

# WESTERN CENTER ON LAW AND POVERTY

## MEMORANDUM

To: People Interested in Access to Courts Issues  
From: Dick Rothschild  
Date: December 13, 1999  
Re: Update V

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### **IFP Issues: Reapplication Requirements**

1. In another context, the belief of certain judges and court clerks that our clients will escape poverty might be considered heart-warming. Unfortunately, the belief has been converted to a presumption in some courts. The Shasta County unified courts have enacted a rule requiring a person who has obtained a fee waiver to reapply each year that the litigation continues. The basis for the local rule is Government Code Section 68511.3(c), which permits a court to authorize a clerk to be examined by the court "provided that no litigant shall be required to appear more than once in any four-month period."

John Gianola of Legal Services of Northern California is attempting to negotiate with the court to resolve certain ambiguities in the local rule, such as whether litigants have a sua sponte duty to reapply or whether instead the court should notify the litigants every year.

2. David Jones, also a LSNC attorney, reports that Yolo County's unified courts have a similar rule, but the indigent litigant need only reapply for IFP status every three years.

3. In a similar vein, the Court of Appeal for the Third Appellate District requires a new application for waiver of appeal fees when the litigant files a second appeal in the same case.

### **IFP Issues: Deeming**

4. Those of you who thought you could permanently avoid the types of issues litigated by AFDC nerds by staying away from welfare law may be in for a surprise. Judges and court clerks considering IFP applications have discovered "deeming." The Presiding Judge of the Kern County Superior Court, after a hearing with live testimony, denied a fee waiver for an indigent young adult because he lived with his father, who receives a social security check. Roy Malahowski of Greater Bakersfield Legal Services has filed a writ.

5. In a similar vein, John Gianola of LSNC reports that in Lassen County Superior Court dissolutions, the collection officers impute as income to an indigent spouse the value of the property in which she has a community property interest.

### **IFP Issues: Sliding Scale**

6. Fresno County Superior Court is utilizing a "sliding scale" rationale to impose court fees on an indigent litigant. A litigant represented by Jack Daniel of Central California Legal Services had income lower than the one-person AFDC grant, which made the litigant automatically eligible for IFP status under Government Code Section 68511.3(a)(6)(B). The trial court determined, nonetheless, that Jack's client could afford to pay \$103 out of a \$182 filing fee.

CCLS has filed a writ in the Court of Appeal. Though that court has not acted yet, there is one encouraging sign: the \$250 filing fee for the writ was waived.

### **IFP Issues: Securing Attendance of Peace Officer**

7. Government Code §§68096.1 - 68096.5 require litigants who subpoena a peace officer to reimburse the public entity for the officer's salary. Section 68097.55 permits a court to relieve a party of this duty "for good cause shown, including the fact that the party is proceeding in forma pauperis". A Kern County Superior Court judge, however, refused to waive fees for an indigent; the court's only explanation was that it had discretion whether or not to waive the fees.

### **IFP Issues: Old Dogs, Old Tricks**

8. Some branches of the Administratively Unified Courts of Los Angeles County are ignoring (or never read) the Courts' April 11, 1994 announcement (previously reported here) to begin obeying the law. In these courts, clerks (not courts) are denying IFP applications and refusing to file accompanying papers; and both clerks and courts are seeking forms of proof for public assistance status that do not exist. Catherine Grant of Community Legal Services, Norwalk and Rod Field, Legal Aid Foundation of Los Angeles, are working to bring these courts into line. There has been some success: Compton Superior Court Judge Enrique Romero has distributed one of Catherine's letter to fellow judges and clerks "so that they take into account your position in making such determinations consistent with the California Rules of Court, other statutes and case law." In addition, the Hungtington Park Municipal Court has agreed to rescind onerous documentation requirements that had been adopted in August of 1994.

### **Interpreters**

9. At the last meeting of the directors of litigation, there were reports of unqualified interpreters in small claims court in Alameda County and some of the counties served by LSNC. Tony White of CRLA (415-777-2752) may not remember it, but he volunteered a while ago to serve as a coordinator for persons concerned about interpreter issues.

10. The small claims courts in San Francisco had no foreign language interpreters at all until San Francisco Neighborhood Legal Assistance Foundation complained. The policy has now been changed. Interpreters are required in small claims actions under Gardiana v. Small Claims Court, 59 Cal.App.3d 412 (1976).

### **Catch 22 for Abused Minors: Possible Legislative Solution**

11. Low income minors who need temporary restraining orders to protect themselves against violence sometimes never get their day in court. The minors can rarely obtain counsel or sue on their own behalf. A minor can only appear in court through a guardian ad litem, but under current law a non-attorney may not represent the minor in such a capacity. In J.W. v. Superior Court, 17 Cal.App.4th 958, 22 Cal.Rptr.2d 527 (1993), the Court of Appeal held that the State Bar Act prohibited a non-attorney guardian ad litem from representing her son in a paternity action.

In some jurisdictions, J.W. has been interpreted to bar minors from protecting themselves in court. Other courts have ignored J.W. in the interest of protecting minors' safety.

The problem may be resolved through legislation approved by the State Bar Conference of Delegates and soon to be introduced in Sacramento. The legislation would specify that a minor, accompanied by a duly appointed guardian ad litem, may appear in court without counsel to obtain an order protecting her against harassment or violence. Contact Terry Villa McDowell of the Legal Aid Foundation of Long Beach, 310-435-3501, extension 205, or Toby Rothschild, extension 222, for further information.

### **Federal Courts' Refusal to File Pleadings When IFP Sought**

12. Unlike state law (Cal. R. Ct., R. 985(a)), federal law does not expressly require a clerk to file a pleading when accompanied by an application to proceed in forma pauperis. This, as one legal services program discovered recently, can cause problems when there are deadlines such as statutes of limitations.

In the particular case, the person attempting to file the complaint on the last day within the statute of limitations period explained the problem to the clerk (and offered to give the clerk a personal check if necessary), and was told there was no problem. When the IFP application was later granted, however, the filing date was listed as after the expiration of the statute. The clerk's office said that the complaint would be considered lodged on the day it was presented.

A non-exhaustive look at the case law suggests that lodging is sufficient for all deadline purposes, including statutes of limitation. Cervantez v. Sullivan, 724 F.Supp. 757, 758, n. 2 (E.D. Cal. 1989), and cases cited. Counsel should carefully weigh the risks, however, when filing papers and seeking IFP status close to an important deadline.