

70
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January 11, 2002

The Honorable Chief Justice of California
The Honorable Associate Justices of the Supreme Court of California
300 South Spring Street
Los Angeles, CA 90013-1233

Re: *In Re the Estate of Levitt*
Court of Appeal Case No. B 140538
In Re the Estate of Labow
Court of Appeal Case No. B 142397
Supreme Court Case No. S 107776

Honorable Justices:

The Beverly Hills Bar Association respectfully requests that this Court grant review to settle an important question of statutory interpretation regarding the Elder and Dependent Adult Civil Protection Act. The Association sponsored the Act in the State Legislature and therefore has a compelling interest in seeing that the Act is properly interpreted to promote one of its core purposes: Facilitating access to the judicial system for elder abuse victims.

The petitioner-attorney in this case contends that Court of Appeal's published decision, in a case of first impression, misinterprets the Act in a way that hinders rather than encourages access to the courts for elder abuse victims by imposing an artificial limitation on attorney fee awards in elder abuse cases

Welfare and Institutions Code sections 15657 mandates that in aggravated cases of physical or financial elder abuse, the court shall award reasonable attorney's fees. Section 15657.1 specifies that the award shall be based on all relevant factors including the value of the abuse-related litigation in terms of the quality of life of the abuse victim and the results obtained.

Where the abuser has assets or the victim's estate is large, courts have had ~~iu~~ trouble setting reasonable attorney fees. But where the abuser has no assets and the victim has few assets, courts need more guidance than the Court of Appeal gives them here. The cases on review here present a prime example of the concern. The attorney in these cases did an admirable job, in one case saving his client not only from financial ruin but from physical deprivation of food and medicine. The trial courts found the attorney's hours and billing rate to be reasonable. Nevertheless, those courts reduced the attorney fee awards solely because of the relatively small size of the victims' estates. The attorney attests that the resulting awards did not even cover his overhead in prosecuting these challenging cases, much less encourage him (and other attorneys) to take on elder abuse cases where small estates are involved. The Court of Appeal affirmed the reduced awards, stating that "the trial court had broad discretion in setting fees, and it is therefore unlikely that [the attorney] will ever be able to demonstrate an abuse of that discretion in a situation similar to the ones here." (Slip Opinion, page 8.)

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Hon. Chief Justice of California
January 11, 2002
Page 2

The Association submits that review should be granted to **decide** whether the Act authorizes a limitation of attorney fee awards based solely on the size of the victims' estates. The courts below seemingly gave no contrary weight to the non-monetary – sometimes life-saving – benefits conferred on the abuse victims. Yet Section 15657.1 would appear to require the courts to do so. The Legislature has found it would be in the best interests of elders to have reasonable fees available to the attorneys who might be able to help save them from physical and financial abuse, even if the attorney's fees award might diminish the abuse victim's own estate.

This is a case of first impression as to the intended meaning of the Act's attorney's fees provisions. The Beverly Hills Bar Association urges this Court to grant review to interpret the Act for the benefit of all elder abuse victims.

Respectfully submitted,

BEVERLY HILLS BAR ASSOCIATION

By  David R. Evans, President
David R. Evans, President

cc: 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 January 15, 2002, I served the foregoing document described as Letter to Honorable Chief Justice of California and Associate Justices on the interested parties in this action by placing the true copies thereof in sealed envelopes addressed as stated in the attached mailing **list**:

I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon **fully** prepaid.

I **am** "readily familiar" with **this firm's** practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day 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.

Executed on January **15,2002**, at Los Angeles, California.

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

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



Anita McTyre

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