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July 2, 2014

Frank A. McGuire, Clerk
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *K.I. v. Wagner*, S219252 (Petition for Review Pending)

Letter in Support of Petition for Review

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of California:

We write on behalf of the Bar Association of San Francisco, the Los Angeles County Bar Association, and the Beverly Hills Bar Association to urge the Court to grant the pending petition for review in this case. The three Bar Associations, which collectively represent more than 32,500 members, share a mission of promoting access to the judicial system for the poor, the disabled, and the unrepresented. This case directly implicates that mission.

We believe that the Court of Appeal misinterpreted the scope of the attorney's fee provision of Welfare & Institutions Code § 10962, by precluding a litigant who successfully challenges a government public benefit decision from recovering court awarded fees for work in the mandatory administrative proceeding that is necessary to obtain judicial review.

The Court of Appeal's decision will have sweeping statewide consequences: it will discourage attorneys from representing poor and disabled persons who seek

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to challenge government decisions affecting their access to public benefits, thereby stranding vast numbers of people whose ability to challenge benefits decisions depends on the prospect that lawyers will step forward to assist them based on § 10962's promise of payment for all time reasonably spent on successful litigation.

The Bar Association of San Francisco (BASF) is a voluntary bar association of more than 7,500 members. The majority live and work in the City and County of San Francisco, California. Through its board of directors, its committees, and its volunteer programs, BASF has consistently worked for decades to protect and expand legal services to the poor, the disabled, and the unrepresented.

The Los Angeles County Bar Association (LACBA), with more than 20,000 members, is one of the largest metropolitan voluntary bar association in the United States. In addition to meeting the professional needs of its members, LACBA actively promotes the administration of justice, access to the judicial system, and the role of lawyers to facilitate both.

The Beverly Hills Bar Association (BHBA) is a voluntary bar association with more than 5,000 members who live or work on the westside of Los Angeles County. BHBA is dedicated to improving the administration of justice, meeting the professional needs of Los Angeles lawyers, and serving the public. Ensuring access to justice for low-income clients is one of its core missions.

For the millions of California beneficiaries of CalWORKs, Medi-Cal, In-Home Supportive Services (IHSS) and other public social services programs, the only way to contest a denial or reduction of aid is to request an administrative hearing. Welf. & Inst. Code § 10950. If the beneficiary is unsuccessful at the hearing, the sole remedy is a writ of mandate under Welfare & Institutions Code § 10962. If a beneficiary obtains a favorable decision in court, § 10962 requires an award of "reasonable attorney's fees. . . ." This encourages attorneys to accept these cases so that beneficiaries can access the court system.

In this case, the mother of an IHSS claimant could not afford an attorney. After the claimant lost at the administrative level, an attorney agreed to represent the family pro bono and agreed to seek payment solely from the State. The attorney had the administrative hearing reopened in order to develop and augment the record. When relief was denied, he sought a writ of mandate from the Superior Court. At that point, the director of the Department of Social Services stipulated to the relief and issuance of the writ.

The attorney petitioned for fees for his time. Although he was granted fees for time spent on the court proceedings that led to the stipulated concession by the State, he was denied any fees for the administrative proceeding which set up the successful stipulation and issuance of the writ. (He spent more time developing the hearing record than he spent on the litigation.)

The Court of Appeal held that § 10962's provision for "reasonable attorney's fees" does not include fees for time the attorney spent prior to the successful litigation—and, specifically, that it excludes any compensation for time spent in the administrative proceedings, despite the fact that administrative exhaustion was required. The Court of Appeal acknowledged that California courts construing the similarly worded private attorney general fee statute, Code of Civil Procedure § 1021.5, have held that time spent in administrative proceedings prior to litigation can be compensable as long as it was necessary and useful to the litigation. *Edna Valley Watch v. Co. of San Luis Obispo* (2011) 197 Cal.App.4th 1312, 1318-19, 1322; *Best v. Apprenticeship Council* (1986) 193 Cal.App.3d 1449, 1459. But the Court of Appeal distinguished such cases as involving the broader public interest rather than the vindication of private interests such as benefits for a single indigent person. *K.I. v. Wagner*, Slip Opn. at 14-16.

Not only is the Court of Appeal's interpretation of § 10962 contrary to public policy, it is also unsupported by the case law. The distinction that the Court of Appeal drew between cases involving the broader public interest and those vindicating benefits for a single person fails for at least two reasons.

First, the Legislature, by enacting § 10962, determined that providing representation to indigent clients who otherwise stand to lose subsistence benefits *does* serve the public interest. *Cf. Lopez v. Heckler, Lopez v. Heckler* (9th Cir.) 713 F.2d 1432, 1437, *rev'd in part on other grounds*, (1983) 463 U.S. 1328 (“Our society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights or privileges.... It would be tragic, not only from the standpoint of the individuals involved but also from the standpoint of society, were poor, elderly, disabled people to be wrongfully deprived of essential benefits for any period of time.”).

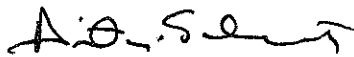
Second, the Court of Appeal’s holding is inconsistent with the rules followed in federal cases, even when those cases, as here, only affect individuals rather than large groups. The Supreme Court of the United States has interpreted the term “reasonable attorney’s fee” as including compensation for work in administrative proceedings necessary to achieve judicial relief. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air* (1986) 478 U.S. 546, 559 (although fee provision in Clean Air Act applies only to “any action,” this is not a sufficient indication that Congress intended the provision to apply only to judicial, and not administrative, proceedings); *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 71 (Title VII litigation); *Native Village of Quinagak v. United States* (9th Cir. 2002) 307 F.3d 1075 (plaintiffs entitled to fees for time spent exhausting required administrative remedies despite language in statute providing for fees for successful “action.”).

The Court of Appeal has failed to provide a convincing rationale for deviating from C.C.P. § 1021.5 or federal case law. It has adopted an interpretation of § 10962 that is contrary to the statute’s purpose of providing an incentive for lawyers to represent indigent persons challenging the denial of government benefits. That interpretation reduces the intended incentive in manner that will have broad statewide consequences.

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The Court should grant review on this issue to secure uniformity of decision and settle an important question of law, and to make clear that § 10962 includes necessary work at the administrative level.

Respectfully submitted,



by: Amitai Schwartz, State Bar # 55187
Co-Chair, Amicus Committee
Bar Association of San Francisco

Timothy Moppin, State Bar # 133363
President-elect, The Bar Association of San Francisco

Linda L. Curtis, State Bar # 139877
President, Los Angeles County Bar Association

Cythia Tobisman, State Bar # 197983
Co-Chair, Beverly Hills Bar Association,
Amicus Brief Committee

cc: Charles Wolfinger
Ernest Martinez

PROOF OF SERVICE

Re: K.I. v. Wagner, California Supreme Court Case No. S219252

I, Amitai Schwartz, declare that I am over 18 years of age, and not a party to the within cause; my business address is 2000 Powell Street, Suite 1286, Emeryville, CA 94608. I served a true copy of the attached

Amici Curiae Letter in Support of Petition for Review

on the following by placing a copy in an envelope addressed to the parties listed below, which envelope was then sealed by me and deposited in United States Mail, postage prepaid, at Emeryville, California, on July 2, 2014.

K. I. : Plaintiff and Appellant

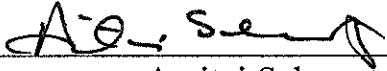
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2014 at Emeryville, California.



Amitai Schwartz