



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 3, No. 5 September 25, 2007

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

Written by: Martha Matthews (MM), Jenny Cheung (JC), and Sophia Ali (SA)

© 2007 by Children's Law Center of Los Angeles (“CLC”). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at [www.clcla.org](http://www.clcla.org).

## **NEW DEPENDENCY CASE LAW**

### **ICWA NOTICE**

***In re A.C.*** – filed August 21, 2007, partial pub. Order Sept. 19, 2007, Third Dist.

Docket No. C054642

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C054642.DOC>

Parents appealed from termination of parental rights on grounds that county agency should have provided notice to non-federally-recognized tribe, under a new state law, WIC 306.6, which allows nonrecognized tribes to appear and present information to the juvenile court. Affirmed. WIC 306.6 does not require notice to nonrecognized tribes. In enacting § 306.6, the Legislature specifically chose not to require any notice beyond what is already required by ICWA. The tribe in question could have requested the juvenile court's permission to appear if it chose to do so. (MM).

### **REUNIFICATION; DUE PROCESS; WIC 362**

***In re Neil D.*** – filed August 28, 2007, pub. order Sept. 17, 2007, Second Dist., Div. Four

Docket No. B195487

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B195487.DOC>

Two children were detained after mother delivered a premature baby who died shortly after birth. Mother admitted using drugs during pregnancy. Mother voluntarily enrolled in a 6- to 9-month inpatient drug treatment program. At the time of the dispositional

hearing, mother had completed 3 months of the program. The court ordered mother to complete the inpatient drug program. Mother appealed. Affirmed. Ordering mother to complete an inpatient drug program was within the juvenile court's authority under WIC 362, because mother's addiction was the primary threat to her children's safety and well-being. The juvenile court is not required to choose the least restrictive alternative for a parent. The order did not constitute involuntary incarceration, because mother could choose whether to comply or not. The order also did not prevent mother from complying with other parts of the case plan, because the drug program allowed mother to have visits with her children, and, in the final phase of treatment, would help her find a job and stabilize her life. (MM).

## **SOCIAL WORKERS; IMMUNITY**

*Jacqueline T. v. Alameda County CPS* – filed Sept. 20, 2007, First Dist., Div. Three  
Docket No: A116420  
Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A116420.DOC>

Jacqueline T. and her ex-husband had two children. In 1998, 1999, and 2000, the county agency received reports that the children were being sexually abused by N., the ex-husband's girlfriend's son. The county agency investigated each report, and concluded that it was unfounded, in part because the parents were involved in an ongoing custody dispute. N. later admitted to sexually abusing the children and was prosecuted; when the children were re-interviewed, they made much more detailed statements concerning the abuse. Jacqueline filed a tort action against the county and the social workers who had investigated the reports. The trial court dismissed the lawsuit, ruling that the social workers and the county were immune under Govt. Code §§ 821.6 and 820.2.

Affirmed. The social workers' alleged negligent acts were within the scope of their employment as investigators, and were covered by § 821.6 immunity. The "failure to discharge mandatory duty" exception to governmental immunity under § 815.6 does not apply in this case. None of the social workers' alleged negligent acts constituted a failure to discharge a mandatory duty under any statute or regulation.

## **TERMINATION OF JURISDICTION; GUARDIANSHIPS; WIC §§ 303, 366.4**

*In re D.R.* – filed Sept. 20, 2007, Second Dist., Div. One  
Docket No: B196277

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B196277.DOC>

D.R. became a dependent in 2001, at the age of 12. Jurisdiction was terminated in 2003, with a permanent plan of legal guardianship with a nonrelative. In November 2007, five days before D.R.'s 18<sup>th</sup> birthday, the guardian filed a WIC 388 petition to reinstate juvenile court jurisdiction over D.R. The petition alleged that he suffered from serious

educational, behavioral, and health problems, had not completed high school, and did not have the skills to live independently. On D.R.'s 18<sup>th</sup> birthday, the juvenile court denied the 388 petition without a hearing, on the grounds that the court lacked jurisdiction since D.R. was 18. The guardian and D.R. appealed.

Reversed and remanded. Under WIC 366.4, the juvenile court retains jurisdiction over any guardianship established as a dependent minor's permanent plan under 366.26. Any motions related to the guardianship may be filed in the juvenile court, even if the court has terminated the dependency case. Because the guardian's 388 petition was filed before D.R. turned 18, the court had jurisdiction to consider the petition. The petition made a prima facie showing of changed circumstances affecting the best interests of the child under § 388; although D.R. had always had developmental and behavioral problems, the impact of these problems became more serious when he was about to turn 18. Also, the facts alleged in the petition, if true, would justify continuing jurisdiction beyond age 18 under WIC 303, in that D.R. would likely be harmed by terminating jurisdiction. The juvenile court abused its discretion by denying the petition without a hearing. (MM).

**TERMINATION OF PARENTAL RIGHTS; INCOMPLETE § 366.26 HEARING;  
§ 366.26, SUBDIVISION (i)**

*In re Q.D.* – filed September 18, 2007, Fourth Dist., Div. Three  
Docket No. G038343

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G038343.DOC>

Mother appealed termination of parental rights arguing she was denied due process because the juvenile court did not conduct a contested hearing on the issue of termination. Although mother through counsel expressly waived that right, she argued her waiver was invalid due to extrinsic mistake – a confusing similarity between the concepts of adoption and foster care in the Vietnamese language causing her to misunderstand the nature of the hearing. At the section 366.26 hearing to consider termination of parental rights, mother protested when the trial court announced its decision to terminate parental rights. After mother's counsel had the opportunity to confer with her, the trial court trailed the matter to the next day because of the uncertainty regarding the mother's waiver. The minute order for that hearing indicated that parental rights were terminated and that the section 366.26 hearing was trailed to the next day. On the following day, the trial court concluded that it had no authority to hold a contested 366.26 hearing because its termination order had been entered into the court's minutes the day before. Appeal dismissed. The appellate court found that section 366.26, subdivision (i)(1) did not apply because the trial court's intention was not to terminate parental rights, but to trail the matter to the next day. The appellate court further stated that when the totality of the minute order is considered, it cannot be reasonably construed as a final order terminating parental rights. The case was remanded to the trial court with instructions to proceed with the contested 366.26 hearing. (JC)

## **OTHER LEGAL DEVELOPMENTS**

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

#### **Procedural Guides:**

#### **For Your Information (FYIs):**

07-30            Los Angeles Dependency Lawyers (LADL)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0730LAL.doc>

This FYI informs staff that the Los Angeles Dependency Lawyers (LADL) legal organization, which represents parents in Dependency Court proceedings, has hired investigators and a classification of employees it calls “social workers”. This FYI also informs staff of situations where it is appropriate to have contact with these investigators and “social workers.” (JC)

07-31            Participation in Extracurricular Activities

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0731ExtrcurriculaarAct.doc>

This FYI reminds staff of current DCFS policy on extracurricular and social activities for children/youth in out-of-home care. (JC)

#### **Procedural Guides:**

70-509.10        (REV) Observation Techniques

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007050910V0907.doc>

This revised procedural guide informs CSWs of procedures to follow when assessing allegations based upon observations. (JC)

70-513.10        (REV) Downgrading and Upgrading Emergency Response  
Referrals by  
Regional Staff

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007051310V0907.doc>

This revised procedural guide informs CSWs of procedures to follow when a referral appears to meet the criteria for a downgraded or upgraded response time. (JC)

70-531.10 (REV) Disrobing Children

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007053110v0907.doc>

This revised procedural guide has clarifying language regarding the examining of children 0-36 months who may be victims of neglect. (JC)

70-537.10 (REV) Assessment of Domestic Violence

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007053710DVioV0907.doc>

This revised procedural guide informs CSWs of procedures to follow when a referral is received at the child protection hotline involving domestic violence. (JC)

70-548.11 (REV) Cross-Reporting Responsibilities at the Conclusion of a Child Abuse Investigation

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054811v0907.doc>

This revised procedural guide informs CSWs of procedures to follow when cross-reporting at conclusion of allegations to the Department of Justice, cross-reporting to law enforcement and district attorney, when cross-reporting to the child's dependency court attorney, and when notifying the (alleged) perpetrator of the report to the Child Abuse Central Index. (JC)

70-548.20 (REV) Taking Children Into Temporary Custody

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054820v0907.doc>

This revised procedural guide informs CSWs of procedures to follow when taking children into temporary custody. (JC)

70-560.05 (REV) Joint Response Referral

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007056005jointrespv0907.doc>

This revised procedural guide informs CSWs of procedures to follow when a joint response referral is identified. (JC)

80-506.10 (REV) Selecting Appropriate Services for Children and Families

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050610v0907.doc>

This revised procedural guide informs CSWs of the many types of services available to families. (JC)

100-525.11 Placing Children Outside of the Country

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052511v0907.doc>

This procedural guide informs CSWs of procedures to follow when a request is made for an international placement. (JC)

200-506.05 (REV) Information To Be Provided To Applicants

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020050605v0907.doc>

This revised procedural guide informs CSWs of procedures to follow when an unattached applicant contacts DCFS to adopt a child. (JC)

200-506.10 (REV) Applicant Assessment for the Adoption of Children

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020050610v0907.doc>

This revised procedural guide informs SCWs and CSWs on procedures to follow when conducting a full adoption assessment. (JC)

300-303.06 (REV) Hospital Holds

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030306v0907.doc>

This revised procedural guide informs CSWs of procedures to follow when a child is hospitalized and there is reason to believe that the child's safety is in question if released to parents or guardians and when a hospital hold is removed. (JC)

600-520.0 Collaborating with Regional Center to Provide Services to Children/Youth

Link to Procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060052000RegionaCenterv0907.doc>

This procedural guide informs CSWs of procedures to follow when referring a child with developmental disability or a child who may have a developmental disability to the regional center and when providing on going services to a child who receives regional center services. (JC)

900-522.10 (REV) Specialized Care Increment (SCI) - D-Rate

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/090052210Dratev0907.doc>

This revised procedural guide informs CSWs of procedures to follow when initiating a D-rate assessment and the six-month D-rate alert is received. (JC)

900-522.11 (REV) Specialized Care Increment (SCI) - F-Rate

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/090052211Fratev0907.doc>

This revised procedural guide when assessing the need for F-rate and upon the receipt of the six-month F-rate alert of the management information division. (JC)

1200-501.10 (REV) Victims of Crime: Referrals and Release of Information to Service Providers

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050110v0907.doc>

This revised procedural guide informs CSWs of procedures to follow when a dependent child is to be referred to VOC and when a non-dependent child or family under DCFS supervision is to be referred to VOC. (JC)