

WESTERN CENTER ON LAW AND POVERTY

M E M O R A N D U M

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

IFP Issues

1. The Governor signed into law Assembly Bill 2667 (Stats. 1996, ch. 888), a surprising victory for legal services advocates. As described in previous reports, A.B. 2667 amends Government Code §68511.3 to provide that an indigent seeking a fee waiver may provide her social security number as her documentation of receipt of public assistance. The Judicial Council Advisory Committee has proposed alternative verification for public assistance recipients who refuse to provide their social security numbers. John Gianola and Catherine Rodman, among others, sent in comments on the Advisory Committee proposals.

2. Somebody in the Los Angeles Superior Court didn't get the word on A.B. 2667. That court proposed a rule requiring public assistance recipients to show last month's check receipt and those qualifying for i.f.p. status on the basis of low income to show last year's tax return. Bill Flanagan of Bet Tzedek Legal Services has written a letter to the Superior Court pointing out the error of its ways.

3. Fresno County courts are giving indigents only partial waiver of jury fees, according to Connie Medina-Flores of Central California Legal Services. Though Rule 985(j)(1) provides jury fees for indigents are among those costs that "may be waived," under Martin v. Superior Court, 176 Cal. 289 (1917), they must be waived.

4. Shasta County Court instituted a policy of accepting for filing pleadings accompanied by fee waiver applications but requiring applicants to come back the next day with verification. John Gianola of Northern California Legal Services convinced the court to drop the policy for unlawful detainer defendants.

Cases in the News

5. An indigent woman seeking to appeal termination of her parental rights must be provided a free transcript, the United States Supreme Court has held. M.L.B. v. S.L.J., __ U.S. __, 117 S.Ct. 555 (1996).

The Court, in a 6-3 opinion written by Justice Ruth Bader Ginsburg, relied upon cases holding that any state providing a right to appeal criminal convictions, even misdemeanor convictions, must also provide a free transcript. The right to contest the loss of parental rights is at least as important as the rights in those cases, the Court reasoned.

The decision has no immediate effect in California, which already permit indigents appealing parental termination orders to have access to a free transcript. California, however, does not provide free transcripts for indigents in ordinary civil appeals.

6. Los Angeles Superior Court may not impose a \$110 family law mediation fee, the Court of Appeal has held. Hogoboom v. Superior Court, 51 Cal.App.4th 653 (1996). The appellate court, among other grounds, held that the Legislature has preempted the field of court fees; costs for mediation are a matter of statewide, not local, concern; and the fee violated the Domestic Violence Prevention Act. The petitioners--retired Superior Court judges--were represented by Horvitz & Levy attorneys David Ettinger and Elizabeth Anthony and Betty Nordwind and Julia Rueschemeyer of the Harriett Buhai Center for Family Law.

7. The California Supreme Court depublished McMillan v. Superior Court, 50 Cal.App.4th 246 (1996), which had held that when a discovery referee has been appointed over the plaintiff's objection, the trial court may not order the plaintiff's attorney to pay a share of the referee's fees, particularly when the trial court has not determined whether the fees are reasonable.

The decision probably was depublished because of some of its rhetoric, which was interpreted as attacking retired private judges. The Court of Appeal had also stated: "our concern is that we are too fast approaching the time when the law, in its majestic equality, will forbid the poor from using not only a private system restricted to the wealthy, but also the public system theoretically available to all."

Free Transcripts!

8. In another legislative victory, the Governor signed into law legislation reenacting provisions guaranteeing free deposition transcripts for legal services programs. Stats. 1996, ch. 895, reenacting Bus. & Prof. Code §§ 8030.2, 8030.4, 8030.6 & 8030.8. The statute sunsets again in 2000, so stay tuned.

Other Issues

9. The Yolo County court has reversed one of its judges who had instituted a rule prohibiting submission of handwritten pleadings. Oren Sellstrom of LSNL convinced the presiding judge that the rule was probably illegal and certainly unwise.

10. The municipal court in Pomona is accepting checks from landlords but not tenants, according to Theresa Glenn of Pasadena & San Gabriel-Pomona Valley Legal Services, Inc. She is also looking into

the practice of judges there cutting off pro per litigants from speaking.

11. A Kings County Superior Court family commissioner was refusing to permit an issue statement to be filed in family law cases until both the wife and husband submitted income and expense statements. Bob Kratky of Central California Legal Services convinced the commissioner to change his practices.