



# Children's Law Center of Los Angeles

## "DEPENDENCY LEGAL NEWS"

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### NEW DEPENDENCY CASE LAW

#### **ICWA – AGENCY DUTY OF INQUIRY**

*In re K.W.* – filed Nov. 9, 2006, Fourth Dist., Div. One

Docket No. D048762

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048762.DOC>

Minor mother appealed the termination of her parental rights alleging invalid ICWA notice. At the detention hearing, mother's counsel denied any Indian heritage. After a Welf. & Inst. Code § 366.26 hearing was set, the adoption social worker asked the mother about Indian heritage and mother said the maternal great-grandfather was Sioux Indian. The agency asked to continue the § 366.26 hearing and sent ICWA notice to the 16 Sioux tribes and the BIA. The notices included the great-grandfather's name but no other information about him. Ten of the tribes responded that the child was not eligible for membership. The juvenile court found that ICWA did not apply and terminated parental rights.

Affirmed. The appellate court rejected the mother's argument that the agency failed to perform its continuing duty to inquire and obtain additional family history (about the great-grandfather) for the ICWA notice. The record showed that the social worker had met with the mother and had marked "unknown" in the notice boxes requesting identifying information about the great-grandfather. Thus, it was reasonable to conclude that the social worker had asked the mother for the information. Further, there was no evidence to suggest that if the social worker had contacted other maternal relatives, they would have provided any more information. In any case, because the agency's duty of continuing ICWA inquiry is imposed by Cal. Rule of Court 1439(d), not ICWA itself, it is subject to harmless error analysis. Here, any error was harmless. The court also found harmless the fact that the notices had not been addressed to the designated tribal agents, since each tribe had either filed a response or signed the requisite certified mail receipts, showing that they had actual notice. (CS)

#### **JURISDICTION; WIC § 300(b), (d)**

*In re P.A.* – ordered published Nov. 21, 2006

Docket No. B189808

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B189808.DOC>

Dependency petition alleged that father had sexually abused nine-year-old daughter and that his two younger sons were at risk of abuse. Father challenged sufficiency of evidence supporting jurisdiction under Welf. & Inst. Code § 300(b) and (d). Affirmed. Daughter's testimony about the abuse was sufficiently consistent and credible to support jurisdictional finding. Father could have, but did not, cross-examine her and/or present evidence that the abuse could not have occurred in the way she described (she slept in top bunk, in same room as parents and siblings). Also, evidence of risk to younger brothers was sufficient because they were close to the same age. Under *In re Karen R.* (2001) 95 Cal.App.4th 84, any younger sibling of a sexually abused child may be found to be at risk of sexual abuse, due to parent's aberrant sexual behavior. This is consistent with the legislative finding underlying § 355.1(d), that siblings of sexually abused children are presumptively at risk of harm. (MM)

## **LIMITED ICWA REVERSAL DOES NOT AUTHORIZE WIC § 388 PETITION TO MODIFY TERMINATION ORDER**

*In re Terrance B.* – filed Nov. 13, 2006, Fourth Dist., Div. One  
Docket No. D048200

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048200.DOC>

Mother appealed a judgment terminating her parental rights on Terrance. The court of appeal issued a limited reversal for the purpose of ICWA compliance. Following the issuance of the remittitur, mother filed a Welf. & Inst. Code § 388 petition alleging that circumstances had changed because Terrance's siblings had been returned to her and asking the juvenile court to consider new evidence as to the sibling relationship exception. The juvenile court summarily denied mother's § 388 petition and ruled that the limited reversal did not authorize it to hear the petition. Affirmed. Relying on *In re Francisco W.* (2006) 139 Cal.App.4th 695, the appellate court found that the limited reversal and remand was for ICWA notice only and its prior ruling did not permit the juvenile court to revisit issues from the § 366.26 hearing that were previously resolved and affirmed on appeal. The appellate court stated the mother was not entitled to a second selection and implementation hearing when the sole reason for reversal was ICWA notice. (JC)

## **OTHER LEGAL DEVELOPMENTS**

### **New or Revised Los Angeles County Department of Children and Family Services Policies of Significance –**

#### **Procedural Guides:**

0090-506.30 (REV) The Teen Pregnancy Disincentive (TPD) Program Assessment and Referral

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0090/009050630.doc>

This revised procedural guide informs CSWs of the Teen Pregnancy Disincentive (TPD) Program which requires that in order to be eligible for AFDC, minor parents must live in the home of their parent(s), i.e., the senior parent(s), legal guardian, an adult relative or in an adult-supervised living arrangement, unless one of the exemptions to the live-at-home rule applies. (JC)

0100-520.60 (REV) Psychiatric Hospital Discharge Planning for DCFS-Placed Children

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052060HospitaDischargeV1006.doc>

This revised procedural guide informs CSWs of the procedures to follow when children are discharged from psychiatric hospitals and advises that the discharge planning conference should include the CSW, hospital staff, DMH, the child's attorney and may also include Regional Center staff, Wraparound providers and the child's out-patient therapist. (JC)

0300-503.99 (REV) Change Of Permanent Plan From Legal Guardianship/Kin Gap Adoption

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050399v1106.doc>

This revised procedural guide informs CSWs of the procedures to follow when changing the permanent plan from legal guardianship to adoption and advises CSWs of the importance to continue Kin-GAP payments in the interim by contacting the Revenue Enhancement-Kin-GAP section in order to ensure no gaps in payments to the family. (JC)

0600-505.20 (REV) Medical Hospitalization And/Or Discharge of DCFS-Supervised Children

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060050520v1106.doc>

This revised procedural guide advises CSWs that when a DCFS-supervised child is hospitalized for medical reasons, the CSW is expected to maintain contact with the hospital staff, participate in discharge planning, evaluate the suitability of the child's current caregiver and, if needed, actively seek an appropriate placement in anticipation of the child's discharge. (JC)

1000-501.10 (REV) Case Assignment: From Emergency Response Command Post (ERCP) to Regional FM/R/G Children's Social Worker

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1000/100050110V1106.doc>

This revised procedural guide informs CSWs, SCSWs, and Regional SCSWs of their responsibilities when assigning cases from the ERCP to the services workers when there are new referrals and open referrals. (JC)