

No. S288176

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

FAMILY VIOLENCE APPELLATE PROJECT and
BAY AREA LEGAL AID,

Petitioners,

v.

SUPERIOR COURTS OF CALIFORNIA, COUNTIES OF
CONTRA COSTA, LOS ANGELES, SANTA CLARA, and
SAN DIEGO,

Respondents.

THE LEGISLATURE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND BRIEF OF *AMICUS CURIAE* CENTER FOR JUDICIAL
EXCELLENCE IN SUPPORT OF PETITIONERS FAMILY
VIOLENCE APPELLATE PROJECT AND BAY AREA LEGAL AID**

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APPLICATION TO FILE *AMICUS* BRIEF

Pursuant to rule 8.487(e) of the California Rules of Court, the Center for Judicial Excellence (“CJE”) requests leave to file the following brief in support of petitioners Family Violence Appellate Project and Bay Area Legal Aid.¹

The CJE and its clients have a strong interest in this Court’s grant of the relief sought by Petitioners. CJE is a nonprofit organization whose mission is to protect child abuse and domestic violence survivors in the U.S. family court system and to foster accountability throughout the judicial branch. For nearly two decades, CJE has been a voice for vulnerable children and a catalyst for child safety that works to expose systemic failures in U.S. family courts that are harming countless children.

The convergence of California’s shortage of court reporters and its law preventing electronic recording in most civil proceedings has resulted in thousands of civil proceedings, including those of litigants who cannot afford a private court reporter, going unrecorded. (See Petition at pp. 50-51.) The lack of verbatim recordings denies CJE’s constituents, particularly self-represented litigants who are child abuse and domestic violence survivors, the ability to obtain meaningful review of their complaints when judicial misconduct occurs in their cases. Such review is critical in these cases, as they involve issues of fundamental importance, including child custody, safety from domestic violence, and the financial resources necessary to support domestic violence survivors and their children.

¹ No counsel for a party authored this brief in whole or in part. No party or party’s counsel financially supported this brief, and no one other than *amicus* and their counsel contributed financially to this brief.

For these reasons, *amicus* CJE has a substantial interest in this matter and respectfully requests leave to file the brief set forth below.

Dated: April 4, 2025

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**BRIEF OF *AMICUS CURIAE* CENTER FOR JUDICIAL
EXCELLENCE IN SUPPORT OF PETITIONERS FAMILY
VIOLENCE APPELLATE PROJECT AND BAY AREA LEGAL AID**

INTRODUCTION

In their Petition for Writ of Mandate and/or Prohibition (“Petition”), Family Violence Appellate Project and Bay Area Legal Aid (together “Petitioners”) describe the conditions that have resulted in litigants being deprived of access to verbatim records of their court proceedings. They further describe the importance of verbatim records to appellate review and to trial courts’ ability to fairly and efficiently dispense justice. They ask this Court to declare that Government Code section 69957 may not constitutionally be applied to preclude the use of electronic recording to create an official verbatim record of civil proceedings involving litigants who cannot afford to pay for a private court reporter when the court overseeing the proceedings does not itself supply a court reporter.

In this brief, CJE addresses the importance of verbatim records in an additional context: the review of judicial conduct by the Commission on Judicial Performance (the “Commission”). The Commission, an independent state agency responsible for investigating and disciplining misconduct by state court judges, is required to apply a “clear and convincing” evidence standard in its cases. Without a verbatim record of the proceedings, it is difficult, if not impossible, to establish such evidence of misconduct.

Access to verbatim records is particularly critical for litigants in family court proceedings, including domestic violence, child abuse, and child custody cases, who seek to pursue a complaint regarding judicial misconduct before the Commission. Family violence litigants appear before a trial court at a time of intense personal crisis, typically without a

lawyer, often with limited or no ability to understand English, and without the knowledge (or even the ability) to take detailed notes of what transpired during the proceeding. As a result, without a verbatim record, their ability to present a complaint sufficient to result in an investigation by the Commission, let alone for the Commission to conclude that there is clear and convincing evidence of judicial misconduct, is severely impaired if not nonexistent. Granting the relief Petitioners seek is essential for the Commission to meaningfully review allegations of judicial misconduct, particularly in proceedings involving unrepresented family law litigants and domestic violence survivors who are unable to pay for a court reporter.

BACKGROUND

I. Commission on Judicial Performance

As part of its mission, CJE assists child abuse and domestic violence survivors in pursuing complaints before the Commission, the body constitutionally charged with the responsibility to investigate and discipline misconduct by state court judges. (Cal. Const., art. VI, §§ 8, 18.) The Commission investigates such misconduct as “rude, abusive, and improper treatment of lawyers, litigants, witnesses, jurors, court staff or others, failure to disqualify when the law requires, receipt of information about a case outside the presence of one party, abuse of contempt or sanctions, and delay in decision-making.”² And the Commission may disqualify, suspend, retire, censure, and admonish judges depending on the results of its proceedings. (Cal. Const., art. VI, § 18, subds. (b)-(c).)

² (Cal. Com. on Jud. Performance, Filing a Complaint, available at https://cjp.ca.gov/file_a_complaint/ [as of Mar. 18, 2025].)

A complainant may initiate Commission action concerning a judicial officer by submitting a written statement. (Rules of Com. on Jud. Performance, rule 109(a).)³ The Commission advises that the written statement should “fully describe what the judicial officer did and said” and “not simply state conclusions, such as ‘the judge was rude’ or ‘the judge was biased.’”⁴ The complainant may submit a copy of a transcript showing the alleged misconduct with their written statement.⁵ Based upon the written statement and transcript, if provided, the Commission determines whether to initiate a preliminary investigation and, depending on the results of that investigation, may institute formal proceedings.

If formal proceedings are instituted, members of the Commission or appointed special masters hold an evidentiary hearing in which they receive testimony and other evidence. (Rules of Com. on Jud. Performance, rules 121, 125.) Depending on the evidence presented, the Commission may issue an advisory letter to admonish, censure, remove or retire a judge, or find a person unfit to serve as a subordinate judicial officer. (Rules of Com. on Jud. Performance, rule 134.) Importantly, any such action against a judge or other judicial officer must be based upon “clear and convincing evidence.” (See, e.g., *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090.) To satisfy this burden, the examiner must

³ (See also Cal. Com. on Jud. Performance, Commission Proceedings, available at https://cjp.ca.gov/wp-content/uploads/sites/40/2022/04/CN_Proceedings_Combined_Flow_Chart_s.pdf [as of Mar. 18, 2025].)

⁴ (Cal. Com. on Jud. Performance, Filing a Complaint, *supra*.)

⁵ (*Ibid.*)

provide evidence showing that there is a “high probability” that the charges are true. (*Id.*)

ARGUMENT

I. The Lack of Verbatim Recordings Precludes Complainants from Obtaining Meaningful Commission Review

Every day, California litigants go to court to resolve issues that are important to them. For CJE’s constituents, these issues include child custody, safety from domestic violence, and the financial resources necessary to support domestic violence survivors and their children. Typically, the judges overseeing these proceedings run them in a manner that comports with California’s standards of judicial conduct. Too often, however, the judges engage in conduct that falls short of these standards. In these situations, a verbatim recording of the proceedings is critical objective evidence of the judicial misconduct.

The Commission has reported that 95% of the complaints it receives concern conduct by judges while performing judicial duties in court proceedings.⁶ But an ongoing shortage of court-appointed court reporters in California precludes many litigants from having access to verbatim recordings of their court proceedings. The Judicial Council reported that, between October 1, 2023, and March 31, 2024, over 480,000 hearings in family, probate, and unlimited civil cases had no verbatim record.⁷ This

⁶ (Victoria B. Henley, Com. on Jud. Performance, letter to Governor Brown, C. J. Cantil-Sakauye, Sen. Steinberg, and Speaker Perez, Feb. 29, 2012, p. 2, available at <https://centerforjudicialexcellence.org/wp-content/uploads/2013/12/Commission-on-Judicial-Performance-ReportLetter.pdf> [as of Mar. 18, 2025] [hereafter “CJP Letter”].)

⁷ (Jud. Council of Cal., Fact Sheet: Shortage of Certified Shorthand Reporters in California (June 2024), available at

amounted to over 70% of those proceedings.⁸ The Judicial Branch of California’s website further shows that hearings in over 90% of unlimited civil cases during the relevant time had no verbatim record.⁹

Recent disciplinary matters before the Commission illustrate the importance of a verbatim record in bringing a successful complaint against a judge who has engaged in wrongdoing. For example, a judge was admonished by the Commission for committing serious misconduct when he, among other things, chastised a domestic violence survivor for staying in an abusive relationship and made other comments that “reflected offensive and outdated stereotypes and beliefs regarding victims of domestic violence.”¹⁰ In addition to quoting heavily from the hearing transcript in its decision, the Commission was able to discern other judicial misconduct, including “admonishing [the victim] more harshly for interrupting, even though both parties equally interrupted the judge or each other[,]” only due to the presence of a verbatim recording.¹¹ The presence

<https://beta.courts.ca.gov/system/files/file/fact-sheet-shortage-certified-shorthand-reporters-june2024.pdf> [as of Mar. 18, 2025].)

⁸ (*Ibid.*)

⁹ (Jud. Branch of Cal., Research and Data: Shortage of Court Reporters in California (June 2024), available at <https://beta.courts.ca.gov/shortage-court-reporters-california> [as of Mar. 18, 2025].)

¹⁰ (See *In the Matter Concerning Former Judge Robert F. Cochran, Decision and Order Imposing Public Admonishment Before the Commission on Judicial Performance* (Feb. 19, 2025), p. 15, available at https://cjp.ca.gov/wp-content/uploads/sites/40/2025/02/Cochran_DO_Pub_Adm_2-19-25.pdf [as of Mar. 18, 2025].)

¹¹ (*Id.* at p. 16.)

of a verbatim transcript allowed the Commission to discern an overall pattern of dismissiveness and bias by the judge throughout the hearing, which would have been otherwise impossible for the complainant to articulate based on handwritten notes and memory alone.

But litigants often do not have access to such recordings. This lack of access to verbatim recordings frustrates the ability of litigants who have been subject to judicial misconduct to file a sufficient complaint, inhibits the Commission's ability to investigate and review allegations of judicial misconduct, and renders it extraordinarily difficult, if not impossible, to meet the "clear and convincing evidence" standard required for a finding of judicial misconduct. The Commission's decision to institute an investigation depends on the litigant's ability to provide a detailed description of "action[s] or behavior" amounting to misconduct.¹²

Litigants who cannot afford a private court reporter are therefore at a disadvantage because they do not have a written record of their proceedings to help them recount these specific details, or to provide direct evidence of what occurred. Moreover, these litigants are frequently unrepresented and lack the ability to understand or articulate in their complaint the facts necessary to trigger Commission review. Because these litigants do not have a verbatim record to submit with their complaint, they run the risk of having their complaint dismissed based not on the strength of the claims but rather on their inability to articulate those claims.

Further, the Commission considers, as part of the decision whether to initiate an investigation of a complaint and then in the subsequent investigation, prior complaints against a judicial officer to assess whether

¹² (See Cal. Com. on Jud. Performance, Filing a Complaint, *supra*.)

the judicial officer has engaged in a pattern of misconduct.¹³ If determining the existence of misconduct without a transcript for a current complaint is difficult, making that determination for prior complaints where there is no transcript and witness recollection is vague or nonexistent, is far more difficult. Transcripts submitted with prior complaints would enable the Commission to more accurately assess whether the judicial officer has engaged in a pattern of misconduct.

Even when litigants manage to submit a complaint that escapes dismissal, a verbatim record remains crucial to fair adjudication of their claims. The “clear and convincing” standard of proof in Commission disciplinary proceedings poses an enormous, if not insurmountable, obstacle for complainants where there is no verbatim record. As the Commission has recognized, “it can be very difficult, if not impossible, to establish what was said and what occurred in the courtroom without any record of the proceedings.”¹⁴ Moreover, a pattern of misconduct, which can help satisfy the “clear and convincing” standard, may be even more difficult to show for past instances of judicial misconduct where there is no verbatim record and witness recollection may be faded or lost.

¹³ (See Com. to Review the Operations and Structure of the Com. on Jud. Performance, Report and Recommendations (Mar. 27, 2023), pp. 22, 24 [noting that “intake and investigating attorneys now routinely take potential patterns of misconduct into account when evaluating and investigating complaints” and that “investigating attorneys formulate case plans that, among other things, assess whether there is a potential pattern of misconduct to investigate”], available at <https://cjp.ca.gov/wp-content/uploads/sites/40/2023/03/REPORT.March2023-ADA.pdf> [as of Mar. 18, 2025].)

¹⁴ (CJP Letter, *supra*, p. 2.)

II. Inequities Resulting from the Lack of Verbatim Recordings Are Particularly Acute in Family Court Proceedings

The lack of verbatim recordings has a pronounced impact on family court matters, including those involving custody and domestic violence. According to a joint statement by the CEOs of California Superior Courts, “[o]ver 50% of the California courts have reported that they are unable to routinely [provide court reporters to] cover non-mandated case types including civil, family law and probate.”¹⁵ And the Commission on the Future of California’s Court system has reported that, in some courts, about 75% of family law litigants are unrepresented.¹⁶ In the case of domestic violence restraining orders filed in California, that figure has been reported to exceed 90%. (*In re Marriage of D.S. and A.S.* (2023) 87 Cal.App.5th 926, 934, citing *Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 861 & fn. 3.)

Moreover, family law proceedings—and particularly those involving domestic violence allegations in which the perpetrator is in the courtroom—present extraordinarily stressful situations for the victims or parents of victims who are unrepresented. It is unrealistic to expect unrepresented litigants in those circumstances to have a clear, detailed understanding of what happened. It is even more unrealistic to expect them to be able to set that forth in a complaint in a way that permits a

¹⁵ (Chad Finke et al., Joint CEO Statement Regarding Court Reporter Shortage Crisis in California (Nov. 2, 2022), p. 2, available at https://www.alameda.courts.ca.gov/system/files/general/11022022-joint-ceo-statement-re-court-reporter-shortage_.pdf [as of Mar. 18, 2025].)

¹⁶ (Com. on Future of California’s Court System, Report to the Chief Justice (2017), p. 240, available at <https://www4.courts.ca.gov/documents/futures-commission-final-report.pdf> [as of Mar. 18, 2025].)

determination that judicial misconduct may have occurred, rather than that the complainant was merely unhappy with the outcome (which may well be the primary focus of an unsophisticated, unrepresented litigant who has been subject to judicial misconduct).

In these cases, the lack of a verbatim recording is not merely an obstacle to meaningful evaluation of possible judicial misconduct, it effectively precludes it, and it does so at multiple stages of Commission proceedings. The lack of a verbatim recording in many if not most cases disables a family law litigant who has experienced judicial misconduct from filing a complaint that describes the misconduct in a manner sufficient to result in an investigation by the Commission. And even if the litigant manages to file such a complaint, the likelihood of providing evidence that there is a “high probability” that misconduct has occurred, as is required to meet the clear and convincing standard, is remote if not impossible. This is because the only evidence available would be the recollection of the litigant and of other witnesses, if any (who often were adverse to the litigant or were court staff). A verbatim transcript is therefore essential for the Commission to perform its function in these cases.

CONCLUSION

In sum, the convergence of the shortage of court-appointed court reporters and California’s law preventing electronic recording in most civil proceedings presents an often-insurmountable hurdle for litigants seeking review of judicial misconduct. Equally important, the absence of a recording of court proceedings prevents the swift and complete exoneration of judges by the Commission when appropriate. Allowing electronic

recording when litigants cannot afford to pay for a private court reporter and the court does not supply one would afford such litigants a fair opportunity to present complaints of judicial misconduct to the Commission and would enable the Commission to fairly adjudicate those claims.

For the reasons set forth herein, CJE respectfully requests that this Court grant relief as set forth in the Petition.

Dated: April 4, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the number of words contained in the foregoing *amicus curiae* brief, including footnotes but excluding the Table of Contents, Table of Authorities, the Application for Leave to File *Amicus Curiae* Brief, and this Certificate, is 2,368 words, as calculated using the word count feature of the program used to prepare this brief.

Dated: April 4, 2025

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I, Christy Marty Holdt, am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105.

On April 4, 2025, I served the document listed below on the interested parties in this action as follows:

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BRIEF AND BRIEF OF *AMICUS CURIAE* CENTER FOR
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2025, at San Francisco, California.

Christy Marty Holdt
(typed)

/s/ Christy Marty Holdt
(signature)

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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4/4/2025

Date

/s/John Douglass

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