

# The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

## [California Supreme Court Upholds an Expanded Application of Private Attorney General Fees](#)

November 17, 2010 by [Michael Walsh](#)

[Code of Civil Procedure § 1021.5](#) allows for the recovery of attorney fees from the opposition under certain circumstances when a successful litigant acts as a private attorney general. While it was well established that a financial interest in the matter can disqualify a party from an award under § 1021.5, it was disputed as to whether a non-financial interest could also disqualify a successful litigant from such a recovery. *In [Conservatorship of Roy Whitley](#)*, the Supreme Court unanimously resolved this dispute by holding that “a litigant’s personal nonpecuniary motives may not be used to disqualify that litigant from obtaining fees” under § 1021.5. In *Whitley*, the interest of the successful litigant was the appropriate care for her disabled brother, but she had no pecuniary interest as the case involved injunctive relief and the mandatory procedures for transferring a disabled person. It was not disputed that an important public right was at issue. The Supreme Court held that the application of § 1021.5 was conditioned on the “financial burden of private enforcement,” i.e., the existing financial incentives and burdens, and not on any nonpecuniary interest in the outcome.

To the extent they disagree with this conclusion, the Court disapproved of *Williams v. San Francisco Bd. of Permit Appeals* (1999) 74 Cal.App.4th 961, *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (2000) 79 Cal.App.4th 505, *Hammond v. Agran* (2002) 99 Cal.App.4th 115, and *Punsly v. Ho* (2003) 105 Cal.App.4th 102. For more details about *Whitley*, see the [Attorney Related update page](#).