IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MARY CUMMINS,
Plaintiff and Petitioner,

v.

AMANDA LOLLAR,
Defendant and Appellee

After a Decision by the Court of Appeal, Second Appellate District, Division Three, Case No. B251184

PETITION FOR REVIEW

Mary Cummins
Petitioner, Plaintiff, Petitioner In Pro Per
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SUPREME COURT OF CALIFORNIA

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: B251854

Case Name: Cummins v Lollar

Please check the applicable box:

☒ There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None

Mary Cummins
Signature of Party Submitting Form

Dated: April 3, 2015

Printed Name: Mary Cummins

Party Represented: Petitioner

IDENTITY OF PARTIES AND COUNSEL

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PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to rules 8.500(b) and 8.508 of the California Rules of Court, petitioner, Mary Cummins, respectfully requests this Court review the decision of the Court of Appeal, Second Appellate District, Division Three, which affirmed the Superior Court's order denying a restraining order for civil harassment stating Cummins did not provide the court with a reporter's transcript of the hearing i.e. adequate record, which showed bias, irregularities in the proceedings or that evidence was improperly excluded. A copy of the Appeal Court's Opinion filed February 23, 2015, is attached as Exhibit 1[1].

ISSUES PRESENTED

Review is sought pursuant to California Rules of Court 8.500 to settle an important question of law regarding whether the court failing to notify indigent petitioner pro se of her right to have a court reporter, that the court reporters had very recently been fired, that there was no court reporter, would therefore be no court transcript, refusing to allow

[1] Appeal Court Opinion http://www.courts.ca.gov/opinions/nonpub/B251854.PDF

petitioner to audio record the hearings to create a transcript or adequate record making appeal impossible, violated petitioner's rights to a fair trial.

NECESSITY FOR REVIEW

The Court should grant review to settle important questions of law concerning the effect of firing almost all court reporters in California Courts especially Los Angeles County Superior Court because of budget cuts without notifying parties leaving pro se indigent parties without a means of obtaining an adequate record making appeal impossible which violated petitioner's right to a fair trial.

ARGUMENT

This case presents important issues regarding rights to a fair trial after the State fired the court reporters without notifying parties or providing other means for a transcript, adequate record, making these cases unappealable.

The Second Court of Appeal's Opinion stated "Cummins has not shown any error with respect to the July 1, 2013 order denying her petition for injunction prohibiting harassment and awarding attorney fees to Lollar. It is rudimentary that an Appellant must affirmatively show error by an adequate

record. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 628, p. 704.) Cummins has not provided this court with a reporter's transcript of the July 1, 2013 hearing. On the record presented, there is no support for Cummins' contentions that the trial judge was biased, that there were irregularities in the proceeding or that evidence was improperly excluded." (Op p 4, item 1)

I. **Review is Required Because The Lack Of A Transcript, Adequate Record, Was Not The Fault of Petitioner But The Court Which Is Proof Of Denial Of A Fair Trial**

Petitioner was not notified that all the court reporters had been fired before the July 1, 2013 hearing. The court, court coordinator and Judge did not notify anyone in the courtroom or before about the lack of a court reporter before the hearing. Even if Petitioner had been notified that there were no court reporter, Petitioner pro se who is not an attorney was not notified than an appeal is impossible without the transcript if the Clerk does not write honest and accurate minutes. Petitioner could never have foreseen that the Judge would not rule fairly or that the Judge and Clerk would not write accurate notes in the order. Petitioner was not notified of her rights as per the court order. Petitioner did not waive her right to a court reporter or other means of recording the hearing. This alone is proof that

Petitioner did not receive a fair trial. Petitioner was deprived of a transcript by the court which is needed for appeal.

At the subsequent hearing to reconsider the denial Petitioner gave notice in her motion that Petitioner would record the hearing which is Petitioner's right as per California Rules of Court, Rule 1.150 (d)[2]. Petitioner began to record the hearing with a small "inconspicuous personal recording device" of "high quality" when Judge Goodson told her she was not allowed to record. On the audio recording Petitioner clearly states she must record as there are no court reporter[3]. The Judge may only not allow recording if it interferes with the courtroom which this device did not California Rules of Court, Rule 1.150 (d). Then the Judge ordered the Court Deputy Sheriff M Lewis to take the recording device from Petitioner preventing Petitioner from having any audio notes to recreate a transcript or settled statement for this Court.

After realizing there was no transcript Petitioner who took very accurate written notes in the July 1, 2013 hearing included exact quotes from the Judge in her motion to reconsider. The Judge and Appellee received copies of all filings in this appeal. Neither the Judge nor the Appellee ever stated

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[2] http://www.lacourt.org/newsmedia/uploads/14201410894656CRC1.1502014.pdf

[3] Audio recording of second hearing http://www.marycummins.com/judge_carol_boas_goodson.mp3

that what was written in the motion by Petitioner was not accurate. They did not contradict the facts as stated by Petitioner even though they were presented with the opportunity to do so. In fact in Respondent's reply to Petitioner's motion to reconsider Respondent stated "Judge (sic) Goodman denied the RRO on the face of the application itself." Respondent admits that Judge Goodson prejudged the case by denying the RRO on the face of the application itself. If Petitioner had falsely quoted what the Judge said in Petitioner's written document, the Judge would have struck the document and sanctioned Petitioner for perjury and fraud. That didn't happen and is not included in the court order.

All LA courtrooms had and still have "Electronic Recording Monitors." This courtroom was able to record the hearings in question as per the stamp on the top right corner of the July 1, 2013 order. This courtroom records the hearings if a pro tem Judge is over seeing the hearing that day as per court Deputy Sheriff M Lewis. The Judge may also record the proceedings for any other purpose as per California Rules of Court 1.150 (c). The Judge and/or Court Clerk could have turned on the recording device knowing that there is no court reporter and no order can be appealed without one if the Clerk does not take honest and accurate

minutes. The Court failed to do so. "The judiciary is responsible for ensuring the fair and equal administration of justice."

While sufficient evidence was put forth in Petitioner's motions in this case the Appeals Court ruled based on the court order alone as there was no transcript. It was a one page order[4] (Exhibit 2) which stated "The court finds that the petition, on its face, does not rise to the level of the issuance of an Injunction. Oral argument taken from the petitioner. The Petition For Injunction Prohibiting Harassment is denied." Petitioner was not allowed to give oral argument or present any evidence. If the Court will rule on only what is written in the court order, they must also rule based on what is not included in the court order and not assume that Petitioner was notified of her right to a court reporter, recording of the hearing and a transcript. The court order did not state "Parties were advised there was no court reporter so there will be no transcript. Parties were advised of the necessity of a transcript for appeal. Parties waived their rights to a court reporter and transcript. Parties were advised that they could record the hearing. Parties waived the right to record the hearing." As this was not in the court order, Petitioner did not waive her rights to a court reporter, transcript or audio.

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[4] Court Order July 1, 2013 hearing http://www.courts.ca.gov/opinions/nonpub/B251854.PDF

Petitioner is borrowing a friend's iPhone. It has the ability to record the hearing in high quality. This phone was used to make the recording at the second hearing which is linked above. It would have been sufficient to record the entire proceedings as you can clearly hear the Judge and Petitioner. If Petitioner was notified of her rights at the first hearing, Petitioner could have instantly recorded the hearing on the iPhone. Petitioner could have recorded the first hearing had Petitioner been advised of her rights. Just because Petitioner didn't have a court reporter does not mean she waived her right to one. If Petitioner had been notified of the issues with a court reporter, Petitioner could have requested a continuance of two weeks to try to find a solution to the problem.

Even if Petitioner were advised that there was no court reporter at the July 1, 2013 hearing, Petitioner would not have been able to afford one. Petitioner would have had to find a pro bono reporter. There is currently no system in place to provide court reporters for indigent pro se civil parties. Petitioner has claimed indigency in waiving the fees on appeal. To deprive an indigent pro se person of a court reporter would deprive that person of a fair trial.

While the court order falsely states "Oral argument taken from the petitioner" the court order does not state that "Petitioner showed evidence and exhibits to the court." Petitioner was not allowed to show evidence to the court even though she came prepared with audio, video and written evidence of harassment, assault and police reports from crimes committed by Appellee against Petitioner. Not being able to show any evidence deprived Petitioner of a fair trial.

Petitioner had no other way to provide the Appeals court with a record of the hearings. If Petitioner had requested a settled statement, Appellee's attorney Dean Rocco would have refused. Rocco was not returning any of Petitioner's emails and still doesn't. If Petitioner had been allowed to record, Petitioner would have been able to make a transcript for review and agreement with the recording. The hearings were extremely short and Appellee did not even show for any of them.

All people have the right to a fair trial especially if they will be deprived of life, liberty or property without due process of law (Fifth Amendment of the United States Constitution). In this case Petitioner was ordered to pay Appellee $6,350 within 90 days. Petitioner could be seen in violation of this court order and could be incarcerated until she pays the amount. As

Petitioner is indigent this could be for an indefinite time. In this case Appellees stated in appeal documents they will spend $144,000 to write their 14 page reply to this appeal. Petitioner could then possibly be owing at least $150,000 just for trying to get a stay away, don't communicate order against Appellee who has been harassing, stalking, threatening to kill, committing crimes against Petitioner for the past four years as evidenced by multiple police reports. "The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand." (Pratt v. Pratt (1903) 141 Cal. 247, 252.)

The lack of record of the trial court's hearings is a fundamental error which deprived Petitioner of her constitutional rights to due process as well as other statutory rights. Petitioner argues that the failure to record these proceedings resulted in the lack of an adequate record on appeal, and therefore violated the Petitioner's due process and trial rights under the Fifth, Sixth, Eighth and Fourteenth Amendments, as well as the applicable statutes. There is no legal support for the proposition that a defendant forfeits an issue on appeal by failing to anticipate that an officer of the court

will overstep his or her authority in a way that results in profound violations of the defendant's constitutional rights.

Defendant is entitled to a record sufficient to permit adequate and effective appellate review. (RB 91, citing People v. Rogers, supra, 39 Ca1.4th at p. 857, and Griffin v. Illinois (1956) 351 U.S. 12, 16-20.) The lack of a transcript is not adequate to permit effective review.

In (People vs Bradford (2007) 154 Cal.App.4th 1390) part of a trial was not recorded. Petitioner showed that "no record sufficient to permit meaningful review could be prepared, for reasons attributable to the State." "At a minimum the lack of a record compounds the lack of confidence society can have in the integrity of the proceedings. A record is critical to ensure adequate appellate review and a fair process." The judgment was reversed.

The trial judge has a "duty to see that a miscarriage of justice does not occur through inadvertence." Lombardi v. Citizens Nat. Trust & Sav. Bank (1951) 137 Cal App.2d 206, 209, [289 P.2d 8231].

In (Fickett v. Rauch , 31 Cal.2d 110[5]) the court reporter died before a transcript could be made from reporter's notes. Petitioner requested a new

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[5] http://scocal.stanford.edu/opinion/fickett-v-rauch-26026

trial as there was no transcript and was denied. Petitioner appealed and Appeals court ruled that the motion should have been granted because "Petitioner was denied a fair trial due to lack of a transcript" and reversed the order.

In this case Petitioner had included exactly what was said, a statement of the evidence, in the July 1, 2013 hearing in her motion to reconsider which is part of the court record. Petitioner tried to create a satisfactory record. Appellee has never stated that Petitioner's record was not accurate. Appellee never objected to Petitioner's statement of the evidence in court documents. This clearly shows reversible error affirmatively appearing on the face of the record - which, in this situation includes reversible error due to the lack of an adequate record.

The lack of court reporters in California court rooms "undermines the administration of justice in court proceedings in California,"[6] (Exhibit 3) as stated by Director, Chief Counsel Victoria B. Henley of the official California Commission on Judicial Performance in her letter to Governor Brown. Henley stated February 2012 when the court reporter layoffs first started that half of her investigations had no transcript. Most Judges Henley

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[6] https://judicialcouncilwatcher.files.wordpress.com/2012/03/letter-2-29-12-1.pdf

investigated were reported for inappropriate behavior in the court room. Henley goes on to tell the Governor "action should be taken to ensure when the court reporters are released another means of creating a record is provided." Henley continues "the use of private court reporters hired by one party in litigation raises numerous concerns, including the questionable admissibility of the transcript as an official court record and access to justice for those with limited financial means." Even if Petitioner found a pro bono reporter who recorded the transcript, that transcript might not be admissible as it would not be the "official" court record but just one party's recording. The State's own oversight commission stated the lack of court reporters "**undermines the administration of justice in court proceedings**." In this case Petitioner was never even notified there was no court reporter as evidenced by the lack of inclusion of this in the court order.

The "lack of an adequate record" is itself an error; It was the court's responsibility to make that record or to inform Petitioner that there was no court reporter so there would be no transcript and no possibility to appeal, and it failed to do so. Petitioner never gave up her right to a court reporter,

transcript or ability to appeal as a statement to this effect is not included in the court order. This is a fundamental error.

The Appeals court released their opinion on this case February 23, 2015 affirming the Superior Court's order. The reason for affirming the order was that the Appeals Court must rely on the written record of the court if there is no transcript which says otherwise. In this case there was no transcript through no fault of the Petitioner but the Court.

CONCLUSION

"The cumulative effect of the trial judge's conduct requires reversal." (People v. Sturm, supra, 37 Cal.4th at p. 1243.) "The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand." (Pratt v. Pratt (1903) 141 Cal. 247, 252.)

A trial that cannot be appealed is not a fair trial. The case could not be effectively appealed because there was no court transcript through no fault of petitioner. Petitioner was never notified that there was no reporter, would be no record. Petitioner was also not allowed to audio record the hearing even though the court allows it.

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Therefore, Petitioner requests that this Court grant review.

Respectfully submitted,

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Petitioner In Pro Per
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mmmaryinla@aol.com

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1)

Pursuant to California Rule of Court 8.504(d), I certify that the text of this brief is 2,730 words which is fewer than the allowed 8,000 words. In so certifying, I am relying on the word count of Apple iPages, the computer program used to prepare this brief.

DATED: April 3, 2015

Respectfully submitted,

By Mary Cummins

Mary Cummins
Petitioner in Pro Per

PROOF OF SERVICE BY MAIL
(FRCivP 5 (b)) or
(CCP 1013a, 2015.5) or
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

PETITION FOR REVIEW

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

Dean Rocco
Wilson Elser Moskowitz Edelman & Dicker LLP
555 S. Flower Street - Suite 2900
Los Angeles, CA 90071-2407

Los Angeles County Superior Court
Judge Carol Boas Goodson, Dept 75
111 North Hill St.
Los Angeles, CA 90012

Second District Court of Appeals
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

///

Executed this day, April 3, 2015, at Los Angeles, California.

Respectfully submitted,

Mary Cummins, Plaintiff
Dated: April 3, 2015
645 W. 9th St. #110-140
Los Angeles, CA 90015

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MARY CUMMINS, Plaintiff and Appellant, v. AMANDA LOLLAR, Defendant and Respondent.	B251854 (Los Angeles County Super. Ct. No. BS143169)

APPEAL from an order of the Superior Court of Los Angeles County, Carol Boas Goodson, Judge. Affirmed.

Mary Cummins, in pro. per., for Plaintiff and Appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker and Dean A. Rocco for Defendant and Respondent.

Plaintiff and appellant Mary Cummins (Cummins), in propria persona, appeals an order denying her petition for injunction prohibiting harassment by defendant and respondent Amanda Lollar (Lollar).

On the record presented, we perceive no error and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Proceedings which are the subject of the notice of appeal.*

On May 24, 2013, Cummins filed an application for a temporary restraining order (TRO) to enjoin harassment by Lollar. On the same day, the trial court issued a TRO, scheduled to expire at the end of the hearing scheduled for June 14, 2013.

On July 1, 2013, the matter came on for hearing. There is no reporter's transcript of the hearing. However, the minute order indicates Cummins was sworn and that she presented testimony and oral argument. Thereafter, the trial court denied Cummins's petition for an injunction prohibiting harassment, granted Lollar's request for attorney fees and ordered Cummins to pay Lollar's counsel the sum of $6,350 within 90 days. (Code Civ. Proc., § 527.6, subd. (r).)

On September 30, 2013, Cummins filed notice of appeal, specifying the July 1, 2013 "judgment after court trial."[1] [2]

2. *Events subsequent to the July 1, 2013 hearing and order.*

On July 16, 2013, Cummins filed a motion for reconsideration.

On August 15, 2013, Cummins filed an amended motion for reconsideration, which included a request for a new trial before a different judge.

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[1] The July 1, 2013 order is appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(6), which provides an appeal lies from "an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction."

[2] It does not appear Cummins either served or was served with a document entitled "Notice of Entry" of the July 1, 2013 order. Therefore, the notice of appeal is timely because it was filed within 180 days of entry of the July 1, 2013 order. (Cal. Rules of Court, rule 8.104(a).)

On August 16, 2013, the trial court denied the motion for reconsideration, finding it failed to show "new or different facts, circumstances, or law to substantiate a reversal of this court's order. [Cummins's] disagreement with the law is not sufficient."

On August 28, 2013, Lollar filed a motion to deem Cummins a vexatious litigant, supported by an extensive request for judicial notice of state court records in California and Texas pertaining to Cummins's litigation activity.

On September 5, 2013, Cummins filed an affidavit of prejudice/peremptory challenge to Judge Goodson, who made the July 1, 2013 ruling.

On September 6, 2013, the trial court struck the affidavit of prejudice as untimely.

On September 20, 2013, Cummins filed a statement of disqualification, alleging "extreme prejudice and bias" on the part of Judge Goodson.

On September 27, 2013, the trial court struck the statement of disqualification.[3] It also denied Lollar's motion to declare Cummins a vexatious litigant, finding "there is not enough evidence, at this time, to declare [Cummins] a vexatious litigant."

As set forth above, on September 30, 2013, Cummins filed notice of appeal, specifying the appeal was from the July 1, 2013 order denying her petition for an injunction prohibiting harassment.

CONTENTIONS

Cummins contends: the trial judge's bias denied her constitutional due process; a new trial is warranted due to irregularities in the proceeding and the trial judge should have been recused; and the trial court's exclusion of evidence constituted an error of law requiring a new trial.

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[3] On October 4, 2013, Cummins filed a petition for writ of mandate seeking to overturn the September 27, 2013 order striking the statement of disqualification. This court denied the petition on October 30, 2013.

DISCUSSION

1. *Cummins has not shown any error with respect to the July 1, 2013 order denying her petition for injunction prohibiting harassment and awarding attorney fees to Lollar.*

It is rudimentary that an appellant must affirmatively show error by an adequate record. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 628, p. 704.) Cummins has not provided this court with a reporter's transcript of the July 1, 2013 hearing. The narrative in her briefs is supported only by citations to her own various filings below. On the record presented, there is no support for Cummins's contentions that the trial judge was biased, that there were irregularities in the proceeding or that evidence was improperly excluded.

It is a "cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. [Citation.] '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." ' [Citation.] This general principle of appellate practice is an aspect of the constitutional doctrine of reversible error. [Citation.] ' "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." ' [Citation.] 'Consequently, [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 [appellant].' [Citation.]" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

In sum, on the record presented, the July 1, 2013 denial of Cummins's petition for an injunction prohibiting harassment, and the award of attorney fees to Lollar, are presumed to be correct and must be affirmed.

2. *Rulings subsequent to the July 1, 2013 order.*

a. *Denial of disqualification request.*

Cummins contends the trial court erred in denying her request to disqualify the trial judge.

Although Code of Civil Procedure section 170.3, subdivision (d), provides "[t]he determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate," the statute "does not bar appeal from a final judgment on constitutional grounds of judicial bias." (*Tri Counties Bank v. Superior Court* (2008) 167 Cal.App.4th 1332, 1339.)

Here, however, Cummins's appellate contention of judicial bias is without support in the record and therefore requires no discussion.

b. *Denial of motion for reconsideration.*

Code of Civil Procedure section 1008, subdivision (g) provides: "An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." Accordingly, the August 16, 2013 order denying Cummin's motion for reconsideration of the July 1, 2013 order is appealable.

In denying reconsideration, the trial court ruled "the motion does not comply with Code of Civil Procedure section 1008. [Cummins] did not provide new or different facts, circumstances, or law to substantiate a reversal of this court's order. [Cummins's] disagreement with the law is not sufficient."

On appeal, Cummins does not contend she presented "new or different facts, circumstances, or law," at the time she sought reconsideration. (Code Civ. Proc., § 1008, subd. (a).) Therefore, Cummins cannot show the trial court erred in denying reconsideration.

c. *Denial of "request" for new trial.*

An order denying a motion for new trial is nonappealable but may be reviewed on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan*

Transportation Authority (2005) 35 Cal.4th 15, 18.) Therefore, the August 16, 2013 order denying a new trial is reviewable on the appeal from the July 1, 2013 order.

The record reflects that Cummins did not file a notice of intention to move for a new trial, in accordance with Code of Civil Procedure section 659, subdivision (a). Rather, she merely included a "request for new trial" in the context of her "amended motion [for] reconsider[ation]" of the July 1, 2013 order. This revised motion, filed August 15, 2013, was merely an amendment to the previously filed motion for reconsideration (motion filed July 16, 2013), a reconsideration motion which was scheduled to be heard on August 16, 2013.

The statutory notice of intention to move for a new trial, required by Code of Civil Procedure section 659, is essential to the court's jurisdiction to grant a new trial. (*Tabor v. Superior Court* (1946) 28 Cal.2d 505, 507-508.) On August 16, 2013, the trial court did not have before it a proper motion for new trial. Therefore, we reject Cummins's contention the trial court erred in denying her request for a new trial.

DISPOSITION

The July 1, 2013 order is affirmed. Lollar shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/01/13			DEPT. 75
HONORABLE CAROL BOAS GOODSON	JUDGE	S. CHARLES	DEPUTY CLERK
HONORABLE #2	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
M. LEWIS	Deputy Sheriff	NONE	Reporter

8:30 am	BS143169	Plaintiff Counsel	IN PROPRIA PERSONA
	MARY KATHERINE CUMMINS-COBB		
	VS	Defendant Counsel	DEAN A. ROCCO
	AMANDA LORRAINE LOLLAR		

NATURE OF PROCEEDINGS:

harassment
Hearing on Petition for Injunction Prohibiting

The above entitled matter is called for hearing.

The petitioner is sworn.

The court finds that the petition, on its face, does not rise to the level of the issuance of an Injunction.

Oral argument taken from the petitioner.

The Petition For Injunction Prohibiting Harassment is denied.

Counsel for the respondent's motion for attorney fees is granted. The petitioner is ordered to pay the Law offices of Jackson/Lewis, the sum of $6,350.00, within ninty (90) days.

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
FAX (415) 557-1266
Web Site: http://cjp.ca.gov

February 29, 2012

Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

Honorable Darrell Steinberg
Senate President pro Tem
State Capitol, Room 205
Sacramento, CA 95814-4900

Honorable Tani Cantil-Sakauye
Chief Justice of California
Supreme Court
350 McAllister Street
San Francisco, CA 94102

Honorable John A. Pérez
Speaker of the Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0046

Dear Governor Brown, Chief Justice Cantil-Sakauye, Senator Steinberg, and Speaker Pérez:

This letter is written at the request of the Commission on Judicial Performance to alert you to a problem that the commission believes impairs its ability to fulfill its mandate to protect the public, and undermines the administration of justice in court proceedings in California. It involves decreased reporting of court proceedings in California's courts of record. The commission takes no position on how the problem should be fixed but urges, for the public's protection, that the problem be addressed and resolved.

In summary:

- Some courts are cutting costs by terminating court reporters. Nothing requires courts to replace court reporters with another means of recording proceedings. As a result, there are fewer official records of court proceedings in California's courts of record.

- The Commission, which is responsible for investigating and disciplining misconduct by state court judges, is held to a clear and convincing evidence standard in its cases. Without any record of the proceedings, it can be difficult, if not impossible, to establish what occurred in the courtroom, where 95% of the complaints to the Commission each

year originate. In December 2011, there were transcripts or recordings in only half of the Commission's pending investigations that involve courtroom conduct.

- California, ordinarily a leader in the administration of justice, is falling behind other states in which the public is protected and the administration of justice is preserved by recording *all* court proceedings.

- At a minimum, action should be taken to ensure that when court reporters are released, another means of creating an official record is provided.

These points are addressed in greater detail in the remainder of this letter.

As California's budget crisis has persisted and trial court funding was reduced, trial courts individually began to impose measures to achieve cost reductions, including termination of the services of court reporters. According to news reports, in October, 15 court reporters were laid off in Alameda County; in November, San Francisco Superior Court laid off 22. The website of the California Official Court Reporters Association states that Santa Cruz County Superior Court pulled reporters from civil courts in 2010, and, as of October 2011, reporters were being laid off in Napa and Marin, and warnings of imminent layoffs were being made in Los Angeles and Ventura.[1] In some counties, litigants in civil proceedings and their counsel are being told to bring their own reporters if they want a record of the proceedings.[2] If the trend continues towards decreased reliance upon court reporters without the substitution of other means of creating an official record, court reporters will be used only in the proceedings required by law to be reported, and there will be no official record – electronic or otherwise—of any other court proceedings.

As you are all aware, the Commission on Judicial Performance is the body constitutionally charged with responsibility to investigate and discipline misconduct by state court judges. Each year, 95 percent of the complaints submitted to the commission concern conduct by judges in the course of performing judicial duties in court proceedings. Because the standard of proof in commission disciplinary proceedings is clear and convincing evidence, 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. Over the past decade, there were six cases in which judges were removed from office for conduct involving courtroom proceedings. In five of those cases, there were transcripts or recordings of the proceedings that substantiated the charges of misconduct. Similarly, over the same period, in six of the seven cases in which judges were censured for

[1] http://cocra.org/
[2] (Foster, *Laid-Off Reporters Organize, Get Backing of Judges and Bar*, S.F. Recorder (Oct. 5, 2011).)

conduct that involved courtroom proceedings, there were transcripts or recordings of the proceedings.

A review of pending investigations involving court proceedings at the commission's December 2011 meeting revealed, however, that transcripts or recordings exist in only half of the cases, which means that it may not be possible to establish with certainty whether or not misconduct occurred in half of the cases. The absence of transcripts or recordings thus impedes the commission in determining that misconduct has occurred and in protecting the public from abusive judges. Equally important, the absence of a record of court proceedings prevents the swift and complete exoneration of judges by the commission when appropriate.[3] In addition to causing anxiety for judges, prolonged investigations also increase their defense costs. For the commission – which has operated for the past several years with a 25 percent reduction in staffing – other investigations are inevitably delayed, when extensive interviews must be conducted because a transcript or recording is not available. This situation will become more extreme if fewer court proceedings are reported.

Ironically, California, ordinarily a leader in the administration of justice, is falling behind other states in which the public is protected and the administration of justice is preserved by recording *all* court proceedings. Some might argue that this is easier to accomplish in smaller states, yet in New York, a jurisdiction with twice as many judges as California, all proceedings are reported in courts of record and, since 2008, even the 1,200 courts that are not courts of record have been mandated to audio record all proceedings, on equipment furnished by the Office of Court Administration. That office also provides remote transcription assistance when necessary to make an actual transcript. Similarly, Utah passed legislation in 2010 requiring all justice, county and municipal courts to audio record proceedings starting July 1, 2012. Proceedings in all Utah state courts – the Supreme Court, Court of Appeals, district courts and juvenile courts – are already reported. Court reporters and video reporting in those courts are being phased out in favor of audio reporting. Other states in which all court proceedings are recorded include Alaska, Maryland, Massachusetts, Missouri, New Hampshire and New Jersey. Where audio recordings are easily made available, our counterparts in other jurisdictions report that they are able to quickly obtain and review the recordings and make a prompt determination whether an investigation is necessary, thereby avoiding unnecessary and prolonged proceedings.

In California, we are aware of nothing that requires courts to replace court reporters with any other means of reporting proceedings, unless a record is prescribed by law. We are also aware of nothing that requires consistency in how trial courts address this problem.

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[3] Commissions in states that have reporting of all proceedings, particularly audio proceedings, generally bear out our own experience that a record of court proceedings exonerates the judge more often than not.

The effect on commission proceedings is obviously not the only negative impact of decreased reporting of court proceedings in California. The elimination of reporting of court proceedings is likely to increase the workload of the trial courts and further delay both trial court and appellate proceedings. Without any official record, the trial courts will be required to produce settled statements in those cases in which appeals are taken, a time-consuming and imprecise process at best. The use of private court reporters hired by one party in litigation raises numerous concerns, including the questionable admissibility of the transcript as an official court record and access to justice for those with limited financial means. The public's confidence in the courts is also undermined. For instance, in a complaint submitted to the commission in October 2011, the complainant wrote: "Also, I feel there's misconduct also of the court due to, I was just informed when I was trying to get a recording of that hearing [], that there was no recording nor transcripts! Well how handy."

This problem should be addressed before the administration of justice in California is further compromised, in the commission's cases as well as in judicial proceedings. At a minimum, action should be taken to ensure that when court reporters are released, another means of creating an official record is provided.

The commission appreciates your consideration of its concerns and will provide any additional information that might be helpful to you.

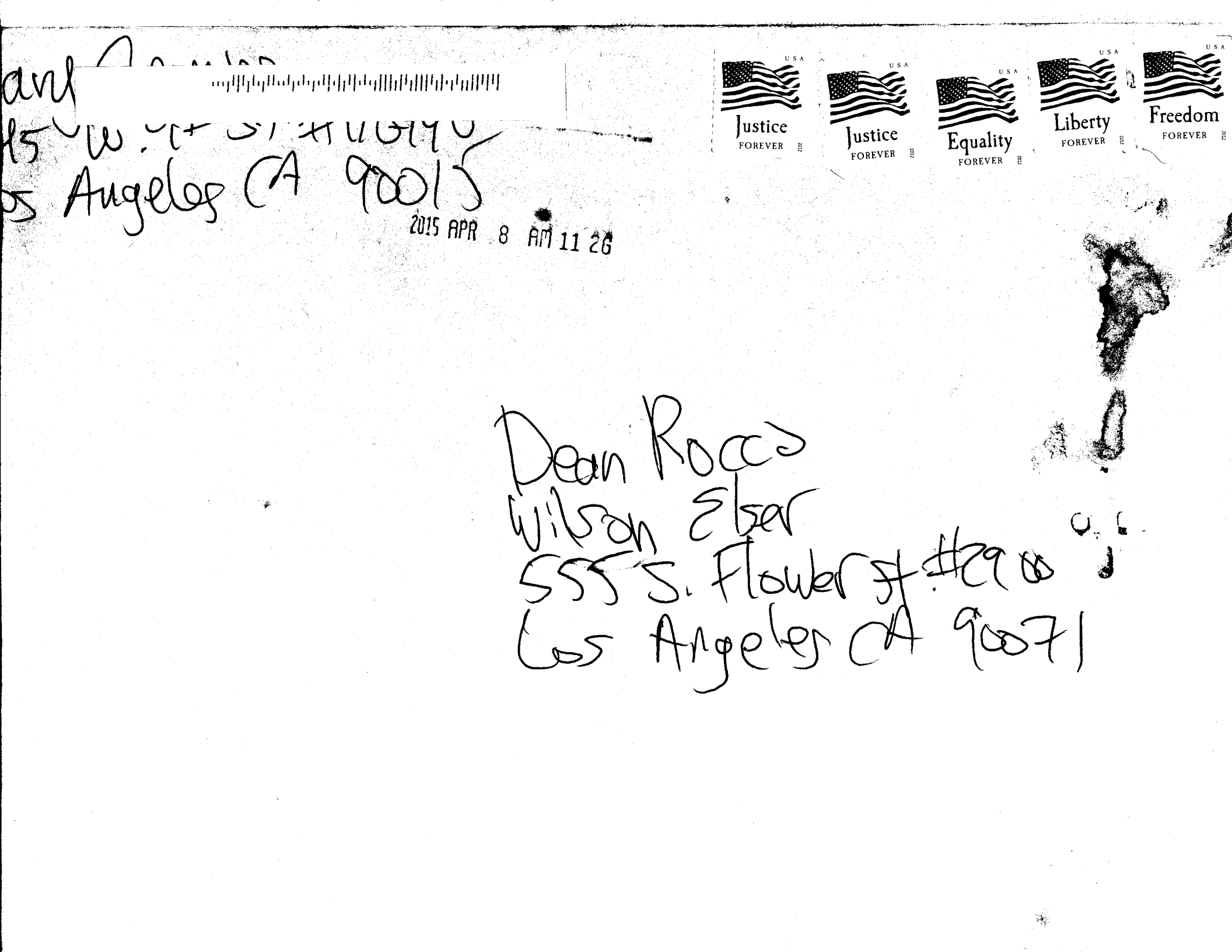
Very truly yours,

Victoria B. Henley

Victoria B. Henley
Director-Chief Counsel

VBH:ng

cc: Joseph L. Dunn, Executive Director
State Bar of California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