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Re: ***Jameson v. Desta*, No. S230899**
Petition For Review filed Dec. 1, 2015

AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW (Cal. Rules of Court, rule 8.500(g))

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To the Chief Justice and the Associate Justices of the California
Supreme Court:

The California Academy of Appellate Lawyers (Academy) urges this Court to grant the petition for review in the above-referenced case, *Jameson v. Desta* (2015) 241 Cal.App.4th 491 (*Jameson*).

1. The Academy's Interest in Supporting Review.

The members of the Academy are experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures designed to ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation. The Academy files this letter out of concern that all parties to civil appellate litigation, including persons who are indigent, should be afforded equal access to appellate justice. The Academy itself has no interest in or connection with either of the parties in this case.

The Academy urges the Court to grant review on the second issue presented for review: whether the superior court

abused its discretion by adopting a court reporter policy that has the practical effect of categorically denying indigent litigants access to court reporters and thus restricting their ability to make an adequate record for appeal. (Petn. 3.)¹

2. The Superior Court’s Policy Against Providing Indigent Litigants With An Official Court Reporter Or Waiving Their Fees For A Private Court Reporter.

At issue in this case is a local written policy of the San Diego Superior Court stating that “[o]fficial court reporters are not normally available in civil, family, or probate matters,” and “[p]arties, *including those with fee waivers*, are responsible for all fees and costs related to court reporter services” that litigants arrange privately. (Super. Ct., San Diego County, Form #ADM-317 <<http://goo.gl/fhtXKF>> [as of Dec. 14, 2015], emphasis added, boldface omitted.)²

Based on this policy, the Court of Appeal held that appellant Barry S. Jameson, an indigent prisoner who had been prosecuting a San Diego civil action for alleged negligent medical treatment and had obtained a fee waiver (Gov. Code, § 68631), was precluded from raising evidentiary issues on appeal from a judgment of nonsuit because, due to his indigence, he was unable to pay the appearance fee of a private court reporter and thus could not obtain a transcript of oral proceedings in the superior court. (*Jameson, supra*, 241 Cal.App.4th at p. 504, citing *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657.) In the Court of Appeal’s view, Jameson’s “financial circumstances” were no excuse for failing to supply an adequate record on appeal. (See *id.* at p. 495 [“While this court is sympathetic to the plight of litigants like Jameson whose incarceration and/or financial circumstances present such challenges, the rules

¹ The Academy takes no position regarding an assertion in the petition underlying the first issue presented for review—that the fee waiver provision in Government Code section 68086, subdivision (b), extends to fees charged for the services of a private court reporter. (Petn. 2-3.)

² Rule 2.956(c) of the California Rules of Court states it is a “party’s responsibility to pay” the fee charged for the services of a private court reporter; but, unlike the San Diego Superior Court’s policy, rule 2.956(c) does *not* preclude *fee waivers* for indigent litigants and thus is not at issue here.

of appellate procedure and substantive law mandate that we affirm the judgment in this case.”].)

3. California’s Policy Of Ensuring Indigent Litigants Access To The Courts.

The Legislature has declared it the policy of the State of California that all persons should have “access to the courts without regard to their economic means,” and “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.” (Govt. Code, § 68630, subd. (a).) The Judicial Council has similarly declared that “[p]roviding access to justice for self-represented litigants is a priority for California courts,” and “[c]ourt programs, policies, and procedures designed to assist self-represented litigants . . . at all stages must be incorporated and budgeted as core court functions.” (Cal. Rules of Court, rule 10.960(b).) And for nearly a century, this Court has made clear that any rule that “has the practical effect of restricting an indigent’s access to the courts because of his poverty . . . contravenes the fundamental notions of equality and fairness which since the earliest days of the common law have found expression in the right to proceed in forma pauperis.” (*Isrin v. Superior Court* (1965) 63 Cal.2d 153, 165, citing *Martin v. Superior Court* (1917) 176 Cal. 289, 293-297; see also *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 648 [unfettered access to the courts “is an important and valuable aspect of an effective system of jurisprudence’ ”].)

The Court of Appeal’s decision violates California’s long-standing policy of ensuring indigent litigants access to the courts.

4. The Need To Ensure Access To The Appellate Courts For Indigent Litigants Who Cannot Afford To Pay A Private Court Reporter.

In civil litigation by or against indigent prisoners, California courts have enunciated an *abuse of discretion* standard for effectuating the right of access to the courts. (*Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, 207; *Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1483-1484 [“a trial court has discretion to choose among” various remedies “in safeguarding a prisoner litigant’s right of meaningful access to the courts to prosecute or defend against a civil action threatening his or her interests”].) The Academy believes this standard should extend to *all* indigent civil litigants—not just prisoners—and any local superior

court rule or policy that has the effect of depriving indigent litigants of meaningful appellate review is invalid because it is inconsistent with state law and policy. (See *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351 (*Elkins*) [“A trial court is without authority to adopt local rules or procedures that conflict with statutes or with rules of court adopted by the Judicial Council, or that are inconsistent with the California Constitution or case law.”].) In cases where an indigent litigant has obtained a fee waiver, it should be considered an abuse of discretion for the superior court to categorically refuse to either provide the litigant with an official court reporter or extend the fee waiver to an appearance fee charged by a private court reporter where the consequence is to preclude meaningful appellate review.³

According to the Court of Appeal, “[t]his case aptly demonstrates that civil justice is not free.” (*Jameson, supra*, 241 Cal.App.4th at p. 495.) One can scarcely imagine a worse message to send the people of the State of California. This Court has admonished that local court rules and policies should not have the effect of “diminishing litigants’ respect for and trust in the legal system.” (*Elkins, supra*, 41 Cal.4th at p. 1367.) “Courts must earn the public trust.” (*Id.* at p. 1369, citing Cal. Stds. Jud. Admin., § 10.17(b)(5)(A), (B).) Courts do not foster public respect and trust through pronouncements that appellate justice is only for those who can afford to pay for it.

³ The injurious effect of the superior court’s policy is not ameliorated by the absence of language expressly precluding exceptions to the policy on party motion, because such preclusion can be reasonably implied from the absolute nature of the specification that the parties’ responsibility for private court reporter fees includes parties with fee waivers. Nor is the policy’s injurious effect ameliorated by the possibility of obtaining a settled statement (Cal. Rules of Court, rule 8.137(a)(2)(C)) or an agreed statement (Cal. Rules of Court, rule 8.134(a)), given the various practical obstacles to producing an adequate record by such means.

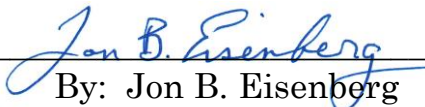
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The present case affords this Court an opportunity to reaffirm the California judiciary's commitment to making civil justice—including justice *on appeal*—accessible to everyone, not just the affluent.⁴

Respectfully submitted,

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By: Jon B. Eisenberg

cc: See attached proof of service

⁴ A case already pending in this Court, *Hamilton v. Yates*, review granted June 4, 2015, S226450, presents a similar issue—whether the superior court erred in concluding there was no means of affording the indigent prisoner plaintiff access to the courts to pursue his civil action where he was unable to appear personally at trial due to his imprisonment. The Court may wish to grant review of the present case as a companion to *Hamilton*.