



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **CONFLICTS**

***In re Charlisse C.***-- filed October 30, 2008, Supreme Court of California

Docket No. S152822

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S152822.DOC>

An attorney from CLC-3 was appointed to represent the minor Charlisse C. after she was detained from her mother Shadonna. Mother, who was represented by a non-CLC attorney, moved to disqualify CLC on the grounds that a conflict of interest existed because mother was previously represented by CLC-1 and, as a result of structural changes to CLC in 2005, the CLC "units" were now essentially operating as one firm. Mother argued that the failure to maintain ethical walls among CLC's three units created a de facto conflict of interest for every client with an adverse interest to another client within the organization. CLC argued that there was insufficient evidence for disqualification and that CLC's structure and operating procedures closely complied with the standards set forth in *Castro v. Los Angeles County Bd. of Supervisors* (1991) 232 Cal.App.3d 1432 and *People v. Christian* (1996) 41 Cal.App.4th 986. The juvenile court granted mother's motion to disqualify CLC, stating CLC violated the safeguards required by *Castro* and *Christian* when representing multiple parties in the same action. It noted that although no confidential or privileged information from mother's case had been revealed, "a *Castro* type structural conflict" existed because the restructuring of CLC caused a "gradual erosion of CLC's ethical walls," preventing it from representing more than one party in a case. CLC appealed, and in a 2-1 decision the Court of Appeal (Division 5) reversed the disqualification order. The Supreme Court of California granted review.

The Supreme Court affirmed the Court of Appeal's decision, finding that the juvenile court erred by applying the legal standard for simultaneous representation cases, when this was a successive representation case. The Supreme Court noted that conflicts of interests arise in two situations: (1) successive representation cases, in which an attorney seeks to represent a client with potentially adverse interests to a former client; and (2) simultaneous representation cases, in which an attorney seeks to simultaneously represent multiple parties with potentially adverse interests. In successive representation cases, the primary duty at stake is the duty of confidentiality to the former client, while in simultaneous representation cases the paramount duty that an attorney owes to the client is the duty of loyalty. Thus, the disqualification standards for simultaneous representation cases are more stringent. In successive representation cases, such as here, the correct legal standard requires disqualification of the attorney if the former client shows that there is a "substantial relationship" between the subjects of the previous and current representations. Although the disqualification would usually extend to the attorney's entire law firm under the doctrine of imputed knowledge, vicarious disqualification generally does not apply to public sector attorneys because unlike private sector attorneys, they do not have financial incentives to favor one client over another. Therefore, vicarious disqualification will in general not apply to public sector law offices where the public law office has "adequately protected, and will continue to adequately protect" the former client's confidences. Further, the Supreme Court held that the Court of Appeal erred in finding that the evidentiary burden is on the party seeking disqualification. Instead, the burden is on the party objecting to disqualification to establish that the confidential information acquired during the prior representation has been and will continue to be adequately protected during the representation of the new client through "timely, appropriate, and effective screening measures and/or structural safeguards." Because the factual record here is incomplete, the matter is remanded to the juvenile court for rehearing of the disqualification motion applying the correct legal standards.

Note: The Supreme Court declined to express an opinion as to whether a failure to observe one or more of the structural safeguards laid out in *Castro* would require the juvenile court to disqualify CLC in a simultaneous representation case. It stated that although *Castro* discussed the existence of certain structural safeguards as one of many factors in its analysis regarding disqualification, it did not establish a bright-line test of disqualification based on those safeguards or suggest that disqualification would be necessary if one of the safeguards were not in place. (SA & PB)

## **DUE PROCESS RIGHTS OF NON-OFFENDING PARENT**

*In re A.E. et al* – filed November 5, 2008, Second Dist., Div. Eight  
Docket No. B206270

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B206270.DOC>

Father appealed from the juvenile court's order directing him to participate in parent education classes and individual counseling. Parents were in the process of a divorce and shared legal custody of the children with mother having primary physical custody and father having visitation rights. A petition was filed when A.E. (6 years old) complained to father that mother struck H.E. (3 years old) with a spatula hard enough to leave a black bruise.

While mother admitted to hitting the children and father was non-offending on the petition, the juvenile court had several concerns about the father's understanding of the seriousness of the case and his inadequate grasp of his responsibilities to protect his children from further abuse. Father attributed the corporal punishment of the children to mother's Korean culture; father unaccountably went from alarm about the abuse to having no real issues about mother and her parenting; father went from being concerned about mother's boyfriend who had a prior conviction for having sex with a minor to having no problems with him; and most concerning, father stated at the jurisdiction hearing that there was no abuse of the children and that it was a nonissue. The juvenile court found the children to be dependents of the court and ordered both parents to participate in programs. There was no objection to that order.

Affirmed. The appellate court stated that the juvenile court's order was correct and well within the discretion of the trial court. The appellate court first stated that father's appeal lacked merit because the trial court's order was the correct approach to correcting father's inadequate grasp of his responsibilities. Although the father was non-offending, he vacillated between reporting mother's abuse of the children to the police, to later denying that there had been any abuse and stating that he would never again report such beatings to the authorities. The appellate court stated that father's worrisome attitude about the abuse of small children left the trial court with no alternative but to direct him to participate in counseling sessions. The appellate court also found that father did not object to the order directing him to participate in programs and forfeited his right to raise the issue on appeal. (JC)

## ICWA

*In re A.A.*--filed October 28, 2008, Fifth Dist.

Docket No. F055097

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F055097.DOC>

After mother gave birth to a drug-exposed baby, the infant and her two sisters were detained. Mother was an enrolled member of the Tule River Tribe ("Tribe"), and the trial court found that the ICWA applied. The children were found to be dependents under WIC 300, and removed from their parents' custody. At disposition, the infant was placed with Indian relative caregivers, who were unable to take all three children. The older children were placed in a non-relative placement. The trial court found that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. The parents did not comply with their case plans and the court terminated reunification services and set a section 366.26 hearing.

After several changes in placement, the older children were placed with their infant sibling. The relative caregivers initially indicated they wanted to adopt all three children, but subsequently changed their minds, and decided they could only adopt the infant. The older two children were placed in a non-relative prospective adoptive home which met ICWA placement preferences. A psychological evaluation diagnosed the older children with attachment disorder and recommended they not change placements again. Prior to the section 366.26 hearing, the relative caregivers changed their mind and indicated they did want to adopt the older children. At the section 366.26 hearing, the Tribe's counsel argued that

termination of parental rights was not in the older children's best interests because adoption by the current caretakers would substantially interfere with the children's connection to "family" and because the Tribe had identified guardianship as the desired permanent plan. The Tribe also argued that the Tribe's preferred placement was with the former (relative) caregivers. The Tribe argued that it would support termination of parental rights only if the former relative caregivers could adopt; otherwise, the Tribe advocated guardianship as the culturally appropriate plan for the children. The trial court terminated parental rights to all three children, and both the mother and the Tribe appealed, with respect to the older children. Mother and the Tribe argued the trial court erred in: 1) finding under 25 U.S.C. § 1912(d) and WIC 361.7(a) that "active efforts" were made to provide services designed to prevent the breakup of the Indian family; 2) not applying the WIC 366.26(c)(1)(B)(vi) exception to termination of parental rights; and 3) not applying the ICWA placement preference at the section 366.26 hearing.

Affirmed. The requirement under WIC 361.7(a) that "active efforts" be made to provide services designed to prevent the breakup of the Indian family is separate from the placement preference requirements under WIC 361.31. With respect to the section 366.26(c)(1)(B)(vi) exception to the termination of parental rights, the trial court is not required under that exception to make an affirmative finding of "no detriment." By terminating parental rights, the trial court implicitly made a finding that such termination would not constitute a detriment. Further, the (c)(1)(B)(vi) exception relates to whether termination of parental rights would interfere with the child's relationship with his or her tribal community, and not in general whether it would interfere with other, non-tribal interests. Also, the trial court did not abuse its discretion in finding that the Tribe's identification of guardianship as a permanent plan was not a compelling reason for finding that termination of parental rights would be detrimental.

Finally, the trial court was correct in its analysis of whether the Indian placement preference under WIC 361.31 was correctly applied. The trial court was unsure whether the placement preference should be evaluated as of when the children were placed with their current caregivers, or when the court was selecting the permanent plan, and therefore analyzed as of both. With respect to the placement with the current caregiver, the trial court correctly found that the agency did comply with the preference requirements. With respect to placement as of the section 366.26 hearing, the issue was whether the ICWA and WIC 361.31 require deference to the tribal preference anew at the WIC 366.26 hearing, even where the children's current placement is in a home which meets ICWA placement preferences (though in a "lower priority" placement than that desired by the Tribe). In this case, the issue need not be decided, because even if deference to the Tribe's preference is required, good cause existed for non-compliance with the preference; this good cause determination was supported by substantial evidence. (PB)

## **NON-DEPENDENCY CASES OF INTEREST**

### **CACI/Due Process**

*Humphries v. County of Los Angeles* – filed Nov. 5, 2008, Ninth Circuit Court of Appeals

Parents were listed on the Child Abuse Central Index [CACI] due to an allegation of physical abuse by Mr. Humphries' 15-year-old daughter. Criminal charges and a dependency petition were filed. The criminal charges were later dropped and the dependency petition dismissed. The Humphries obtained a "declaration of factual innocence" from the criminal court. The sheriff's department refused to change its findings to 'unsubstantiated' so as to remove the Humphries from the CACI. Mrs. Humphries, a special education teacher, was at risk of losing her teaching credential. Parents filed a federal civil rights action. The District Court granted summary judgment to the county defendants. The Humphries appealed.

Reversed. The Child Abuse and Neglect Reporting Act [CANRA], Cal. Penal Code §§ 11164-11174, violates due process because inconclusive as well as substantiated child abuse/neglect reports are listed on the CACI; there is no adequate procedure to challenge a CACI listing; and being listed on the CACI causes not only stigma but also adverse effects on employment, licensing, and child placement opportunities. (MM)

## **OUT OF STATE DEPENDENCY CASES**

### **ICPC/Noncustodial parents**

*In re Alexis G.* – filed Oct. 29, 2008, Supreme Court of New Hampshire.

6-month old baby was detained because father was homeless and left child with friends for days at a time. Mother lived in Arizona. She offered to come and get the baby when she was contacted by the child welfare agency. Juvenile court set the case for disposition, and indicated that if the mother came and got the child, the case would be closed. Child welfare agency moved for reconsideration, asserting that the ICPC applied. Juvenile court granted the motion and ruled that the child could not be released until the agency received a favorable ICPC report from Arizona. Mother appealed.

Reversed. The New Hampshire Supreme Court reversed, holding that the ICPC does not apply when the juvenile court releases a child to an out-of-state parent, rather than to a foster or adoptive home. (MM).-> ICPC is not an issue of offending vs non offending parent. The issue is whether the parent is a custodial or nocustodial (under 361.2) out of state parent.-->instead of asking for an ICPC ask for PRI, PRC or courtesy CASA visit.

## **OTHER LEGAL DEVELOPMENTS**

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

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

08-52           Dental Resources for DCFS-Served Children

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0852DentalResources.doc>

This FYI is to notify staff that there are dental resources listed on LA Kids under the Bureau of the Medical Director's Home Page, within the DCFS Health, Mental Health and Substance Abuse Services Section's page. Resources that can be accessed are CHDP Dental Providers, including specialty providers, Denti-Cal Providers, and Denti-Cal's Beneficiary Services. In addition, community/pro bono resources are listed. (SA)