

S230899

Case No. **S** _____

IN THE SUPREME COURT OF CALIFORNIA

BARRY S. JAMESON,
PLAINTIFF AND PETITIONER,

V.

TADDESE DESTA,
DEFENDANT AND RESPONDENT.

SUPREME COURT
FILED

DEC - 1 2015

Francis M. Morgan, Clerk
Deputy



After a Decision by the Court of Appeal for the Fourth District, Division One
Case No. D066793
Affirming a Judgment of the Superior Court of San Diego County
The Honorable Joel M. Pressman
Superior Court No. GIS9465

PETITION FOR REVIEW

KIRKLAND & ELLIS LLP
Michael Shipley, SBN 233674
Sierra Elizabeth, SBN 268133
333 South Hope Street
Los Angeles, CA 90071
Tel: (213) 680-8400
Fax: (213) 680-8500

*Attorneys for Plaintiff and Petitioner
Barry S. Jameson*

COPY

Case No. S _____

IN THE SUPREME COURT OF CALIFORNIA

BARRY S. JAMESON,

PLAINTIFF AND PETITIONER,

v.

TADDESE DESTA,

DEFENDANT AND RESPONDENT.

After a Decision by the Court of Appeal for the Fourth District, Division One

Case No. D066793

Affirming a Judgment of the Superior Court of San Diego County

The Honorable Joel M. Pressman

Superior Court No. GIS9465

PETITION FOR REVIEW

KIRKLAND & ELLIS LLP

Michael Shipley, SBN 233674

Sierra Elizabeth, SBN 268133

333 South Hope Street

Los Angeles, CA 90071

Tel: (213) 680-8400

Fax: (213) 680-8500

Attorneys for Plaintiff and Petitioner

Barry S. Jameson

TABLE OF CONTENTS

ISSUES PRESENTED FOR REVIEW	2
THE IMPORTANCE OF THE ISSUES	3
STATEMENT OF THE CASE	4
I. Jameson’s Thirteen-Year Odyssey through the Courts.....	4
II. The San Diego Superior Court’s “No Official Reporters” Policy.....	7
III. The Published Opinion of the Court of Appeal.....	10
REASONS FOR GRANTING REVIEW.....	12
I. Unless This Court Grants Review, Indigent Civil Litigants Will Lose the Right to Meaningfully Appeal Adverse Judgments in Civil Trials.....	13
II. The Court of Appeal’s Decision Conflicts with California’s Strong Policy of Ensuring Equal Access to Justice for Indigent and Imprisoned Civil Litigants.....	14
A. California State Law Requires Courts to Exercise Their Discretion in Favor of Ensuring Indigent Litigants’ Rights of Access to Justice.....	14
B. State Law Afforded the Trial Court in This Case Ample Discretion to Protect Jameson’s Right to Access the Civil Appeal Process.....	23
C. Local Court Rules and Policies That Cabin the State-Granted Discretion of Superior Courts to Protect the Rights of Indigent Litigants Are Invalid.....	28
CONCLUSION	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adsani v. Miller</i> (2d Cir. 1998) 139 F.3d 67	21
<i>In re Allison</i> (1967) 66 Cal.2d 282.....	21
<i>Alshafie v. Lallande</i> (2009) 171 Cal.App.4th 421	19, 20
<i>Apollo v. Gyaami</i> (2008) 167 Cal.App.4th 1468	19, 22, 30
<i>Baltayan v. Estate of Getemyan</i> (2001) 90 Cal.App.4th 1427	15, 20
<i>California Court Reporters Assn. v. Judicial Council of California</i> (1995) 39 Cal.App.4th 15	9, 23, 24
<i>Chaaban v. Wet Seal, Inc.</i> (2012) 203 Cal.App.4th 49	17
<i>City of Rohnert Park v. Superior Court</i> (1983) 146 Cal.App.3d 420.....	17
<i>Conover v. Hall</i> (1974) 11 Cal.3d 842.....	16
<i>Contractors Labor Pool, Inc. v. Westway Contractors, Inc.</i> (1997) 53 Cal.App.4th 152	29
<i>Cortez v. Bootsma</i> (1994) 27 Cal.App.4th 935	29
<i>Cruz v. Ayromloo</i> (2007) 155 Cal.App.4th 1270	29

TABLE OF AUTHORITIES (Cont'd)

Cruz v. Superior Court
(2004) 120 Cal.App.4th 175 15

Earls v. Superior Court
(1971) 6 Cal.3d 109..... 18, 19, 30

Elkins v. Superior Court
(2007) 41 Cal.4th 1337 19, 21, 29, 30

Ferguson v. Keays
(1971) 4 Cal. 3d 649..... 16, 17, 21, 30

Foust v. San Jose Const. Co., Inc.
(2011) 198 Cal.App.4th 181 13

Garcia v. Santana
(2009) 174 Cal.App.4th 464 20

Hodges v. Mark
(1996) 49 Cal.App.4th 651 10

Hoversten v. Superior Court
(1999) 74 Cal.App.4th 636 20

Isrin v. Superior Court
(1965) 63 Cal.2d 153 (*Isrin*) 18

Jameson v. Desta
2007 WL 1885104 (July 2, 2007, D047284)
[nonpub. opn.] 5

Jameson v. Desta
(2009) 179 Cal.App.4th 672 5, 15, 20, 22

Jameson v. Desta
(2013) 215 Cal.App.4th 1144 5, 7, 23

Jameson v. Desta
(2015) 241 Cal.App.4th 491 *passim*

Jara v. Mun. Court
(1978) 21 Cal.3d 181..... 16, 17

TABLE OF AUTHORITIES (Cont'd)

Lindsey v. Normet
(1972) 405 U.S. 56 21

Majors v. Superior Court
(1919) 181 Cal. 270..... 16

In re Marriage Cases
(2008) 43 Cal.4th 757 18

Martin v. Superior Court
(1917) 176 Cal. 289..... 15, 16, 19

Payne v. Superior Court
(1976) 17 Cal.3d 908..... 18, 19, 20

People v. Alice
(2007) 41 Cal.4th 668 12

People v. Hall
(1994) 8 Cal.4th 950 29

People v. Pena
(2004) 32 Cal.4th 389 31

In re Robin M.
(1978) 21 Cal.3d 337..... 29

Rucker v. Superior Court
(1930) 104 Cal.App. 683 17

Serrano v. Priest
(1971) 5 Cal.3d 584..... 18, 21

Silverbrand v. Cnty. of Los Angeles
(2009) 46 Cal.4th 106..... 19

Wantuch v. Davis
(1995) 32 Cal.App.4th 786 15, 20, 21, 22

Wisniewski v. Clary
(1975) 46 Cal.App.3d 499..... 29

TABLE OF AUTHORITIES (Cont'd)

Yarbrough v. Superior Court
(1985) 39 Cal.3d 197..... 18, 19, 20, 22

Statutes

28 U.S.C. § 753 9
28 U.S.C. § 1915 9
Bus. & Prof. Code § 8030.6 17
Code Civ. Proc. § 269..... 11, 24
Code Civ. Proc. § 273..... 24
Code Civ. Proc. § 1030..... 19
Gov't Code § 68086 *passim*
Gov't Code § 68630 3, 15
Gov't Code § 68631 *passim*
Gov't Code § 69941 28
Gov't Code § 70043 28
Gov't Code § 70044 28
Gov't Code § 70048 28
Penal Code § 2601(d)..... 15, 21, 22
Stats. 2013, ch. 454 § 1 26

Rules

Cal. Rules of Court, rule 2.956 *passim*
Cal. Rules of Court, rule 3.55 25
Cal. Rules of Court, rule 8.264 12
Cal. Rules of Court, rule 8.500 *passim*

TABLE OF AUTHORITIES (Cont'd)

Cal. Rules of Court, rule 8.504	12
Cal. Rules of Court, rule 9.256	27
Cal. Rules of Court, rule 10.960	15
Other Authorities	
7 Witkin, California Procedure (2015 online ed.)	17, 24
<i>Making the Record: Utilizing Digital Electronic Recording at p. 7</i>	9
Reed Smith LLP, <i>Survey of Court Reporter Policies (2014)</i>	8, 9, 13, 14
San Diego Superior Court, <i>Official Reporter Pro Tempore Policy</i>	8
San Diego Superior Court, <i>Policy Regarding Normal Availability and Unavailability of Official Court Reporters</i>	7

PETITION FOR REVIEW

In 2002, Barry Jameson—an indigent *pro se* plaintiff—sued Defendant Tadesse Desta for providing negligent medical treatment while Jameson was in prison. On three separate occasions over ten years, the San Diego County Superior Court dismissed Jameson’s case. Each time, however, the Court of Appeal reversed. *Twelve years* after filing his complaint, Jameson was led to believe he had finally secured his right to bring his case to trial. But yet again, the superior court prevented his claims from reaching a jury. It granted Desta’s oral motion for nonsuit based only upon Jameson’s opening statement.

This time, however, the superior court’s actions deprived Jameson of even effective recourse to a fourth trip to the Court of Appeal. A few days before the commencement of trial, the trial court issued a minute order informing Jameson that an official reporter would not be present for his trial, invoking the San Diego Superior Court’s policy of categorically refusing to provide official reporter services for civil trials. Instead, under that policy, Mr. Jameson was required to secure and pay for the services of a private reporter *pro tempore*—services he clearly could not afford.

At the outset of his case, Jameson had been granted a fee waiver under Government Code section 68631. Under recently enacted Government Code section 68086, subdivision (b)—which requires that reporters’ fees “shall be waived for a person who has been granted a fee waiver under [Government Code] section 68631”—he was entitled to an official reporter free of cost. But through its policy, the trial court rendered the benefit of section

68086, subdivision (b) nugatory. What the Legislature gave, the superior court took away.

The Court of Appeal affirmed. (*Jameson v. Desta* (2015) 241 Cal.App.4th 491, Slip. Op. at 14–15 (*Opinion*).)¹ It compounded the superior court’s error by holding that Government Code section 68086, subdivision (b) “does not mandate that a trial court provide indigent litigants with court reporter services where no official court reporter is provided by the court, as was true in this case.” (*Ibid.*) The court ruled that under such circumstances, every litigant, even an indigent one, must arrange and pay for the services of a private reporter *pro tempore*, under California Rules of Court, rule 2.956. (*Ibid.*) Because Mr. Jameson suffered the arbitrary misfortune of filing his action in a county that—through no fault of his own—categorically refuses to provide an official reporter for civil trials, the Court of Appeal held that he forfeited any appeal of the nonsuit for want of a proper reporter’s transcript to provide a record on appeal. (*Id.* at 17–18.)

ISSUES PRESENTED FOR REVIEW

The issues presented for this Court’s review are:

1. Jameson has been granted a fee waiver under Government Code section 68631. Did the Court of Appeal err by permitting the trial court’s policy to never provide official reporters in civil trials to absolve the court of its obligation under Govern-

¹ The opinion of the Court of Appeal, District Four, Division One, is appended to this Petition as Exhibit A. (*See* Cal. Rules of Court, rule 8.500(b)(4).)

ment Code Code § 68086 subdivision (b) to waive reporter's fees for fee waiver litigants?

2. Legislatively established policy and longstanding precedent from this Court requires courts to exercise their discretion in a manner that protects the rights of indigent litigants with colorable claims to access the courts to redress their grievances. Did the Superior Court abuse that discretion by adopting a court reporter policy that has the practical effect of categorically denying all indigent litigants access to court reporters, and thus their practical ability to make a record for appeal?

THE IMPORTANCE OF THE ISSUES

This case presents a legal question of profound importance to the administration of justice in California. (*See* Cal. Rules of Court, rule 8.500(b)(1).) Each year, thousands of indigent litigants seek civil redress in California's courts. Already, the odds are stacked against them: unable to afford a lawyer, they face represented litigants and often complex and burdensome court rules alone.

In 2013, the Legislature amended the statutes governing court reporter fees to require that court reporters' fees "shall be waived for a person who has been granted a fee waiver under Section 68631" consistent with long-standing California law designed to ensure "access to the courts without regard to [a person's] economic means." (Gov't Code, § 68086, subd. (b) (hereinafter section 68086(b); Gov't Code § 68630.)) The Court of Appeal's decision in this case, however, rendered that statute almost a nullity—holding that it requires waiver of the reporter's fee *only if there is already an official reporter present*. (*Opinion* at 14–15).

That ruling arbitrarily imperils the right of appeal for a huge swath of indigent litigants and presents an exceptionally significant issue for this Court's review. Moreover, by preventing fee-waiver litigants from effectively appealing adverse rulings for no reason other than their inability to pay a court reporter's appearance fee, the Court of Appeal's decision runs afoul of longstanding precedent of this Court obligating the courts of this state to exercise their discretion in favor of protecting access to the courts by indigent persons. Only the intervention of this Court can prevent the Court of Appeal's published decision from becoming an insurmountable obstacle for poor and imprisoned litigants to access the appellate process.

This Court should grant review.

STATEMENT OF THE CASE

I. Jameson's Thirteen-Year Odyssey through the Courts.

Jameson has been nothing if not tenacious. In 2002, he sued Desta, a prison doctor, in San Diego Superior Court, alleging negligent medical treatment for Hepatitis C while Mr. Jameson was incarcerated. (*Opinion* at 4.) The operative counts of his complaint litigated by the parties allege breach of fiduciary duty through lack of informed consent as well as professional negligence. (*Id.* at pp. 4-5.)

Over the next thirteen years, Jameson's case followed a circuitous but regular pattern. The superior court would find some reason to dismiss his case, only to be reversed by the Court of Appeal.

In 2005, the superior court dismissed Jameson's complaint for lack of diligent service, despite that three years earlier, Desta had signed a "notice and acknowledgement of receipt indicating that he had been served with a summons and a complaint." (*Jameson v. Desta* (July 2, 2007, D047284), 2007 WL 1885104 at *6 opn. mod. July 26, 2007 [nonpub. opn.] (*Jameson I*).) The Court of Appeal reversed in an unpublished opinion. (*Id.* at p. 9.)

On remand, the superior court again dismissed when Jameson—still incarcerated—failed to appear at a telephonic case management conference, despite evidence that his nonappearance resulted from prison officials denying him access to the telephone. The Court of Appeal again reversed, holding that the superior court had abused its discretion by denying Jameson of "meaningful access to the courts." (*Jameson v. Desta* (2009) 179 Cal.App.4th 672, 684 (*Jameson II*).)

On further remand, the superior court granted summary judgment in favor of Desta, finding that Jameson had not raised triable issues related to causation. Yet again, the Court of Appeal reversed. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144 (*Jameson III*).) On the merits, it ruled that Desta had not met his initial burden on Jameson's implied consent claim and that Jameson had sufficiently raised triable issues as to causation on his negligence claim. (*Id.* at pp. 1164–74.) The Court of Appeal further determined that the trial court improperly permitted Desta's lawyer to take an *ex parte* deposition of Jameson's medical expert, over Jameson's objections. (*Id.* at pp. 1174–76.) The court noted that the trial judge's statements in overruling Jameson's

objections were “entirely inconsistent with [the] mandate” “that an indigent incarcerated litigant has a right to prosecute a bona fide civil action on his own behalf and to be afforded meaningful access to the courts in doing so, and that the trial courts are to ensure that this right is protected.” (*Id.* at p. 1176.) The court was sufficiently concerned by the superior court’s comments that it found it necessary to “remind the trial court of its obligation to ‘ensure indigent prisoner litigants are afforded meaningful access to the courts’[.]” (*Id.* at p. 1149.)

Finally, with the case before it a fourth time, the superior court set the matter for jury trial on April 21, 2014. (*See* RA 232.) A minute order reflecting a hearing on April 18, 2014—with Jameson appearing by telephone—states that the court notified the parties that “the Court no longer provides a court reporter and that the parties have to provide their own court reporters for trial.”² (*Ibid.*) After trial was continued twice to address pending motions (RA 250–51, 252–53) a civil jury trial commenced on April 28, 2014. (RA 254.)

After a one-hour-long jury selection process, Jameson, *pro se* and appearing via telephone from prison, gave his opening statement. (RA 257.) No court reporter, official or otherwise, was present to transcribe the proceedings.³ After he gave his own

² The hearing itself was not reported. (RA 231.) This is the record’s only reference that the superior court would not be providing a reporter.

³ Mr. Jameson’s *pro se* opening brief to the Court of Appeal asserted that at the beginning of trial, Defendant indicated that he would not be having the trial reported. (Jameson’s Appellant’s

opening statement, Desta moved for nonsuit. (RA 257, *see Opinion* at 6.) The superior court granted the motion, dismissing the case for a fourth time, ruling that “Jameson did not establish causation in his opening statement,” (RA 257, *see Opinion* at 16), in significant tension with the appellate court’s most recent ruling in *Jameson III*. (*Cf. Jameson III, supra*, 215 Cal.App.4th at p. 1168 [holding that “Jameson raised a triable issue of fact with respect to both the standard of care and causation.”].) Judgment was entered on July 31, 2014. (RA 259–60.)

II. The San Diego Superior Court’s “No Official Reporters” Policy.

“At a hearing 10 days prior to the commencement of the jury trial, the trial court informed the parties that ‘the Court no longer provides a court reporter for civil trials, and that parties have to provide their own reporters for trial.’” (*Opinion* at 11 [quoting RA 232].)⁴ Indeed, since 2013, as a matter of official court policy, the San Diego Superior Court has not provided official court reporters in civil, family, or probate matters, including all civil trials. (*See* S.D. Super. Ct. Form ADM-317, *Policy Re-*

Br. at p. 42.) Jameson’s brief stated that he orally objected to the court’s refusal to provide a reporter at that time, but that his objections were overruled. (*Ibid.*) The trial court’s minute order does not reflect any objection or ruling on it (RA 256–257) and without a transcript, there is no way to know what was said.

⁴ The hearing occurred on April 18, 2014, which was only three days before the scheduled onset of the trial. (*See* RA 232.) As noted, after two continuances, jury selection began on April 28, 2014, which was ten days after the trial court’s admonishment about the lack of official reporters.

garding *Normal Availability and Unavailability of Official Court Reporters*.)⁵ The policy affords no exceptions for indigent litigants, even when they have qualified for a fee waiver and no other way to pay for a record. (See S.D. Super. Ct. Form ADM-315, *Official Reporter Pro Tempore Policy* at 2.)⁶ It specifically states: “In cases where the court no longer provides court reporters, indigent litigants are not entitled to have the court provide or pay for a court reporter based on a fee waiver. *Fee waivers apply only to fees charged by the court. They do not apply to court reporter fees and costs in cases where the court is not providing the court reporter.* Privately retained court reporters are independent from the court, and are allowed to charge indigent litigants for their services.” (*Ibid.* [emphasis added].) By outsourcing *all* civil trial reporting to private reporters, the court has rendered it effectively *impossible* for an indigent civil litigant to create a trial record, fee waiver or not.

San Diego’s policy is not unusual. Millions of Californians face similar no-official-reporter policies. Among the counties that, like San Diego, do not provide official reporters for most civil proceedings are Los Angeles, San Francisco, Alameda, Fresno, Kern, and Ventura. (See Reed Smith LLP, *Survey of Court Reporter Policies* (2014).⁷) On the other hand, had they filed in Santa Clara,

⁵ Attached as Ex. B, per Rule of Court, rule 8.500(e)(1)(C).

⁶ Attached as Ex. C, per Rule of Court, rule 8.500(e)(1)(C).

⁷ Available at http://www.reedsmith.com/files/uploads/alert-attachments/alert14228_attach.pdf

San Mateo, or Orange Counties, the court would provide a reporter, at least for trial. (*Ibid.*)

Or if they lived in other states, they might at least be entitled to an official electronic recording. (*See generally* National Center for State Courts (2013) *Making the Record: Utilizing Digital Electronic Recording* at p. 7 [noting that some states rely almost exclusively on electronic recording, while others use it in at least some cases where official reporters are unavailable].)⁸ But California law prohibits the use of electronic recordings in lieu of live transcripts in unlimited civil cases, even as a last resort when no reporter is available. (*See California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 33 (CCRA) [invalidating former Cal. Rules of Court, rules 33(e), 891, 892, and 980.3, which permitted electronic recording of trial court proceedings, as inconsistent with statute]). And if there were federal jurisdiction, a federal court would provide *in forma pauperis* litigants with a transcript upon certification that the appeal was not frivolous and the transcript was necessary for appeal. (*See* 28 U.S.C. §§ 753(f) & 1915(c).)

But Jameson—like indigent San Diegans, Angelenos, San Franciscans, Fresnans, and many more Californians—was out of luck. Incarcerated and indigent, he could not afford to pay for the services of a private reporter *pro tempore*, the only permissible

⁸ Available at <http://www.ncsc.org/Services-and-Experts/Court-reengineering/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx>

way under the trial court's policy for him to make an adequate record for appeal.

III. The Published Opinion of the Court of Appeal.

Jameson timely appealed the judgment of nonsuit, as well as several other orders of the trial court. (AA 1207–09.) On the nonsuit, Jameson argued that the trial court erred in ruling that based on his opening statement, he could never establish causation. (*Opinion* at 17–18.) Jameson's arguments included several claims of error related to the trial court's decision, such as its refusal to permit Jameson to admit his own expert's testimony by deposition, its refusal to permit Jameson to establish causation by relying on Desta's expert or the doctrine of *res ipsa loquitur*, and various issues regarding the trial court's approved jury instructions. (*Ibid.*)

The Court of Appeal, however, declined to reach the merits of these arguments, finding that "none of [them are] cognizable in the absence of a reporter's transcript." (*Id.* at 18.) Citing an earlier case, the court explained that "a[n] appellant who fails to provide a reporter's transcript on appeal is precluded 'from raising any evidentiary issues on appeal.'" (*Opinion* at 17 [quoting *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657].) "Because an order granting a nonsuit is dependent on a review of the evidence to be presented at trial, an appellant cannot obtain reversal of such order in the absence of a reporter's transcript." (*Ibid.*) As "the record on appeal does not contain a reporter's transcript[,] Jameson is therefore precluded from obtaining a reversal of the trial court's ruling granting Desta's motion for nonsuit." (*Id.* at p. 18.)

As to why he lacked the record he needed to preserve his appeal, Jameson argued: (1) that the trial court erred by “waiting until trial started to disallow a court reporter”—depriving him of an opportunity to make a record on the issue—and (2) that Code of Civil Procedure section 269(a)(1) and section 68086(b)—which requires that a court reporter’s fee “shall be waived for a person who has been granted a fee waiver under Section 68631”—required the court to provide him with an official reporter free of charge. (Jameson’s Appellant’s Br. at 43.)

The Court of Appeal rejected these arguments. On the timing, the court found that the admonition reflected in the court’s April 18, 2014 minute order was adequate, particularly because Jameson’s brief had not specifically argued that the trial court did not properly follow Rule of Court, rule 2.956, which addresses the court’s obligation to provide notice of the unavailability of official reporters. (*Opinion* at 14 & n.10.) And as to Jameson’s right to a free reporter, the court held that section 68086(b) applies only to a waiver of fees for official reporters. (*Id.* at p. 14.) According to the court, it does not, however, require a free reporter when the superior court does not provide official reporters, and instead requires parties to secure the services of private reporters *pro tempore*. (*Id.* at p. 15.) Relying on Rule of Court, rule 2.956(c) and the superior court’s official policy, the court held that “it is a ‘party’s responsibility to pay the reporter’s fee’ where an official court

reporter is not provided by the court,” even when that party is an indigent litigant who has been granted a fee waiver. (*Ibid.*)⁹

Rejecting Jameson’s other arguments, the Court of Appeal affirmed the judgment in full in an unpublished opinion issued on October 14, 2015. (*Id.* at p. 21.) On October 20, 2015, the acting presiding justice on the panel ordered the opinion certified for publication. (*Id.* at p. 22.)¹⁰ The court’s decision became final on November 19, 2015. (Cal. Rules of Court, rule 8.264(b)(3).) This petition is timely. (Cal. Rules of Court, rule 8.500(e)(1).)

REASONS FOR GRANTING REVIEW

The Court of Appeal’s published opinion in this case sanctions a categorical “no official reporters” policy that effectively precludes indigent litigants like Jameson from appealing adverse judgments arising from their civil trials. Moreover, the decision is contrary to the express Legislative policy of this state, the statutory authority permitting waiver of reporters’ appearance fees for indigent litigants, and nearly a century of precedent from this Court and the Court of Appeal requiring California’s courts to exercise their discretion with utmost solicitude for the rights of indigent persons and prisoners to access the courts, including appellate courts, to redress their grievances.

⁹ Neither rule 2.956 nor the superior court’s policies were expressly addressed in Desta’s appellate briefing. (*See* Desta’s Respondent’s Br. at p. 50–53; *cf. People v. Alice* (2007) 41 Cal.4th 668, 671.)

¹⁰ Because he believed it to be futile, Mr. Jameson did not request rehearing in the Court of Appeal. (*Accord* Cal. Rules of Court, rule 8.504(b)(3).)

Review in this case is thus merited. The Court's intervention is necessary, both to secure the uniformity of decisional law regarding the rights of access to civil appeals and because the case presents an issue of profound importance that has heretofore been unresolved by this Court. (Cal. Rules of Court, rule 8.500(b)(1).)

I. Unless This Court Grants Review, Indigent Civil Litigants Will Lose the Right to Meaningfully Appeal Adverse Judgments in Civil Trials.

The Court of Appeal's key holding is that Government Code section 68086(b) "does not mandate that a trial court provide indigent litigants with court reporter services where no official court reporter is provided by the court." (*Opinion* at 14–15.) When that ruling is combined with the Superior Court's policy of *never* providing official reporters for civil trials, and the settled rule that the lack of a reporter's transcript precludes appellate review of most civil trial decisions,¹¹ the upshot is that indigent civil litigants in San Diego effectively forfeit any right to appeal an adverse judgment rendered after a civil trial.

And that result would not be limited to San Diego. Among the counties that, like San Diego, either never or rarely provide official reporters for civil trial proceedings, are Los Angeles, San Francisco, Alameda, Fresno, Kern, and Ventura. (See Reed Smith LLP, *supra*, *Survey of Court Reporter Policies*.) If these litigants lived in Santa Clara, San Mateo, or Orange Counties, they would

¹¹ See generally *Foust v. San Jose Const. Co., Inc.* (2011) 198 Cal.App.4th 181, 186 [collecting cases].

have reporters, at least for trial. (*Id.*) But in most of the State's largest cities—where indigent Californians are most likely to live—the Court of Appeal's decision means that if they are too poor to pay reporters' fees, they are too poor to appeal. In short, the Court of Appeal's published decision locks the doors of the appellate courts of this state to indigent Californians.

II. The Court of Appeal's Decision Conflicts with California's Strong Policy of Ensuring Equal Access to Justice for Indigent and Imprisoned Civil Litigants.

California law recognizes that poor and imprisoned litigants have a fundamental right to access the courts, including the appellate process. The Courts of this state are required to exercise their discretion in crafting their procedures to vindicate the right of access. Although the trial court in this case had means within its discretion to ensure that Jameson could have a reporter present at his trial to create a record for appeal, it took no steps to preserve Jameson's access to the appellate process. Indeed, it has essentially tied its own hands by enacting a court policy that makes it practically *impossible* for fee-waiver litigants to obtain court reporting services at their civil trials. In doing so, it has run afoul of the clear policies of this state and abused its discretion in denying Jameson access to the courts.

A. California State Law Requires Courts to Exercise Their Discretion in Favor of Ensuring Indigent Litigants' Rights of Access to Justice.

"Access to justice is a fundamental and essential right in a democratic society. It is the responsibility of government to ensure that all people enjoy this right." (California Commission on Access to Justice (October 2002) *The Path to Equal Justice: A*

Five-Year Status Report on Access to Justice in California Finding A, page 36; see also *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 179.) In 2009, the California Legislature declared as the policy of this state, “[t]hat our legal system cannot provide ‘equal justice under law’ unless all persons have access to the courts without regard to their economic means.” (Gov’t Code, § 68630, subd. (a)). “California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.” (*Ibid.*) “Providing access to justice for self-represented litigants is a priority for California courts.” (Cal. Rules of Court, rule 10.960(b)).

Indeed, California law specifically affords prisoners “a statutory right to initiate civil actions.” (*Jameson II, supra*, 179 at p. 678 [citing Penal Code, § 2601(d)].) “In the case of an indigent prisoner initiating a bona fide civil action, this statutory right carries with it a right of meaningful access to the courts to prosecute the action.” (*Ibid.* [quoting *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792 (*Wantuch*)].)

These policies have a proud lineage in the decisions of this Court. Nearly a century ago, the Court held that California courts had the inherent equitable power to recognize the right of an indigent person to litigate *in forma pauperis* and bring actions without paying filing fees. (*Martin v. Superior Court* (1917) 176 Cal. 289, 296 (*Martin*); see also *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1436 (*Baltayan*) (conc. opn. of Johnson, J.). [“Nearly 85 years ago, in *Martin v. Superior Court*, the California Supreme Court proclaimed poverty could not be al-