

Case No. B255973

**IN THE  
COURT OF APPEAL  
FOR THE  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 5**

---

**VAL WEST, *Plaintiff and Appellant,***

**v.**

**ARENT FOX LLP, *Defendant and Respondent.***

---

**ON APPEAL FROM THE SUPERIOR COURT  
OF THE COUNTY OF LOS ANGELES  
THE HONORABLE TERESA SANCHEZ-GORDON, JUDGE  
CIVIL CASE NO. BC499863**

---

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF  
OF *AMICUS CURIAE* LEGAL AID ASSOCIATION OF CALIFORNIA  
IN SUPPORT OF PLAINTIFF AND APPELLANT VAL WEST**

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Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court,  
the Legal Aid Association of California respectfully requests leave to  
submit the accompanying amicus curiae brief in support of appellant Val

West. Amicus believes its viewpoint will be helpful to the court's resolution of this case.

The Legal Aid Association of California ("LAAC") is a statewide membership association of more than eighty public interest law non-profits, which provides free civil legal services to low-income people and communities throughout California. LAAC's members include organizations located throughout the state, serving both rural and urban areas. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations, including seniors, persons with disabilities, victims of domestic violence, and migrant farmworkers. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of legal services on a statewide level regarding funding and access to justice issues.

The decision of the lower court in this case has the potential to threaten the ability of LAAC's members to serve their clients effectively. The underlying facts of this case involve the family of a vulnerable senior using legal services to gain access to a network of social service and government agencies tasked with ensuring that senior's well-being. It is communication between those complimentary parts of a larger system that this case could silence.

This case, therefore, has broad implications for the delivery of legal services to the thousands of Californians that access free legal help every day and for the court system that could be inundated with cases that legal aid lawyers might otherwise have resolved prior to litigation. This appeal provides the court with the opportunity to express support for California's ongoing commitment to access to justice.

No party or counsel for a party in the pending appeal authored the enclosed brief, in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

Dated: February 12, 2015

Respectfully submitted,

LEGAL AID ASS'N OF CA  
LORIN KLINE

By  \_\_\_\_\_

Lorin Kline  
Attorney for *Amicus Curiae*  
Legal Aid Association of  
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No. B255973

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## INTRODUCTION

This case raises fundamental issues about the ability of legal aid attorneys to serve their clients effectively, to utilize fully the network of government and non-profit agencies that protect and support our society's most vulnerable members, and to reduce strain on the court system through pre-litigation conflict resolution. In this case, a Residential Care Facility for the Elderly ("RCFE") represented by a major, national law firm, sued the daughter of an elderly, impoverished RCFE resident because the daughter's boyfriend copied the family's legal aid attorney on an email complaining about the mother's care. Twice the daughter prevailed on an anti-SLAPP motion against the RCFE's defamation claim under Code of Civil Procedure section 425.16, having satisfied both the trial court and this Court that the RCFE could not demonstrate a "likelihood of success on the merits" of the defamation claim. *Los Angeles Jewish Home For Aging v. West*, No. B224314, 2011 WL 5517283, at \*1 (Cal. Ct. App. Nov. 14, 2011). Now, however, the daughter's suit is being dismissed without explanation or briefing based on an Alternative Writ of Mandate filed by the law firm. This raises issues of access to justice and effective use of the justice system's scarce resources.

As a matter of public policy, California supports equal access to justice for all of its citizens, particularly for those who lack the financial means and sophistication to hire a lawyer. Where, as here, the loved ones of an RCFE resident obtained brief counsel from a legal aid attorney who specializes in elder law and filed a complaint with the ombudsman based on that lawyer's advice, no reasonable attorney could or would conclude that a

subsequent email between the family and the RCFE complaining about the resident's care was defamatory simply because a copy was sent to the legal aid lawyer. The lower court's decision encourages the filing of defamation claims based on pre-litigation communications to legal aid lawyers who have given brief counsel and advice to vulnerable clients.

The dismissal of this case has a chilling effect on the ability of California's most vulnerable citizens to access justice. Thus, LAAC, on behalf of legal aid organizations throughout the State, urges this Court to reverse the trial court's judgment. To do otherwise would endanger the ability of LAAC's members to serve their clients effectively, to utilize fully the network of non-profit and government agencies tasked with protecting and supporting the indigent, and to conserve scarce court resources by resolving conflicts prior to litigation where possible.

## **ARGUMENT**

### **I. Dismissal of Appellant's Claim Fundamentally Threatens California's Established System of Civil Legal Aid.**

#### ***A. Access to justice remains a startling problem in California.***

The unmet need for legal aid to the poor plagues California. According to the California Campaign for Justice, California is drowning in unmet need for legal help with more than 7 million people falling below the poverty threshold that qualifies them for

free legal assistance. *See The Justice Gap: A Crisis on the Courthouse Steps*, at 1.<sup>1</sup> In response, the State legislature has acted to provide for funding of legal services and has tasked the State Bar with administering the funds. *See Cal. Bus. & Prof. Code § 6211 et seq.* (2014). Even with these funds, however, there is only one legal aid attorney for every 7,300 potential legal aid clients in California. *See The Justice Gap: A Crisis on the Courthouse Steps*, at 1. As stated in a California Commission on Access to Justice Report, “Thousands of Californians who cannot obtain legal services are prevented from having meaningful access to justice and, consequently, too often lose their homes, their possessions, their livelihoods, and even their dignity.” *See An Action Plan for Justice, A Report of the California Commission on Access to Justice*, at 16 (2007).<sup>2</sup>

Unfortunately, despite the growing need for free legal assistance, legal aid programs do not have the resources to meet the demand. The State Bar of California, the regulatory body of the legal profession, provides some funding to nearly 100 legal aid organizations. By law, the State Bar distributes funds from lawyer trust accounts to programs that serve indigent Californians in need of legal services, whether directly or indirectly. *See Cal. Bus. & Prof. Code § 6211 et seq.* (2014). As interest rates and other funding sources dwindle, however, so do resources for legal aid. As Chief Justice Ronald George explained in his State of the Judiciary address in 2009, the economic crisis has not only increased the need for legal assistance but has also caused funding for legal aid to decline dramatically. *See Assembly Analysis of Shriver Civil Counsel Act, A.B. 590 at*

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<sup>1</sup> Available at [http://www.caforjustice.org/documents/JusticeGapFund\\_FactsandFigures.pdf](http://www.caforjustice.org/documents/JusticeGapFund_FactsandFigures.pdf).

<sup>2</sup> Available at [http://www.calbar.ca.gov/Portals/11/documents/2007\\_Action-Plan-Justice.pdf](http://www.calbar.ca.gov/Portals/11/documents/2007_Action-Plan-Justice.pdf).

2 (September 9, 2009). The resulting justice gap is huge and leaves thousands without legal help. With such a striking need for legal services, it is crucial that no decision by this court hinders the ability of those few legal aid attorneys to serve their clients as effectively and efficiently as possible.

**B. *The civil legal aid system creates a safety net for those trapped in the justice gap.***

- i. *Brief advice and other alternative models are integral to addressing the justice gap.***

Civil legal aid providers play a critical role in addressing the access to justice crisis in California. They leverage scarce resources by using a wide range of tools and methodologies to serve as many clients as effectively as possible and integrating alternative models of legal assistance. Not only do legal aid organizations and their attorneys and staff work to protect the rights of vulnerable Californians by representing their interests in court, but perhaps more importantly, they help to resolve countless disputes outside the courtroom. In a time when our courts are already backlogged, this is crucial.

A key way in which legal aid organizations are able to provide assistance to the largest number of people possible is by providing brief counsel and advice rather than full representation. Today, although many of the eligible people who seek legal aid are turned away for lack of resources, many of those who do get help receive brief counsel or advice. Laura Abel, *Designing Access: Using Institutional Design to Improve Decision*

*Making About the Distribution of Free Civil Legal Aid*, 7 Harv. L. & Pol’y Rev. 61 (2013).

Legal aid organizations throughout California face the unfortunate truth of not having the resources to serve the tens of thousands of people who qualify for their services and desperately need their help. By providing full representation to some clients and a lesser level of service to many more, these organizations are able to serve the greatest number of people in the most effective manner possible. Legal aid attorneys offer a continuum of services on a daily basis, effectively resolving countless disputes by providing brief advice.

It is not only legal aid providers that have recognized the importance of embracing limited scope legal services. In 2013, the American Bar Association House of Delegates approved a resolution encouraging lawyers to consider providing “unbundled” or limited services in order to “increas[e] access to legal services.” *See American Bar Association Resolution 108*, at 1 (2013).<sup>3</sup> The American Bar Association’s Litigation Section convened a Modest Means Task Force more than a decade ago, and concluded that an important way to make the justice system fairer is for lawyers to provide limited scope assistance. The Task Force stated that legal aid lawyers can “make more efficient use of their resources, and thereby provide legal services to more low-income people” by

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<sup>3</sup> Available at [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/lis\\_del\\_unbundling\\_resolution\\_108.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lis_del_unbundling_resolution_108.authcheckdam.pdf)

engaging in limited scope representation. *See Handbook on Limited Scope Legal Assistance, American Bar Association Section of Litigation*, at 4 (2003).<sup>4</sup>

Important California bodies have reached the same conclusion. The State Bar of California convened a Civil Justice Strategies Task Force in late 2013 to evaluate the role of the legal profession in addressing the justice gap. *See Civil Justice Strategies Task Force* (2014).<sup>5</sup> The Task Force has examined many alternative models, including unbundling services and even the use of limited license legal technicians to address the justice gap. Rex Bossert, *Panel pursues ideas to fund legal services for poor*, California Bar Journal, April 2014, at 1. The Judicial Council of California likewise supports these alternative models, providing for limited scope representation in its court rules. *See, e.g.*, Cal. Rule of Court 3.35-3.37.

The provision of limited representation, particularly through giving brief counsel and advice, is integral to our system of civil legal aid. Nearly all legal aid providers use the more limited services to provide access to justice to the largest possible number of people using extremely limited resources. In this utilization of alternative service models, legal aid has created a safety net to effectively address the justice gap.

- ii. *California's Long Term Care Ombudsman Program is one example of the many social safety net programs that work cooperatively with legal aid to serve vulnerable individuals.*

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<sup>4</sup> Available at <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>.

<sup>5</sup> Available at <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/CivilJusticeStrategiesTaskForce.aspx>.

Legal aid would be unable to employ a safety net for the protection of victims of the justice gap without the cooperation of many other entities and institutions. In our current economy, it is universally understood that funding for social programs and services is insufficient. For this reason, system-wide cooperation is essential. Legal aid exemplifies this reality through its cooperative work with other programs outside of the justice system. Legal aid cooperates with government and social service programs to make its integrated service delivery models more effective. Particularly in the many instances in which legal aid organizations are unable to provide full scope representation, outside collaboration makes the safety net more effective. These collaborations also frequently resolve disputes without litigation, thereby preserving judicial resources.

A common example of interagency cooperation is legal aid's partnership with California's long term care ombudsman program. This program is authorized by the federal Older Americans Act and by the Older Californians Act and is administered through the California Department on Aging. *See* 42 U.S.C. § 3001 *et seq.*; Cal. Welf. & Inst. Code § 9710 *et seq.* In fact, legal services delivery standards that are followed by the more than 39 designated Legal Services Providers for Seniors mandate cooperation with local long term care ombudsmen.

What happened in this case is an excellent example of the system working to support legal aid's safety net for victims of the justice gap. Appellant, Ms. West, sought the help of legal services to address her concerns about the health and well-being of her elderly mother, and the legal services safety net was deployed to help her. Specifically, she was

served by a cooperative effort between legal aid and the local long term care ombudsman program. When Ms. West's issues with the Jewish Home for the Aging were not satisfactorily corrected, she met with Jody Spiegel, Esq., an attorney at Bet Tzedek Legal Services ("Bet Tzedek"). (4 AA 00786-00789 PP30-31; 5 AA01106, P3; 5 AA01100, P5.) Ms. Spiegel was the Director of Bet Tzedek's Nursing Home Advocacy Project which provided counseling and litigating services on behalf of residents and their families. (5 AA01099, PP 2-4; 4 AA 00798 PP31; 1 AA 00073, P 20.) She referred appellant to the California State ombudsman's office and asked to be kept informed if there were further problems. (4 AA 00798-00799, P 31; 5 AA 01099, PP 2-4.) Ms. Spiegel thus provided only brief counsel and advice to Ms. West, not full-scope representation, and then offered a referral to the ombudsman program. According to the California Department of Aging, the goal of the long term care ombudsman program is to advocate for the rights of residents of long term care facilities, such as Ms. West's mother. What occurred was an example of two programs working cooperatively and effectively together.

When Bet Tzedek worked with the local long term care ombudsman to resolve a dispute occurring at the Jewish Home for the Aging, multiple service providers collaboratively solved a problem in their larger community, the Jewish Community in Los Angeles. The actions of legal aid were critical to that collaboration.

Examples of legal aid working collaboratively to serve their clients exist in communities all over California. Often in these collaborative models, legal aid attorneys

may provide some brief advice or limited scope assistance, then will refer a client to other programs that will help resolve the issue. This can be seen in every legal aid office that has an intake phone line or hotline to assess client needs, then to provide brief advice or a referral to the many clients the organization cannot fully represent. It exists at every law school or legal aid clinic. In every situation, a legal aid lawyer will provide brief advice and potentially refer the client to another community service provider. It would not be uncommon for any of these clients to make another contact with their legal aid lawyer, whether through an additional brief counseling session or through copying the attorney on an email. It is in this way that legal aid is able to address the justice gap.

***C. Condoning the underlying defamation claim in this case fundamentally threatens the safety net.***

***i. Consulting a legal aid lawyer is not probable cause for defamation.***

There was no probable cause to bring the underlying defamation claim in this case, because the copying of a legal aid attorney on an email cannot be probable cause. Probable cause to believe Ms. West engaged in tortious activity could not be based Ms. West's utilization of free legal services. As Arent Fox explains, probable cause is determined by the application of the "reasonable attorney" standard, meaning that there is only probable cause where a reasonable attorney would find the claim tenable. See Respondent's Brief, at 8 (*citing Sheldon Appel Co. v. Albert & Oliker*, 47 Cal.3d 863, 885 (1989)). It is difficult to imagine, however, the circumstances under which any reasonable attorney would consider a vulnerable, low-income individual's email to her

legal aid representative, relaying facts relevant to the concern for which she sought legal aid, defamation under California law.

Additionally, Jody Spiegel, whose expertise was in advising and litigating regarding residential care facilities, asked to be kept informed of problems appellant had with the Jewish Home for the Aging for the obvious purpose of determining if efforts short of litigation might resolve the disputes. It was with this background that the allegedly defamatory email was copied to Ms. Spiegel. Although a complaint had not yet been drafted or filed (*Aaronson v. Kinsella, supra*, 58 Cal.App.4th at p. 268), the email clearly related to “potential court action” for which the litigation privilege is applicable. *Rosenthal v. Irell & Manella, supra*, 135 Cal.App.3d at p. 126. It would be a hollow privilege indeed if individuals who cannot adequately represent themselves in a court of law cannot with impunity communicate with their attorneys regarding legal disputes that might lead to litigation.

- ii. *If consulting a legal aid attorney is deemed potentially defamatory, the whole system of legal aid will suffer.*

Upholding the lower court’s decision on any grounds would have a devastating impact on access to justice in California. Not only will it discourage vulnerable clients from seeking help, it will prevent legal aid lawyers from assisting them. In a system in which access to justice is already an enormous problem, courts should hesitate before making decisions that would reduce the ability of legal aid and its cooperative safety net to address the problem.

Threatening the ability of legal aid to provide brief services and to do so collaboratively will have a devastating effect on numerous communities. Bet Tzedek, the ombudsman, and the Jewish Home for the Aging are all part of the same safety net for victims of the justice gap in their community. By simply continuing to consult with her legal aid attorney, Ms. West has ended up locked in lengthy and unnecessary back-and-forth litigation. By utilizing state supported services in the manner they were intended, Ms. West faced an unreasonable and unfounded suit.

Likewise, to hold the communications that any legal aid client has with their legal aid lawyer, particularly in the context of the provision of more limited services, unduly harms the safety net these services provide. Legal aid lawyers answering calls for help on hotlines or seeing clients in clinics hear complaints about other people; it is in the nature of their role in the system of service providers. To hold the contents of that system actionable for defamation is to compromise its effectiveness.

It is vital that the court not limit or chill communication between clients who have sought counsel and advice and legal aid attorneys. By clarifying that it is not reasonable for those communications to be considered defamatory, the court can protect the needs of indigent Californians and encourage them to access resources. If clients resist communication with their legal aid attorneys because they fear being sued, legal aid's work will be impacted severely. Sending any signal that this kind of litigation is permissible will jeopardize the safety net that legal aid and so many others have

cooperatively constructed. For vulnerable populations with little resources, this is a risk they will be unwilling and unable to take.

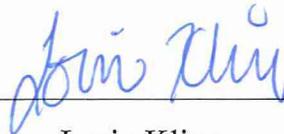
### CONCLUSION

The Legal Aid Association of California urges this Court to reverse the trial court's ruling. To do otherwise is to undermine the safety net for justice gap victims that legal aid has worked hard to establish in partnership with others. Allowing such behavior promotes unnecessary litigation, hinders the ability of legal aid programs to provide services, and discourages those most in need from seeking the help of legal aid. We urge the court to send a clear and unequivocal message that access to justice will be maintained.

Dated: February 12, 2015

Respectfully submitted,

LEGAL AID ASS'N OF CALIFORNIA  
LORIN KLINE

By  \_\_\_\_\_

Lorin Kline  
Attorney for *Amicus Curiae* Legal Aid  
Association of California

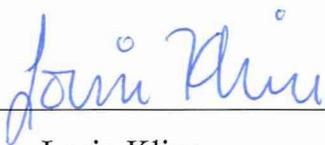
## CERTIFICATE OF WORD COUNT

I hereby certify that the Brief of Amicus Curiae was prepared using Microsoft Word and that the text of this brief consist of 2,967 words as counted by the aforementioned computer program.

Dated: February 12, 2015

Respectfully submitted,

LEGAL AID ASS'N OF CALIFORNIA  
LORIN KLINE

By  \_\_\_\_\_

Lorin Kline  
Attorney for *Amicus Curiae* Legal Aid  
Association of California

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2015, a true and correct copy of **APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF *AMICUS CURIAE* LEGAL AID ASSOCIATION OF CALIFORNIA IN SUPPORT OF PLAINTIFF AND APPELLANT VAL WEST; PROPOSED ORDER; AND CERTIFICATE OF INTERESTED ENTITIES OR PERSONS** was served on all counsel of record via U.S. Mail.

*/s/ Mary Cross*

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Mary Cross

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—  
**PROPOSED ORDER**

Having reviewed the foregoing Motion by The Legal Aid Association of California, this Court finds that the Legal Aid Association of California has demonstrated sufficient cause to be allowed to file a brief as *Amicus Curiae* in this matter.

IT IS HEREBY ORDERED that the brief submitted by the Legal Aid Association of California, submitted with the foregoing Motion, may be filed with the clerk and considered in this case.

\_\_\_\_\_  
Hon. Paul Turner  
Presiding Justice

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION 5	Court of Appeal Case Number: <p style="text-align: center; font-weight: bold;">B255973</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lorin Kline (SB#275263)	Superior Court Case Number: <p style="text-align: center; font-weight: bold;">BC499863</p>
350 Frank H. Ogawa Plaza, Suite 701 Oakland, CA 94612 TELEPHONE NO.: 510-893-3000 FAX NO. (Optional): E-MAIL ADDRESS (Optional): lkline@laaconline.org ATTORNEY FOR (Name): Legal Aid Association of California	FOR COURT USE ONLY
APPELLANT/PETITIONER: Val West  RESPONDENT/REAL PARTY IN INTEREST: Arent Fox LLP	
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>	

1. This form is being submitted on behalf of the following party (name): Val West

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

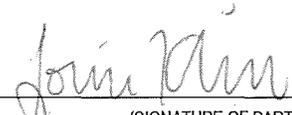
- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 12, 2015

Lorin Kline  
 (TYPE OR PRINT NAME)

▶   
 (SIGNATURE OF PARTY OR ATTORNEY)