

## **Court Reporter Shortage Case: Frequently Asked Questions**

### **What is this lawsuit about?**

This case seeks to protect the constitutional rights of low-income people. Historically, California courts relied on court reporters to create a word-for-word record of what happens in court, known as a “verbatim record.” In recent years, there has been a growing shortage of court reporters, and now courts are regularly unable to provide free court reporters in many cases. People can only get a verbatim record if they hire their own private court reporter. Because low-income people cannot afford this, they are forced to proceed with their cases without any verbatim record. Each day, thousands of hearings happen and there is no verbatim record of what occurred. This violates due process, equal protection, and separation of powers guarantees of the California Constitution.

### **What is a verbatim record?**

A verbatim record is a word-for-word record of what is said during a hearing, trial, or other court proceeding. This includes the testimony, objections, and arguments made by the parties or their attorneys. It also includes the oral statements made by the judge, such as the ruling and reasoning for it.

### **Why do I need a verbatim record?**

**Without an official verbatim record, it can be impossible for people to appeal an incorrect trial court ruling.**

Real-life repercussions: Family Violence Appellate Project (FVAP), has been forced to turn away dozens of domestic violence survivors because there was no verbatim record of their hearing. These individuals could have had strong grounds to appeal incorrect trial court rulings, but the lack of a verbatim record made it virtually impossible to win an appeal. In one case, a survivor had been physically abused by her husband – he pulled her out of a car and shoved her into a concrete wall – but the trial court denied her request for a domestic violence restraining order despite photographic evidence of her injuries. Because there was no verbatim record of the hearing, FVAP could not represent the survivor on appeal.



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**Without verbatim records of prior hearings, there is a risk that people will be wrongly denied critical relief.** For example, a verbatim record is important when a party asks the trial court to modify existing orders, or issue new ones.

Real-life repercussions: FVAP was forced to turn away a domestic violence survivor who wanted to challenge a court order modifying the parties' child visitation order. The court removed a requirement that her children's father perform sobriety testing before visiting the children, despite evidence that he had been skipping the sobriety tests rather than passing them. Without a verbatim recording of this hearing, FVAP could not assess the merits of a potential appeal, and therefore could not help the survivor challenge an order she thought was dangerous for their children.

### **What do you hope will be the outcome of this lawsuit?**

We are asking the California Supreme Court to require that trial courts electronically record court proceedings for low-income people when the court cannot provide a free court reporter. This will ensure that everyone has equal access to a verbatim record.

### **How does this lawsuit impact ordinary Californians?**

The [California Access to Justice Commission](#) recently estimated that over one million hearings and trials in family, probate, and other civil cases had no verbatim record from March 2023 to March 2024. People have deeply important interests at stake in these cases, including child custody and visitation, spousal and child support, divorce, conservatorship, guardianship, debt collection, and civil protections from domestic, workplace, and other forms of harassment and violence. The vast majority of Californians cannot afford to bring a private court reporter to court. The California [Judicial Council](#) has estimated that a private court reporter costs on average \$3,300 per day. **We want to make sure that everyone, regardless of wealth, has equal access to a verbatim record, which is critical to protect these interests.**



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### **Who are the plaintiff and defendant in this lawsuit?**

When a case, like this one, is filed directly with the California Supreme Court, the plaintiff is referred to as “Petitioner” and the defendant is referred to as “Respondent.” The Petitioners in this case are Family Violence Appellate Project and Bay Area Legal Aid. The Respondents in this case are the Superior Courts of Contra Costa, Los Angeles, Santa Clara, and San Diego Counties.

### **Why was this lawsuit filed against the Superior Courts of Contra Costa, Los Angeles, Santa Clara, and San Diego Counties?**

The Superior Courts of Contra Costa, Los Angeles, Santa Clara, and San Diego Counties are failing to create verbatim records for low-income people, as required under the California Constitution and the California Supreme Court decision *Jameson v. Desta*. Two courts – Contra Costa and San Diego – are regularly failing in this respect; the other two – Los Angeles and Santa Clara – have recently issued orders designed to help the problem but do not address it fully.

**Petitioners seek relief that, if granted, will provide appropriate guidance to *all California courts* facing the access to justice crisis caused by the court reporter shortage.**

### **Why is this case starting in the California Supreme Court instead of the trial court?**

The California Supreme Court is the proper court to hear this case. The court reporter shortage is a statewide emergency that directly harms Californians seeking access to justice. Countless people will suffer irreversible harm if this situation continues, because once a hearing or trial has gone unrecorded there is no way to go back in time and get a verbatim record of what happened. Only the California Supreme Court can resolve the important constitutional issues presented in this case in a way that ensures both certainty and consistent state-wide protection for the rights of all low-income people.

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### **What is electronic recording? How does it work? Are there other states that allow this?**

Electronic recording captures the audio of what is said during a hearing via microphones installed in a courtroom. Electronic recording is a well-recognized, reliable method for creating a verbatim record and is routinely used in state and federal courtrooms across the country. In 2022, 33 out of 35 states reported that they permitted the use of electronic recording in all or some hearings. (California Access to Justice Commission, *Issue Paper on Access to the Record of California Trial Court Proceedings* (Nov. 14, 2024), at pg. 16.) Electronic record is also used routinely in California administrative law proceedings, and in trial courts for unlimited civil cases like eviction and small claims cases.

### **Why aren't courts already using electronic recording to create a verbatim record when court reporters are unavailable?**

California law (Section 69957 of the Government Code) prohibits the use of electronic recording in family law, probate, and other civil cases for the purpose of creating an official verbatim record. The law provides no exception for people who cannot afford to pay for a private court reporter, or when a court-provided court reporter is not available. As a result, low-income people are frequently denied a verbatim record of their court proceedings. This violates due process, equal protection, and separation of powers guarantees of the California Constitution.

### **Are you asking the Supreme Court to authorize the use of artificial intelligence (AI) in California courts?**

No, this case has nothing to do with artificial intelligence (AI). Electronic recording is not created by artificial intelligence. Electronic recording is simply an audio recording of what is said in the courtroom.

### **What happens if the court is required to provide me with a free court reporter, but one isn't available for my hearing?**

Some courts may offer to postpone (“continue”) a hearing in the hopes that a court reporter will be available on the new date. These continuances may span several weeks or months, depending on how busy the court’s calendar is. There is no guarantee that a

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court reporter will be available on the new date. When there is no court reporter on the new date, people are faced with the same decision between proceeding without a verbatim record and postponing their case yet again, often when they have an urgent need for court orders.

Real-life repercussions: Bay Area Legal Aid (BayLegal) had a client seeking a domestic violence restraining order, but there was no court reporter available on the day of the hearing. The hearing was continued to a future date, in hopes that a court reporter would be available then, and the client had to wait several months for the hearing. During that waiting period, there was a temporary restraining order in place to protect the client from her abuser. However, the abuser violated the restraining order multiple times before the hearing, including stalking the client and assaulting one of their minor children. When the client appeared for the hearing, there again was no court reporter available. The judge did not address the fact that the abuser had violated the temporary restraining order. Because no verbatim record was created, BayLegal could not challenge this order.

#### **What is the status of the lawsuit?**

On December 4, 2024, Family Violence Appellate Project, represented by Covington & Burling LLP and Community Legal Aid SoCal, and Bay Area Legal Aid filed a Petition for Writ of Mandate and/or Prohibition in the California Supreme Court. We currently await further consideration and instruction from the California Supreme Court.

#### **How can someone support your efforts?**

We appreciate your support as we urge the California Supreme Court to address this constitutional crisis impacting the rights of low-income people. We suggest following us on social media to receive status updates as the case develops.

**If you have been impacted by the court reporter shortage, we want to hear your story. Please take a few minutes to share your story [here](#).**