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In the Court of Appeal of the State of California
First Appellate District, Division Two

In re Rafael C.,

A Minor,

People of the State of California,

Plaintiff and Respondent,

v.

Rafael C.,

Defendant and Appellant.

No. A106783

(Alameda County
Superior Court
No. J184802)

Appellant's Motion for Judicial Notice

Pursuant to Evidence Code sections 452(d) and 459(a), appellant requests that the Court take judicial notice of the attached amicus curiae brief filed by the Youth Law Center (YLC) in a case pending in this

Division: *In re Sean W.*, no. A107500. (Ex. A.) YLC's brief in *Sean W.* supports the minors-appellants' arguments in that case and in this one regarding the intentional effect of Senate Bill 459's amendment of section 731 of the Welfare and Institutions Code. That amendment, effective January 1, 2004, gave juvenile courts discretion to set a maximum term of confinement for a juvenile committed to CYA less than the maximum (upper) term applicable to adults convicted of the same offense. On January 28, 2004, this Division granted the motion of the Youth Law Center in *Sean W.* and filed the amicus curiae brief in that case. (Ex. B.)

Appellant in this case has raised the same argument that section 731(b) now authorizes a maximum term of confinement for juvenile less than the upper term for adults. YLC's arguments regarding the amendment to section 731 and, in particular, its analysis of the legislative history complements and augments appellant's argument.

As detailed in the application the YLC filed in *Sean W.* (Ex. C), YLC is a non-profit law firm specializing in issues relating to the out-of-home placement of at-risk youth. YLC has participated as amicus curiae in cases around the county and numerous times in the Supreme Court of California and the California Courts of Appeal. YLC attorneys have testified at

numerous legislative hearings and participated in discussions and meetings regarding legislation relating to juvenile court law. (Ex. C at 2.)

Furthermore, the YLC “is well-equipped to assist the Court in understanding the history of S.B. 459, because [it was] involved in the policy discussions that led to the legislation, and the discussions that occurred as it moved through the Legislature. Since the enactment of S.B. 459, [YLC] has been contacted by numerous attorneys seeking background information about the bill and the legislative history.” (Ex. C at p. 3.) The amicus curiae brief filed in *Sean W.* “provides just that kind of information to the Court - - the circumstances that led to S.B. 459, and what the Legislature had before it in deciding to enact the bill into law.” (Id.)

Because YLC’s analysis would significantly assist this Court’s consideration of the section 731 issue, it is essential to have YLC’s brief before this Court in this case. In the interest of expediency, however, appellant requests that in lieu of YLC filing an amicus curiae brief in every case presenting this issue, that the Court simply take judicial notice of the amicus curiae brief filed in *Sean W.* A reviewing court may take judicial notice of “[r]ecords of ... any court of this state” and the YLC brief filed in *Sean W.* is such a record. (Evid. Code § 452(d), 459(a).) This very Division

has, in one case, taken judicial notice of an amicus curiae brief filed in another case. (*McCormick v. Travelers Ins. Co.* (2001) 86 Cal.App.4th 404, 416; see also *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1514 fn.11.)

For the foregoing reasons, appellant requests that the Court take judicial notice of Exhibit A, YLC's amicus curiae brief filed in *In re Sean W.*, no. A107500.

Dated: March 3, 2005

Respectfully Submitted,

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