



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 5, No. 18 October 13, 2009

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

ICWA

In re Damian C., filed September 17, 2009, Fourth Dist., Div. One

Docket No. D054918

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D054918.PDF>

The juvenile court sustained a petition alleging jurisdiction over child Damian C. based on mother's drug use. Mother's ICWA-020 form reported that maternal grandfather was descended from the Pasqua Yaqui tribe. The county agency's ICWA noticing specialist interviewed maternal grandfather who reported that he “had heard” that his father was either Yaqui or Navajo Indian, but that he was later informed the family did not have Indian heritage. He did not know to which Yaqui or Navajo tribe the family may have been related. He understood that the family had been trying to research its possible Indian heritage, “but they kept hitting dead ends because they did not have enough information.” Based on this information, the court found that ICWA did not apply. Mother appealed on the grounds that the court erred by not ensuring that the county agency complied with the ICWA requirements of inquiry and notice.

Reversed. Although the county agency argued that the legislative history of Senate Bill 678, effective January 1, 2007, reveals a purpose to change California law to conform to less stringent federal notice standards, the court of appeal disagreed. WIC 224.2, subdivision (b) restates the ICWA requirement that “[n]otice shall be sent whenever . . . there is reason to know that an Indian child is involved” WIC 224.3, subdivision (b)(1) sets forth the circumstances that may provide “reason to know;” these include when a person “provides information *suggesting* the child is a member of a tribe . . . or one or more . . . great-grandparents are or were a member of a tribe.” (§ 224.3, subd. (b)(1)(emphasis added).) It is

true that the rules of court regarding notice have been changed. The former pertinent rule of court required notice if the child *may* be an Indian child, and current Rule of Court 5.481(b)(1) requires notice only if it is known or there is reason to know the child *is* an Indian child. However, there is no practical difference between the two rules, given the statutory language defining “reason to know.” In short, Senate Bill 678 did not alter the notice requirements under California law. (PB)

PARENTAGE; FAM. CODE §§ 7611(d), 7612(a)

In re J.O. – filed Sept. 9, 2009 & published 10/17/09, Second Dist., Div. Four
Docket No. B211535

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B211535.PDF>

* Status of case changed from unpublished to published on October 17, 2009. See September 22, 2009 newsletter for summary.

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-50 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0950FormsUpdate.doc>

This FYI is to provide staff with an update to the posting of new/revised forms to LA Kids and to the CWS/CMS (LA County specific templates). (SA)

09-51 Policy Release Update

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0951PolicyReleaseUpdate.doc>

This FYI is to provide staff with an update to the posting of new/revised procedural guides to LA Kids. (SA)

09-52 Deaf Services Unit Intake Criteria

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0952DeafServicesUnit.doc>

This FYI is to inform staff of the criteria that must be met for the Deaf Services Unit to accept a case. (SA)

09-53 (REV) Civil Rights PUB 13 Pamphlet

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0953CivilRightsPam.doc>

This FYI is and update of FYI 08-14 “Civil Rights PUB 13 Pamphlet” issued March 20, 2008. It is meant to remind staff of the California Department of Social Services (CDSS), Division 21-107.221 requirement that the Civil Rights Pub 13 Pamphlet, “Your Rights Under California Welfare Programs” shall be distributed to DCFS clients at initial contact of all Emergency Response referrals. In addition, clients should continue to receive the DCFS 2457, Civil Rights Information Form. (SA)

Procedural Guides:

0070-501.15 (REV) When Clients Provide Their Own Interpreter

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007050115v1009.doc>

This procedural guide was revised to include the California Civil Rights Regulations Division 21 116.21 requirement that a client’s acceptance or refusal of forms or other written material offered in the individual’s primary language be documented in the case record. (SA)

0070-548.17 (REV) Completion and Submission of the SS 8583 Child Abuse Summary Report

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054817v0909.doc>

This procedural guide was updated to inform staff that changes were made regarding the submission of the SS 8583 form to the Department of Justice, and to inform CSWs that if they are not able to locate the family, they shall not submit the SS 8583 form to the Department of Justice. (The Penal Code requires that when a child abuse/neglect investigation concludes with either a substantiated or inconclusive finding in the categories of sexual abuse, physical abuse, severe neglect, emotional/mental abuse or exploitation, the investigating CSW is responsible for forwarding to the Department of Justice the SS 8583 Child Abuse-Summary Report. In turn, the DOJ records this information in the Child Abuse Central Index (CACI).) (SA)

0070-548.25 Completing the Structured Decision Making (SDM) Safety Plan

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054825SDMSafetyPlanv1009.doc>

This procedural guide provides DCFS staff with instructions on how to complete the SDM Safety Plan when at least one safety threat as well as safety interventions are identified. (SA)

0070-550.11 (REV) Family and Children’s Index (FCI)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007055911V1009.doc>

This procedural guide updated the directions on using the FCI and added instructions on how to access DCFS’s contacts in the FCI using LA Kids. (SA)

0080-502.10 (REV) Initial Case Plan

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050210v0909.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and/or institutionalized parent/legal guardian; the period of time that court-ordered services be provided for a child who on the date of initial removal from the physical custody of his/her parent/guardian was under three years of age; and that a dependent parent must consult with his/her dependency attorney before entering into a VFM/VFR case plan. The procedural guide was further revised to reflect that if a case plan needs ARA approval, SCSWs must send the case plan to the ARA on-line and the ARA must approve the case plan on-line. (SA)

0080-504.20 (REV) Case Plan Update

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050420v0909.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and/or institutionalized parent/legal guardian; the period of time that court-ordered services be provided for a child who on the date of initial removal from the physical custody of his/her parent/guardian was under three years of age; and that a dependent parent must consult with his/her dependency attorney before entering into a VFM/VFR case plan. The procedural guide was further revised to reflect that if a case plan needs ARA approval, SCSWs must send the case plan to the ARA on-line and the ARA must approve the case plan on-line. (SA)

0100-510.21 (REV) Voluntary Placement

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051021VPv0909.doc>

This procedural guide was revised to reflect the requirements of WIC 301(c) and notify CSWs that the change in law now mandates that when a CSW is considering entering into a voluntary family reunification case plan with a minor parent who is a dependent of the court, that minor parent must consult with his or her attorney prior to agreeing to a voluntary case plan. At this time, ERCP CSWs **shall not** utilize voluntary placement agreements. When an ERCP CSW identifies a family that may benefit from a voluntary placement agreement, they are to document this in their contacts and/or Investigation Narrative and send the referral to the Regional office as a follow-up. If a safety threat was identified, a SDM Safety Plan must be in place. The Regional office will determine what services will best meet the needs of the family. This procedural guide also added the steps CSWs are required to follow when the voluntary placement is for an Indian child. (SA)

0300-503.35 (REV) Pre-Released Investigation Report

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050335PRIv0909.doc>

This procedural guide was updated to reflect the correct name of the Division responsible for completing relative and non relative home assessments, which is the ASFA Division.

Further, instructions for the completion of the PRI report were clarified to include the required elements specified in WIC sections 361.3 and 361.4. Finally, a reference to Intensive Services Workers and their responsibilities in the PRI process was added. (SA)

0300-503.40 (REV) Writing the Probate Legal Guardianship Court Report

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050340ProbateLGV0909.doc>

This procedural guide was revised to clarify procedures in the case opening and closure process and to streamline the case assignment process in order to enhance the timely processing of a funding request. Further, it removed reference to the Statewide Registry for Probate Non-related Guardians as this no longer exists and replaced it with information about the Professional Fiduciary Bureau. Also, instructions to create and maintain a record of the report on CWS/CMS have also been added and instructions under each of the report headings were changed to correspond with the newly developed probate report template in CWS/CMS. (SA)

0500-504.10 (REV) Protection and Disclosure of HIV/AIDS Information

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050410v0909v2.doc>

This procedural guide was updated to clarify instructions for CSWs regarding documentation and filing of HIV/AIDS information. (SA)

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/0600/060050520v0909.doc>

This procedural guide was updated with references to various procedural guides and forms, added instructions regarding consultation with PHN's, updated hyperlinks for DCFS Medical Case Management Services and the Bureau of the Medical Director, added instructions regarding requesting a child's medical records, added instructions for initiating Medical Case Management Services, included definitions of, "Special Health Care Needs" and "Specialized In Home Health Care," added instructions regarding out-of-home caregiver training to meet specific medical needs of the child, and added instructions for the Child Protection Hotline CSW's regarding discharge of a DCFS-Supervised child from the hospital. (SA)

0600-508.00 (REV) Foster Youth Substance Abuse Services

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050800v1009.doc>

This procedural guide was updated with contact information for Adolescent Intervention, Treatment, Recovery, and Prevention Providers, and a link was inserted with the most current list of providers. (SA)

0900-503.10 (REV) Back to School Clothing Allowance

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090050310v0909.doc>

This procedural guide changed the back to school clothing allowance age eligibility criteria from five to three years old. (SA)

0900-513.10 (REV) Funeral, Burial, and Cremation Costs

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052710EARSV0909.doc>

This procedural guide was revised to add a note regarding funeral costs for children who die while placed in a group home. (SA)

0900-527.10 (REV) Emergency Aid Requisition (EAR)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052710EARSV0909.doc>

This procedural guide was updated to indicate the minimum \$3.00 and maximum \$299 amount for and EAR check. (SA)

1200-500.20 (REV) Child Passenger Restraint Requirements

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050020V0909doc.doc>

This procedural guide added instruction on how CSWs can access non-emergent transportation for children with special health care needs. (SA)

E090-0590 (REV) Foster Care Placement/Replacement

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E090/E0900590v0909.doc>

This procedural guide cites new regulations regarding placement/replacement tasks and responsibilities of CSWs and provides procedures to reflect the new regulations. (SA)