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FROM COVER

Fee waivers denied for the poor

Indigent litigant claims her request was improperly dismissed.

By Laura Ernde

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When indigent litigant Nylonda “Jazz” Sharnese brought her fraud case to Los Angeles County Superior Court last year, she was blindsided by a judge grilling her about whether she needed to have her court fees waived due to financial hardship.

“Do you have proof of your food stamps?” Superior Court Judge Michael Latin asked her after remarking that she was represented by private counsel.

Sharnese, whose attorney was working pro bono, told him she had proof, but the judge revoked her fee waiver anyway. When Sharnese wasn’t able to pay the fees, her case against American Intercontinental University Inc. and Higher One Inc. was dismissed.

As financial troubles plague both litigants and the courts who serve them, public interest lawyers said more indigent clients are being improperly denied fee waivers. They say Latin made multiple errors in his handling of Sharnese’s matter and they’re hoping to use her case — which is pending at the 2nd District Court of Appeal — to remind judges about the rules regarding fee waivers. *Sharnese v. American Intercontinental University*, B227344.

“These seemed to be really flagrant violations by the court of the fee waiver statutes,” said David S. Ettinger, of Horvitz & Levy, who is handling Sharnese’s appeal pro bono. “We’re in a period where the judiciary has really been savaged by budget cuts, but it’s very important that those budget cuts not disadvantage indigent litigants and bar them from the courts.”

Fees vary in each case and from county to county, but even an initial filing fee typically runs hundreds of dollars. Sharnese had taken law school classes so she knew that the judge wasn’t supposed to withdraw her fee waiver without a proper



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Nylonda “Jazz” Sharnese, left, with attorneys Peter K. Batalden, and David S. Ettinger.

hearing. Also, she knew that any discussion of her finances should have taken place in chambers.

“I was so humiliated and shocked,” said Sharnese, who was relying on public assistance while studying for a master’s degree in business.

Latin, who recently retired and joined ADR Services, declined to comment, saying it wouldn’t be appropriate to talk about a pending case.

Sharnese took her case to the appellate self-help clinic at the 2nd District, where Lisa Jaskol of Public Counsel had been on the lookout for exactly this kind of situation to fix a larger problem.

“We need the courts of appeal to step in and remind the superior courts of how these rules work and of the importance of these rules to ensure litigants have access to justice when they need it in these important cases,” Jaskol said.

Jaskol contacted Ettinger, her former colleague at Horvitz & Levy LLP, and he immediately agreed to take the case.

Litigants requesting a fee waiver must fill out a form declaring under penalty of perjury that they fall into one of three categories of eligibility: they are receiving public assistance, their income falls below 125 percent of the poverty level, or paying fees would leave them unable to afford “the common necessities of life.”

Clerks may grant fee waiver requests, but only judges have the power to deny them, said Tai E. Glenn, pro bono director at Legal Aid of Los Angeles, who is assisting Ettinger in the appeal. Also, a fee waiver cannot be denied or revoked without a hearing that the litigant has 10 days to prepare for, she said.

Even though her case was dismissed, Sharnese said she was able to obtain a confidential settlement of her claims, in

Complaints arise over fee waiver denials

which she accused the defendants of failing to follow through with promised job placement and forcing her to pay fees to access her student loan funds.

The settlement makes the case technically moot, but it doesn't prevent the 2nd District from weighing in on the larger issue, Ettinger and Glenn said. The court has scheduled oral argument for Oct. 18. No one has filed papers in opposition since the defendants don't have a stake in the outcome.

"It's always been a misunderstood law that people haven't been trained on," Glenn said, adding that she's been hearing more examples lately of fee waivers being improperly denied.

She said she suspects that some judges and clerks throughout the state, whether unconsciously or not, may be unnecessarily scrutinizing fee waivers due to the financial pressure on the courts.

"It's a difficult position for everyone to be in," she said. "The courts have a financial problem and our clients have a financial problem."

Glenn was involved in an earlier Court of Appeal case that largely helped determine the ground rules in use today. In 2004, the 2nd District ruled that judges couldn't deny litigants a fee waiver without a hearing. *Cruz v. L.A. Superior Court*, 2004 DJDAR 8064.

While the courts have improved their handling of fee waivers since that decision, the problem remains, Glenn said.

In another example of a fee waiver improperly denied, a judge in Los Angeles refused to hold a hearing on a Skid Row tenant's complaint that he was illegally locked out of his unit until the client showed proof of his benefits, which is not required under the law, she said.

In that case, Legal Aid paid the fee so the

time-sensitive case could be heard earlier. But other litigants who don't have counsel might not be so lucky, she said.

Officials in one small northern county have been scheduling financial review hearings for litigants who have previously obtained fee waivers, she said. If the litigant fails to appear, even if the case has already been disposed of, the court is retroactively denying the fee waiver and ordering payment.

In other cases, Glenn said she's heard of judges scrutinizing fee waivers of those who ask for interpreters or jury trials, which are huge expenses for the court. Once a fee waiver has been granted, a judge must have a valid reason for questioning eligibility, she said.

"What we're seeing is the people we represent and can stand up for," she said. "What about people who walk up to the window and are turned away?"