

2670 Mission Street  
Suite 200  
San Marino, CA 91108

COLE | PEDROZA<sup>LLP</sup>  
ATTORNEYS AT LAW

Telephone 626-431-2787  
Facsimile 626-431-2788  
www.colepedroza.com

Cassidy C. Davenport  
cassidydavenport@colepedroza.com

November 9, 2017

Chief Justice Tani G. Cantil-Sakauye  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4797

SUPREME COURT  
FILED

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Jorge Navarrete Clerk

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Deputy

**Re: *Jameson v. Desta, M.D.***  
**Supreme Court Case No. S230899**  
**Court of Appeal Case No. D066793**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

This case presents the following issue:

In the case of a litigant who has been granted a fee waiver (Gov. Code, § 68631), can a county's superior court employ a policy that has the practical effect of denying the services of an official court reporter to civil litigants who have been granted such a fee waiver, if the result is to preclude those litigants from procuring and providing a verbatim transcript for appellate review?

In his briefing on the merits, Respondent Taddese Desta, M.D. answered the question presented in the affirmative. There is no legislative or judicial mandate that trial courts pay for services of an official court reporter where a civil litigant has been granted a fee waiver. Even assuming indigent civil litigants are entitled to free court reporter services, there is no right to a free reporter's transcript for appellate review.

November 9, 2017  
Honorable Chief Justice Cantil-Sakauye  
and Honorable Justices  
Re: *Jameson v. Desta, M.D.*  
Page 2

This Court requested supplemental briefing on the following issue:

What effect, if any, does the 2015 amendment to California Rules of Court, rule 3.55(7) and the accompanying Advisory Committee Comment have on the resolution of the issue presented by this case?

Rule 3.55(7) provides that “reporter’s fees for attendance at hearings and trials” must be waived upon granting an application for an initial fee waiver, but *only* “if the reporter is provided by the court.”

This language and the Advisory Committee’s express statement that the rule “is not intended to mandate that a court reporter be provided for all fee waiver recipients” supports Dr. Desta’s answer to the question presented. (Advisory Com. com., West’s Ann. Codes, Cal. Rules of Court, rule 3.55(7), p. 2697.) Civil litigants who sue for personal injury damages are not entitled to official court reporter services or transcripts at public expense. Even assuming they are, the absence of a court reporter during Appellant’s opening statement was harmless. The judgment should be affirmed.

**I. RULE 3.55(7) SUPPORTS DR. DESTA’S ANSWER TO THE QUESTION PRESENTED IN THIS CASE AND REFLECTS AN INTENT THAT FEE WAIVER RECIPIENTS ARE NOT ENTITLED TO COURT REPORTERS AT PUBLIC EXPENSE**

California Rules of Court, rule 3.55 lists the fees and costs that must be waived if the trial court grants an application for an initial fee waiver due to a litigant’s financial condition. Rule 3.55(7) provides, “[c]ourt fees and costs that must be waived upon granting an application for an initial fee waiver include: [¶] . . . [r]eporter’s fees for attendance at hearings and trials, *if the reporter is provided by the court*[.]” (Emphasis added.)

The language “if the reporter is provided by the court” was added by the Judicial Council in 2015. (Cal. Rules of Court, rule 3.55(7), as amended July 1, 2015; see Cal. Const., Art. 6, § 6 [the Judicial Council is the entity charged with adopting rules for court administration, practice, and procedure].) The Advisory Committee Comment to Rule 3.55 explains,

November 9, 2017  
Honorable Chief Justice Cantil-Sakauye  
and Honorable Justices  
Re: *Jameson v. Desta, M.D.*  
Page 3

The inclusion of court reporter's fees in the fees waived upon granting an application for an initial fee waiver *is not intended to mandate that a court reporter be provided for all fee waiver recipients*. Rather, it is intended to include within a waiver all fees mandated under the Government Code for the cost of court reporting services provided by a court.

(Advisory Com. com., West's Ann. Codes, Cal. Rules of Court, rule 3.55(7), p. 2697, emphasis added.)

Though they are not enacted by the Legislature, the Rules of Court "have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions." (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 125.) Rule 3.55(7) is consistent with the Legislature's decision to grant trial courts the discretion to determine whether and to what extent official court reporter services would be provided in civil proceedings.

**A. A Fee Waiver Does Not Guarantee A Civil Litigant Free Court Reporter Services**

Rule 3.55(7) contains a significant qualification: reporter's fees for attendance at hearings and trial are waived only "if the reporter is provided by the court[.]" Stated in the converse, reporter's fees are not waived if the court does not provide a reporter. As is clear from the plain language of the rule, courts are not required to provide court reporter services for attendance at hearings and trial. Nothing in the rule prohibits a court from adopting a policy that denies court reporter services to a civil litigant who has been granted a fee waiver.

In fact, the Judicial Council's Advisory Committee specifically explained that the inclusion of court reporter fees in Rule 3.55 "is not intended to mandate that a court reporter be provided for all fee waiver recipients." (Advisory Com. com., West's Ann. Codes, Cal. Rules of Court, rule 3.55(7), p. 2697.) This comment reflects a specific intent that trial courts retain the discretion to decide whether to provide court reporter services in civil proceedings.<sup>1</sup> (See also Cal. Rules of Court, rule 2.956 [trial courts are

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<sup>1</sup> Though such commentary is not binding authority, California courts often look to such commentary for guidance when ascertaining legislative intent. (*Ault v. Dinner for Two, Inc.* (1972) 27 Cal.App.3d 145, 149, fn. 2 ["The Judicial Council Comments provide an

tasked with adopting policies enumerating if and when services of official court reporters are made available by the court].)

**B. A Fee Waiver Does Not Guarantee A Civil Litigant Free Court Reporter Transcripts**

Rule 3.55(7) affects the resolution of the issue presented in yet another respect. In the event the court provides a reporter, Rule 3.55(7) makes clear that only fees for the reporter's "attendance at hearings and trial" are waived. The expense of *transcribing* the events at hearings and trial is distinct. That expense was not intended to be waived for indigent litigants. As the Advisory Committee explained, Rule 3.55(7) "is intended to include within a waiver all fees mandated under the Government Code for the cost of *court reporting services* provided by a court." (Advisory Com. com., West's Ann. Codes, Cal. Rules of Court, rule 3.55(7), p. 2697, emphasis added.)

Consequently, even if the Court adopts a rule mandating court reporter services for civil fee waiver recipients, such litigants are not entitled to reporter's transcripts at public expense.

**C. Mandating Official Court Reporter Services Would Create Significant Hardship For The Already Overburdened Superior Courts**

The Superior Courts should retain jurisdiction to decide whether to provide official court reporter services because, as the Los Angeles County Superior Court explains in its *amicus curiae* letter brief, trial courts have no independent means for raising or obtaining the necessary financial resources to support such services. The policy at issue in this case was necessary to ensure the court's continued operation in light of state budget cuts to the judiciary. If the courts are required to allocate resources to official reporter services, the cost impact will be substantial.

The Los Angeles County Superior Court estimates it would be forced to divert \$5.5 million in funds from other court programs to provide reporters to indigent civil litigants. *Amicus curiae* Orange County Superior Court estimates such a rule would increase the court's deficit by at least \$1 million per year. That assumes the courts are even able to find and retain available, qualified court reporters.

November 9, 2017  
Honorable Chief Justice Cantil-Sakauye  
and Honorable Justices  
Re: *Jameson v. Desta, M.D.*  
Page 5

Moreover, if court funds are to be redirected to official court reporter services, other court services will be reduced or eliminated altogether. Access to justice will then be compromised for *all* litigants in California, not just those who receive fee waivers and request court reporter services for personal injury cases.

### CONCLUSION

The 2015 amendment to Rule 3.55(7) and the accompanying Advisory Committee comment support this Court's affirmance of judgment in favor of Dr. Desta. Plaintiff was not entitled to official court reporter services or a reporter's transcript at public expense. Even assuming he was, the absence of a reporter in this case was harmless.

Furthermore, there were many reasons the trial court ruled against plaintiff below. The Court of Appeal did not consider all of those grounds for affirmance, including the trial court's dismissal based on plaintiff's delay in prosecuting his case pursuant to Code of Civil Procedure section 583.310. Should this case be remanded for further proceedings, this Court should direct the Court of Appeal to consider whether the absence of a court reporter during plaintiff's opening statement resulted in prejudice

Respectfully submitted,



Cassidy C. Davenport  
Counsel for Defendant and Respondent,  
Taddese Desta, M.D.

cc: All Counsel, per attached Proof of Service

## PROOF OF SERVICE

I am employed by Cole Pedroza LLP, in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2670 Mission Street, Suite 200, San Marino, California 91108.

On the date stated below, I served in the manner indicated below, the foregoing document described as: RESPONDENT'S SUPPLEMENTAL LETTER BRIEF on the parties indicated below by placing a true copy thereof, enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

By United States Postal Service – I am readily familiar with the business's practice for collecting and processing of correspondence for mailing with the United States Postal Service. In that practice correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, with the postage thereon fully prepaid, in San Marino, California. The envelope was placed for collection and mailing on this date following ordinary business practice.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of November, 2017 at San Marino, California.

  
Sara Mazzeo

## SERVICE LIST

Michael Shipley, SBN 233674  
Sierra Elizabeth, SBN 268133  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
29th Floor  
Los Angeles, CA 90071  
Tel: (310) 680-8400  
Fax: (310) 680-8500

*Attorneys for Plaintiff and  
Appellant,*  
BARRY S. JAMESON

Paulette Brown, *pro hac vice*  
AMERICAN BAR ASSOCIATION  
32 North Clark Street  
Chicago, Illinois, 60654  
Tel.: (312) 988-5000

*Attorneys for Amici Curiae,*  
AMERICAN BAR  
ASSOCIATION

Mary-Christine Sungaila,  
SBN 156795  
HAYNES AND BOONE, LLP  
600 Anton Blvd., Suite 700  
Costa Mesa, CA 92626  
Tel: (949) 202-3000  
Fax: (949) 202-3001

*Attorneys for Amici Curiae,*  
AMERICAN BAR  
ASSOCIATION

Catherine Blakemore, SBN 075850  
1831 K. Street  
Sacramento, CA 95811  
Tel: (916) 504-5800

*Attorneys for Amici Curiae,*  
AMICUS CURIAE  
COMMITTEE OF THE  
CALIFORNIA  
COMMISSION ON  
ACCESS TO JUSTICE

Jon B. Eisenberg, SBN 88278  
509 Tucker St.  
Healdsburg, California 95448  
Tel: (707) 395-0111

Albert Giang, SBN 224332  
Caldwell Leslie & Proctor, PC  
725 S. Figueroa St., 31st Floor  
Los Angeles, CA 90017  
Tel: (213) 629-9040

Michele L. Maryott, SBN 191993  
Gibson, Dunn & Crutcher LLP  
3161 Michelson Dr.  
Irvine, CA 92612  
Tel: (949) 451-8000

*Attorneys for Amici Curiae,*  
CALIFORNIA ACADEMY  
OF APPELLATE  
LAWYERS; BEVERLY  
HILLS BAR  
ASSOCIATION; INNER  
CITY LAW CENTER,  
LEGAL AID  
ASSOCIATION OF  
CALIFORNIA; LEGAL  
AID FOUNDATION OF  
LOS ANGELES; LOS  
ANGELES CENTER FOR  
LAW AND JUSTICE; LOS  
ANGELES COUNTY BAR  
ASSOCIATION; PUBLIC  
COUNSEL;  
NEIGHBORHOOD LEGAL  
SERVICES OF LOS  
ANGELES COUNTY;  
PROF. ERWIN  
CHEMERINSKY; PROF.  
DAVID MARCUS; PROF.  
JUDITH RESNIK; PROF.  
LOUIS S. RULLI;  
WESTERN CENTER ON  
LAW AND POVERTY



Erin C. Smith, SBN 234852  
Family Violence Appellate Project  
1814 Franklin Street, Suite 805  
Oakland, CA 94612  
Tel: (510) 858-7358  
Fax: (866) 920-3889

*Attorneys for Amici Curiae,*  
FAMILY VIOLENCE  
APPELLATE PROJECT

Penelope A. Prevolos, SBN 87607  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
Tel: (415) 268-7000  
Fax: (415) 268-7522

*Attorneys for Amici Curiae,*  
FAMILY VIOLENCE  
APPELLATE PROJECT