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May 24, 2004

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The Honorable Candace D. Cooper, Presiding Justice
and Honorable Associate Justices

MAY 24 2004

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Re: *Patton v. Los Angeles Superior Court*
2d Civil No. B175178

Dear Presiding Justice Cooper and Associate Justices:

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The California Academy of Appellate Lawyers, a non-profit organization of experienced appellate practitioners, supports the petition to transfer this case to the Court of Appeal. We are interested in this case not only because the petition presents an important question of adequacy of legal remedies, but also because it concerns a denial of access to the courts that, if not promptly reviewed, could affect other parties without the means to pay court filing fees.

Just the other day, the United States Supreme Court noted the importance of court access, stating that “[t]he Due Process Clause also requires the States to afford certain civil litigants a ‘meaningful opportunity to be heard’ by removing obstacles to their full participation in judicial proceedings.” (*Tennessee v. Lane*, ___ U.S. ___, ___ [2004 Daily Journal D.A.R. 5854, 5857.]) Court fees can be just as great an obstacle to an indigent person’s opportunity to be heard as disabilities are to a disabled person.

Whether the trial court’s decision was substantively correct is beyond the scope of this letter. However, unless the Court takes this

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opportunity to consider the appropriate appellate remedy for erroneous fee waiver decisions, the issue may escape review altogether.

The superior court clerk denied petitioners' application to proceed in forma pauperis. In denying a writ of mandate to remedy this error, the Appellate Division stated that petitioners "have an adequate remedy at law." Since the Appellate Division handles all the appeals and writs from limited jurisdiction courts throughout Los Angeles County, this conclusion is likely to affect other parties who do not have the wherewithal to pay filing fees. And if the Appellate Division is wrong—if, as petitioners persuasively argue, there really is no meaningful remedy at law—these indigent parties will have no protection from erroneous denials of fee waivers.

As appellate lawyers, we take no position on what procedures should apply to fee waiver applications in the trial courts, or whether the clerk made a mistake in this case. We do know, however, that trial court judges and clerks make mistakes. The disadvantaged in our society have as much right to have those mistakes corrected as anyone else.

In most cases, "a purported error of a trial judge may (1) be cured prior to trial, (2) have little or no effect upon the outcome of a trial, or (3) be properly considered on appeal." (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App. 3d 1266, 1273.) But the denial of an indigent's fee waiver application may well mean that the case is over. Faced with the need to keep food on the table, a low-income litigant may well decide to forego even the most meritorious case or defense. Unlike the typical case described in *Omaha Indemnity*, there is no possibility of a cure if the denial was erroneous.

In addition, foreclosing writ review of fee waiver denials would erode the critical law-making function of the appellate courts. In most areas of law, courts have no shortage of opportunity to exercise this function. However, the likelihood that a fee waiver dispute will reach the appellate courts is remote. Most indigents are unrepresented, and even when they do find lawyers, the amounts involved do not justify resort to the appellate courts. When a case that raises serious issues does reach an appellate court—as this case has—the reviewing court should seize the opportunity to decide those issues.

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We urge the Court either to grant the petition to transfer or to otherwise consider on the merits whether writ relief is appropriate to remedy denials of applications to proceed in forma pauperis.

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By 

Robin Meadow
First Vice President

RM:pl

cc: Richard Sherman, Esq.
Paul D. Fogel, Esq.
Charles A. Bird, Esq.
As per attached proof of service

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5700 Wilshire Boulevard, Suite 375, Los Angeles, California 90036.

On May 24, 2004, I served the foregoing document described as: **LETTER DATED MAY 24, 2004 TO THE HONORABLE CANDACE D. COOPER, PRESIDING JUSTICE AND HONORABLE ASSOCIATE JUSTICES FROM ROBIN MEADOW, FIRST VICE PRESIDENT OF THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS REGARDING *PATTON v. LOS ANGELES SUPERIOR COURT*, 2d Civil No. B175178** on the parties in this action by serving:

Richard A. Rothschild, Esq.
Western Center On Law & Poverty
3701 Wilshire Boulevard, #208
Los Angeles, California 90010

T.E. Glenn, Esq.
Legal Aid Foundation of Los Angeles
1102 Crenshaw Boulevard
Los Angeles, California 90019

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Los Angeles Superior Court Counsel
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Clerk to
The Presiding Justice
Los Angeles Superior Court
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Los Angeles, California 90012

Office of the District Attorney
Appellate Division
320 West Temple Street, #540
Los Angeles, California 90012

California Supreme Court (five copies)
300 South Spring Street
Los Angeles, California 90013

(X) By Envelope - by placing the original **(X)** a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

By Personal Service: I delivered such envelope by hand to the office of the addressee(s).

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Executed on **May 24, 2004**, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed by the office of a member of the bar of this court at whose direction the service was made.



Peggy Levenstein