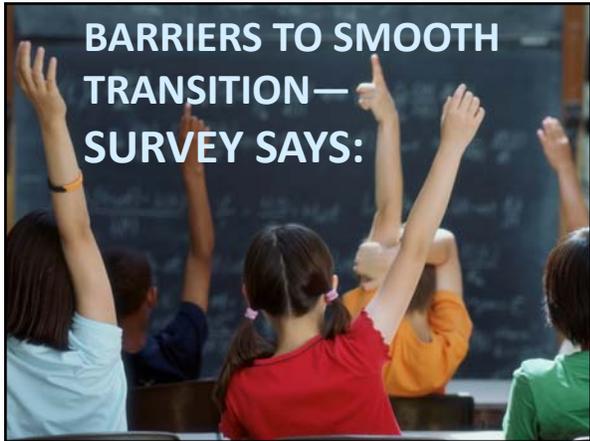




**WHAT HAPPENS AFTER A 300
CASE IS DISMISSED?**
Issuing Meaningful Juvenile Custody Orders

Beyond the Bench
Dec. 2, 2015



**BARRIERS TO SMOOTH
TRANSITION—
SURVEY SAYS:**

What do dependency attorneys and social workers say about juvenile custody orders?
Survey Says:

- “We don’t do family law trials.”
- “It’s not our job to determine the best visitation schedule; that has nothing to do with risk to the child.”
- “Let them go to family law and figure out the details.”
- “You can’t refer something to mediation.”
- “Our Department does not deal with parenting time after Dependency is terminated.”



What do parents tell the family law judge when they seek a modification?

Survey Says:

- “My Dependency Attorney told me to just agree with the exit order and then go back to family law so here I am.”
- “The social worker got it all wrong; they have no idea what Dad does and he is still using drugs.”
- “Don’t I have an obligation to protect, so here I am trying to get a change in order to protect my child.”



What do family law judges say to themselves about Juvenile custody orders?

Survey Says:

- “Why did they take the child from Mother and immediately give the child back to Father when I awarded custody to Mom after a 2-day family-law custody trial with these parents 6 months ago?”
- “Why didn’t the Juvenile Court Judge refer these parents to the Child Recommending Counselor?”
- “I really don’t know anything about this family from looking at this order.”
- “Why would the Juvenile Court order a visitation schedule ‘as arranged by the parents?’”



Who is a “parent” entitled to custody in juvenile proceeding?

Only a *presumed* parent has right to custody.

- More than biological
- More than alleged



When does juvenile court issue final custody orders?

When it terminates jurisdiction over a dependent child at or after disposition (W&I Code, § 362.4) *and*

- Orders the child in custody of previously noncustodial parent under § 361.2(b)(1)

or

- Orders the child to live with one or both parents *and*
 - At least one parent has completed services
 - Parents not married and not living together



Judicial Council forms

- *Custody Order—Juvenile—Final Judgment (JV-200)*
[Mandatory; rev. Jan. 1, 2016]
- *Visitation (Parenting Time) Order—Juvenile (JV-205)*
[Mandatory; rev. Jan. 1, 2016]
- *Reasons for No or Supervised Visitation—Juvenile (JV-206)*
[Optional; new Jan. 1, 2016]



Optional Judicial Council form attachments

- FL-341(B) Child Abduction Prevention Order Attachment
- FL-341(C) Children’s Holiday Schedule Attachment
- FL-341(D) Additional Provisions—Physical Custody Attachment
- FL-341(E) Legal Custody Attachment
 - Consider (we will come back to this).



Section 362.4 authority

- Once issued, custody order **must be filed** in any existing proceeding for nullity, dissolution, guardianship, or parentage.
- By rule, if no FL proceeding exists, the receiving court must open a new family law file, assign a case number, and mail a copy of the order to the juvenile court and the parents. (CRC, rule 5.700.)



ISSUING MEANINGFUL JUVENILE CUSTODY ORDERS

AVOID THE TUG OF WAR



Goals for custody orders

- Reduce conflict between parties
- Promote understanding by parties of the order's requirements
- Promote enforceability of the terms of the order
 - Can law enforcement understand terms?
- Promote understanding of the order's terms by the other court who may be called upon to modify



Juvenile custody orders are final custody orders

Modification requires a significant change in circumstances and best interest

We'll come back to this
W&I § 302(d)

What orders must be made?

- CUSTODY
 - Legal
 - Physical
- VISITATION (parenting time)
 - Specific plan & schedule
- OTHER?



Legal custody

- **Sole:** one parent has the right and the responsibility to make decisions regarding health, education, and welfare of a child (Fam. Code, § 3003)
- **Joint:** “both parents” share that right and responsibility.

Physical custody

- **Joint physical** = “Both parents” have significant periods of physical custody.
- **Sole physical** = Child resides with one parent, subject to the other parent’s visitation (or parenting time)
- **“Primary physical”?** = Term has no legal meaning, but sometimes used to describe joint physical custody



Physical custody

- *Manage the details:*
 - Primary
 - Holiday
 - Birthdays
 - Summer schedule
 - Exchange times, locations, and manner



Visitation (parenting time)

- An order permitting the parents to determine issues concerning supervised visitation is invalid in that it leaves to much discretion with the parents.
 - The court must specify the minimum amount of visitation required. (In re T.H. (2010) 190 Cal.App.4th 1119.)



Visitation

- Supervised or unsupervised?
- If supervised, by whom?
 - Third party or agency.
 - Who pays?
 - High level, low-level, or therapeutic supervision.
 - Are reports required?



WHAT ELSE?

What does the family law court need to know?

Confidentiality



How much information may a juvenile court include?

“OTHER”
Attachments

How about status?

- Bypass?
- Termination of services
- Date of last contact with child
- Date of last participation in services



Special topics

- Domestic violence treatment for both parents
 - Perpetrator completed DV class?
- Drug and alcohol services
 - How long in treatment?
 - How long sober?



Services after termination?

A *juvenile* court may make an open-ended counseling order on termination of jurisdiction as a condition of visitation.

- DV?
- Substance Abuse



Should judge suggest and set forth in the order criteria that must be met to establish a change in circumstances?

“Supervision should not be lifted unless Father does x, y and z.”

Language suggestions

These orders originate from a litigated Juvenile Dependency proceeding. Pursuant to WIC, § 827(a)(1)(L), the assigned Family Law Judicial Officer may review the Confidential Dependency case file prior to making any changes to the current custody order. The Family Law Judicial Officer is strongly encouraged to review the Dependency file to determine both whether there has been a significant change of circumstances since this order was made and whether modification of the order is in the best interests of the child. [See Welfare and Institutions Code, section 302(d).]

(See also In re Michael B. (1992) 8 Cal.App.4th 1698, 1704.)

Restraining orders

- The Court may issue a no contact or restraining order (Welf. & Inst. Code, §§ 213.5, 362.4).
 - Mandatory Judicial Council forms JV-250 and JV-255 must be used.
- The Court may make an order restraining one parent from telling the child that his presumed father is not his biological father.
 - In re Nicholas H. (2003) 112 Cal.App.4th 251, 269.

Child support?

Juvenile Court has no authority to order.

In re Alexandria M. (2007) 156 Cal.App.4th 1088.



“Stamping Filed Order”

- “Cannot change without a substantial change in circumstances”
- So that the mediator knows

Local procedural options

- Front-Load Mediation
 - Refer 300 case to custody mediation before termination
 - If RFO filed in Family within 6 months, require mediation before hearing
- If RFO filed within 1 year, heard by 300 judge sitting as Family Court.
(see sample Local Rule, Santa Clara County)

Local procedural challenges

- Processing times for the Juvenile Custody Order to be transmitted to the Family Law file.
 - Means we may not catch the impromptu RFO filing to address custody issues



Final orders

- A significant change in circumstances is required to modify a final order.

AND

- Requested modification must be in best interest of the child.

Examples:

- Serious Domestic Violence.
- Corroborated drug or alcohol abuse.



Welfare and Institutions Code §302(d)

(d) Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction . . . **shall be a final judgment** and shall remain in effect after that jurisdiction is terminated.



Welfare and Institutions Code §302(d), continued

- The order shall not be modified . . .
- . . . unless the court finds
 - a significant change of circumstances since the juvenile court issued the order and
 - best interests



Process for filing

- Each county different
- Same county
 - Automatic filing?
- If custodial parent lives in another county



Modifications

- Should go back to 300 judge
- How to alert family law judge
- Mediation



Conclusion

Take the time to explain what a custody order is and does at the last juvenile court hearing.

Dependency

<http://youtu.be/lozsQpn4yA>

Thank you.