



OFFICE OF COUNTY COUNSEL

VISION

TO BE DEDICATED ADVOCATES AND TRUSTED ADVISORS TO THE BOARD OF SUPERVISORS, COUNTY DEPARTMENTS, AND OUR OTHER GOVERNMENTAL CLIENTS, ADVANCING THEIR GOALS THROUGH RESPONSIVE SERVICE WHILE MAINTAINING THE HIGHEST STANDARDS OF ETHICS AND PROFESSIONALISM.

The primary mission of the Dependency Division is the litigation of dependency cases involving allegations of child abuse and neglect. The Office of the County Counsel, through this division, represents the Department of Children and Family Services (DCFS). DCFS is the agency charged with initiating petitions under Welfare and Institutions Code section 300 requesting the juvenile court to intervene in the lives of children who are alleged to be victims of child abuse. On average, DCFS files 61 new petitions each day between Edmund D. Edelman Children's Court in Monterey Park and the Alfred J. McCourtney Juvenile Justice Center in Lancaster. The Dependency Division also supports DCFS in a range of programs and initiatives targeted to improve the dependency system.

The Dependency Division Court Sections staff the dependency trial courts and Intake Detention Control (IDC), which is responsible for preparing and filing dependency petitions. The dependency trial courts will typically handle over 50 scheduled hearings each day, as well as new filings. The trial courts now include specialized courts. The "18 and Up" court handles cases for foster youth age 18-21 transitioning from the foster care system to adulthood. The Dedication to Restoration through Empowerment, Advocacy, and Mentoring court (DREAM court), which opened in February 2016, hears most of the cases for children who are commercially sexually exploited in Los Angeles County. The average caseload in DREAM court is about 150 children. The Indian Child Welfare Act court hears most of the dependency cases involving American Indian children in the county, which is home to the largest urban Native population in the country and includes representatives from most of the federally recognized Indian tribes as well as many Native California tribes who are in the process of becoming federally recognized.

In 2017, the juvenile court opened one new courtroom, and county counsel staff was increased to handle the additional workload. The Court Sections also handle legislation, confidentiality, and child fatality reviews. A snapshot of the year 2019 revealed the following data:

- On average 1109 cases¹ were heard in the trial courts a day. A snapshot of the month of August reveals there was a 6% increase in total cases from August 2019 compared to August 2018, and a 96% increase from August 2017.²
- On average 61 detentions, or new filings, were heard per day.
- DCFS requested 9,903 warrants to remove children from a parent's custody. Of those, 627 were denied.

¹ For data purposes, one "case" consists of one minor. Prior to the implementation of the Los Angeles Superior Court's digital case summary system Odyssey in 2017, one "case" represented all of a mother's children, including half-siblings.

² This increase is likely due to the implementation of Odyssey, which tracks cases by each minor rather than by family.



The Outstation Section staffs 19 DCFS regional offices. Attorneys assigned to this section provide a wide range of advice related to existing and emergent dependency cases and investigations. This section develops and delivers extensive social worker training programs in dependency law and related issues. There are two Section Heads who supervise 19 attorneys, and help coordinate the training activities of the four attorneys who have assignments in the regional offices located in the North County.

The Warrant Desk handles issues relating to emergency response investigations. They review new petitions and assist on removal orders, interview orders, and investigative search warrants each month. The Warrant Desk is primarily staffed by a Section Head and nine lawyers. The Warrant Desk operates twenty-four hours a day, 365 days a year. It is part of the Social Services Division of County Counsel.

The North County Section services three dependency trial courts, and the DCFS regional offices in the San Fernando Valley, Santa Clarita, Palmdale, and Lancaster. The trial courts located in Lancaster are the busiest dependency trial courts both by numbers of hearings and dependent children. There is a Section Head and 13 attorneys assigned to the North County Section.

The Appeals Division handles juvenile dependency appellate matters on behalf of DCFS. This division files responsive briefs and answers to writs filed by parents and children. The Appeals Division also reviews cases for possible appellate action and will file an affirmative writ in circumstances where DCFS believes the court's order may place a child at risk or where an appeal would not be feasible due to time considerations. The Appeals Division seeks publication of appellate opinions and works with other counties to seek de-publication of unfavorable published opinions. There is a Division Chief and 17 attorneys assigned to this section, an increase of one attorney since the year prior.

In 2019, the Appeals Division filed more than 660 appellate briefs and other pleadings, an increase of 80 briefs from the previous year.

Among the published decisions from the Los Angeles County Juvenile Court issued by the Court of Appeal in 2019 were:

Bahra v. County of San Bernardino (2019) 945 F.3d 1231

Plaintiff, Eric Bahra, was fired from his position as a social services practitioner at the San Bernardino County Department of Children and Family Services (CFS). Bahra challenged his termination, unsuccessfully, through an appeal to the Civil Service Commission of the County of San Bernardino. He then filed an action in the United States district court against CFS, the County of San Bernardino, and two employees of CFS, in which he alleged that CFS and two of its employees fired him in retaliation for his whistleblowing activities, in violation of California Labor Code § 1102.5 and 42 U.S.C. § 1983. The district court granted summary judgement for the defendants holding, in part, that the plaintiff's claims for retaliation under the California Labor Code § 1102.5 and 42 U.S.C. § 1983 were barred by claim preclusion and issue preclusion. The Court of Appeal affirmed in part and reversed in part. The United States Court of Appeals for the Ninth Circuit affirmed the district court's ruling that the plaintiff's § 1983 claim was precluded by the Commission's order. It also held that the Commission's order did not preclude the plaintiff's California Labor Code § 1102.5 claim and, thus, reversed the district court's ruling to the contrary.

B.H. v. Manhattan Beach Unified School District (2019) 35 CA5th 563

A child welfare agency's provision of Adoptive Assistance Program (AAP) funding for a former foster child's residential treatment does not constitute "placement" of the child in the residential facility by the child welfare agency. The school district of the adoptive parents' residence remains responsible for the cost of the child's special education and related services.

Brackeen v. Bernhardt (2019) 942 F.3d 287

Plaintiffs, the states of Texas, Indiana, and Louisiana, and seven individual plaintiffs seeking to adopt Indian children, presented a facial constitutional challenge to ICWA as well as statutory and constitutional challenges to the 2016 administrative rule (the Final Rule) that was promulgated by the Department of the Interior to clarify provisions of ICWA. Defendants, the United States of America, several federal agencies and officials in their official capacities, and five intervening Indian tribes, moved to dismiss the complaint for lack of subject matter jurisdiction. The district court denied the motion, concluding that Plaintiffs had Article III



standing. The district court then granted summary judgment in favor of Plaintiffs, ruling that provisions of ICWA and the Final Rule violated equal protection, the Tenth Amendment, the nondelegation doctrine, and the APA. Defendants appealed.

The United States Court of Appeals for the Fifth District affirmed the district court's ruling that Plaintiffs had standing, reversed the district court's grant of summary judgment to Plaintiffs, and rendered judgment in favor of Defendants.

CDSS v. Marin (2019) 34 CA5th 328

California Department of Social Services appealed a trial court judgment to grant an adoptive father's writ of mandate and reversing an administrative law judge's decision to deny the adoptive father's request for a rate increase. The adoptive father's request for a rate increase was based on two federal court decisions, *Calif. State Foster Parent Assn. v. Wagner* and *Calif. State Foster Parent Assn. v. Lightbourne*, establishing new foster care maintenance payment rates. Although Adoption Assistance Program (AAP) benefits are limited to age-related, state approved foster care maintenance payments, the California Legislature amended the Welfare and Institutions Code limiting retroactive application of the holdings in the two federal cases to AAP payments.

In re Adam H. (2019) 43 CA5th 27

A father appealed from a juvenile court's dispositional order removing his 14-year-old child from his custody pursuant to W&IC § 361(c). The father argued the court applied the wrong statute: since he was a non-custodial parent requesting custody, the juvenile court should have evaluated whether the child should be placed with him under W&IC § 361.2. DCFS agreed but argued this error was harmless.

The Court of Appeal reversed and remanded. The appellate court declined to make an implied finding of detriment under W&IC § 361.2 where the juvenile court did not expressly consider placement with the father under W&IC § 361.2(a) and where there was conflicting evidence as to whether such placement would be detrimental to the child. The order removing the child from his father under W&IC § 361(c) was therefore reversed, and the case was remanded to the juvenile court with directions to hold a new disposition hearing to consider the father's placement request under W&IC § 361.2.

In re A.E. (2019) 38 CA5th 1124

Six children who were physically abused by their parents appealed a juvenile court's dispositional order granting family reunification services to the parents. The Court of Appeal reversed with directions. A juvenile court's findings that, although the family reunification services bypass provisions under W&IC § 361.5 (b)(5) and (b)(6) applied, pursuant to W&IC § 361.5 (c)(2) and (c)(3), such services were in the children's best interest, would likely prevent re-abuse, and not providing such services would be detrimental to the children, were not supported by substantial evidence. The reviewing court further concluded the term "testimony" as found in W&IC § 361.5 (c)(3) refers to in-court oral statements of live witnesses, not to other forms of evidence.

In re A.W. (2019) 38 CA5th 655

A mother and father appealed from a juvenile court's termination of parental rights. The Court of Appeal conditionally reversed. A child protective agency was required to send ICWA notice to the Picayune Rancheria of the Chukchansi Indians tribe where a juvenile court ordered ICWA notice to be provided to the tribe, the maternal grandfather was a member of that tribe and lived on the Reservation, and the mother was found to be an Indian child when she was a dependent of the court and that tribe had intervened in that case. A child welfare agency erred when it initially noticed the tribe of a status conference but failed to notice the tribe of any subsequent hearings, including the hearing where the juvenile court found the ICWA did not apply. A juvenile court erred when it failed to assure notice of the hearings had been provided to the tribe and did not wait 60 days after the tribe received notice before making the ICWA finding. A child welfare agency's failure to notice the tribe of all subsequent hearings did not constitute harmless error because the tribe had responded to the child welfare agency's late, non-compliant ICWA notice, stating the child and mother were eligible for membership in the tribe through lineal descent by the maternal grandfather, who was an enrolled tribal member, and the tribe intended to intervene in the proceedings.

In re B.D. (2019) 35 CA5th 803

A mother and father appealed the juvenile court's findings and orders terminating their parental rights to their son, adopting a permanent plan of adoption, and determining the parents failed to meet their burden of



establishing the applicability of the beneficial parental relationship exception under W&IC § 366.26(c)(1)(B)(i). A mother filed a CCP § 909 motion asking an appellate court to take additional evidence on appeal. The mother’s motion sought to include minute orders from the juvenile court showing that the child welfare agency removed the child from the foster parents’ home and information related to the investigation for the removal. The child welfare agency asked the appellate court to strike mother’s motion. An appellate court sought supplemental briefing and oral argument on: (1) whether a writ of error coram vobis, a rarely invoked appellate remedy reserved for cases involving corruption of the trial court record by extrinsic fraud, was satisfied; (2) whether the Court should summarily reverse according to the parties joint application for reversal; and (3) whether the child welfare agency breached its obligation to provide a preliminary assessment of adoptability pursuant to W&IC § 366.22(c)(1)(D), and if so, was the breach so egregious as to rise to the level of a due process violation, justifying reversal on that basis?

The appellate court reversed, finding this was one of the rare and compelling cases where postjudgment evidence stood to completely undermine the legal underpinnings of the juvenile court’s judgment under review. Stipulated reversal was not appropriate because such reversal by agreement of the parties would mask an error of federal constitutional magnitude that warranted attention in a reasoned opinion. The child’s due process rights were violated when the child welfare agency violated W&IC § 366.22(c)(1)(D), by withholding from the court information material to the “preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker.”

In re Caden C. (2019) 34 CA5th 87

A child and a child welfare agency challenged a juvenile court’s finding that a mother established the beneficial relationship exception to the termination of parental rights. The Court of Appeal reversed. A juvenile court’s reliance on the beneficial relationship exception to the termination of parental rights was an abuse of discretion where there was no evidence that the mother attempted to maintain her sobriety or seek treatment to address her mental health issues in the 10 months prior to the permanency planning hearing and her insight regarding her parenting was deficient. Furthermore, the question was not whether the mother’s bond with the child trumped the bond he shared with his caregiver. Rather, it was whether mother’s bond

with the child was such a positive influence on his young life that an uncertain future was an acceptable price to pay for maintaining it. When the strength and quality of the mother’s relationship with the child was properly balanced against the security and sense of belonging adoption by his caregiver would confer, no reasonable court could have concluded that a compelling justification had been made for foregoing adoption.

No reasonable court would apply the beneficial relationship exception on this record of mother’s disengagement from treatment and case plan, inability or unwillingness to remain sober, and deficient insight regarding her parenting.

For an especially vulnerable child such as Caden, who has suffered significant trauma in his young life, the justification for blocking adoption must indeed be exceptional.

Caden C. was granted review by the California Supreme Court on July 24, 2019. As of April 2021 the case had been argued and submitted and is now pending a decision by the Court.

In re Charlotte C. (2019) 33 Cal. App. 5th 404

The child appealed from two orders: (1) the order denying her counsel’s request for her relatives’ assessment information compiled by the Resource Family Approval Program (RFA) and (2) the order denying counsel’s request to present evidence and cross-examine witnesses at the placement hearing. The Court of Appeal affirmed in part and reversed in part. The Court found that the child’s attorney is entitled to receive a copy of the child’s case file, including RFA-related information. The child’s attorney may obtain confidential RFA-related information that is outside the case file upon the filing of a W&IC § 827 petition with notice provided to the relative whose information is being sought. The juvenile court may order the release of confidential RFA information to the child’s attorney upon a finding, by a preponderance of the evidence, that the requested information is substantially relevant to a legitimate need that outweighs the relative’s interest in keeping the information confidential. The alleged error in denying the child’s request to present evidence or cross-examine witnesses was harmless because the child did not request a new trial or a reversal of the ultimate placement decision.



In re C.W. (2019) 33 CA5th 835

In a paternity and child support action filed by the County of Los Angeles (COLA), a mother's boyfriend, rather than the child's biological father, was found to be the child's father pursuant to Fam. Code § 7611. The Court of Appeal reversed. Even if the evidence satisfied a presumption that the mother's boyfriend was the child's father under Fam. Code § 7611, the presumption was rebutted because a genetic test established the biological father's paternity and the boyfriend did not seek parental status.

In re D.R. (2019) 39 CA5th 583

A father appealed the denial of his W&IC section 388 petition which alleged the child welfare agency failed to give him notice of the dependency proceedings. The appellate court found the agency failed to exercise reasonable due diligence and failed to comply with the Hague Service Convention, and the appellate court reversed all orders as to the father. The appellate court stressed the agency knew the father had been deported to Mexico but it searched United States government databases and did not seek assistance from the father's adult children, who were available, cooperative, and in contact with the father through Facebook.

In re E.W. (2019) 37 CA5th 1167

A mother appealed from a juvenile court custody order on grounds the juvenile court had no jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act to issue its order. The Act requires State courts to enforce valid child-custody and visitation determinations made by sister state courts. It also establishes interstate enforcement procedures. The Act takes a strict "first in time" approach to jurisdiction. California had exclusive, continuing jurisdiction because, even though the mother and the child lived in South Carolina, the parents shared joint legal custody under a 2014 Family Law order issued in California.

In re Harley C. (2019) 37 CA5th 474

A mother appealed a juvenile court's refusal to permit her to testify or call witnesses at a contested disposition hearing because her counsel had not filed a joint trial statement as required by a local rule. The Court of Appeal reversed. The juvenile court improperly impaired the mother's ability to present her case because it excluded all of the mother's evidence due to her counsel's failure to file a joint trial statement. The

local rule was invalid and unenforceable because it was adopted in violation of state law and the California Rules of Court. The court had options to punish counsel for her error short of denying the mother the ability to present any witnesses at the dispositional hearing. If the joint trial statement was necessary, the court could have resolved the issue by briefly continuing the hearing, permitting the mother to file a joint trial statement, and, if appropriate, scheduling a new hearing directing the mother's counsel to show cause why sanctions should not be imposed against her. The court's application of its local rule improperly impaired the mother's ability to present her case prejudiced her and required reversal of the judgment.

In re I.A. (2019) 40 Cal. App. 5th 19

Two dependent children appealed a juvenile court order granting their parents reunification services even though they had been removed, returned, and removed again from parental custody based on the same allegations as before of ongoing domestic violence and neglect. The statutory language of W&IC § 361.5(b)(10) allows bypass of reunification services when reunification services had previously been terminated and the subsequent petition the subsequent petition applies to the same children. This statutory interpretation advances the legislative intent to restrict the mandatory provision of reunification services if a parent failed prior reunification attempts.

In re I.I. (2019) 42 CA5th 971

A father challenged a juvenile court's jurisdictional order and findings that his children were persons described by W&IC § 300(f) based on the juvenile court's previously sustained W&IC § 300 petition finding he and the children's mother caused the death of a child through abuse or neglect. The Court of Appeal affirmed. Because it was uncontroverted that the juvenile court found in the earlier case that the parents caused the death of their child through abuse or neglect, the juvenile court was required to sustain the petition and assert jurisdiction pursuant to W&IC § 300(f). A showing of current risk to surviving children was not required.

In re J.F. (2019) 39 Cal. App. 5th 70

A father appealed the order terminating his parental rights. The Notice of Appeal did not identify an earlier order denying his W&IC § 388 petition. The father's opening brief challenged only the order denying his W&IC § 388 petition. The Court of Appeal held that



appellate jurisdiction is dependent on a timely notice of appeal that adequately identifies the order being appealed. Because the father's Notice of Appeal did not mention the order denying his W&IC § 388 petition, the Court of Appeal did not have jurisdiction to review the order. The Court of Appeal also held that the juvenile court's findings and orders are presumed correct and it is the appellant's duty to show error by citation to the record and authority. When an appellant fails to raise a point or asserts it but fails to support it with reasoned argument and citation to authority, appellant waives the issue. Because the father failed to demonstrate error with respect to the order appealed, i.e, the order termination parental rights, the father waived his challenge to that order, which was affirmed.

In re J.M. (2019) 40 CA5th 913

DCFS appealed the juvenile court's dismissal of a W&IC § 300 petition for lack of evidence of current risk of harm at the time of the jurisdiction hearing after mother had absconded with the children in violation of the court's removal order. The Court of Appeal reversed. Evidence of current risk of harm was not rendered insufficient by the fact that more than a year passed after the mother absconded with the children in violation of a removal order. The "at the time of the hearing" rule should not apply to frustrate dependency jurisdiction when a parent's wrongful conduct is the cause of the delay.

In re J.P. (2019) 37 CA5th 1111

A mother appealed a juvenile court's order granting her ex-boyfriend visitation with her son. The Court of Appeal affirmed. The juvenile court did not abuse its discretion in ordering visitation with a nonparent after determining that it would be in the child's best interest. The juvenile court had authority to order visitation between a dependent child and a nonparent, under statute granting the juvenile court broad authority to make reasonable orders for the care of the dependent child and to direct reasonable orders to parents or guardians of the dependent child. Although there was no statute that expressly authorized visitation between the mother's ex-boyfriend and her dependent child, there was nothing precluding the juvenile court from ordering visitation if it was reasonably related to the child's care and was in the child's best interest. Construing statutes to bar visitation would produce absurd results, and permitting visitation with a nonparent that was in the child's best interest promoted the purpose of the dependency system.

In re J.R. (20 19) 42 CA5th 513

A mother appealed from a juvenile court's order selecting guardianship as the permanent plan and terminating dependency jurisdiction, arguing in part that the juvenile court erred prior to the setting of the W&IC § 366.26 hearing and she did not receive proper notice of the requirement to file a petition for extraordinary writ from the setting of the section 366.26 hearing to preserve her appellate rights. The Court of Appeal affirmed. The mother's failure to timely file a petition for extraordinary writ from the setting of the W&IC § 366.26 hearing was not excused where the juvenile court mailed notice of the writ requirement to the address the mother provided on her destination of mailing address form.

In re J.Y. (2019) 30 CA5th 712

A mother appealed the order removing her child from his previous caretakers and placing him with the caretakers of his two siblings, to be adopted through a tribal customary adoption. The mother also appealed the order granting the tribe's petitions for modifications, giving full faith and credit to an amended tribal customary adoption order.

The Court of Appeal affirmed. The mother lacked standing to challenge the placement issue because by the time of the change in placement, her reunification services had been long since terminated and tribal customary adoption had already been selected as the permanent plan. Thus, the child's placement did not have the potential to alter the juvenile court's determination regarding the appropriate permanent plan (which had already been determined to be tribal customary adoption) or otherwise affect mother's interest in her legal status with respect to the child. The reviewing court noted that the mother offered no argument that any of her legal rights were affected by the juvenile court's order; only that she was affected by its order because she was still afforded some visitation and had a strained relationship with the caregivers to whom the child was transferred. Additionally, the reviewing court held the juvenile court properly gave full faith and credit to the amended tribal customary adoption order under W&IC § 366.24, even though it had already given full faith and credit to the initial tribal customary adoptions order.

In re K.T. (2019) 42 CA5th 15

Former relative caretakers challenged the order removing the child from their custody under W&IC §



387. The Court of Appeal affirmed. In the published portion of the opinion, the Court of Appeal held the appellants had standing to challenge the removal order because as relative caretakers they had legally cognizable interests under W&IC § 361.3.

In re L.C. (2019) 38 Cal.App.5th 646

A legal guardian appealed the juvenile court's jurisdictional finding that a six-year-old child was at substantial risk of serious physical harm due to the legal guardian's abuse of methamphetamine. The Court of Appeal reversed, holding that evidence of the legal guardian's occasional methamphetamine use outside his home and while the child was in the care of another adult in the home did not support dependency jurisdiction under WIC § 300, subdivision (b)(1).

In re L.M. (2019) 39 CA5th 898

Former caregivers challenged an order removing a child from them and placing her with caregivers who previously adopted the child's sibling. The Court of Appeal affirmed. The former caregivers were afforded the rights of prospective adoptive parents pursuant to W&IC § 366.26(n) and a juvenile court properly considered future placements, including placement with a sibling, when it determined removal was in the child's best interest. The juvenile court was in the best position to make the difficult decision of which placement, between two excellent options, was in the child's best interest. Substantial evidence supported the juvenile court's finding that removal was in the child's best interest and its ruling did not constitute an abuse of discretion.

M.L.v. Superior Court (2019) 37 CA5th 390

It was not beyond the scope of the juvenile court's authority to remove two children from parental custody after an evidentiary hearing on a W&IC section 388 petition filed by counsel for only of the two children, where the petition alleged both children were at risk, contemplated removal of both children, and was supported by the non-petitioning child's counsel. Regardless, the removal order was within the juvenile court's inherent and statutory authority to modify or set aside its orders sua sponte as circumstances warrant, so long as it has provided the parties with notice and an opportunity to be heard.

In re M.S. (2019) 41 CA5th 568

A mother appealed from a juvenile court's orders

denying her reunification services based on a finding her whereabouts were unknown, setting a W&IC section 366.26 hearing, and terminating parental rights. The Court of Appeal reversed. Substantial evidence did not support a finding that a mother's whereabouts were unknown where she appeared and provided her residence address, there was no evidence she had moved, and the child welfare agency did not pursue the most likely means to verify she still resided there. A juvenile court erred in setting a W&IC section 366.26 hearing rather than a six-month review hearing where the sole basis for denial of reunification services was a parent's unknown whereabouts. Harmless error analysis did not apply to the erroneous denial of reunification services, but if it did, the errors were prejudicial. The remedy for the errors was to reverse the orders and remand with directions that the mother be provided with reunification services for the minimum six-month period applicable to an infant child, notwithstanding that the 24-month statutory time limit on services had passed.

In re Nicole S. (2019) 39 CA5th 91

A former nonminor dependent of the juvenile court appealed an order denying her motion for an award of attorney's fees pursuant to Code of Civil Procedure (CCP) § 1021.5. In her motion, the dependent sought a fee award for the work that her attorneys had performed in an interim writ proceeding, through which the dependent successfully challenged an evidentiary decision made by the juvenile court. When denying her motion, the juvenile court ruled (1) it had ancillary jurisdiction to consider the motion even though it lacked subject matter jurisdiction over the dependent due to her age, (2) CCP § 1021.5 does not apply to dependency proceedings, and, (3) even if the statute did apply, the dependent's attorneys were not entitled to a fee award under the facts presented in this case. According to the Court of Appeal, the financial incentives integral to CCP § 1021.5 are unnecessary in the dependency context and could undermine protections built into the dependency scheme to serve the best interests of children and nonminor dependents by ensuring that all parties are represented by competent counsel.

In re William M.W. (2019) 43 CA5th 573

A mother and father appealed from a juvenile court's refusal to order a child welfare agency to deliver requested discovery electronically and at no cost in advance of a contested review hearing involving their children. The Court of Appeal remanded. The court concluded that no rule, statute, or constitutional



principle required a parent's requested method of discovery disclosure. However, should a circumstance arise where an indigent parent's meaningful access to the judicial process is impaired by discovery requirements, a juvenile court has the authority to fix the time, place, and manner of discovery upon such terms and conditions as will serve the ends of justice and the purposes of the juvenile court law. A juvenile court erred when it determined it had no discretion to enter an order requiring a child welfare agency to provide discovery to parents at no cost.

THE PRACTICE OF DEPENDENCY LAW

The practice of dependency law provides an opportunity for members of the Dependency Division to be part of the County team along with DCFS to protect abused, neglected, or abandoned children, to preserve and strengthen family ties, and to provide permanency for children.

The purpose of Dependency Court, as embodied in the statutes that govern it, is to provide for the safety and protection of each child under its jurisdiction and to preserve and strengthen the child's family ties whenever possible. Parenting is a fundamental right that may not be disturbed unless a parent is acting in a way that is contrary to the safety and welfare of the child. A child is removed from parental custody only if it is necessary to protect him or her from harm. When the court determines that removal of a child is necessary, reunification of the child with his or her family becomes the primary objective.

The proceedings in Dependency Court differ significantly from civil and criminal actions and affect the fundamental rights of both parents and children. Knowledge of the law and the case, combined with insight and judgment, enable County Counsel to work cases with opposing counsel in a spirit of cooperation to achieve realistic and reasonable results for the family and child while assuring that the child is protected.

A. PRE-FILING PROCEDURES

Prior to the initiation of a dependency court case, a child abuse investigation is initiated through a call to the Child Protection Hotline. DCFS has the responsibility of investigating allegations of child abuse and neglect and determining whether a petition should be filed alleging that the child comes within the jurisdiction of the Dependency Court. Should the Children's Social Worker (CSW) determine that a child is in need of the protection of the juvenile court, the CSW submits the

petition request to the Intake and Detention Control Section (IDC) of DCFS. County Counsel staffs the IDC with attorneys who review the petitions to ensure they are legally sufficient. In addition, the IDC attorneys give legal advice on detention and filing issues.

Once a petition has been filed, the petitioner (DCFS), through its attorney, has the burden of proof at the initial hearing and subsequent jurisdiction, disposition, review, and selection and implementation hearings held in Dependency Court. There is a direct calendaring system in Dependency Court, whereby all hearings in a case are heard before the same judicial officer, whenever possible. In addition, the County Counsel provides vertical representation throughout the proceedings, which ensures necessary continuity and familiarity on a case.

B. INITIAL HEARING

The purpose of the initial petition hearing is to advise parents of the allegations in the petition and to decide detention issues. Based on prima facie evidence submitted in the CSW's detention report, the court makes a determination whether (1) the child should remain detained and (2) if the child comes within the description of Welfare and Institutions Code ("WIC") section 300 (a) - (j). County Counsel advocates on behalf of DCFS for continued detention if it appears necessary for the safety and protection of the child because of the following circumstances:

- There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's emotional or physical health can be protected without removing the child from the custody of the parents or guardian; or
- There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court; the child has left a placement in which he or she was placed by the Dependency Court; or,
- The child indicates an unwillingness to return home and has been physically or sexually abused by a person residing in the home.

If the juvenile court orders a child detained, the court must make a finding that there is substantial danger to the physical and/or emotional health and safety of the child and there are no reasonable means to protect the child without removing the child from the custody of the parents. The court also must make a finding that reasonable efforts were made to prevent or eliminate the need to remove the child from parental custody.



C. JURISDICTION

At the Jurisdiction hearing, DCFS has the burden of proof to establish, by a preponderance of the evidence, that the allegations in the petition are true and that the child has suffered, or there is a substantial risk that the child will suffer, serious physical or emotional harm or injury.

The parties may set a matter for a mandatory settlement conference or a Pretrial Resolution Conference during which County Counsel participates in settlement negotiations with other counsel.

Alternatively, the matter may be set for Adjudication. If the child is detained from the parent's home, the matter must be calendared within 15 court days. If the child is released to a parent, the time for trial is 30 calendar days. At the Adjudication, County Counsel litigates the counts set forth in the petition to establish the legal basis for the court's assumption of jurisdiction. If it is necessary to call a child as a witness, County Counsel or the child's attorney may request that the court permit the child to testify out of the presence of the parents. The court will permit chambers testimony if the child is (1) intimidated by the courtroom setting, (2) afraid to testify in front of his or her parents, or (3) it is necessary to assure that the child tell the truth.

The social study report prepared by the CSW, attachments to the report, and hearsay statements in the report may be used as substantive evidence subject to specific objections. The CSW, as the preparer of the report, must be available for cross-examination.

At the conclusion of testimony, the court may find the allegations true and sustain the petition; find some of the allegations true and sustain an amended petition; or, find the child is not a person described by WIC § 300 and dismiss the petition.

D. DISPOSITION

If the child is found by the court to be a person described by Welfare and Institutions Code sections 300 (a) - (j), a disposition hearing is held immediately following the jurisdiction hearing to determine the proper plan for the child. The Disposition hearing may be continued for good cause up to 10 court days after the Adjudication if the minor is detained, or within 30 calendar days if DCFS is recommending the court order no reunification services for the parents, or if DCFS seeks to release the child to the custody of a parent.

If DCFS recommends that the child be removed from parental custody, County Counsel must establish by clear and convincing evidence that return of the child to his or her parents would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child, and there are no reasonable means by which to protect the child. A non-custodial parent is entitled to custody of his or her child unless it can be shown that custody would be detrimental to the safety, protection, or physical or emotional well-being of the child. When the court is making a placement decision for a child, it first must consider placement with the custodial parent followed by the non-custodial parent, relative, foster home, community care facility, foster family agency, or group home. In addition, the court is required to develop and/or maintain sibling relationships whenever possible.

If a child is removed from parental custody, the court may order family reunification services for the parents. There must be a reunification plan that is designed to meet the needs of the family, which may include a parenting class, individual and conjoint counseling, domestic violence programs and other treatment modalities that will alleviate the problems that led to dependency court involvement. If the child is three years of age or older, the period of reunification services is twelve months from the date the child entered foster care and may not exceed 18 months from detention. If the child is under three years of age at the time of initial removal, a parent has six months from the date of the disposition hearing to successfully reunify with the child. The court has the discretion to limit the period of reunification for older siblings when one of the siblings is less than three years old.

In 2009, the statutory time for reunification services was modified. The law now provides that if, at the eighteen-month review hearing, the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period, the court may extend reunification services to 24 months from the date the child was removed from the parent's custody. The court shall extend the time period only if it finds that it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period, or that reasonable services have not been provided to the parent or guardian.

Reunification services are not ordered in all cases. If a parent is in custody, the court may deny reunification



services if it finds it would be detrimental to the child to order reunification services. If DCFS has determined that it would not be in the best interests of the child to reunify with his or her parents, County Counsel must demonstrate to the court that the specific statutory criteria have been met on which the court may base a non-reunification order. There are seventeen statutory grounds under which a court may deny reunification services to the parent. Those grounds are:

- The whereabouts of the parent or guardian is unknown;
- The parent or guardian is suffering from a mental illness and is incapable of benefiting from reunification services;
- A child or sibling has been physically or sexually abused as determined on two separate dependency petitions;
- The parent or guardian has caused the death of a child through abuse or neglect;
- The child is under 5 years old and has been severely physically abused;
- The child or the child's sibling has been severely sexually abused or severely physically harmed;
- The parent or guardian is not receiving reunification services for a sibling or half sibling pursuant to Welfare and Institutions Code section 361.5, subdivisions (b)(3), (5) or (6);
- The child has been conceived under Penal Code Sections 288 or 288.5 (rape);
- The child has been willfully abandoned which has caused serious danger to the child, or the child has been voluntarily surrendered;
- Reunification services have been terminated for a sibling after the sibling was removed from the home and the parent or guardian has not made a reasonable effort to treat the problem that led to the removal of the sibling;
- Parental rights were terminated on a sibling, and the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling;
- The parent or guardian has been convicted of a violent felony as defined in Penal Code section 667.5;
- The parent or guardian is a chronic abuser of drugs or alcohol, and has resisted court ordered treatment;
- The parent or guardian has advised the court that he or she is not interested in receiving family reunification services or having the child placed in his or her custody;
- The parent or guardian has on one or more

occasions abducted the child or the child's sibling;

- That the parent or guardian has been required by the court to be registered on a sex offender registry under the federal Adam Walsh Child Protection and Safety Act of 2006; or
- That the parent or guardian knowingly participated in, or permitted, the sexual exploitation of the child.

If the court has not ordered reunification services for the family, a hearing to select and implement a permanent plan must be calendared within 120 days. If the parent's whereabouts are unknown, the selection and implementation hearing is not scheduled until after the initial six-month review hearing is held.

E. REVIEW HEARINGS

(WIC section 364) If the court has ordered that the child reside with a parent, the case will be reviewed every six months until the court determines that conditions no longer exist that brought the child within the court's jurisdiction, the child is safe in the home, and jurisdiction may be terminated.

(WIC section 366.21 (e).) If the court has ordered family reunification services, the subsequent review hearings are held every six months. At each of the review hearings, the court reviews the status of the child and the progress the parents have made with their case plan. The court is mandated to return the child to the custody of his or her parents unless it finds by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, physical, or emotional well-being of the child. Failure of a parent to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence that return of the child would be detrimental.

If the child was under the age of three on the date of initial removal from parental custody, the first six-month review hearing is a permanency hearing.

(WIC section 366.21 (f)) The 12-month review hearing is the permanency hearing for a child who was three or older on the date of initial removal from parental custody. If the child is not returned to the custody of his or her parents, the court must terminate reunification services and set the matter for a hearing at which a permanent plan of adoption, guardianship, or long term foster care is selected.



In rare instances, the court may continue the case for an additional six months if it finds that there is a substantial probability that the child will be safely returned and maintained in the home by the time of the next hearing.

(WIC section 366.22) The permanency hearing must occur within 18 months of the original detention of the child. If the child is not returned to the custody of his or her parents, the court must terminate reunification services and set the matter for a hearing at which a permanent plan of adoption, guardianship, or long term foster care is selected. In rare instances, the court may continue the case for an additional six months if a parent was recently released from incarceration, is in a court-ordered in-patient drug program and is making significant and consistent progress, or was a minor or nonminor dependent parent at the time of detention and is making significant and consistent progress in establishing a safe home for the child's return, and the court finds that there is a substantial probability that the child will be safely returned and maintained in the home by the time of the next hearing. Particularly, the court must take into consideration the barriers of an incarcerated or institutionalized parent in determining whether to extend reunification services. The court also must determine, by clear and convincing evidence, that additional reunification services are in the child's best interest, and the parent is making significant and consistent progress, and there is a substantial probability that the child will be returned to the physical custody of his or her parent within the extended period.

(WIC section 366.25) The permanency hearing must occur within 24 months of the original detention of the child. If the child is not returned to the custody of his or her parents, the court must terminate reunification services and set the matter for a hearing at which a permanent plan of adoption, guardianship, or long term foster care is selected.

(WIC section 366.26) The selection and implementation hearing is the hearing at which the court selects the permanent plan for the child. The preferred plan is adoption followed by legal guardianship and a planned permanent living arrangement. If the court selects adoption as the plan, before terminating parental rights, the court must find by clear and convincing evidence that the child is adoptable. If the child is adoptable, the court shall terminate parental rights unless one of the following circumstances applies:

- A relative caretaker is unwilling or unable to adopt because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, and removal of the child from the relative would be detrimental to the child.
- Termination would be detrimental to the child because the parents have maintained regular visitation and contact with the child, the child will benefit from continuing the relationship, and the benefit from continuing the parental relationship will outweigh the benefit derived from the permanence of an adoptive home.
- Termination would be detrimental to the child because a child 12 years of age or older does not wish to be adopted.
- Termination would be detrimental to the child because the child requires residential treatment and adoption is unlikely or undesirable.
- Termination would be detrimental to the child because there would be substantial interference with a child's sibling relationship.
- Termination would be detrimental to the child because the child is living with a non-relative caretaker who is unwilling or unable to adopt because of exceptional circumstances, and removal of the child from that home would be detrimental to the child.
- Termination would not be in the best interest of the child because there would be a substantial interference with the Indian child's connection to his or her tribal community or the child's tribal membership rights.
- Termination would not be in the best interest of the child because the Indian child's tribe has identified guardianship or long term foster care with a fit or willing relative as an appropriate plan.

(WIC Section 366.3) After the permanency hearing, the court reviews the status of the child at least once every six months. The court determines the progress made to provide a permanent home for the child and efforts extended to find and maintain significant relationships between the child and individuals who are important to the child. Sibling relationships are evaluated and maintained where possible. Emancipation and independent living services which have been offered are reviewed for the teenager as he or she approaches adulthood.

F. NON MINOR DEPENDENTS

"Nonminor dependent" means a foster child who is a current dependent child or ward of the juvenile court,



or who is a nonminor under the transition jurisdiction of the juvenile court, has attained 18 years of age while under an order of foster care placement. The juvenile court may retain jurisdiction over these young adults until the age of 21. In certain circumstances, a child who is no longer a foster child can petition the court to reenter foster care after his 18th birthday.

GLOSSARY

Brief

A document filed in court that summarizes the facts of the case and then analyzes the facts in accordance with applicable law.

Chambers

The judge or hearing officer’s office.

Command Post

The DCFS office that handles after hour emergency detentions

Concession letter

A letter to the reviewing court that admits the opposing party’s argument has merit.

Detention hearing

The initial hearing that is held in dependency court following the removal of a child from parental custody and the filing of a petition.

Direct Calendaring

A case is assigned to a courtroom at the initial hearing and will remain in the same courtroom throughout the proceedings.

Disposition

If the child is found to be a person described in Welfare and Institutions code section 300, a disposition hearing is held to determine the appropriate placement of the child and the case plan.

Family reunification

Child welfare services provided to a child and the child’s parents or guardians to facilitate reunification of the family.

Hearsay

An out of court statement offered in evidence for the truth of the matter stated.

Indian Child Welfare Act

Federal law enacted to protect and preserve American Indian Families

Initial hearing

See detention hearing

Jurisdiction

The scope of the court’s authority to make orders. A child who comes within the description of Welfare and Institutions code section 300 (a)-(j) falls within the juvenile court’s jurisdiction.

Legal Guardianship

Legal authority and responsibility for the care of a child.

Non-Related Extended Family Member

An adult caregiver who has an established familial or mentoring relationship with the child.

Notice

Formal communication with a party, usually written, informing them of court proceedings.

Planned Permanent Living Arrangement

Formerly Long Term foster care. A permanent plan for a dependent child for whom neither adoption nor legal guardianship is a viable plan.

Preponderance of Evidence

The standard of proof where a court is only required to find that it is more likely than not that the thing sought to be proven is true.

Pretrial Resolution Conference

A court hearing held prior to the jurisdictional hearing, in which the parties meet in an attempt to resolve the issues before the court.

Prima Facie Evidence

Evidence that, if uncontradicted, would support the requested finding. In a dependency proceeding, the court, at an initial hearing, needs only prima facie evidence that the child is described by Welfare and Institutions code section 300 and may not remain safely in the home of the parent or guardian in order to make detention findings

Review hearing

Hearings which occur every six months during which the court reviews the appropriateness of the case plan

Selection and Implementation hearing

Hearing at which the court selects and implements a permanent plan for the child. That plan can be either adoption, legal guardianship, or, on rare occasions,



a planned permanent living arrangement.

Social Study Report

A report prepared by the children's social worker that provides information to the court regarding the problems challenging a family and the family's progress regarding those challenges.

Termination of Parental Rights (TPR)

If the court determines that adoption is the appropriate plan at the Selection and Implementation hearing, the court must free the child for adoption by terminating parental rights, unless one of the statutory exceptions to termination of parental rights applies.

Vertical Representation

In dependency proceedings, an attorney representing a party remains on the case at all stages of the proceedings, so as to provide continuity of representation.