

INTRODUCTION

This case raises important issues about the representation of dependent children in California and is a natural extension of this Court's decision in *In re Zeth S.* (2003) 31 Cal.4th 396. California has made a commitment to providing trial counsel for nearly every dependent child. (Cal. Welf. & Inst. Code, 317, subd. (c); Cal. Rules of Court, rule 1438(b).) Dependent children should have a voice on appeal as well. However, the role of appellate counsel for a dependent child needs to be clarified to ensure that all of the work that goes into determining what is in a child's best interests in the juvenile court is not lost on appeal.

There are good reasons for concluding, as the Fifth District Court of Appeal did in this case, that appellate counsel for a dependent child is not authorized to evaluate a child's best interests and may not dismiss a child's appeal on that basis. Not only would any such reevaluation of the child's best interests inevitably lead to admission of postjudgment evidence and advancement of new positions on appeal, it would allow appellate counsel to override the child's trial counsel's assessment of the child's interests without ensuring that appellate counsel has the necessary training, oversight, time, and relationship with the child to adequately evaluate the child's interests.

In considering the issue of appellate representation of dependent children, this Court should also consider the advantages of continuity of

counsel on appeal, at least in the case of organizational representation of dependent children. Continuity of representation is already used in parts of California as well as in various other states and is more likely to result in consistent and effective appellate representation of children.

Children’s Law Center of Los Angeles (CLC) is a private, non-profit organization that employs over 100 attorneys and represents approximately 20,000 children in the juvenile dependency system in Los Angeles County. Because this case will set the standard for appellate representation of these children in California, it is important for CLC to have the opportunity to weigh-in on how dependent children are represented on appeal.

ARGUMENT

I. APPELLATE COUNSEL FOR A DEPENDENT CHILD IS NEITHER AUTHORIZED NOR QUALIFIED TO INDEPENDENTLY ASSESS THE CHILD’S BEST INTERESTS AND SHOULD BE REQUIRED TO ADVANCE ON APPEAL THE CHILD’S POSITION AT TRIAL

A. *Zeth S.* Compels the View That Appellate Counsel for a Dependent Child Has No Duty to Independently Assess the Child’s Best Interests

In *Zeth S.*, *supra*, 31 Cal.4th 396, this Court addressed the role of appellate counsel for children and, in so doing, embraced reasoning at odds with the notion that a dependent child’s appellate attorney has a duty to independently assess the child’s best interests. The Court held that Welfare

and Institutions Code¹ section 317 governs the duties of a dependent child's trial, not appellate, counsel. (*Id.* at p. 415.) Moreover, the Court disapproved a line of cases² from the Fourth District Court of Appeal to the extent that they suggested that appellate counsel for a dependent child should routinely independently investigate evidence outside of the record and bring it to the reviewing court's attention so that the reviewing court could consider the impact of the postjudgment evidence on the children's best interests. (*Id.* at pp. 413-414.)

In explaining its rationale, the Court in *Zeth S.* stressed its concern that the appellate arena not supplant the factfinding and determination of a child's best interest properly vested in the trial court:

The chief problem with the Court of Appeal's approach, however well intentioned it was, is that it effectively substitutes the reviewing court's own post hoc determination of whether termination of parental rights remains in the minor's best interests for the legislatively mandated determination that follows when the comprehensive juvenile dependency statutory scheme is dutifully adhered to in the trial court. The Legislature, however, has determined that what is in the child's best interests is best realized through implementation of the procedures, presumptions, and timelines written into the dependency statutes. The statutory scheme does not authorize a reviewing court to substitute its own judgment as to what is in the child's best interests for the trial court's determination in that regard, reached pursuant to

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² *In re Jonathan M.* (1997) 53 Cal.App.4th 1234, *In re Eileen A.* (2000) 84 Cal.App.4 1248, *In re Jeremy S.* (2001) 89 Cal.App.4th 514, and *In re Jayson T.* (2002) 97 Cal.App.4th 75.

the statutory scheme's comprehensive and controlling provisions.

(*Id.* at pp. 409-410.) If an appellate court may not substitute its own best interests determination for that of the juvenile court because the comprehensive juvenile statutory scheme has assigned that responsibility to the juvenile court, it necessarily follows that appellate counsel for a dependent child may not substitute his or her best interests analysis for that of the child's trial counsel, whose duty to protect and advance the child's interests is prescribed in meticulous detail by that same statutory scheme. (§ 317; Cal. Rules of Court, rules 1438(c), (f), 1448(d), (e).)

Children's appellate counsel, however, urges this Court to interpret *Zeth S.* more narrowly. Appellate counsel relies heavily on *In re Eileen A.*, *supra*, 84 Cal.App.4th 1248 and the Fourth Appellate District Guidelines for Minor's Counsel on Appeal (hereafter "Fourth District Guidelines") in support of her assertion that a dependent child's appellate attorney has a duty to independently assess and determine the child's best interests.

(Opening Brief, pp. 18-20, 30, 32, 43.) *Eileen A.*, however, was disapproved in part by *Zeth S.* and is now of questionable authority. (*Zeth S.*, *supra*, 31 Cal.4th 396, 413-414.) Moreover, the Fourth District Guidelines are less than clear on the prescribed role for appellate counsel. (Appellate Defenders, Inc. Guidelines for Minor's Counsel on Appeal at <
http://www.adi-sandiego.com/dependency/guidelines_minors.htm> [as of

Nov. 16, 2004].) On the one hand, the Guidelines create a rebuttable presumption that appellate counsel shall take the same position on appeal as did trial counsel for the child unless appellate counsel believes trial counsel was clearly wrong or there has been a significant change of circumstances. (*Id.* at p. 4.) On the other hand, the Guidelines state that “[t]he child’s preferences and *best interests are the primary considerations in determining what position to take.*” (*Id.* at p. 3, italics added.). Other guides on appellate representation of dependent children have followed the Fourth District Guidelines and reinforce this confusion.³

The model of appellate representation for dependent children advanced by children’s appellate counsel is problematic for a number of reasons. First, it requires appellate counsel to conduct an independent

³ The Central California Appellate Program’s guidelines apparently contain language requiring appellate counsel for a dependent child to take an informed, independent position. (Opening Brief, pp. 18, fn. 1, 29, fn. 1, citing Central California Appellate Program CCAP Panel Attorney Manual (1999).) Moreover, the Continuing Education of the Bar’s California Juvenile Dependency Practice guide (“CEB Guide”) -- revised in February 2004 after *Zeth S.* was decided – still advances this view. (2 Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2002) Representing Children at Appellate Level, §§ 10.19-10.23 (rev. 2/04).) It advises appellate counsel to take an independent position on behalf of the child after conducting an investigation and becoming fully informed of the child’s situation. (*Id.* at § 10.19, p. 491.) In doing so, the CEB guide relies on *In re David C.* (1984) 152 Cal.App. 3d 1189, 1208, a decision of the Fifth District Court of Appeal. (*Ibid.*) However, the Fifth District recently explained in *Josiah Z.* that they were referring to the duties of a dependent child’s trial, not appellate, counsel in *David C.* (*In re Josiah Z.*, previously published at 118 Cal.App.4th 944, 949.)

assessment of a dependent child's best interests within a very short time frame and without requiring any training for counsel or providing any effective guidance on how to do so. As both the Fourth District Guidelines and CEB Guide acknowledge, reinterviewing children about the abuse they have suffered can further traumatize them, especially if done by a stranger who is not trained in appropriate child interviewing techniques. (Guidelines, *supra*, p. 2; 2 Cal. Juvenile Dependency Practice, *supra*, § 10.20, p. 492.)

Second, this approach encourages appellate counsel to ignore the position the child took in the juvenile court and to substitute his or her assessment of the child's best interests for that of the child's trial counsel and CAPTA guardian ad litem. Thus, it gives guardian ad litem power to appellate attorneys absent any statutory authority and in apparent contradiction with *Zeth S.*'s holding that a child's best interests are to be determined by the juvenile court. (*Zeth S.*, *supra*, 31 Cal.4th 396.) Moreover, it erroneously assumes that appellate and trial counsel are equally well qualified to evaluate the child's interests. Yet, appellate counsel is generally appointed from an outside appellate agency and counsel's knowledge of the child is limited to review of the record and whatever minimal investigation time permits; trial counsel, on the other hand, has had months or years to get to know the child, the child's family, and the child's unique circumstances.

Third, requiring appellate counsel to conduct an independent investigation and best interests analysis invites the injection of postjudgment evidence into dependency appeals. Evaluating what is best for a child is an emotionally charged and weighty responsibility about which reasonable minds often fervently disagree. In addition, the facts in dependency cases are forever changing and any postjudgment investigation will often reveal new facts that bear on the child's best interests. The Fourth District Guidelines go so far as to require appellate counsel to inform the reviewing court of the child's expressed preferences *in every case*. (Guidelines, *supra*, p. 3.) But, any preferences expressed by the child to appellate counsel are also necessarily postjudgment, and may well be disputed by the other parties to the appeal. Taken together, these requirements seem to fly in the face of the holding in *Zeth S.* (*Zeth S.*, *supra*, 31 Cal.4th 396, 405 ["There is no blanket exception to the general rule [that an appellate court reviews whether a judgment was correct at the time it was made upon facts that were before the trial court] for juvenile dependency appeals".])

The position advanced by children's appellate counsel – that appellate counsel for a dependent child is not bound by the child's position in the juvenile court -- conflicts with *Zeth S.* on another significant point as well. The notion that a child's appellate counsel can change the child's position on appeal – even assuming that it would not involve admission of

postjudgment evidence in the reviewing court – is in tension with this Court’s statements in *Zeth S.* that the normal rules of appellate procedure apply to dependency appeals. (*Zeth S., supra*, 31 Cal.4th 396, 405.) Generally, respondents cannot claim error in connection with another party’s appeal and new theories cannot be raised for the first time on appeal. (Eisenberg, Horvitz & Wiener, CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS (The Rutter Group 2003) Limits on Assertion of Issues on Appeal, §§ 8:195, 8:229.) If appellate counsel were required to advocate whatever position counsel believed to be in the child’s best interests regardless of the child’s position in the trial court, it would violate the normal rules of appellate procedure.

In sum, this Court should maintain the approach set forth in *Zeth S.* and founded on sound principles that a dependent child’s appellate counsel may not change the child’s position on appeal unless it is truly warranted. Moreover, the Court should clarify that appellate counsel does not have the authority to independently assess a child’s best interests. Any contrary rule of law would conflict with this Court’s holding in *Zeth S.* as well as the statutorily-mandated function and role of trial counsel for a dependent child.

B. There Should Be a Rebuttable Presumption That Appellate Counsel Will Further the Position Taken by the Child in the Trial Court Absent Exceptional Circumstances

Appellate counsel should not be allowed to change the child's position on appeal simply because he or she disagrees with trial counsel's analysis of the child's best interests. Absent evidence of ineffective assistance of trial counsel or postjudgment facts that completely undermine the legal underpinnings of the trial court's order, there should be a presumption that appellate counsel will further the child's position at trial on appeal. Several sound reasons support this view.

First, it is trial counsel that has the established relationship with the child. The same trial attorney appointed for a dependent child upon the child's initial detention may continue to represent that child until he or she is grown and emancipates from foster care.⁴ It is partly because of this often longstanding relationship that trial counsel is best equipped to know what the child truly wants -- as opposed to what the child may say he or she wants during a one-time interview with appellate counsel -- and to assess the child's long-term interests. Trial counsel also has the benefit of having observed the child's family members and caretakers over time at regularly scheduled juvenile court hearings and has often observed the child outside

⁴ The NACC standards recommend that the same attorney continue to represent the child if at all possible. "Often a child's case workers, therapists, other service providers or even placements change Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child." (National Association of Counsel for Children, American Bar Association Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version), *supra*, at p. 20.)

of the court setting at the child's placement, school, and occasionally at extracurricular functions.⁵ There is simply no way that appellate counsel could develop the kind of relationship that trial counsel has with the child during the limited duration of a dependency appeal.

Second, unlike with appellate counsel, the law prescribes standards of representation for a child's trial counsel that do not exist for appellate counsel. (Cal. Rules of Court, rule 1438(c)(4).) In order to fulfill the litany of duties required by section 317, subdivision (e), trial counsel must "meet regularly" with their child clients and "have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship." (*Ibid.*)

Third, all trial counsel in dependency proceedings must receive ongoing training in issues relating to child abuse and neglect. (Cal. Rules of Court, rule 1438(c)(3).) Rule 1438 requires dependency attorneys to complete a minimum of eight hours of training prior to appointment and an additional eight hours of continuing education every three years. (*Ibid.*) In addition to education on juvenile dependency law, training "must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and

⁵ CLC employs approximately 50 social work investigators to visit child clients at their placements and assess their well-being as agents of the child's attorney.

reasonable efforts.” (*Ibid.*) Knowledge of these areas is critical in order to effectively evaluate a child’s best interests. There is no training requirement for dependent children’s appellate counsel.

Fourth, the law imposes judicial oversight of children’s trial attorneys that does not exist for appellate counsel. Rule 1438(c)(2) authorizes dependency courts to demand evidence of trial attorneys’ competence. Furthermore, the California Standards of Judicial Administration encourage juvenile court presiding judges to establish standards of training and representation for attorneys practicing in the juvenile court and to ensure that such attorneys have the training required to perform their jobs competently. (Cal. Stds. Jud. Admin., § 24(c),(d).)

In response to these mandates, the Los Angeles Superior Court local rules impose additional requirements on dependency trial counsel. Attorneys must complete 12 hours of continuing education each year, including mandatory attendance at an annual full-day conference sponsored by the Dependency Court and California State University, Los Angeles and attendance at at least half of the Attorney Brown Bag Trainings offered monthly at the Edelman Children’s Court located in Monterey Park, California. (Super. Ct. L.A. County, Local Rules, rule 17.16(e).) In addition to the topics mandated by CRC 1438, the Los Angeles local rule adds “special education, mental health, government benefits, and cultural

diversity issues” to the list of required training.⁶ (*Ibid.*) Attorneys are also required annually to certify under penalty of perjury that they have satisfied the training requirements. (*Ibid.*) Furthermore, subdivision (c) of Local Rule 17.16 imposes additional duties on counsel for dependent children, including the obligation to seek appellate review “[i]f a child’s attorney feels that a Court’s determination is contrary to the child’s best interests.”

Fifth, it is the child’s trial attorney, not appellate attorney, who is the child’s CAPTA⁷ guardian ad litem. (§ 326.5; Rule 1448(c); *In re Charles T.* (2002) 102 Cal.App.4th 869.) “An attorney appointed under rule 1438 will serve as the child’s CAPTA guardian ad litem under Welfare and Institutions Code section 326.5.” (Cal. Rules of Court, rule 1448(b).) The duties of a CAPTA guardian ad litem are: “(1) To obtain firsthand a clear understanding of the situation and needs of the child; and (2) To *make recommendations to the court concerning the best interest of the child* as appropriate under (e)” (Cal. Rules of Court, rule 1438(d), italics added.) Subdivision (e) of rule 1448 states that the duties of the child’s court-appointed attorney who is appointed as the CAPTA guardian ad litem are the same duties set forth in section 317, subdivision (e) and rule 1438. Presumably then, a child’s trial attorney is qualified to serve as the child’s

⁶ CLC, which is an approved MCLE provider, also sponsors monthly in-house substantive and skills trainings for its attorneys and social work investigators.

⁷ Child Abuse Prevention and Treatment Act, 42 U.S.C.S. § 5101 et seq.

CAPTA guardian ad litem because of the training requirements and standards of representation imposed on counsel by section 317 and rule 1438, which do not apply to appellate counsel. (*Zeth S.*, *supra*, 31 Cal.4th 396, 415; *Charles T.*, *supra*, 102 Cal.App.4th 869, 878 [court rejected argument that CAPTA required both legal counsel and a separate attorney as guardian ad litem for child in part because it would require counties to expend scarce resources to “ensure [attorney guardian ad litem] had adequate training to appreciate the intricacies of juvenile dependency proceedings”].) Therefore, appellate counsel’s assertion that the appellate attorney for a dependent child may serve as a “CAPTA-like” guardian ad litem on appeal is without merit. (Reply Brief, p. 16.)

Appellate counsel for a dependent child satisfies his or her ethical duties by reviewing the record for evidence of legal error, including ineffective assistance of trial counsel, and informing the reviewing court if counsel does not believe he or she can make a good faith legal argument. (Bus. & Prof. Code, § 6068, subd. (c) [counsel may only maintain actions that appear legal and just]; Rules Prof. Conduct, rule 3-200(B) [an attorney may not present a claim or defense that is not warranted under existing law and cannot be supported by a good faith argument to extend, modify, or reverse existing law].) Appellate counsel should limit the exercise of their independent judgment to their area of expertise – appellate law – and not

attempt to supplant the statutorily mandated duties of trial counsel by reevaluating the child's best interests.⁸

Therefore, this Court should hold that appellate counsel must advance the position of the child as represented to the juvenile court by the child's trial counsel, including all cognizable legal issues. The Fifth District Court of Appeal in *Josiah Z.* aptly recognized that if the child's appellate counsel does not believe that an argument for reversal can be made in good faith, appellate counsel can serve the equivalent of a *Sade C.*⁹ brief on the appellate court. In such circumstances, the court would then authorize trial counsel to file a letter brief regarding the alleged prejudicial error committed by the trial court, with the potential for further briefing to follow. (*Josiah Z., supra*, previously published at 118 Cal.App.4th 944, 953.) Finally, this Court should hold that a child's appellate counsel cannot move to dismiss an appeal without the consent of the child's trial counsel and/or the child if of sufficient age and maturity. This approach best

⁸ CLC is not suggesting that appellate counsel for a dependent child should not have contact with their child clients nor that counsel should never investigate facts outside of the record. If there is evidence that the child's trial counsel performed incompetently or there has been a significant postjudgment change of circumstances that undermines the legal basis for juvenile court's orders, that information should be investigated and brought to the reviewing court's attention by appellate counsel. Evidence that trial counsel misrepresented the child's expressed preferences or clearly did not act in the child's interests by pursuing an appeal would constitute the basis for an ineffective assistance of counsel claim, since section 317 mandates a child's dependency counsel to act in the child's interests.

⁹ (1996) 13 Cal.4th 952.

acknowledges the types of concerns highlighted by *Zeth S.* regarding the nature and role of appellate versus trial counsel for a dependent child.

II. THE PROBLEM OF A CHILD’S APPELLATE COUNSEL TAKING A POSITION DIFFERENT FROM THE CHILD’S POSITION AT TRIAL COULD LARGELY BE AVOIDED IF THERE WERE MORE CONTINUITY OF REPRESENTATION ON APPEAL IN DEPENDENCY CASES

Welfare and Institutions Code section 317, subdivision (e), and this Court’s holding in *Zeth S.* both support the conclusion that continuity of representation from the trial level through the appellate level, especially when an organization with an independent appellate division represents the child, would be an alternative way to avoid the need for a dependent child’s appellate counsel to make new, independent evaluations of the child’s best interests. This approach would substantially decrease the potential for a child’s appellate counsel to take a new, and possibly divisive, perspective of the case after reviewing a cold record. Moreover, continuity of legal counsel renders a more practical, informed and consistent model of representation that can benefit the child’s best interests. For all these reasons, this Court may wish not simply to address the appropriate role of appellate counsel, but also to encourage the notion of continuity of representation for children from the trial through litigation of any appeal. This approach is being used successfully by numerous child advocacy

organizations throughout the country and ensures effective and informed advocacy on behalf of the child on appeal.¹⁰

When children receive continuity in their appellate representation, appellate counsel necessarily is more familiar with the inner workings and issues involved in the dependency case. Absent continuity of representation, the outside appellate attorney is unlikely to have had any prior contact with the case or the key parties, leaving the attorney with a diminished ability to analyze the complex dynamic of the child-client's situation. Further, outside appellate counsel will not have had the opportunity for conversations with the child during which the child may have vacillated in position and/or recollection, thereby inhibiting appellate counsel's ability to appreciate in full the issues most important to the child over time. An appellate attorney completely new to a case will not have had a chance to watch the family dynamic in action, to observe the demeanor of the witnesses during a trial, or to be involved in privileged but critical discussions with the child's therapist, as well as with teachers, counselors, and others who are an invaluable part of the child's life. One cannot overestimate the importance of all of this information in cases that

¹⁰ There are also good reasons to embrace the view that appellate representation should be afforded to children in *all* cases. California has established over the years its abiding commitment to effective counsel for dependent children; in so doing, our state and courts have acknowledged the importance of a strong voice for children in proceedings that will inherently impact their future. This same rationale supports the need for an appellate presence for children in their own dependency cases; at the appropriate time, the Court may want to revisit current procedures that require children in most parts of our state to formally request and seek leave of court before they receive counsel on appeal.

first and foremost are focused on life decisions for a child and his or her family; this is the critical information that can bring a true and intimate understanding of the child's case prior to filing an appellate brief and over the course of the litigation of the appeal. Only when an appellate attorney undertakes his or her role with a comprehensive and informed appreciation of the foundation for the child's issues on appeal -- as can best develop with continuity of representation -- will a child receive truly effective representation.

A. Continuity of Representation Is Employed by Many Other Parts of our State and the Country to Ensure That Children Receive Effective Appellate Advocacy

Throughout California and around the United States, agencies providing legal services to children have developed systems for ensuring the appropriate representation of children on appeal. These approaches have enabled child advocacy organizations to maintain a continuity of representation that helps ensure appellate courts receive critical information necessary to rule and that clients receive the most effective representation possible on appeal.

In California, the Los Angeles Public Defenders' Office, the San Diego Public Defenders Unit (juvenile division) and the Santa Clara District Attorney's Office (juvenile division) all represent their minor clients through the appellate process. In each instance, the appellate division is a separate unit from the trial division, but the attorneys from

both divisions work in tandem. In other states including New York, Florida, Pennsylvania, Massachusetts, Connecticut, Maryland, Illinois, Colorado and Missouri, the legal agencies or organizations representing dependent children maintain legal representation of their child clients from the trial level through the appellate process.¹¹

In Santa Clara County, where children are represented primarily by the district attorney's office, children are not regularly appointed appellate counsel. When a notice of appeal is filed on behalf of the child, however, a special unit within the district attorney's office handles the appeal. The San Diego Public Defender similarly maintains appellate representation in select cases involving cutting-edge legal issues, where the trial attorney has a very close relationship with the client, or where the organization is particularly versed in the issue based on the filing and preparation of briefs or motions in the course of the lower court proceedings. When the Public Defender unit intends to represent a client on appeal it simply forwards a letter to the Court of Appeal stating that the office chooses to represent the child on appeal.¹²

¹¹ The Children's Law Center of Los Angeles contacted agencies representing children in juvenile dependency and delinquency cases in California, New York, Florida, Pennsylvania, Massachusetts, Connecticut, Maryland, Illinois, Colorado, and Missouri regarding how the different organizations handle the appellate representation of their child clients.

¹² The approach taken by the public defender office follows closely that described in Government Code section 27706, subdivision (g), that states,

In New York, the representation by a law guardian will continue from the time of the initial appointment through an appeal to an intermediate court of appeal. Attorneys need not file a motion to be assigned on these appeals as their representation continues by virtue of statute. Pennsylvania uses a system substantially similar to New York, although it may vary from county to county. In Massachusetts, an in-house attorney, specially trained in appellate work, will file the appeal. The Public Guardian in Cook County, Illinois, also uses in-house appellate attorneys to handle appeals for children and disabled adults. On appeal, these attorneys cannot take a position contrary to the trial attorney's position. If after the appeal is filed the child's position changes, the office will not further the appeal or the appeal will be withdrawn.

In all of the preceding examples (except Illinois and Pennsylvania), the organizations reported that cases are regularly reviewed to determine whether ineffective assistance of counsel may have taken place. In situations where counsel may have been ineffective, each of the organizations has a mechanism, generally through an appellate court, for requesting appointment of independent counsel to handle the appeal. The

“Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.”

review process used to address the ineffective assistance of counsel issue demonstrates that this limited, though important, issue should not prevent a child from receiving continuity of representation.

This model of continuity of counsel is consistent with that employed by many Public Defender offices in criminal cases. By way of example, the Los Angeles Federal Public Defender's Office (as well as many other public defender offices) maintains representation of a criminal defendant on appeal, unless the office's appellate unit identifies any basis for an ineffective assistance of counsel claim. The prevalence of this model of continuous representation is not surprising -- it avoids the loss of critical information and background on a case that necessarily results from the transfer of appellate representation and recognizes the value that flows from the continued relationship on appeal with the client and others involved in the litigation. Our state's dependent children should be entitled to these same benefits as we seek to resolve on appeal issues that will chart their future course in life.

B. Organizational Representation Provides a Particularly Effective and Efficient Model for the Development of Continuity of Representation

The various approaches and mechanisms used around this state and the nation evidence the viability of maintaining a continuity of representation throughout the appellate process. By using organizational representation as a model, a child will be better able to receive stable,

consistent representation, while also ensuring that juvenile dependency appeals are handled efficiently.

Although it may not be feasible for all juvenile dependency trial counsel to represent their clients on appeal, the difficulties in allowing solo practitioners to handle appeals should not prevent counsel who are part of an organization from handling dependency appeals. In particular, organizational representation allows for the development of procedures and safeguards that not only address the major concern raised by a continuity of representation -- ineffective assistance of counsel -- but can also bring greater efficacy to the appellate process.

While it might be impossible for a solo practitioner to deal appropriately with the ineffective assistance of counsel issue, the same is not true for an organizational model. With an organization, an agency can create a unit dedicated to appeals. A dedicated unit can then review cases on a regular basis to determine whether an ineffective assistance of counsel issue necessitates the appointment of independent counsel. Where independent counsel is not needed, the organization should then be able to pursue appropriate appeals and maintain continuity of representation.

By allowing a single organization to handle a case from the trial level through the appellate court, the trial counsel and the appellate counsel can work much more closely together in developing strategies for handling a client's case. This close cooperation also improves the quality of the trial

practice, enhancing the quality of the record and the development of issues in the lower court, thereby improving appellate practice by clarifying at an early stage the significant issues in a given case. Further, this close cooperation will likely improve the relationship between the child client and the appellate counsel as the relationship will have more opportunity to develop and will develop in concert with the input of the trial counsel.

For all these reasons, we encourage the Court to consider not simply the proper role for counsel on appeal, but also the model of representation that best ensures effective appellate advocacy on behalf of dependent children in our state. This Court may well wish to encourage adoption of the continuity of counsel model used successfully by many organizations around the country.

CONCLUSION

For all of the foregoing reasons, this Court should hold that appellate counsel for a dependent child does not have the authority to independently assess a child's best interests and, absent extraordinary circumstances, must advance the position of the child as represented to the juvenile court by the child's trial counsel, including all cognizable legal issues. If the child's appellate counsel does not believe that an argument for reversal can be made in good faith, appellate counsel should be required to serve the equivalent of a *Sade C.* brief on the appellate court and trial counsel should

be given an opportunity to respond. Moreover, appellate counsel should not be allowed to move to dismiss an appeal without the consent of the child's trial counsel and/or the child if of sufficient age and maturity. Lastly, the Court should consider the encouraging continuity of representation of dependent children on appeal.