



Complaint to Sacramento County Superior Court

Per ADA Title II Regulations
Sections 35.104, 35.107, 35.170(a)

Per Section 504 of the
Rehabilitation Act of 1973

Per California Government
Code Section 11135

Exhibit E

Access to Justice
Jameson v. Desta / S230899

Supreme Court of California

Jameson v. Desta / S230899

Excerpts from the Supreme Court's Opinion Relevant to Local Court Practices that Deny Access to Justice

“[T]his court and the Courts of Appeal have afforded indigent civil litigants the ability to obtain meaningful access to the judicial process in a great variety of contexts. . . . *Payne v. Superior Court* (1976) 17 Cal.3d 908 (*Payne*) [right of indigent prisoner who is a defendant in a civil case to be provided meaningful access to judicial process, *including representation by counsel if necessary*]. (emphasis added)

“ . . . California courts, pursuant to the principles of the in forma pauperis doctrine, have the *inherent discretion* to facilitate an indigent civil litigant's equal access to the judicial process” (Emphasis added)

“[T]he exercise of judicial discretion in furtherance of facilitating equal access to justice is not limited to excusing the payment of fees that the government charges for government-provided services. *Judicial authority to facilitate meaningful access to indigent litigants extends as well to . . . devising alternative procedures (e.g., additional methods of service or meaningful access) so that indigent litigants are not, as a practical matter, denied their day in court.*” (emphasis added)

“[T]he policy of affording indigent litigants meaningful access to the judicial process establishes restrictions not only upon potential barriers created by *legislatively* imposed fees or procedures, but also upon *court*-devised policies or practices that have the effect of denying to qualified indigent litigants the equal access to justice”

[T]o be valid a local court policy, like a local

court rule, must be consistent with the federal and state Constitutions, statutes, rules of court, and applicable case law. (See Cal. Const., art. VI, § 6, subd. (d); *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351 (*Elkins*)).

“[O]ur past decisions caution that a court's legitimate *financial considerations must be carefully weighed against the potential impairment of a needy litigant's right to equal access to justice*. (See, e.g., *Elkins, supra*, 41 Cal.4th at p. 1353 [noting that a “common theme” in cases invalidating local rules as inconsistent with the public's interest in equal access to justice “is that a local court has advanced the goals of efficiency and conservation of judicial resources” in adopting the challenged rule]; *Ferguson, supra*, 4 Cal.3d at p. 657 [noting that “the legitimate purpose[] of providing financial support for our courts” does not require “depriv[ing] indigents of access to the appellate courts”]; see also § 68630, subd. (b) [“The Legislature finds and declares . . . [¶] . . . [¶] . . . [t]hat *fiscal responsibility should be tempered with concern for litigants' rights to access the justice system*”].)” (emphasis added)

Comment: “Jameson used far-reaching language about the importance of equal access to justice. Why then shouldn't indigent civil litigants be entitled to free legal representation, at least in fundamental civil disputes, like family, juvenile, or probate cases? It is a dirty secret that not being represented in those types of cases can make all the difference in the outcome. Is the policy-based claim for free legal representation right around the corner?” Commentary by Jens B. Koepke, [Los Angeles Daily Journal](#).

IN THE SUPREME COURT OF CALIFORNIA

BARRY S. JAMESON,)	
)	
Plaintiff and Appellant,)	
)	S230899
v.)	
)	Ct.App. 4/1 D066793
TADDESE DESTA,)	
)	San Diego County
Defendant and Respondent.)	Super. Ct. No. GIS9465
_____)	

Under California’s in forma pauperis doctrine and Government Code section 68086, subdivision (b),¹ a person who because of limited financial resources qualifies for a waiver of initial court filing fees is entitled, as well, to a waiver of fees for the attendance of an official court reporter at a hearing or trial. In this case, however, although plaintiff Barry Jameson (hereafter plaintiff) was entitled to a waiver of official court reporter attendance fees, plaintiff was not provided the opportunity to have a court reporter at his civil trial because the San Diego Superior Court, in response to a significant reduction of its judicial budget, had adopted a policy under which the court did not make official court reporters available at most civil trials even for persons who qualified for a fee waiver.

¹ Unless otherwise specified, statutory references are to the Government Code. For convenience, section 68086, subdivision (b) shall hereafter be referred to as section 68086(b).

Furthermore, the court in *Martin* rejected the contention that the trial court's refusal in that case to permit the indigent plaintiff to obtain a jury without the payment of jury fees could be defended on the ground that the trial court's action did not leave the plaintiff remediless "but left open to him the trial of his cause without a jury." (*Martin, supra*, 176 Cal. at p. 297.) The court responded: "Little need be said to show the inadequacy of such a response. Where the suitor was allowed to prosecute *in forma pauperis*, all the rights which were open to him upon the payment of fees were open to him by virtue of the order, and every officer was required to perform his duty without the payment of fees as fully as though the legal fees had been paid. . . . Therefore we will not say that a suitor who . . . cannot pay court fees must be content to go to trial without a jury. The law does not say this, and we will not read such a declaration into the law." (*Id.* at pp. 297-298.)

A Following the general principles set forth in *Martin*, this court and the Courts of Appeal have afforded indigent civil litigants the ability to obtain meaningful access to the judicial process in a great variety of contexts. (See, e.g., *Majors v. Superior Court* (1919) 181 Cal. 270 [right of civil indigent litigant to obtain jury on retrial without prepayment of jury fees]; *Isrin v. Superior Court* (1965) 63 Cal.2d 153 (*Isrin*) [indigent civil plaintiff could not be denied in forma pauperis status because represented by counsel on contingent fee basis]; *Ferguson v. Keays* (1971) 4 Cal.3d 649 (*Ferguson*) [right of indigent civil litigant to file appeal without payment of appeal fees]; *Earls v. Superior Court* (1971) 6 Cal.3d 109 (*Earls*) [indigent civil litigant may not be denied in forma pauperis status on the ground that litigant may be able to afford fees through savings over several months]; *Conover v. Hall* (1974) 11 Cal.3d 842 (*Conover*) [right of indigent civil litigant to obtain injunction without providing an injunction bond]; *Payne v. Superior Court* (1976) 17 Cal.3d 908 (*Payne*) [right of indigent prisoner who is a

* defendant in a civil case to be provided meaningful access to judicial process, including representation by counsel if necessary]; *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197 [explaining trial court's responsibilities under *Payne*]; *County of Sutter v. Superior Court* (1966) 244 Cal.App.2d 770 (*County of Sutter*) [right of indigent civil litigant to obtain waiver of bond requirement imposed by Gov. Code, § 947]; *Bank of America v. Superior Court* (1967) 255 Cal.App.2d 575 (*Bank of America*) [right of indigent out-of-state civil litigant to obtain waiver of security for costs required by Code Civ. Proc., § 1030]; *Roberts v. Superior Court* (1968) 264 Cal.App.2d 235 (*Roberts*) [right of indigent civil litigant to obtain waiver of appeal bond required by Code Civ. Proc., § 985.5]; *Cohen v. Board of Supervisors* (1971) 20 Cal.App.3d 236 (*Cohen*) [right of indigent civil plaintiff who could not afford service by statutorily prescribed publication to utilize alternative reasonable method of service]; *Solorzano v. Superior Court* (1993) 18 Cal.App.4th 603 (*Solorzano*) [trial court abused its discretion in appointing a privately compensated discovery referee that indigent plaintiffs could not afford]; *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1436-1443 (conc. opn. of Johnson, J.) (*Baltayan*) [right of indigent out-of-state civil plaintiff to exemption from security undertaking required by Code Civ. Proc. § 1030]; *Roldan v. Callahan & Blaine* (2013) 219 Cal.App.4th 87 (*Roldan*) [trial court may not consign indigent plaintiffs to an arbitration process they cannot afford to pursue].)

The general teaching of this long line of decisions is that California courts, pursuant to the principles of the in forma pauperis doctrine, have the inherent discretion to facilitate an indigent civil litigant's equal access to the judicial process even when the relevant statutory provisions that impose fees or other expenses do not themselves contain an exception for needy litigants.

Moreover, this line of cases also demonstrates that the exercise of judicial discretion in furtherance of facilitating equal access to justice is not limited to

excusing the payment of fees that the government charges for government-provided services. Judicial authority to facilitate meaningful access to indigent litigants extends as well to excusing statutorily imposed expenses that are intended to protect third parties (e.g., injunction or damage bonds) and to devising alternative procedures (e.g., additional methods of service or meaningful access) so that indigent litigants are not, as a practical matter, denied their day in court. (See *Conover, supra*, 11 Cal.3d 842; *County of Sutter, supra*, 244 Cal.App.2d 770; *Bank of America, supra*, 255 Cal.App.2d 575; *Roberts, supra*, 264 Cal.App.2d 235; *Cohen, supra*, 20 Cal.App.3d 236; *Baltayan, supra*, 90 Cal.App.4th 1427; *Payne, supra*, 17 Cal.3d 908.)

Finally, these cases demonstrate that the policy of affording indigent litigants meaningful access to the judicial process establishes restrictions not only upon potential barriers created by legislatively imposed fees or procedures, but also upon court-devised policies or practices that have the effect of denying to qualified indigent litigants the equal access to justice that the in forma pauperis doctrine was designed to provide. (See, e.g., *Isrin, supra*, 63 Cal.2d 153; *Earls, supra*, 6 Cal.3d 109; *Solorzano, supra*, 18 Cal.App.4th 603; *Roldan, supra*, 219 Cal.App.4th 87.)

B. Legislative Enactments Relating to In Forma Pauperis Status and Initial Court Rules Regarding Official Court Reporter Fees

Although the authority of California courts to ameliorate financial barriers to access to justice faced by indigent litigants pursuant to the in forma pauperis doctrine was first recognized in judicial decisions, in 1979 the Legislature enacted a statute confirming this judicial authority and directing the Judicial Council to formulate uniform forms and rules of court to effectuate this authority. (Stats. 1979, ch. 850, § 1, pp. 2952-2953 [enacting former § 68511.3].)

Former section 68511.3 provided broadly that the rules adopted by the Judicial Council should permit “proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.” The statute identified certain categories of litigants (e.g., recipients of specified welfare benefits) who were to be permitted to proceed in forma pauperis, and further directed that the rules to be adopted should recognize a court’s authority to grant permission to proceed in forma pauperis “in any other instance in which, in its discretion, such permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant’s family to provide for the common necessities of life.” (*Ibid.*) Former section 68511.3 did not list the specific court fees that would be waived for in forma pauperis litigants, but provided that the Judicial Council should adopt uniform forms and rules in this regard.

The initial rules adopted by the Judicial Council pursuant to the statutory mandate of former section 68511.3 recognized that in forma pauperis litigants were entitled to the waiver, among other fees, of court reporter attendance fees. The initial rules, however, drew a distinction between the waiver of such fees for proceedings held within 60 days of the grant of fee waiver status and later proceedings. Former rule 3.61(7) provided that court reporter attendance fees “must” be waived for proceedings held within 60 days of the order granting the fee waiver application, whereas former rule 3.62(4) provided that such court reporter attendance fees “may” be waived for proceedings held more than 60 days after the date of the order granting the fee waiver application. The rules themselves provided no explanation for this distinction.

In 2008, former section 68511.3 was repealed and replaced by a series of statutory provisions beginning with section 68630. (Stats. 2008, ch. 462, § 2, pp. 3309-3320.) The 2008 legislation explicitly and forcefully confirms this

state's policy of providing equal access to justice to all persons regardless of their economic means.

Section 68630 provides in this regard: “The Legislature finds and declares all of the following: [¶] (a) That our legal system cannot provide ‘equal justice under law’ unless all persons have access to the courts without regard to their economic means. 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. [¶] (b) That fiscal responsibility should be tempered with concern for litigants’ rights to access the judicial system. The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services. The procedure for determining if a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so. [¶] (c) That those who are able to pay court fees should do so, and that courts should be allowed to recover previously waived fees if a litigant has obtained a judgment or substantial settlement.”

Under the 2008 legislation, the Judicial Council retained the authority to adopt rules and forms relating to in forma pauperis status, including “[p]rescribing the court fees and costs that may be waived at every stage of the proceedings.” (§ 68641.) Although the initial Rules of Court relating to the waiver of court reporter attendance fees — former rules 3.61(7) and 3.62(4) — were renumbered in 2009 as rules 3.55(7) and 3.56(4), the substance of the rules regarding court reporter attendance fees remained unchanged, retaining the distinction between proceedings held within 60 days of the order granting a fee waiver and proceedings held after 60 days.

In 2013, the Legislature amended section 68086, the specific statute relating to court reporter attendance fees. (Stats. 2013, ch. 454, § 1.)⁸ As part of the 2013 amendment of section 68086, the Legislature added a new subdivision (b), which provides in full: “The fee shall be waived for a person who has been granted a fee waiver under Section 68631 [the general provision relating to an initial fee waiver].” Section 68086(b) draws no distinction regarding the entitlement to a fee waiver based upon the date upon which the hearing or trial occurs, nor places any other qualification on the applicability of the litigant’s right to a waiver of court reporter attendance fees.⁹

C. Importance of a Court Reporter Under Current California Law

Under current California law, in most civil proceedings the presence of a court reporter is required in order to obtain a verbatim record of trial court

⁸ Section 68086 was initially enacted in 1992, following the adoption of state funding of California trial courts. (Stats. 1992, ch. 696, § 21, pp. 3009-3310.) As initially enacted, the statute imposed an official court reporter attendance fee of \$100 per half day for each civil case lasting more than one day; at that time, no official court reporter fee was imposed for the first day. The statute also directed the Judicial Council to adopt rules requiring trial courts to notify parties of the unavailability of official court reporting services. As initially enacted, section 68086 did not address the waiver of court reporter attendance fees for in forma pauperis litigants.

Subsequent amendments of section 68086, prior to the 2013 amendment, extended the official court reporter attendance fee to any proceeding lasting more than one hour (Stats. 1993, ch. 70, § 2, pp. 1051-1052) and increased the fee to be imposed to “a fee equal to the actual cost of providing that service.” (*Id.*, subd. (a)(1), as amended by Stats. 2003, ch. /159, § 14, p. 1668.)

⁹ In addition to adding subdivision (b), explicitly providing for waiver of the court reporter attendance fee for fee waiver recipients, the 2013 amendment of section 68086 added provisions relating to the imposition of a \$30 fee for each proceeding anticipated to last one hour or less, and retaining a fee equal to the actual cost of providing court reporter services for each proceeding lasting more than one hour. (§ 68086, subd. (a)(1), (2).)

proceedings and, ultimately, the preparation of an officially recognized reporter's transcript for use on appeal.¹⁰ The inclusion of court reporter fees in the original court rules setting forth the categories of costs and fees to which an economically needy litigant is entitled to a waiver, as well as the explicit legislative codification of such entitlement in section 68086(b) in 2013, reflect the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California.

As the Court of Appeal decision in the present case aptly demonstrates, the absence of a court reporter at trial court proceedings and the resulting lack of a verbatim record of such proceedings will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court. This is so because it is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. (See, e.g., *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 355, p. 409 [citing cases].) "This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." (*Ibid.*; see Cal. Const., art. VI, § 13.)

¹⁰ As already noted (*ante*, p. 2, fn. 2), section 69957 currently precludes California courts from utilizing electronic recording to generate an official certified verbatim record of trial court proceedings except in limited civil actions and criminal proceedings involving misdemeanors and infractions. (§ 69957, subd. (a); see also *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15; *California Court Reporters Assn. v. Judicial Council of California* (1997) 59 Cal.App.4th 959.)

“In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court. ‘[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.’ ” (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) “ ‘A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.’ ” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) “Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)¹¹

In *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187, the court extensively catalogued the frequency with which appellate courts have declined to reach the merits of a claim raised on appeal because of the absence of a reporter’s transcript. The court in *Foust* stated: “In numerous situations, appellate courts have refused to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor

¹¹ As the appellate court in *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364, quipped: “When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two.”

similar policies, indigent civil litigants are denied the ability to obtain a verbatim record of the trial court proceedings unless another party in the action who can afford to pay for a private court reporter chooses to arrange and pay for a private court reporter. The issue before us in this case is the validity of the San Diego policy as applied to a fee waiver recipient.

E. The Parties' Contentions

Plaintiff, and the numerous amici curiae that have filed briefs on his behalf, maintain that the San Diego Superior Court policy is inconsistent with the prior California in forma pauperis decisions indicating that California courts should properly exercise the discretion they possess to ensure that litigants in California judicial proceedings are not denied equal access to justice, at trial or on appeal, on the basis of their limited financial resources. Defendant, by contrast, contends that the San Diego policy is valid, maintaining that the Court of Appeal properly found the policy compatible with the applicable statutes and rules of court. Defendant asserts that no case or statute requires a court to make an official court reporter available in every civil case in which a fee waiver recipient requests the services of an official court reporter, and that the fee waiver provision of section 68086(b) applies only when an official court reporter is provided by the court and when payment of a court reporter fee would otherwise be required. Further, defendant maintains that the superior court policy is a reasonable response to the significant reduction in its budget.

For the following reasons, we agree with plaintiff's position.

F. Effect of Section 68086, Subdivision (d) and Rule 2.956

~~In addressing this issue in its decision below, the Court of Appeal recognized that to be valid a local court policy, like a local court rule, must be consistent with the federal and state Constitutions, statutes, rules of court, and~~

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applicable case law. (See Cal. Const., art. VI, § 6, subd. (d); *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351 (*Elkins*).)

In upholding the validity of the San Diego Superior Court policy, the Court of Appeal relied on the provisions of section 68086, subdivision (d) and rule 2.956. Section 68086, subdivision (d) directs the Judicial Council to adopt rules to ensure that parties are given adequate and timely notice of the availability of an official court reporter, and further provides “[t]hat if an official court reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefor recoverable as [taxable costs by the prevailing party].”¹⁴ (*Id.*, subd. (d)(1).)

Rule 2.956 — adopted by the Judicial Council in response to the directive in section 68086, subdivision (d) — provides, in turn, that each trial court must adopt and post a local policy “enumerating the departments in which the services of official court reporters are normally available, and the departments in which the services of official court reporters are not normally available during regular court hours. If the services of official court reporters are normally available in a department only for certain types of matters, those matters must be identified in the policy.” (Rule 2.956(b)(1).) Rule 2.956(c) further provides that “[i]f the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange for the presence of a certified shorthand reporter to

¹⁴ Section 68086, subdivision (d) provides in full: “The Judicial Council shall adopt rules to ensure all of the following: [¶] (1) That parties are given adequate and timely notice of the availability of an official court reporter. [¶] (2) That if an official court reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefor recoverable [as taxable costs by the prevailing party]. [¶] (3) That if the services of an official pro tempore reporter are utilized pursuant to paragraph (2), no other charge shall be made to the parties.”

However, the new policy failed to provide an exception for cases involving a fee waiver recipient who desires a verbatim record of the trial court proceedings but cannot afford to pay for a private reporter. Although such a limited exception would concededly impose some additional financial burden on the superior court,¹⁸ our past decisions caution that a court's legitimate financial considerations must be carefully weighed against the potential impairment of a needy litigant's right to equal access to justice. (See, e.g., *Elkins, supra*, 41 Cal.4th at p. 1353 [noting that a "common theme" in cases invalidating local rules as inconsistent with the public's interest in equal access to justice "is that a local court has advanced the goals of efficiency and conservation of judicial resources" in

¹⁸ We note that we have received and considered amici curiae briefs from several superior courts, describing the financial consequences they anticipate would result from a decision invalidating the San Diego Superior Court policy at issue as applied to fee waiver recipients.

At the same time, we observe that if a superior court were to provide an official court reporter in cases in which a fee waiver recipient requests such a reporter, the court would be permitted to impose a pro rata share of the costs of such an official court reporter on the parties in those cases who can afford to pay official court reporter fees, just as in other cases in which the court provides an official court reporter. (§ 68086, subd. (a)(2).) Under California Rules of Court, rule 2.958, the half-day fee to be charged under section 68086, on a pro rata basis, "is equal to *the average salary and benefit costs of the reporter, plus indirect costs of up to 18 percent of salary and benefits.*" (Italics added.) Accordingly, the court could recover a significant portion of the additional cost of providing an official court reporter in cases involving fee waiver recipients from the parties in those cases who can afford the usual pro rata official court reporter fees.

Moreover, it is worth noting that the increased use of private court reporters in place of official court reporters will itself frequently entail additional administrative expense for a superior court. For example, a court may incur additional costs in attempting to locate and communicate with private court reporters when questions regarding such reporters' service arise subsequent to trial court proceedings. Communications with a court's own official court reporters often involve less time and expense.

adopting the challenged rule]; *Ferguson, supra*, 4 Cal.3d at p. 657 [noting that “the legitimate purpose[] of providing financial support for our courts” does not require “depriv[ing] indigents of access to the appellate courts”]; see also § 68630, subd. (b) [“The Legislature finds and declares . . . [¶] . . . [¶] . . . [t]hat fiscal responsibility should be tempered with concern for litigants’ rights to access the justice system”].) The question before us is whether the superior court in adopting the challenged court reporter policy properly exercised the discretion it possesses in a manner consistent with the principles underlying California’s in forma pauperis doctrine and the legislative policy of equal access to the courts set forth in section 68630, subdivision (a).

In defending the absence of an exception for in forma pauperis litigants, defendant relies on the lack of any prior decision that supports the necessity of such an exception for official court reporters. Although there is no prior case directly on point with regard to official court reporters, several prior cases that have arisen in other contexts support the conclusion that the San Diego Superior Court erred in adopting a policy that effectively denies in forma pauperis litigants the ability to obtain a verbatim record of the trial court proceedings while preserving that opportunity for litigants who can afford to pay for a private court reporter.

In *Solorzano, supra*, 18 Cal.App.4th 603, the question arose in the context of the procedure for resolving a discovery dispute. Ordinarily, discovery disputes are resolved by the trial court, and a fee waiver recipient (like other parties) need not pay any fee to obtain such resolution. Under section 639, subdivision (a)(5) of the Code of Civil Procedure, however, a trial court is permitted to appoint a referee to “hear and determine any and all discovery motions and disputes . . . and to report findings and make a recommendation thereon,” and section 645.1, subdivision (b) of the Code of Civil Procedure, in turn, permits the court to “order