



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 3, No. 1 July 24, 2007

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

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NEW DEPENDENCY CASE LAW

APPEAL RIGHTS – PARENTS

In re Phoenix H. – filed July 9, 2007, Fourth Dist., Div. One

Docket No. D050304

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D050304.DOC>

Mother appealed a termination of parental rights, and her appointed counsel indicated that she was unable to find any issues to raise on appeal. Mother asked that the court of appeal independently review the record for error, and allow mother to file a brief *in pro per*. Dismissed. In *Sade C.*, the Ca. Supreme Court held that the courts of appeal in dependency cases are not required to independently review the record when appointed counsel cannot find any issues. *Sade C.* did not decide whether parents must be allowed to file *in pro per* briefs in this situation. Giving parents the right to file *in pro per* briefs would cause delays that could be harmful to children; and, since parents in the Fourth District receive competent and vigorous appellate representation, the likelihood of an *in pro per* brief raising a meritorious issue that the attorney missed is very small. (MM)

ETHICS - CONFLICTS ISSUES

In re Zamer G. – filed July 10, 2007, Second Dist., Div. Five

Docket No. B194885

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B194885.DOC>

CLC appealed an order disqualifying CLC1 from representing four siblings, and disqualifying CLC2 from representing a fifth sibling. Affirmed in part and reversed in part. There was an actual conflict of interest among the four siblings. The two older brothers had allegedly been abused by the father of their two younger half-sisters, and had made statements about the abuse. The half-sisters were preverbal, there was no allegation that their father had abused them, and reunification with their father might be in their best interests. So, the juvenile court was correct in disqualifying CLC1 from representing all four. However, the juvenile court erred in disqualifying CLC2 from representing the fifth sibling because there was not a material breach in CLC's ethical screens sufficient to justify treating all CLC units as one firm for conflict purposes. (MM)

NON-DEPENDENCY CASES OF INTEREST

“PARENTAGE BY ESTOPPEL” DOCTRINE

County of San Diego v. Argaza – filed July 2, 2007, Fourth Dist., Div. One
Docket No. D047798

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047798.DOC>

In May 2004, the county filed a parentage action alleging that Argaza was the father of Karen, age 15. Argaza denied paternity, and blood tests revealed that he was not Karen’s biological father. The county then sought and obtained a paternity judgment and a child support order on the basis of parentage by estoppel, based on evidence that Argaza and Karen’s mother were in a relationship from before her birth to when she was 6 years old, he behaved like a father to her and she thought he was her father, and he did not find out that he was not her biological father until the 2004 blood test. Reversed. The doctrine of “parentage by estoppel” applies only when a man who knows he is not a child’s biological father causes a child to rely on him as a father – it does not apply to a man whose conduct is based on the mistaken belief that he is the biological father. (MM)

UCCJEA

In re Marriage of Sareen – filed Jun. 21, 2007, Third Dist.

Docket No. C053784

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C053784.DOC>

Husband and wife were married in India then moved to New York, where their daughter was born. According to wife, six months after child’s birth, husband said they were going on vacation to Switzerland, but instead he took them to India. Nine days later, husband filed for divorce and custody in India, then returned to New York alone. Wife alleged husband left her and daughter in India without money or their travel documents. Over one year later, wife returned to the U.S. with child and settled in California near wife’s brother. Three months later, wife filed a petition for custody in the Sacramento County Superior Court. Husband filed a motion to quash jurisdiction, arguing that India had jurisdiction under the Uniform Child Custody and Jurisdiction Act (UCCJEA). The California court agreed, finding that at the time wife filed the California action, India was the child’s home state and California lacked jurisdiction. Wife appealed. Reversed.

The court of appeal held that the husband could not take the child to India, file a premature custody petition in that country, and then use the time the child remained in India pending resolution of the husband’s petition to meet the six-month UCCJEA home state period, either in the Indian custody proceeding or as a defense to the wife’s competing custody proceeding in California. Thus, India was not the child’s home state at the time the wife filed her California custody petition, and California was not precluded from exercising jurisdiction by the pending Indian proceedings because India had not exercised jurisdiction in conformity with the UCCJEA. (Fam. Code, § 3426(a).) Furthermore, even though California was not the child’s home state either, California nevertheless had jurisdiction under the UCCJEA because the wife and child had a significant connection to California beyond mere physical presence and there was substantial evidence available in California concerning the child’s care. (Fam. Code, § 3421(a)(2).) (CS)

DELINQUENCY – VISITATION

In re James R. – filed July 17, 2007, First Dist., Div. Two

Docket Nos. A114530 & A115595

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A114530.DOC>

James R. was adjudicated delinquent due to sexual acts with other minors. He was placed in a group home, with a case plan goal of reunification. In response to his counsel's request for more visitation with father, the juvenile court asked the group home to explain why visits were limited to once per month. Their response listed reasons applicable to juvenile sex offenders in general, and some specific concerns about James. The court refused to order more frequent visitation. At a later hearing, James' counsel again asked for more visitation, since James was doing well in the program. The court again refused to "interfere" with the "point system," since visitation was considered a privilege by the group home. Reversed. After a detailed review of the dependency case law, the court of appeal concluded that the juvenile court's second refusal to order more frequent visits was an unlawful delegation of authority over visitation to the group home, because it was based not on any specific concerns about James, but on deference to the group home's general policies and "point system." (MM)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

07-22 Obtaining Birth Certificates

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0722BirthhCertificates.doc>

This FYI advises staff that Eligibility Workers ("EWs") are requesting birth certificates as part of the eligibility practice, and at re-determinations if necessary. It also reminds CSWs that they must regularly review the file for birth certificates and may request birth certificates through the EWs. (SH)

Procedural Guides:

50-502.30 (REV) Child Protection Hotline: Information Calls

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050230v0707.doc>

This procedural guide informs Information CPH workers on how to handle information requests and what their general duties are regarding giving referrals and information. (SH)

50-503.35 (REV) Child Protection Hotline: Evaluated-Out Referrals

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050335v0707.doc>

This procedural guide instructs CPH workers on how to evaluate whether a referral requires an in-person response or whether it can be evaluated out. The revisions are non-substantive. (SH)

50-503.40 (REV) Child Protection Hotline: Providing Feedback to the Reporting Party

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050340v0707.doc>

This procedural guide informs CPH workers of proper procedures for follow-up with a reporting party. It instructs CPH workers on how to give out contact information, expected response time and to allow for further inquiries or reporting. (SH)

50-503.45 (REV) Allegations Received From a Source Other than the Child Protection Hotline

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050345V0707.doc>

This procedural guide instructs CSWs and other DCFS employees on how to document and refer allegations of child abuse to the Child Abuse Hotline. The revisions are to reflect current practice. (SH)

50-503.70 (REV) Child Protection Hotline: Alleged Perpetrator is Not the Child's Parent/Legal Guardian/Primary Caregiver

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050370v0707.doc>

This procedural guide advises CPH workers on how to handle referrals involving perpetrators who are not a primary caregiver, legal guardian or parent. It instructs workers on jurisdictional issues. (SH)

70-501.10 (REV) Identifying a client's Communication Needs

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007050110v0707.doc>

This procedural guide provides instruction to CSWs on the need for and how to provide bilingual services to clients. The guide covers services providers as well as placements. It specifically requires that minor children not serve as interpreters outside of exigent circumstances. (SH)

70-506.11 (REV) Interviewing the Alleged Child Victim at School

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007050611v0707.doc>

This procedural guide instructs ER CSWs on how to conduct interviews of children at school. The revision informs ER CSWs that the preference is for interviews to be conducted in the home. (SH)

70-515.10 (REV) Evaluating-Out Emergency Response Referrals by Regional Staff

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007051510v0707.doc>

This revised procedural guide advises SCSWs at regional offices on the procedure for evaluating-out emergency response referrals. It provides only one circumstance in which a regional staff may downgrade an in-person emergency response to an evaluated-out response, namely if the allegations/incident is identical to one already investigated or currently being investigated and there are no new facts. Otherwise the response determination is done by the Child Protection Hotline. The revisions are purely formatting. (SH)

80-505.20 (REV) Health and Education Passport (HEP)

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050520v0707.doc>

This revised procedural guide combines recently revised FYIs and procedural guides and instructs CSWs on the proper form and procedure for Health and Education Passports. (SH)

90-503.10 (REV) Family Maintenance Services for Both court and Voluntary Cases

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0090/009050310FMv0707.doc>

This procedural guide informs CSWs and SCSWs on evaluating cases for Family Maintenance services, both through Court and on a voluntary basis. It provides guidelines for providing those services. The revisions eliminate repetitive steps and clarifies instructions. (SH)

100-510.60 (REV) Placement Preference for Children in Out-of-Home Care

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051060v0707.doc>

This procedural guide informs ER Workers and CSWs of the legal preferences for placement of detained children. It also informs workers of the proper procedure for placing children identifying available families and evaluating concurrent planning for permanency. The revisions address placement for children in Out-of-Home care and children under three. (SH)

200-507.25 (REV) Accepting a Consent for an Independent Adoption

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020050725v0707.doc>

This revised procedural guide instructs Independent Adoption CSWs on the proper procedure for obtaining and/or evaluating birth parents' consent for independent adoption. The revisions address time requirements and capacity to consent to adoption. (SH)

600-500.10 (REV) Reducing the Threat of Infection by Blood-borne Pathogens: Universal Precautions

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060050010v0707.doc>

This procedural guide addresses precautionary measures that CSWs and any relevant staff must take to protect against transmission of blood-borne and other diseases. The revisions are purely formatting. (SH)

600-505.12 (REV) Identifying and Documenting a Client's Disability and Need for Services

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060050512v0707.doc>

This procedural guide is designed to effectuate legal requirements that people with disabilities be given equal opportunities to participate in needed services, whether they are parents or children. It guides CSWs in obtaining information regarding services needs of clients with disabilities and emphasizes the right of clients to request auxiliary aides and services of their choosing. (SH)

700-506.10 (REV) Involvement of the School Attendance Review Board (SARB) with Children Under DCFS Supervision

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0700/070050610SARBv0707.doc>

This procedural guide informs CSWs of the services available from the SARB and how to refer dependent children to the SARB. It also advises CSWs on collaborating with SARB and attending meetings involving clients of CSWs. The revisions address SARB interventions and contact/reference numbers. (SH)

1000-501.50 (REV) Family Unit Case Name Rules

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1000/100050150v0707.doc>

This revised procedural guide informs CSWs and SCSWs on the proper way to assign case names and identification numbers. It is intended to provide consistency across service areas. (SH)

1200-500.40 (REV) Requesting Respite Care Services

Link to Procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050040RespiteCareV0707.doc>

This revised procedural guide advises CSWs that there is no longer a specific respite care program. It also informs CSWs that respite care providers must now be licensed foster parents. The remainder of the guide covers the process for accessing respite care services. (SH)