



# Children's Law Center of Los Angeles

## “DEPENDENCY LEGAL NEWS”

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## NON-DEPENDENCY CASES OF INTEREST

### CHILD'S IMMUNITY FOR ABUSE REPORT

*Chabak v. Monroy* – filed Sept. 10, 2007, Fifth Dist.

Docket No. F049069

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F04969.DOC>

Erica Monroy, age 17, reported to the police and her parents that she had been touched inappropriately by Stephen Chabak, a physical therapist. Chabak filed a complaint against her, alleging that she made a false child abuse report. Monroy moved to strike the complaint, the trial court denied the motion, and Monroy appealed. Reversed. Monroy's statements are protected Civil Code 47(b), which provides absolute immunity for statements made to public authorities charged with investigating crimes. (Penal Code § 11172, which permits liability when a non-mandated reporter knowingly makes a false child abuse report, does not apply when the reporter is the alleged victim.) (MM)

### CHILD WITNESS – HEARSAY

*Bockting v. Bayer* – filed Oct. 12, 2007 (9<sup>th</sup> Circuit Court of Appeal). 2007 U.S.App. LEXIS 23937

Six-year-old child made detailed reports of sexual abuse by stepfather to her mother, then to police. At the preliminary hearing, however, she made some inconsistent statements

and then started crying and refused to answer any more questions. At trial, she cried and refused to speak, and was found unavailable by the trial court. Her prior statement to the police was used at trial. Stepfather appealed. The Nevada Supreme Court dismissed the appeal, but the U.S. Supreme Court remanded for further consideration in light of *Idaho v. Wright*, 497 U.S. 805 (1990). The NV. S.Ct. again affirmed the conviction. Stepfather petitioned for a writ of habeas corpus. While the habeas petition was pending, the U.S.S.Ct. decided *Crawford v. Washington* 541 U.S. 36 (2004), which overruled *Ohio v. Roberts*, 448 U.S. 56 (1980). The Ninth Circuit decided that *Crawford* applied retroactively, but the U.S.S.Ct. reversed and remanded.

Writ denied. Under the pre-*Crawford* case law, an out-of-court statement was admissible if the prosecutor proved that the witness is unavailable to testify at trial, and if the statement had “adequate indicia of reliability.” The NV. S.Ct. reasonably applied this rule to the facts of the case. The child’s out-of-court statements were reliable in that they were spontaneous, fairly consistent, showed an unusually detailed knowledge of sex, the child was upset when she reported the abuse, the child was had no motive to fabricate, and the detective did not use suggestive or leading questions. (Judge Noonan dissented.) (MM)

## **OTHER LEGAL DEVELOPMENTS**

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

#### **Procedural Guides:**

0080-508.05 (REV) Fast Track to Permanency (FTP) Provisions

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050805v1007.doc>

This procedural guide was updated with information about fast track to permanency cases, including safe surrender babies and concurrent planning cases. (SA)

0070-528.10 (REV) Assessment of Medical, Educational and Mental health Special Health Needs

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007052810v1007.doc>

This procedural guide has been updated to reflect current law, including information on Medical Hubs and the procedure for dealing with children with medical conditions. (SA)

200-506.10 (REV) Applicant Assessment For The Adoption of Children

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050610v1007.doc>

This procedural guide was revised a second time with updated information on assessing applicants for adoption. (SA)

0100-510.36. Screening And Intake Process Prior To Transporting Children to ERCP

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051036v1007.doc>

This procedural guide informs social workers of the steps they must take to find out-of-home placements for children before obtaining assistance from the Emergency Response Command Post (ERCP). (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052210Dratev1007.doc>

This procedural guide was revised to eliminate the requirement that the DCFS 709 form, "Foster Child's Needs and Case Plan," be part of the D rate Packet. (SA)