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MEMORANDUM

To: People Interested in Access to Court Issues

From: Dick Rothschild

Date: February 23, 2000

Re: Update XVII

1. The Judicial Council is considering a proposed Rule of Court that would prohibit courts from requiring fee waiver applicants to submit documentation other than the Judicial Council - approved forms. As frequently reported here (including below), many courts require all fee waiver applicants to fill out "local" forms or to submit additional documentation re income, such as declarations, income tax returns, pay stubs, etc. Advocates pointed out to the Judicial Council that the practice already is illegal. *See Earls v. Superior Court*, 6 Cal.3d 109, 114 (1971) ("whenever a motion to proceed in forma pauperis is supported by an affidavit sufficient on its face to show indigency the court must grant the motion unless it has *good reason* to doubt the truthfulness of the factual allegations in the affidavit . . ."). The proposed rule would prohibit further inquiry into a litigant's circumstances unless there is good reason to doubt the litigant's truthfulness.

2. The Monterey court will not let a fee waiver applicant file papers without submitting a "dependent declaration" showing how the applicant is being supported, report Phyl Diri and Mike Meuter of California Rural Legal Assistance's Salinas office. The form is in English only, even though many litigants in the area do not speak English. In one case, Mike need two lengthy trips just to get the clerk to file a pleading, and to submit the fee waiver application to a judge, who ultimately approved it without the additional form.

3. A Sacramento Superior Court litigant was unable to file a pleading because the clerk told her she had to submit pay stubs along with her fee waiver application. Jennifer Horne of Legal Services of Northern California's Sacramento office wrote a letter to the court's executive officer, pointing to the officer's previous assurance [reported in Update XVI] that the court "will now ensure that any documents brought to the clerk's office are processed independently of the application of fee waiver." In addition, Jennifer argued that requiring the pay stubs was illegal. The executive officer apologized for the failure to file the pleading, but defended the pay stub policy.

4. An unlawful detainer defendant applying for a fee waiver in San Pedro was turned away because she had not submitted proof of welfare. Under Government Code 68511.3, most welfare litigants need only submit social security numbers, and unlawful detainer defendants do not even have to do that. A deputy court administrator assured Suzanne Browne, an attorney at the Legal Aid Foundation of Long

Beach, that the court is looking into that matter.

5. In another San Pedro unlawful detainer case, Suzanne noticed depositions of police officers and sought waiver of witness fees pursuant to Rule 985(j)(3), which permits courts to waive “Witness fees of peace officers whose attendance is reasonable necessary for prosecution or defense of the case”. Two different judges denied the application without hearing, one writing “inapplicable to discovery” and the other declaring “depositions for muni court u.d. case to [sic] time consuming and not relevant . . .” Suzanne petitioned for a writ, which was mooted when the lower court agreed to approve the fee waiver. In the mean time, however, the Legal Aid Foundation had paid the police officers the witness fees, so the Foundation will ask the Police Department for a refund.

6. A small claims court plaintiff in Van Nuys was told he had to submit pay stubs to get his complaint filed and a hearing date set. After intervention by San Fernando Valley Neighborhood Legal Services attorney Carolyn Corrie, the fee waiver was granted. The complaint was filed, but the filing date was the date of approval of the fee waiver rather than the earlier application date. Rule 985(a) requires that a pleading submitted by a fee waiver applicant be filed immediately even if the fee waiver application itself is pending.

7. While showing her client what a small claims court proceeding looks like, Carolyn witnessed several fee waiver hearings. Rule 985(f) provides: “To ensure confidentiality of the applicant’s financial information the hearing shall be held in private . . .”

8. In another Van Nuys case, the court required a fee waiver hearing for a homeless litigant with no income. The court demanded to know how the litigant was supporting herself, even though her application reported her address as a homeless shelter. The fee waiver application was granted.

9. Compton commissioners are routinely denying fee waiver applications submitted by eligible litigants, according to Anthony Filer, the directing attorney at Community Legal Service’s Norwalk office, and Ashton Cooper, an attorney at CLS’s Compton office. One commissioner reportedly told a litigant, “if you haven’t paid rent, you must have money.” Anthony is setting up a meeting with court officials to discuss the problem.

10. The presiding judge of the juvenile court in Sacramento has banned handwritten pleadings, and is requesting the entire court to adopt such a rule, reports Anne Pearson of LSNC. Rule 201 of the California Rules of Court permits typewritten pleadings, while Rule 249(c)(3) defines “typewriting” to include “other methods equivalent in legibility to typewriting.” Anne and other advocates have written to the presiding judge opposing a no-handwriting rule.

11. Monterey County has a different kind of access problem: getting to court. People who live in places like Salinas, Greenfield and Soledad can only litigate if they travel to Monterey, in some cases 45 miles away. Many can’t make it. If anyone has an idea on how to deal with this, contact Phyl Diri at (831) 757-5221.

12. A Santa Barbara litigant who received a disability accommodation was surprised to find that in violation of Rule 989.3(b)(5), the accommodation request was included unsealed in the public court file, reports Kathy Gillespie of Protection and Advocacy’s Los Angeles office.

13. For years, John Gianola of LSNC's Yolo County (along with others of you) has taken on the job of reminding the Judicial Council that the forms used for qualifying fee waiver applicants as under-income, *i.e.*, under 125% of the federal poverty guideline, need to be changed as those guidelines change annually. This year, the West Group, which now publishes the forms, called John to let him know that the forms will be changed without his asking.