California Family Law Report

Case of the Month – October 2026

Topic: Procedure

Official record required for indigent litigants...

In writ proceeding, the California Supreme Court held that where a litigant requests the creation of an official verbatim record and establishes an inability to pay for a private court reporter, a superior court has a duty to provide some means for the litigant to obtain an official verbatim record, including by electronic recording if an official reporter or reporter pro tempore is unavailable.

Family Violence Appellate Project v. Superior Court of Contra Costa County
(August 10, 2026)

California Supreme Court, S288176, ___ Cal.5th ___, 346 Cal.Rptr.3d 841, 2026 FA 2244, per Guerrero, C.J. (Corrigan, J., Liu, J., Kruger, J., Groban, J., Evans, J., and Lie, J., concurring). Original proceeding. For Family Violence Appellate Project (Petitioner): Sonya Diane Winner, Ellen Yoon-Seon Choi, Katelyn Nicole Rowe, Erica Embree Ettinger, and Jacob Aaron Pagano. For Bay Area Legal Aid (Petitioner): Brenda Star Adams. For Superior Courts (Respondents): Mark R. Yohalem. CFLP §C.97.2.

A shortage of court reporters...

Family Violence Appellate Project (FVAP) and Bay Area Legal Aid (BayLegal) represent low-income litigants in civil trial and appellate proceedings. Their clients include litigants in matters involving domestic violence restraining orders, child custody and visitation, support, guardianship, housing, and consumer disputes.

In December 2024, FVAP and BayLegal filed an original petition for writ of mandate against the superior courts of Los Angeles, Santa Clara, Contra Costa, and San Diego Counties. They alleged that the courts frequently failed to provide official court reporters to litigants who could not afford to hire private reporters, even when the litigants requested a reporter under *Jameson v. Desta* (2018) 5 Cal.5th 594, 234 Cal.Rptr.3d 831.

In *Jameson*, the California Supreme Court held that when a superior court generally does not provide official reporters in civil matters but permits parties with

financial means to hire private court reporters, the court must provide an exception assuring indigent litigants access to an official verbatim record. The Supreme Court based that obligation on the in forma pauperis doctrine, which permits courts to take steps necessary to ensure meaningful access to the judicial process for litigants unable to bear its costs.

Petitioners alleged that, notwithstanding *Jameson*, their clients routinely appeared for civil hearings only to learn that no official reporter was available. In that situation, clients generally faced a choice between accepting a continuance or proceeding without any means to create an official verbatim record.

According to petitioners, continuances frequently were not a meaningful solution. For example, a continuance could delay urgently needed relief in domestic violence, custody, visitation, and support matters. It could also impose further logistical and financial burdens on low-income litigants, who might need to miss work, arrange child care, travel to court again, or repeatedly prepare for a hearing. Moreover, a continuance did not assure that a reporter would be available on the next hearing date. Petitioners alleged that some clients endured multiple continuances because of reporter unavailability, while others chose to proceed without a verbatim record rather than further delay their cases.

The petition included evidence concerning the reporting practices in each respondent court. The Los Angeles Superior Court had issued a general order stating that official reporters ordinarily would not be available in unlimited civil, family law, or probate cases, except on a limited basis. The order recognized that reporter availability for indigent litigants could not always be assured and that the absence of a reporter could result in a continuance.

BayLegal attorneys reported similar circumstances in Santa Clara and Contra Costa Counties. They stated that requests for reporters made by indigent litigants often could not be satisfied because no reporter was available. In Contra Costa County, the resulting delays could extend for months. A Legal Aid Society of San Diego attorney likewise reported that official reporters were not always available in San Diego County family law matters, even when requested by eligible low-income litigants.

Electronic recording orders...

The respondent courts' inability to provide reporters led three of the four courts to adopt general orders authorizing electronic recording in some civil, family law, and

probate proceedings. Los Angeles issued its order in September 2024, Santa Clara followed in November 2024, and Contra Costa issued a similar order in December 2024. San Diego did not issue a comparable order.

The general orders recognized that a shortage of certified shorthand reporters had left substantial numbers of litigants without an official verbatim record. The Los Angeles order stated that the court had held more than 332,000 hearings in 2023 for which no verbatim record was made. Santa Clara's order stated that its court had held more than 56,000 hearings without a verbatim record in 2023 and approximately 59,000 additional such hearings during 2024 through the date of its order.

The orders authorized electronic recording only after a judicial officer made specified findings. Among other things, the court had to find that the proceeding implicated a fundamental right or liberty interest, a party wished to preserve the possibility of a verbatim transcript, no official court-employed reporter was reasonably available, the requesting party had been unable to secure a private reporter because of unavailability or inability to pay, the proceeding involved significant legal or factual issues, and a further continuance would not serve the interests of justice.

Petitioners contended that the respondent courts had a ministerial duty to provide indigent and low-income civil litigants with some means of obtaining an official verbatim record in all civil cases. They maintained that electronic recording should be used whenever a reporter was unavailable and recording was necessary to provide a litigant meaningful access to justice.

The courts did not expressly dispute petitioners' factual allegations or legal conclusions. They expressed concern, however, that petitioners sought to impose a new affirmative obligation requiring the courts to create an official verbatim record through electronic recording whenever an official reporter was unavailable.

The Supreme Court issued an order to show cause and granted the petition.

In forma pauperis doctrine requires meaningful access…

The Supreme Court first addressed whether mandate relief was appropriate. The court explained that a writ of mandate may issue to compel performance of a clear, present, ministerial duty when the petitioner has a beneficial interest in the duty's performance and lacks a plain, speedy, and adequate legal remedy.

The court found those requirements satisfied. It observed that the absence of official verbatim records affected thousands of civil litigants statewide each day. The issues presented were of statewide importance, involved questions of first impression, and required prompt guidance to the superior courts.

The court also concluded that petitioners had a beneficial interest in obtaining relief. FVAP and BayLegal alleged that the lack of verbatim records had required them to expend additional staff time addressing continuances and, in some cases, to spend funds to retain private reporters. According to the court, these allegations established a sufficient organizational injury.

The principal issue was whether the respondent courts had a ministerial duty to provide eligible litigants a means of obtaining an official verbatim record. The court concluded that they did.

The court explained that the in forma pauperis doctrine reflects courts' inherent authority to facilitate meaningful access to justice for litigants whose financial circumstances would otherwise prevent them from participating meaningfully in judicial proceedings. The doctrine historically has allowed courts to excuse fees and other expenses that would bar a poor litigant from access to the courts. It also permits courts to devise alternative procedures to prevent litigants from being denied their day in court as a practical matter.

The court emphasized that the doctrine is not limited to the waiver of ordinary filing fees, observing that it has been applied to excuse an indigent litigant from an otherwise mandatory injunction bond and to develop alternatives where a litigant could not afford the costs required to proceed in an arbitration forum. The court further noted that statutes imposing mandatory requirements ordinarily will not be read to curtail this inherent judicial authority unless the Legislature plainly expresses that intent.

The court then reviewed *Jameson*. In that case, the court held that the absence of an official reporter and resulting lack of a verbatim record frequently prevents meaningful appellate review. Appellate courts presume trial court orders are correct, and an appellant bears the burden to furnish an adequate record demonstrating reversible error. Without a reporter's transcript or adequate substitute, an appellant's claim often must be resolved against the appellant.

For that reason, *Jameson* held that an official court reporter, or another valid means of creating an official verbatim record for appeal, generally must be made

available to in forma pauperis litigants upon request. The court observed that *Jameson* had stated that, under the statutes then at issue, providing an official record generally required an official court reporter.

Continuances and settled statements insufficient…

The Supreme Court found that the evidence before it showed the *Jameson* guarantee had not been achieved in practice. The respondent courts commonly could not supply reporters to eligible litigants who requested them. As a result, financially able litigants could obtain an official record by hiring private reporters, while litigants unable to afford private reporters could not be assured of either a record or a hearing on the scheduled date.

The court rejected the proposition that a continuance satisfied the courts' duty. A continuance, the court explained, necessarily imposes additional effort and expense and may have serious substantive consequences when urgent relief is at issue. This was particularly true where a litigant sought a restraining order, child support, or spousal support. Further, even a litigant who accepted a continuance had no assurance that a reporter would be available on the continued date.

The court also recognized that agreed and settled statements can be useful appellate tools. But it concluded they could not serve as a systematic replacement for an official verbatim record. Preparing a settled statement requires a cumbersome, multistep process involving the parties and the trial court. The court reiterated its conclusion in *Jameson* that the potential availability of an agreed or settled statement does not eliminate the impairment of meaningful access caused by the lack of a verbatim record.

Electronic recording may be required….

The Supreme Court next considered Govt. C. §69957. That statute authorizes courts to use electronic recording to create an official record in limited civil, misdemeanor, and infraction matters when an official reporter or official reporter pro tempore is unavailable. The statute otherwise prohibits the use of electronic recording to make an official or unofficial record in other proceedings, including unlimited civil and family law matters.

The court concluded that Govt. C. §69957 did not prohibit electronic recording when needed to protect an indigent litigant's meaningful access to justice. According to the court, the statute does not expressly address litigants who cannot afford private

reporters and otherwise have no means to obtain an official verbatim record. The court reasoned that the statutory language did not show a plain legislative intent to eliminate the courts' inherent authority under the in forma pauperis doctrine.

The court stated that electronic recording is an available alternative procedure for addressing the gap created by reporter shortages. It noted that electronic recording equipment already appeared to be installed in a significant majority of courtrooms in the respondent courts. The court further observed that federal courts, other state courts, and California courts in authorized limited civil, misdemeanor, and infraction proceedings use electronic recording to create official verbatim records.

The court declined to resolve disputes over the reasons for California's court reporter shortage or to assign fault for the problem. It also declined to exhaustively define when a reporter is unavailable. The relevant inquiry, according to the court, is whether the failure to use electronic recording would deprive the eligible litigant of the equal access to justice that in forma pauperis status is intended to provide.

Thus, if a court can provide an eligible litigant access to an official verbatim record through an official reporter or an official reporter pro tempore, Govt. C. §69957 continues to bar the use of electronic recording. But if no reporter is available and electronic recording is necessary to provide the litigant access to an official verbatim record, the court must imply an exception to Govt. C. §69957 and use electronic recording.

The court emphasized that superior courts have no discretion to deny access to an official verbatim record under those circumstances. Their obligation is ministerial.

Orders too restrictive...

The court also concluded that the electronic recording general orders adopted by Los Angeles, Santa Clara, and Contra Costa Counties were too restrictive. Those orders limited electronic recording to matters involving fundamental rights or liberty interests and required findings concerning the likely content of the proceeding and whether a continuance would be in the interests of justice.

The Supreme Court explained that neither *Jameson* nor the in forma pauperis doctrine is confined to cases involving fundamental rights or liberty interests. Instead, the doctrine reflects the broader policy of assuring meaningful access to the judicial system as a whole. The court therefore held that eligible litigants may request an official verbatim

record in all civil cases, not only in proceedings falling within the categories identified by the general orders.

Finally, the court rejected concerns that electronically created records may be less accurate than records prepared by court reporters. The court concluded that an electronically created verbatim record is better than no record. It added that the use of standardized procedures and safeguards could mitigate reliability concerns.

Accordingly, the Supreme Court issued a writ of mandate directing the respondent superior courts to provide litigants who cannot reasonably afford a private court reporter, upon request, meaningful access in all civil cases to an official verbatim record of proceedings, including by electronic recording when an official reporter or official reporter pro tempore is unavailable.

COMMENT...

Family Violence Appellate Project substantially expands the practical effect of *Jameson*. The decision makes clear that a court's obligation does not end when it offers an eligible litigant a continuance because no reporter is available. When a litigant requests an official record and cannot reasonably afford a private reporter, the court must provide a means of creating that record. If an official reporter or official reporter pro tempore is unavailable, electronic recording must be used when necessary to satisfy that obligation.

The decision is especially important in family law proceedings, where delayed hearings can prolong temporary custody, support, and restraining order arrangements. Practitioners representing clients unable to afford a private reporter should make a clear request for an official verbatim record, provide the court with sufficient information concerning the client's inability to pay, and request electronic recording if no reporter is available. The court emphasized that ability to pay determinations should be flexible and that a formal fee-waiver application is not necessarily required.

Library References

10 Witkin, Summary of Cal. Law (11th ed. 2026) P & C § 406
Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group) ¶ 16:389