Diego Volunteer Lawyer Program

Kevin Aslanian

Executive Director | Coalition of California Welfare Rights Organizations

Patricia McGinnis

Executive Director | California Advocates for Nursing Home Reform

Ilene Jacobs

Director of Litigation, Advocacy & Training | California Rural Legal Assistance

Jimena Vasquez

Directing Attorney | Los Angeles Center for Law and Justice

Amy Poyer

Senior Staff Attorney | California Women's Law Center



June 8, 2020

By Email: invitations@jud.ca.gov

Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Ave.
San Francisco, CA 94102

Re: Comments on Civil Practice and Procedure: Court Reporters for Civil Proceedings Proposed Rules, Forms, Standards or Statutes (SPR 20-07)

Dear Judicial Council Members:

Western Center on Law & Poverty and the undersigned organizations submit this letter in response to the Judicial Council's invitation to comment on the proposed rules implementing *Jameson v. Desta*, 5 Cal.5th 594 (2018). Western Center advocates for transformative, system-wide, public policy solutions to end poverty in California. Our housing advocacy incorporates promotion of affordable and equitable housing development, protection of tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency and low-income people. As explained in our prior comment letters on proposed rules implementing *Jameson*, our role as a legal services support center means that we are uniquely positioned to assess the impact of the Judicial Council's proposals on low-income litigants, particularly in unlawful detainer litigation.

While we appreciate that the proposals include discussions of concerns raised by legal services agencies on the prior round of *Jameson* implementation measures, we still strongly believe that the most effective way to implement *Jameson* is to provide court reporters or an electronic record in all proceedings where a litigant qualifies for a fee waiver. If this approach is not adopted, the second best option would be to allow fee waiver applicants to check a box on the existing fee waiver form indicating that they are requesting a court reporter. Creating an additional form, while preferable to having no system at all, creates an administrative burden for courts and a burden for low-income litigants who often lack access to counsel and are unaware of the importance of a verbatim record to protecting their rights.



1. Verbatim records are essential to providing meaningful access to justice.

In *Jameson*, the California Supreme Court recognized “the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant’s legal rights and in providing such a litigant equal access to appellate justice in California.” (*Jameson, supra*, 5 Cal.5th at p. 608.) Verbatim records are especially critical for tenants in unlawful detainer proceedings, where an unfavorable ruling results in the loss of the defendants’ home and potential homelessness. Although the stakes for tenants facing eviction are extremely high, 90% of tenants are unrepresented while most landlords have representation.¹ Without a verbatim record of unlawful detainer proceedings, tenants, especially those without representation, are unable to create reliable records of their proceedings. The lack of record denies tenants a meaningful right to appeal and may make it more difficult to seek other post judgment relief from eviction.

2. Proposed changes to Rule of Court 2.956 should be modified to accommodate shortened timelines in unlawful detainer proceedings

We agree with the proposal to amend Rule of Court 2.956(c)(2) to state unequivocally that once a fee-waiver recipient has requested a court reporter, one must be provided by the court. However, we are concerned that establishing a 10-day timeline to request a court reporter may prevent defendants in unlawful detainer matters from exercising this right. While unlawful detainer hearings may be scheduled more than 10 days in advance, most defendants are unrepresented or do not find legal representation until shortly before their trial, and litigants without legal assistance will not know to request a court reporter until they obtain counsel. For that reason, we recommend revising proposed rule 2956(c)(2)(B) to the following:

The party should file the request as soon as practicable, and where the request is made less than 5 calendar days before the scheduled hearing, the court may continue the matter for a short period, if necessary, in order to provide a court reporter or official electronic recording.

3. Fee waiver recipients should be provided with a court reporter or electronic recording automatically

Finally, while we appreciate that the Council is seeking more information about how automatically providing court reporters for fee waiver recipients will affect courts fiscally, the right to a record should not be denied in the interim period. While the standardized form is a step in the right direction, pro se litigants will not know that they need to complete the form, and adding a paragraph to the bottom of the instruction sheet is not an adequate way to inform

¹ See Judicial Council of California, Task Force on Self-Represented Litigants: Final Report (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.



litigants of this critical right. This is particularly true for litigants with disabilities and those with limited English proficiency who face additional barriers to completing these forms.

Below, we answer each of the Committee's questions, with the above background in mind.

1. Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?

While a statewide process will be more consistent, the current proposal does not do enough to ensure indigent litigants will have access to a verbatim record. As the committee points out in the Executive Summary and Origin this Council can – and we believe should – require a court reporter in all courtrooms where a fee waiver recipient appears, without any formal request. (Invitation to Comment SPR20-07, p. 2)

Low-income litigants with fee waivers cannot afford to hire attorneys, and navigating unfamiliar court systems is an immense challenge for people with no legal expertise. Self-help centers in many counties face overwhelming demand. Many self-represented litigants have limited English proficiency, are survivors of abuse, and/or experience other factors that make it even more difficult for them to navigate the court system. Requiring these individuals to request a court reporter on a separate form makes it less likely that they will be able to exercise their rights to equal access to the courts as described by the Supreme Court in *Jameson*.

Superior Courts' responses to a recent public records inquiry reveal that providing court reporters for all indigent litigants is workable for courts in rural counties. For instance, Stanislaus County only schedules hearings for fee waiver recipients on dates when a court reporter will be available, and reports that since the *Jameson* decision came down it has never refused a fee waiver recipient's request for a free court reporter. Mono County reports that it provides court reporters regularly and a court reporter is typically provided regardless of whether a litigant requests one. Providing a mechanism for all indigent litigants to obtain a verbatim record of proceedings remains the most effective way to implement *Jameson*.

2. On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing?

The addition does not make the list more confusing. It might be more helpful to change the parenthetical to "(use form FW-020 to make this request)" rather than "(see form FW-020)." However, more pressingly, we do not believe that most litigants actually read the instruction sheet before completing the fee waiver form. For this reason, we suggest adding a check-box to the fee waiver application itself.



As we discussed in our comment last year, this could be accomplished by updating forms FW-001 and FW-001S, to add two new sub-check boxes in subsection ④ “What court’s fees or costs are you asking to be waived.” The text accompanying each sub-check box should say, “including court reporter’s fee for attendance at hearing or trial, if the court is not electronically recording the proceeding; or court fees for copies of electronic recordings in cases in which an electronic recording is the official record of the proceeding.” The same suggested change to forms FW-001-GC; FW-001GCS, would be added under ⑥. While adding box to the general fee waiver form would result in a fee waiver litigant effectively requesting a verbatim record for all proceedings in their case, the majority of unlawful detainer cases only result in one court date for trial, so this would not create significant increased burden for the courts.

In conclusion, creating as few barriers as possible to low-income litigants’ right to verbatim records fulfills the spirit of the *Jameson* decision and the long line of access-to-justice cases upon which it rests. Full implementation of *Jameson* is paramount to ensuring all low-income Californians have access to justice, and in particular have a meaningful opportunity to remain in their homes. Thank you for the opportunity to comment on these proposed rules.

Sincerely,

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