

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR20-07

Title	Action Requested
Civil Practice and Procedure: Court Reporters for Civil Proceedings	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 2.956; approve form FW-020; revise form FW-001-INFO	January 1, 2021
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Anne M. Ronan 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

The California Supreme Court recently held that courts that do not provide official court reporters must upon request make court reporters or other means to create a verbatim record available to parties entitled to a waiver of fees. (*Jameson v. Desta* (2018) 5 Cal.5th 594.) The Civil and Small Claims Advisory Committee proposes a new court reporter request form, a revised fee waiver information form, and amendments to California Rules of Court, rule 2.956, to help fee waiver recipients avail themselves of rights recognized in *Jameson*. The proposal would also revise that rule to reflect recent changes to Government Code section 68086.

Background

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

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

judicial decisions and with the public policy of facilitating equal access to the courts. (*Id.* at p. 599.) It stated:

[I]n order to satisfy the principles underlying California's in forma pauperis doctrine and embodied in the legislative public policy set forth in [Government Code] section 68630, subdivision (a), when a superior court adopts a general policy under which official court reporters are not made available in civil cases but parties who can afford to pay for a private court reporter are permitted to do so, the superior court must include in its policy an exception for fee waiver recipients that assures such litigants the availability of a verbatim record of the trial court proceedings, which under current statutes would require the presence of an official court reporter.

(*Jameson*, at p. 623.)

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

Last year, the Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, approved revisions to several fee waiver forms and to rule 2.956¹ so that they would reflect the *Jameson* holding. At the time the recommendation was made, the advisory committee noted that it would this year recommend a statewide form that could be used by a fee waiver recipient to ask for a court reporter.

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

While the committee believes that the suggestions to require a court reporter in all courtrooms where a fee waiver recipient appears, without any request, expand the holding of *Jameson*, it is an expansion that could be approved as a matter of policy by the council. Therefore, the committee is attempting to gather information about what resources might be required and the possibility and practicability of providing court reporters for all hearings and proceedings not otherwise being electronically recorded, if a fee waiver recipient is appearing. The information is particularly important in light of the shortage of court reporters across the state. The committee will report back to the council when it has completed more work in this area.

In the meantime, the advisory committee proposes moving forward with the planned statewide court reporter request form and with further revisions to an information sheet provided to fee

¹ All references to rules in this document are to the California Rules of Court, unless otherwise indicated.

waiver applicants. In addition, the committee is circulating proposed statewide rules for the process of requesting a court reporter.

The Proposal

Rule 2.956

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

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

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

Amendments Relating to Fee Waiver Recipients

Statewide process. Commenters urged the council that, if a request is to be required to ensure the presence of a court reporter, then there should be a statewide process for doing so, in order to provide consistency across the state. They asserted that this would simplify the process for fee waiver recipients, who are frequently self-represented, and for the legal service agencies and self-help centers who provide information to those parties. The proposed amendments to rule 2.956 prescribe such a process, identifying a form that should be used to request a court reporter and setting out a timeline: 10 days before the proceeding for which court reporter is wanted, or, if the proceeding is set on a shorter time frame, as soon as practicable. (See proposed rule 2.956(c)(2)(A) and (B).) The proposed rule also provides that once a request for a court reporter for a trial is made, it does not have to be repeated if the trial is continued to a later date. (See proposed rule 2.956(c)(2)(C).) In addition, because the commenters asserted that, as drafted, the rule may be unclear as to whether the court would not only provide a court reporter for a fee waiver recipient who asked for one, but do so at no charge to that party, a statement to that effect has been added. (See proposed rule 2.956(c)(2)(D).)

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

the concerns raised, such a mandate has been included in the proposed amendments. (See proposed rule 2.956(c)(2).)²

Amendments Relating to Other Parties

Assembly Bill 2664 recently amended Government Code section 68086(d)—the provision requiring the council to adopt certain rules regarding court reporters—effective January 1, 2019. The amendments to the rule proposed here would incorporate the change in the Government Code.

The primary amendment of the statute was to provide that, if an official court reporter is not available and a party arranges for the presence of a certified shorthand reporter in the courtroom, the court *shall* appoint that reporter as the pro tem court reporter unless there is good cause shown for the court to refuse to appoint the appointment. The rule has been amended to reflect this mandate. (See proposed rule 2.956(c)(1).)

New and Revised Forms

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

In light of the concerns raised by the commenters last year that fee waiver recipients would not know to ask for a court reporter and that they might not understand that the court reporter would be free if requested, the committee is also proposing the addition of a new paragraph to the end of the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to provide more information to all fee waiver recipients about requesting court reporters. In addition, a cross-reference to the new request form has been added to item 1 on the first page of the form, to the item for court reporter fees in the list of waived fees.³

² In light of the changes to the rule to add provisions arising from the *Jameson* decision, the beginning of the rule has also been amended to reflect that it no longer is based solely on Government Code section 68086.

³ The committee would like specific comments on this revision, specifically as to whether the cross-reference to this form may make the information sheet confusing. The committee notes that similar cross-references are not provided for other items for which a fee waiver recipient may have to make a request, such as telephonic appearance fees or sheriff's fees to give notice.

Alternatives Considered

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

The committee considered but did not include in the request form a statement contained on several of the local court forms currently in use, that a party to the action who is not a fee waiver recipient will be responsible for a proportionate share of the cost of the court reporter's attendance at the hearing. While this statement is correct for long cause matters (see Gov. Code, § 68068(a)(2)), the committee concluded that it is not information that needs to be included on a form being filed by the fee waiver recipient.

Fiscal and Operational Impacts

The holding in *Jameson v. Desta*, mandating that courts provide a court reporter for civil hearings for a fee waiver recipient who requests one if no electronic recording is available, has had a significant fiscal and operational impact on courts. This proposal, to provide a statewide form and a timeline for making such requests, is an attempt to aid parties, self-help centers, and legal advisors by providing a consistent process across the state for requesting court reporters. The new form and rules will require training of court personnel, although the proposed 10-day notice period for the request appears to be consistent with what is being used by many courts already.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose of providing a consistent process for fee waiver recipients?
- On form FW-001-INFO, is it helpful to add a cross-reference to the new court reporter request form (proposed form FW-020) among the list of waived fees, or does the addition make the list more confusing? (See footnote 3.)

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 2.956, at page 7
2. Forms FW-001-INFO and FW-020, at pages 8–10
3. Link A: Assembly Bill 2664,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2664

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

1 **Rule 2.956. Court reporting services in civil cases**

2
3 **(a) Statutory reference; application**

4
5 This rule implements and must be applied so as to give effect to ~~is adopted to~~
6 ~~effectuate the statutory mandate of Government Code sections 68086(a)–(b)(c) and~~
7 ~~must be applied so as to give effect to these sections. It applies to trial courts.~~
8

9 **(b) * * ***

10
11 **(c) Party may procure reporter or request reporter if granted fee waiver**

12
13 If the services of an official court reporter are not available for a hearing or trial in
14 a civil case, a party may:

15
16 (1) Arrange for the presence of a certified shorthand reporter to serve as an
17 official pro tempore reporter, whom the court must appoint unless there is
18 good cause shown to refuse to do so. It is that party's responsibility to pay the
19 reporter's fee for attendance at the proceedings, but the expense may be
20 recoverable as part of the costs, as provided by law; or

21
22 (2) If the party has been granted a fee waiver, in compliance with any local court
23 rules, request that the court provide an official reporter for attendance at the
24 proceedings, whom the court must provide if the party has been granted a fee
25 waiver and if the court is not electronically recording the hearing or trial.

26
27 (A) The request should be made by filing a *Request for Court Reporter by*
28 *Party with a Fee Waiver* (form FW-020).

29
30 (B) The party should file the request 10 calendar days before the
31 proceeding for which a court reporter is desired, or as soon as
32 practicable if the proceeding is set with less than 10-days' notice.

33
34 (C) If the party has requested a court reporter for a trial, that request
35 remains in effect if the trial is continued to a later date.

36
37 (D) The court reporter's attendance is to be provided at no fee or cost to the
38 fee waiver recipient.

39
40 **(d)–(e) * * ***

INFORMATION SHEET ON WAIVER OF SUPERIOR COURT FEES AND COSTS

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

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

IMPORTANT INFORMATION!

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

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

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

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

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

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

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

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

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

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

The fee for the court reporter being at your hearing will be waived (there will be no cost to you), but note that having a court reporter does not guarantee the right to get a free transcript.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: ATTORNEY FOR (<i>name</i>): _____	FOR COURT USE ONLY DRAFT 03/27/20 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR COURT REPORTER BY PARTY WITH A FEE WAIVER	CASE NUMBER: _____

INSTRUCTIONS

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

- You must make a request 10 calendar days before any court date for which you want a reporter. If the court date is scheduled with less than 10-days notice, you should file the request as soon as you can.
- If you do not file the request on time, the court may be unable to provide a court reporter on the date requested and may have to reschedule the hearing or trial.
- There will be no fee to you for the court reporter being at the hearing.
- **Note:** Having a court reporter may not guarantee the right to get a transcript.

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

REQUEST FOR COURT REPORTER

I, _____, received a waiver of court fees and costs granted by the court on (date) _____ and I request an official court reporter for trial hearing on (date) _____.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)