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November 13, 2017

By Federal Express and E-File

Clerk of Court
California Supreme Court
355 McAllister Street
San Francisco, CA 94102-4797

SUPREME COURT
FILED

NOV 14 2017

Jorge Navarrete Clerk

Deputy

Re: Supplemental Briefing in *Jameson v. Desta*, No. 230899

Dear Chief Justice and Justices of the Supreme Court:

On October 11, 2017, the Court requested supplemental letter briefing from the parties (and amici) on the following question:

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?

In brief, the 2015 Amendment to Rules of Court, rule 3.55(7) (Rule 3.55(7)) and the accompanying Advisory Committee Comment (collectively, the 2015 Amendment) neither forms the basis of any of Mr. Jameson's arguments on the merits nor undermines or contradicts them. The 2015 Amendment thus has no bearing on the resolution of the issue presented in this case because, on its own terms, it does not apply.

I. Mr. Jameson's Arguments on the Merits Do Not Depend on the 2015 Amendment.

Mr. Jameson does not dispute that Rule 3.55(7) currently requires the waiver of an appearance fee only "if the reporter is provided by the court." (See OB at p. 22 [citing the rule for that point].) Nor does Mr. Jameson assert that "[t]he inclusion [in Rule 3.55(7)] of court reporter's fees in the fees waived upon granting an application for an initial fee waiver . . . mandate[s] that a court reporter is to be

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provided for all fee waiver recipients.” (Cf. Rule 3.55, Advisory Committee Comment.) Mr. Jameson did not, however, argue that the trial court’s “no official reporters” policy violates Rule 3.55(7). Nor, for that matter, has Dr. Desta argued that Rule 3.55(7) authorizes the policy.¹

As discussed at length in the briefs on the merits, Mr. Jameson contends that the superior court abused its discretion by enacting an official policy to *never* provide official reporters in its civil courtrooms, even for litigants who are statutorily entitled to waiver of a reporter’s appearance fee. Mr. Jameson’s arguments for reversal have their basis in the various Legislative enactments that codify the right of access, as well as common law and constitutional principles developed by this Court and the Court of Appeal over the past century. (Jameson’s Opening Brief on the Merits (OB) at pp. 12–25.) That Rule 3.55(7) does not specifically afford the relief sought by Mr. Jameson is of no moment.

II. The 2015 Amendment Does Not Undermine or Contradict Any Arguments on the Merits Raised by Jameson.

Nor is there any plausible reading of the 2015 Amendment that otherwise undermines or contradicts the arguments that Mr. Jameson did make. As discussed in detail below, the 2015 Amendment served a limited purpose—to harmonize the Rules of Court on fee waivers with a recent amendment to Government Code section 68086, subdivision (b) (§ 68086(b)). On its own terms, revised Rule 3.55(7) simply does not address when a trial court must provide an official reporter. Indeed, the Advisory Committee Comment expressly disclaims that it does so. Nor does it address when or if the court can waive appearance fees for a reporter *pro tem*. Most importantly, nothing in the 2015 Amendment curtails the right of access to the courts that is at the heart of Mr. Jameson’s argument on the merits.

¹ Mr. Jameson notes that Rule 3.55 is cited only once in each of Mr. Jameson’s opening and reply briefs, for collateral or background points only. (OB at p. 22 [citing Rule 3.55(7) in a background discussion about the overall statutory scheme]; Jameson’s Reply Brief on the Merits at p. 15 [citing Rule 3.55(1) to provide context about a factually similar case].) It is not cited at all in Dr. Desta’s answering brief.

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A. The History of the 2015 Amendment.

The purpose and scope of the 2015 Amendment is clear from the history of its enactment.

In 2013, the Legislature passed A.B. 648, which amended and clarified the law regarding the collection of court reporters' appearance fees. (Stats. 2013, ch. 454 § 1; see also Senate Rules Com., Office of Senate Floor Analyses, 3d reading analysis of Assem. Bill No. 648 (2013–2014 Reg. Sess.) Sept. 15, 2013, pp. 2–3 [outlining changes to then-current law].²) In particular, A.B. 648 amended the Government Code to require a court reporters' appearance fee "shall be waived for a person who has been granted a fee waiver under Section 68631." (See § 68086(b).)

In 2014, the Civil and Small Claims Advisory Committee of the Judicial Council considered amendments to the Rules of Court and related forms on fee waivers. The Judicial Council circulated a proposal to amend the Rules of Court on fee waivers unrelated to harmonizing the rules with § 68086(b). (See Judicial Council of Cal., Invitation to Comment, No. SPR 14-05.³) But several public commenters—including the Superior Courts of Orange and San Diego Counties and a coalition of public interest law groups—noted that the Rules of Court in effect at the time were inconsistent with the recently enacted § 68086(b). (See Report No. 14-05 to the Judicial Council of Cal., Fee Waivers: Change in Federal Poverty Guidelines, Revisions to Application Form, and Specific Fees Included in Waivers, Feb. 19, 2015 at pp. 4–5 (Report)⁴; see also David Ettinger, Horvitz & Levy LLP, letter to Hon. Patricia M. Lucas, Chair, Civil and Small Claims Advisory Committee, May 20, 2014 (Ettinger Letter)⁵ [noting inconsistency and proposing draft rule changes on behalf of The Harriett Buhai Center for Family Law, The Western Center on Law & Poverty, and Public Counsel].)

² Attached as Ex. A. Mr. Jameson respectfully requests the Court take judicial notice of the various legislative and rulemaking history materials cited in this brief and included as exhibits hereto. (Evidence Code, §§ 451, subd. (c); 452, subds. (c), (d); 459; see also *People v. Benhour* (2009) 177 Cal.App.4th 1308, 1319 fn. 16 [taking judicial notice of Judicial Council materials].)

³ Attached as Ex. B.

⁴ Attached as Ex. C.

⁵ Attached as Ex. D.

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Specifically, the Rules of Court in effect in early 2015 did not reflect that § 68086(b) afforded a mandatory waiver of all court reporter appearance fees to any party with a fee waiver under Government Code section 68631. (See generally Amendments to the California Rules of Court, adopted by the Judicial Council of Cal. Apr. 24, 2009, eff. Jul. 1, 2009 [showing rules as they appeared prior to the 2015 Amendments]⁶.) Those rules, adopted in 2009, did require waiver of reporters' daily attendance fees, but only for hearings and trials occurring within 60 days of the order granting the waiver. (Rules of Court, former rule 3.55(7), as amended by the 2015 Amendments.) For later hearings or trials, the former rules left the waiver to the trial court's discretion. (Rules of Court, rule 3.56(4), as amended by the 2015 Amendments.)

The Advisory Committee ultimately produced a report that agreed with the public comments, (Report at p. 13) and recommended amendments to Rule 3.55(7) and 3.56(4) that tracked the proposal in the Ettinger Letter. (Compare Report at p. 16 with Ettinger Letter at p. 2.) The Rule proposed by the Advisory Committee, however, differed in two respects. The Advisory Committee proposed adding the conditional "if the reporter is provided by the court," to the end of Rule 3.55(7). (Report at p. 16.) And it proposed adding an Advisory Committee Comment at the end of the rule. (*Ibid.*) The Report reflects that the Committee proposed to "[a]mend California Rules of Court, rules . . . 3.55 [and] 3.56 . . . to: reflect in rules 3.55 and 3.56 the new statutory requirement that court fees for court reporting services be included in all fee waivers, and add an advisory committee comment to rule 3.55 to clarify that the inclusion of all court reporter's fees in the rule is not intended to mandate that a court reporter be provided for all fee waiver recipients." (Report at p. 2.)

The Report explains in further detail that:

The Civil and Small Claims Advisory Committee recommends amending rule 3.55(7), which currently includes on the list of fees that must be waived only those court reporters fees for hearing held within 60 days of the issuance of the fee waiver order, to eliminate the time restriction in light of the new mandate in Government Code section 68086(b) that all court reporter's fees otherwise charged by a court are waived for a party who has received a fee waiver. For the same reason, the committee recommends that the item including reporter's fees for

⁶ Attached as Ex. E.

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hearing held more than 60 days after the issuance of the fee waiver order be deleted from the list of fees the court has discretion to grant a waiver for in rule 3.56, since the waiver of such fees are no longer discretionary. An advisory committee comment has been added following rule 3.55 to clarify that the inclusion of such fees in the list of waived fees is in no way intended to mandate that reporters be provided by the court for all hearings or trials at which a fee waiver recipient appears.

(Report at pp. 5–6.)

The extensive comments set out in the report suggest adding neither any conditional language to Rule 3.55(7) nor an Advisory Committee Comment. (See Report at 36–67.) And the Report itself does not offer any further explanation for making these changes to the Advisory Committee’s proposal. Although the proposal was not addressed in the original Invitation for Comment No. SPR 14-05, no further public comment was solicited prior to submitting the proposal to the Judicial Council for approval.

On February 19, 2015, Judicial Council met and considered the Advisory Committee’s proposed “rule amendments to reflect recent changes in law that mandates that any fees charged for the court’s cost for court reporting services . . . be included in a waiver.” (Judicial Council of Cal., Agenda for Feb. 19, 2015, at p. 3.7) The council adopted in full the changes proposed in the Advisory Committee’s Report. (Judicial Council of Cal., Meeting Minutes, Feb. 19, 2015, at p. 7.⁸)

The approved 2015 Amendments made three changes to Rules 3.55 and 3.56. that relate to the Court’s question. (Amendments to the California Rules of Court, adopted by the Judicial Council of Cal. Feb. 19, 2015, eff. Jul. 1, 2015 (Approval Order).⁹)

First, Rule 3.55—which lists fees that “must be waived upon granting an application for an initial fee waiver”—was amended so that an initial fee waiver would apply to *all* attendance fees for court-provided court reporters. (Approval

⁷ Attached as Ex. F.

⁸ Attached as Ex. G.

⁹ Attached as Ex. H.

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Order at p. 1 [amending Rule 3.55(7): “Reporter’s ~~daily~~ fees for attendance at hearings and trials, if the reporter is provided by the court held within 60 days of the date of the order granting the application.”].)

Second, Rule 3.56—which addresses fees that may be waived in the court’s discretion—was amended to remove a provision that afforded discretion in waiving appearance fees for trials and hearings occurring more than 60 days after the order granting an initial fee waiver. (Approval Order at p. 2 [amending Rule 3.56(4): “~~(4) Reporter’s fees for attendance at hearings and trials held more than 60 days after 24 the date of the order granting the application;~~”].)

And third, an Advisory Committee Comment was added to Rule 3.55, stating:

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.

(Approval Order at p.1.)

B. The 2015 Amendments Is, and Must Be, Confined to Its Own Terms.

The foregoing makes clear that the sole purpose of the 2015 Amendment was to prevent trial courts from denying reporters’ appearance fee waivers for hearings and trials occurring more than 60 days after an order granting an initial waiver application. The Advisory Committee Comment too must be taken at face value—that in making the changes, the Judicial Council was not weighing into the issue of when a trial court must provide a court reporter to fee waiver recipients.

There is no reason whatsoever to read the 2015 Amendments to have any broader significance or effect. Neither the text or history of the 2015 Amendments suggest, for instance, that the Rules expressly absolve superior courts of any obligation to provide official reporters to fee wavier recipients, or that they otherwise ratify “no official reporter” policies like the superior court policy at issue in this case. To the contrary, there are several good reasons not to construe the 2015 Amendment outside the narrow confines of its purpose.

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Section 68086(d) specifically granted the council the authority to make rules on notices and procedures to be employed when an official reporter is unavailable in a superior court department. (§ 68086(d)(1)–(3); accord Rules of Court, rule 2.956.) But as explained in Mr. Jameson’s merits briefing, § 68086 is silent on *when* a superior court can decline to provide an official reporter. Nor does § 68086 convey any authority on the Judicial Council to make rules on that issue. Notably, a prior effort by the council to adopt broader rules under the authority granted in current § 68086(d)¹⁰ resulted in their invalidation. (*California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 33 (CCRA) [invalidating rules that permitted electronic recording in lieu of stenographic reporting in certain circumstances].) The Judicial Council and the Advisory Committee thus had very good reasons to be chary of making rules addressed to official court reporters in superior courts beyond the specific fee waiver requirements required by § 68086(b). That reluctance—as expressed in the Advisory Committee Comment’s disclaimer—must not be misconstrued as affirmative rulemaking.

Indeed, to construe the 2015 Amendment more broadly could also result in its invalidation, both as a matter of rulemaking procedure as well as substance. (Cf. *Lammers v. Superior Court* (2000) 83 Cal.App.4th 1309, 1321 [“Court rules are construed to avoid their invalidity.”]; 2 Witkin, *California Procedure* (2017 online ed.) Courts, § 204.)

As discussed above, the 2015 Amendment arose from public comments solicited by the the Advisory Committee in connection with a different proposal unrelated to the implementation of § 68086(b). The initial comments did not suggest or address the conditional in 3.55(7) or Advisory Committee Comment that were recommended by the Advisory Committee and ultimately adopted. (See Report at 36–67). Despite the changes, no further public comment was solicited in connection with the 2015 Amendment.

The Judicial Council’s rulemaking procedures are set out in Rules of Court, rule 10.22. They permit the adoption of court rules without public comment in only limited circumstances. In particular, once changes are made to a proposal, recirculation for further public comment is unnecessary only if “the proposal

¹⁰ The rulemaking authority was previously codified, without substantial change, in § 68086(a)(5). (See *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 28 n.15 [setting forth prior codification of statute].)

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presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy” (Rules of Court, rule 10.22(d)(2); see *Siry Investments, L.P. v. Saeed Farkhondehpour* (2015) 238 Cal.App.4th 725, 731 [applying Rule 10.22(d)(2) to an amended proposal].)

Read for what it is, the 2015 Amendment is a limited rule change to conform the rules to a statutory amendment, and thus a “minor substantive change that is unlikely to create controversy[.]” (Rules of Court, Rule 10.22(d)(2).) As such, its enactment is valid, even without further public comment. But to more broadly construe the amended Rule 3.55(7) or the Advisory Committee Comment to effectively limit the right of access to indigents would be a significant change, and suffice it to say, extraordinarily contentious. To do so without comment would result in the conclusion that the 2015 Amendments were invalidly adopted. Given that Rules of Court should be interpreted to preserve their validity, and the lack of any intent for a broader application in the regulatory history, a broader interpretation is unwarranted.

A broader interpretation of the 2015 Amendment could also potentially render it invalid as in excess of Judicial Council’s rulemaking authority. The State Constitution permits the Judicial Council to “adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute.” (Cal. Const. Art. VI, § 6, subd. (d).) But these rules “shall not be inconsistent with statute.” (*Ibid.*) Under that standard, “a rule is inconsistent with a statute if it conflicts with either the statute’s express language or its underlying legislative intent.” (*In re Alonzo J.* (2014) 58 Cal.4th 924, 937.) Rules that are not irreconcilably in conflict with a specific provision, but nonetheless conflict with the broader legislative intent behind an overall statutory scheme are not valid. (See, e.g., *In re Abbigail A.* (2016) 1 Cal.5th 83, 92.) Similarly, court rules that conflict with judicial interpretations of existing statutes have been held invalid. (See *CCRA*, *supra*, 39 Cal.App.4th at p. 24 [collecting cases].)

As Mr. Jameson’s merits briefing explains, the rule for which he advocates—that California’s courts must exercise their informed discretion in favor of ensuring the rights of indigent litigants to access the courts—is deep-seeded in California law and arises from common law, statutory, and constitutional sources. (See OB at p. 12–20.) For instance, 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. Code, § 68630, subd. (a)). “California law and court procedures should ensure that

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court fees are not a barrier to court access for those with insufficient economic means to pay those fees.” (*Ibid.*) Reading the 2015 Amendments to affirmatively bar remedies that may be necessary to protect the access rights of the indigent likely runs contrary to the Legislative intent in declaring that policy. Thus, a narrow plain meaning construction of the 2015 Amendment is necessary to avoid questions over the validity of the rule.

III. Jameson Does Not Seek Relief Inconsistent with the 2015 Amendment.

Finally, even were the 2015 Amendment somehow construed to somehow mean affirmatively that superior courts can never be required to provide an official reporter for all fee waiver litigants—and it should not be—Jameson’s appeal does not necessarily require that relief.

As noted above, Mr. Jameson asserts that the superior court abused the discretion afforded to it when it enacted a categorical official policy, to *never* provide official reporters in its civil courtrooms, even when parties litigating in those courtrooms would be entitled to a waiver of an official reporter’s fee, had one been provided. The failure of Mr. Jameson’s appeal for an inadequate record was a direct consequence of that policy.

To hold that the superior court abused its discretion does not require this Court to “mandate that a court reporter be provided for all fee waiver recipients.” (Cf. Rule 3.55, Advisory Committee Comment.) Indeed, it requires only that the Court recognize that courts of this state must exercise their discretion to ensure the right of access. Here, the San Diego Superior Court’s categorical policy—a policy that specifically recognizes the burden it places on the indigent, (see OB Ex. A)—is a manifest failure to do so. A reversal of the non-suit and adverse judgment entered against Mr. Jameson requires the Court to go no further in rendering an opinion.

Indeed, as Mr. Jameson’s merits briefing explained, other than a ruling that the trial court’s policy was an abuse of discretion, he does not ask that the Court afford him any particular remedy to ensure his right to access the appellate process. (OB at p. 19.) He argues only that the Court should hold that the trial court had no discretion to “choose no remedy” to protect his right to access, and that it must “take all of the appropriate facts into account and fashion an ‘appropriate remedy to secure access in the exercise of its sound discretion.’” (*Ibid.* [quoting *Apollo v.*

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Gyaami (2008) 167 Cal.App.4th 1468, 1484 (*Apollo*) and *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 793 (*Wantuch*).)

Requiring the presence of an official reporter for every fee waiver recipient for every hearing is only one among many avenues in which a trial court could exercise its discretion to protect the right of access to the appellate process. For instance, were a trial court to provide fee waiver recipients with official reporters only for trials and other hearings where oral testimony is taken in open court, any remaining burden on the right to access may be incidental enough to withstand scrutiny under the abuse of discretion standard. Indeed, had the trial court applied that policy here, Jameson would have no standing to complain.

Superior courts could also adopt other measures to ensure the creation of an adequate record for appeal. Such measures might include:

- Transferring fee waiver matters to other departments where an official reporter may be present. (See *Amicus Curiae Letter Brief of Superior Court of California, County of Orange* at p. 3 [explaining that Orange County Superior Court still provides official reporters in one-third of civil unlimited courtrooms, and half of complex ones].¹¹)
- Reforming court scheduling and case-management practices to ensure that existing reporter resources are available to transcribe trials and evidentiary hearings in fee waiver cases.
- Paying all or part of the appearance fees of private reporters, (see Rules of Court, rule 3.56(5) ([permitting waiver of “[o]ther fees or expenses”]), and potentially locating alternative funding sources for this purpose.
- Establishing programs for court reporters to provide services on a *pro bono* basis.

¹¹ On November 1, 2017, the Superior Courts of Orange and Los Angeles County each filed an application for leave to file an *amicus* brief. Notwithstanding that the applications were filed more than a year after the deadline to seek leave, (Rules of Court, rule 8.520(f)(2)), Mr. Jameson does not object to the courts’ appearance as amici in this case.

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- Ordering an opposing party to advance a private reporter's fee, to be recovered as a cost by the prevailing party. (See § 68086(c), (d); Rules of Court, rule 2.956(c).)
- Enacting programs or reforms to ensure that unrepresented fee waiver litigants were able to create adequate non-verbatim forms of a trial record, such as agreed or settled statements.
- Providing access to means to electronically record the proceedings, on the grounds that, when one party is indigent and the other does not elect to hire a reporter *pro tem*, "neither the court nor any party requests that a verbatim record be taken by an official shorthand reporter pursuant to the provisions of section 269." (See *Los Angeles Cty. Court Reporters Assn. v. Superior Court* (1995) 31 Cal. App. 4th 403, 415.)
- Finding that the more general bar on electronic recording, (see *CCRA, supra*, 24 Cal.App.4th at p. 39), unduly burdens the right to access when applied to the indigent.

Regardless, in requiring superior courts to exercise their discretion to protect the right of access, the Court has recognized that "[h]ow that is to be achieved is to be determined by the exercise of discretion by the trial court." (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 927; see also *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, 200 (1985) ["We left to the trial court's discretion how access is to be achieved in particular cases[.]"].) Mr. Jameson asks only that the Court require the superior court appropriately exercise its discretion in this case.

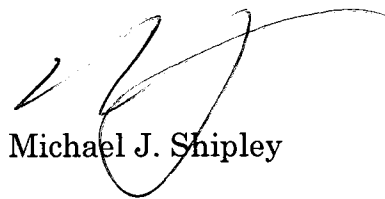
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In sum, the 2015 Amendment has no meaningful effect on the merits of Mr. Jameson's case.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'MJS', with a long horizontal flourish extending to the right.

Michael J. Shipley

MJS

Enclosure

SENATE RULES COMMITTEE

AB 648

Office of Senate Floor Analyses
1020 N Street, Suite 524
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THIRD READING

Bill No: AB 648
Author: Jones-Sawyer (D)
Amended: 9/6/13 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-1, 6/18/13
AYES: Evans, Corbett, Jackson, Leno, Monning
NOES: Walters
NO VOTE RECORDED: Anderson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 49-24, 5/13/13 - See last page for vote

SUBJECT: Court reporters

SOURCE: Judicial Council

DIGEST: This bill requires for each proceeding anticipated to last one hour or less, the \$30 fee to be charged only to the party, or parties if filing jointly, that filed the paper that resulted in the proceeding being scheduled. This bill requires the fee to be charged once per case for all proceedings conducted within the same hour if the total time taken by those proceedings is one hour or less. This bill provides for the deposit of the fees collected into the Trial Court Trust Fund (TCTF); provides for the distribution of those fees back to the courts from which the fees were collected, and waives the fees for a person who has been granted a fee waiver.

Senate Floor Amendments of 9/6/13 clarify that if no fee has been charged to the party filing the paper that resulted in the proceeding being scheduled, but a party subsequently requests a reporter, that party will be charged the fee if the court determines that a reporter is to be provided by the court.

CONTINUED

Senate Floor Amendments of 9/4/13 clarify that the \$30 fee is charged only for the reasonable cost of the court reporting services provided at the expense of the court by an official court reporter pursuant to existing law, and specify that if no fee has been charged, and another party subsequently requests a court reporter, that party is charged the fee if the court determines that a reporter is to be provided by the court.

ANALYSIS:

Existing law:

1. Requires, in relevant part, that an official reporter or official reporter pro tempore of the superior court take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, sentences, arguments of the attorneys to the jury, and statements and remarks made and oral instructions given by the judge or other judicial officer, in certain cases, including, among others, in a civil case, on the order of the court or at the request of a party. (Code of Civ. Proc. Sec. 269.)
2. Establishes the TCTF. (Gov. Code Sec. 68085.)
3. Requires that, among other fees, the fees collected by the trial courts for official court reporters be deposited in a bank account established by the Administrative Office of the Courts (AOC). The AOC must distribute those deposits as provided, with the remainder going to the TCTF. (Gov. Code Sec. 68085.1.)
4. Requires that for each civil proceeding lasting more than one hour, a fee equal to one-half day of services be charged to the parties, on a pro rata basis, and that the fees collected be used only to pay the cost for services of an official court reporter, as specified. (Gov. Code Sec. 68086(a)(1)(B).)
5. Requires that for that each civil proceeding lasting less than one hour, a fee of \$30 be charged for the reasonable cost of services of an official court reporter, as specified. (Gov. Code Sec. 68086(a)(1)(A).)
6. Authorizes the granting of a court fee waiver to a litigant who cannot afford to pay the fee, as specified. (Gov. Code Sec. 68631.)

CONTINUED

This bill:

1. Requires that for each proceeding anticipated to last one hour or less, a \$30 fee be charged for the reasonable cost of the services of an official court reporter, at the expense of the court, pursuant to Section 269 of the Code of Civil Procedure, as follows:
 - A. The fee must be charged to the party, or parties if filing jointly, that filed the paper that resulted in the proceeding being scheduled;
 - B. All parties paying the fee must deposit the fee with the court clerk as specified by the court, but not later than the conclusion of each day's court session;
 - C. The fee must be charged once per case for all proceedings conducted within the same hour if the total time taken by those proceedings is one hour or less;
 - D. If the total time taken exceeds one hour, the fee must be charged and collected pursuant to the provision governing fees for court reporters in proceedings anticipated to last more than one hour, as outlined above;
 - E. The fee must be deposited into the TCTF and distributed back to the courts from which the fees were collected on a dollar-for-dollar basis; and
 - F. The fee must be refunded to the remitting party or parties if no court reporting services were provided at the scheduled proceeding.
2. Requires this fee be waived for a person who has been granted a fee waiver pursuant to existing law.
3. Specifies that unless the court reporter is provided pursuant to court order, the party requesting the court reporter must pay the fee.
4. Makes other technical and clarifying amendments.

Background

Existing law requires that an official reporter or official reporter pro tempore of the superior court take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, sentences, arguments of the

CONTINUED

attorneys to the jury, and statements and remarks made and oral instructions given by the judge or other judicial officer, in specified cases. These cases include, among others, civil cases that are ordered by the court or requested by a party.

Separately, existing law, with the enactment of AB 233 (Escutia and Pringle, Chapter 850, Statutes of 1997) consolidated all court funding at the state level, giving the Legislature authority to make appropriations and the Judicial Council responsibility to allocate funds to state courts. In doing so, it required that all court reporters fees collected by the trial courts be deposited into the TCTF, where nearly all court-collected fees are now deposited. The court reporter fees are then returned to the trial courts as part of their annual allocation and are distributed on a pro rata basis, as opposed to on the basis of the dollars collected.

More specifically, the Government Code requires that certain fees be charged and be used to pay for the cost for services of an official court reporter in civil proceedings. In proceedings anticipated to last more than one hour, a fee equal to the actual cost of providing that service must be charged per one-half day of services to the parties, on a pro rata basis, for the court reporter services on the first and each succeeding judicial day those services are provided. All parties must deposit their pro rata shares of these fees with the court clerk as specified by the court, but not later than the conclusion of each day's court session.

Last year, a budget trailer bill added that for each proceeding lasting less than one hour, a fee of \$30 dollars must be charged for the reasonable cost of the services of official court reporters in civil proceedings, pursuant to existing law, SB 1021 (Senate Budget and Fiscal Review Committee, Chapter 41, Statutes of 2012). This bill seeks to provide specificity regarding the payment of that fee.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Potential minor increase in fee revenue (Trial Court Trust Fund) due to the clarifying procedures established for court reporter fee assessment and collection.
- Minor, absorbable administrative costs to the trial courts to operationalize the clarified assessment and collection procedures.
- Minor, absorbable administrative costs to the Judicial Council related to the allocation of the fees to the individual courts.

CONTINUED

SUPPORT: (Verified 9/5/13)

Judicial Council (source)
California Court Reporters Association
San Bernardino Public Employees Association
San Luis Obispo County Employees Association

ARGUMENTS IN SUPPORT: According to the author, “The 2012 public safety Budget Trailer Bill SB 1021 (Senate Budget and Fiscal Review Committee, Chapter 41, Statutes of 2012) created a new \$30 fee to be assessed against litigants for court reporter services in civil proceedings lasting less than one hour. The statute did not provide clear guidance, however, on how to implement this fee. The Judicial Council’s Policy Coordination and Liaison Committee and the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees therefore recommend addressing the lack of specificity and resulting confusion to better enable courts to collect revenue from this new source. This proposal will streamline procedures and create sufficient flexibility and guidance for the courts and for litigants on how this new fee will be assessed.”

ASSEMBLY FLOOR: 49-24, 5/13/13

AYES: Alejo, Atkins, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Frazier, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Hall, Roger Hernández, Jones-Sawyer, Levine, Mitchell, Mullin, Muratsuchi, Nazarian, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Skinner, Stone, Ting, Torres, Weber, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Bigelow, Chávez, Conway, Dahle, Donnelly, Fox, Beth Gaines, Grove, Hagman, Harkey, Jones, Linder, Logue, Maienschein, Mansoor, Melendez, Morrell, Nestande, Olsen, Patterson, Wagner, Waldron, Wilk

NO VOTE RECORDED: Allen, Ammiano, Holden, Lowenthal, Medina, Salas, Vacancy

AL:ej 9/5/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****