

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Brummett v. Martinez

Brummett · No. 1:21-cv-00086-BAM (PC) · Decided May 15, 2025

SUMMARY

The Eastern District of California grants a pro se prisoner’s request for copies of documents comprising the excerpts of record in his appeal. The court directs preparation and delivery of specified pretrial, motions in limine, and trial transcripts at government expense under 28 U.S.C. § 753(f), certifies that the appeal is not frivolous, and strikes prior transcript request forms.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 15, 2025
DOCKET	1:21-cv-00086-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	In a prisoner civil-rights action under 42 U.S.C. § 1983, after a jury returned a verdict for Defendant and Plaintiff noticed an appeal to the Ninth Circuit, Plaintiff moved for free copies of transcripts and documents needed to prepare his appellate brief.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Melvin Ray Brummett, Jr. v. Martinez

TOPICS

- appellate procedure
- costs
- prisoners rights
- civil rights
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- prisoner civil rights
- government-funded transcripts

QUESTIONS PRESENTED

1. Whether a pro se prisoner proceeding in forma pauperis on appeal was entitled under Ninth Circuit Rule 30-3 to copies of documents and transcripts needed to prepare his appellate brief.
2. Whether the district court should certify under 28 U.S.C. § 753(f) that the appeal was not frivolous and approve preparation of the requested transcripts at government expense.
3. Whether previously filed transcript request forms should be stricken in light of the amended order.

HOLDINGS

1. A pro se prisoner proceeding in forma pauperis on appeal is entitled under Ninth Circuit Rule 30-3 to copies of documents comprising the excerpts of record for preparing an appellate brief, at no charge.
2. The district court may approve transcript preparation at government expense when the appeal is not frivolous and presents a substantial question, and the requested transcripts are needed to decide the appellate issues.
3. The previously filed transcript request and amended transcript request forms were properly stricken because the amended order superseded the prior order and independently resolved the transcript request.

KEY QUOTATIONS

“The district court has the power to order a free transcript furnished if it finds that the suit . . . is not frivolous and the transcript is needed to decide the issue presented . . .” (at 2)

“As these proceedings were preserved in audio format only, a transcript is needed for Plaintiff to fully brief these issues on appeal.” (at 2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a § 1983 action. After a two-day jury trial, the jury found in favor of Defendant Martinez, and Plaintiff appealed. Plaintiff sought transcripts of pretrial, motions-in-limine, and trial proceedings because his appeal challenged discovery-related rulings and those proceedings had been recorded only in audio format.

PROCEDURAL HISTORY

The case proceeded to a jury trial on October 16 and 17, 2024, and the jury returned a verdict for Defendant. Judgment was entered, and Plaintiff filed a notice of appeal on November 1, 2024; the appeal was assigned Ninth Circuit Case No. 24-6736. The district court granted Plaintiff’s request for transcripts, certified under 28 U.S.C. § 753(f) that the appeal was not frivolous as to the identified issue, approved transcript costs at government expense, and struck prior transcript request forms.

DISPOSITION

other

CASES CITED

- Henderson v. United States, 734 F.2d 483, 484 (9th Cir. 1984)
- Pembroke v. Wilson, 370 F.2d 37, 39 (9th Cir. 1966)
- Randle v. Franklin, No. CV-08-00845-JAT, 2012 WL 201757, at *2 (E.D. Cal. Jan. 23, 2012)
- United States v. MacColloum, 426 U.S. 317, 325 (1976)

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