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MEMORANDUM

To: People Interested in Access to Court Issues

From: Dick Rothschild

Date: March 2003

Re: Update XXI

New State Rules Permit Handwritten Pleadings and Rules

The lengthy battle over no-handwriting rules is over, and common sense has prevailed. Effective January 1, court clerks are prohibited from rejecting either a pleading or a form solely because it is handwritten, hand printed or uses a color other than blue or black. The new California Rules of Court are Rules 201(j), covering pleadings, and 201.4, which governs forms.

As often recounted on these pages, for years legal services advocates have battled county by county, with some success, to convince presiding judges that no-handwriting rules denied access to the courts to pro per litigants without access to word processors or typewriters.

Much of the credit goes to Ken Babcock, the director of the Public Law Center in Santa Ana who serves on the advisory committee to the Judicial Council which formulated the proposed rules. Several legal services advocates sent comments to the Council supporting the proposed rule, and arguing against any amendments that would give clerks more discretion to reject documents.

THE JUDICIAL COUNCIL WANTS YOU!

That's right, you. Okay, us. The folks at the Judicial Council have read these Updates, understand there are huge problems, and need our help to make things better. We can do two things:

(1) take the time to review and comment on proposed rules. The next batch should be out sometime in April, and the comment period runs to July. All proposals will be available at <http://www.courtinfo.ca.gov/invitationstocomment>. Unlike other governmental agencies we could name, the Council reads and discusses every single comment, so if you have something to say, say it.

(2) fill out the questionnaire attached to this email re forms you would like to see improved, and whether you want to volunteer for a Judicial Council committee.

Fee Waiver Issues

1. Fee waiver proceedings have become a little bit less than confidential in Orange County Superior Court, according to Renato Izquieta of the Legal Aid Society of Orange County. Renato witnessed a family law proceeding involving a litigant who had previously qualified for in forma pauperis status. The commissioner questioned the litigant in open court about all the details of his finances to determine if he was still eligible for a fee waiver. The commissioner later reported that this was done pursuant to a new court policy.

Rule 985(f) of the California Rules of Court states that a hearing to determine fee waiver eligibility “shall be held in private and the court shall exclude all persons court attaches, the applicant, those present with the applicant’s consent, and any witness being examined.” Renato and Legal Aid Director of Litigation Crystal Sims are making informal attempts to change court policy.

2. The third try was a charm for Sharon Djemal and other advocates at East Bay Community Law Center for getting a fee waiver approved for a foster parent. The Alameda County court rejected her application twice because the foster care income pushed her gross income above the income eligibility line set by Government Code §68511.3(a)(6)(B). Under subdivision (C), however, the court may grant a waiver if “the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant’s family to provide for the common necessities of life.” Sharon wrote a new application, pointing out, among other things, that the foster care money is supposed to be used only for the children, not for court costs. The new application was granted.

3. Alicia Wright from the Harriett Buhai Family Law Center reports that family law clerks in the L.A. Superior Court’s Central District continued to ask fee waiver applicants to fill out supplemental forms long after that practice was prohibited. *See* Cal. R. Ct., R. 985(a). Complaints from Alicia, Harriett Buhai director Betty Nordwind and others led to elimination of the form.

4. In the same court, reportedly, clerks are not approving fee waiver applications from litigants who report no income at all, and instead are scheduling those litigants to appear before the Presiding Judge. Though advocates have confidence in the fairness of the Presiding Judge, the problem is that some litigants become intimidated and stop seeking fee waivers to which they are entitled.

The legality of the practice is unclear, even if it is true, as the court claims, that some agencies which are paid to help people file divorce papers are advising those people to file fraudulent fee waiver applications reporting zero income. A court may schedule a hearing instead of granting an application at the outset “[i]f the court determines . . . that there is substantial evidentiary conflict concerning the applicant’s eligibility for in forma pauperis status . . .” Ca. R. Ct., R. 985(f).

5. Jodie Berger at Legal Services of Northern California reports that the San Francisco Superior Court clerk’s office demanded a fee for the filing of a CalWORKs writ petition, even though the person filing the petition showed the clerk Welfare & Institutions Code §10962, which states, “No filing fee shall be required for the filing of a petition pursuant to this section.” Jodie reports that when she brought this problem to the attention of higher court personnel in the past, everybody agreed with her and promised it would never happen again.

In this particular case, no further action was needed because Jodie, foreseeing problems, armed her messenger with a fee waiver request, which was granted.

Interpreters

1. Language access issues continue to be a problem for indigent litigants. Roberta Stovitz and David Pallack at Neighborhood Legal Services of Los Angeles County report that in the L.A. Superior Court family courts divorces of non-English-speakers are continually postponed because of a lack of capable interpreters.

2. A hearing-impaired tenant is appealing an unlawful detainer judgment taken against her following a trial she was mostly unable to hear, reports Santa Rosa attorney David Grabill. Though the tenant appeared pro per at trial and repeatedly informed the trial court she was deaf, the court did not assist her. The tenant relies upon, among other authorities, Evidence Code §754(b), which provides that “where a party or witness is an individual who is deaf or hearing impaired and the person who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon.”

Guardians ad Litem

An unwritten policy of the Alameda County Superior Court is causing trouble for minors and their parents in slumlord litigation and other suits, reports Oakland attorney Zona Sage. The court will not approve guardian ad litem petitions from parents if the parent is also a plaintiff in the suit. This causes enormous logistical and communication problems, particularly in multi-plaintiff suits where the plaintiffs do not speak English, according to Zona. It is unclear what the court’s statutory authority is for its unwritten policy.

Court Reporters

A Santa Barbara judge told litigants in a pending unlawful detainer trial that there was no need for a court reporter, according to Alex Lambrous of the Legal Aid Foundation of Santa Barbara County, who was representing the tenant. The judge stated that proceedings would be electronically recorded instead. Alex was planning to press the issue, but the landlord dismissed the u.d.

Code of Civil Procedure §274c provides that in a limited civil jurisdiction case, official reporters “shall, at the request of either party . . . take down in short-hand all the testimony” Government Code §72194.5 states that in limited civil cases electronic recording may be used only when “an official court reporter or a temporary court reporter is unavailable”

Misleading Notices

Some defendants are being misled by a San Francisco Superior Court local form, charge a group of legal services advocates. The problem is not what the Status Conference Notification Form says: it accurately tells parties when and where to appear at a status conference. The problem is when the notice

is given and what the notice does *not* say.

As noted in a letter to the then-Presiding Judge written by Oren Sellstrom of the Lawyers' Committee for Civil Rights, the notice is typically served at the same time as the summons and complaint. Clients look at the specific time and place, and conclude that showing up at the status conference is the first thing they need to do in the case. In the mean time, a default is taken against them for failing to respond to the summons and complaint. The advocates suggest a bold warning on the notice that "the law may require that the parties take other actions prior to [the status conference date]." Oren reports that the court was receptive to his letter, and is in the process of changing the form.

Phony "Legal Aid" Agencies

The Court of Appeal has affirmed a sweeping injunction against a "typing" service that takes money from poor people who think they are going to "Legal Aid." *Brockey v. Moore*, No. C038317 (Cal. App. Feb. 20, 2003), 2003 DJDAR 3018 (March 19 issue). The injunction, among other things, prohibits the defendant from using "legal aid" or "legal services" in any of his businesses.

The case was tried by former LSNC attorney Gary Rhoades. The opinion was initially unpublished, but after letters from LSNC director Gary Smith and several other legal services attorneys the Court of Appeal agreed to publish the decision.