

**HOT TOPICS  
IN DEPENDENCY**

COMMISSIONER JACQUELINE LEWIS  
COMMISSIONER ANTHONY  
TRENDACOSTA

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**BEYOND THE BENCH**

DEPENDENCY WORKSHOPS

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- AB 12/212
- LEGAL/JUDICIAL ETHICS AND COLLABRATIVE COURTS
- DEPENDENCY DRUG COURTS
- BRAIN/INJURIES IN ABUSE CASES
- FAMILY LAW/DEPENDENCY CROSS-OVER
- DOMESTIC VIOLENCE
- VISITATION AND "RISK"

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- MEDIATION
- ICWA AND TRIBAL COURTS
- LGBTQ
- CONFIDENTIALITY AND OPEN COURTS
- CAMARETTA V. GREEN
- IMPACT OF THE INTERNET

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We can't deal with all of these!

BUT. . . . .

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Let's start at the beginning:

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**WELFARE AND INSTITUTIONS CODE  
SECTION 300**

- Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: §§ (a) through (j)
- *1987* ch. 1485 § 4, operative January 1, *1989*, *1989* ch. 913 § 3, repealed operative January 1, 1992, 1991, ch. 1203 § 1.5 (repealing provision deleted), 1992 ch. 382, 1996 chs. 1082, 1084 § 1.5, 1998 ch. 1054, 2000 ch. 824 § 3, 2005 chs. 625 (SB 116) § 3, 630 (SB 500) § 1.

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**SUBSTANTIAL RISK**

- Suffered serious (physical/emotional) harm or injury or at substantial risk.
- 300(a), (b) and (c)
- **In re Rocco M.** 1 Cal.App. 4<sup>th</sup> 814
  - Is it still good law?
  - What does it really mean?
    - "the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to a defined risk of harm."

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**Substantial Disagreement**

- **In re David H.** 165 Cal.App. 4<sup>th</sup>
- **In re J.K.** - (2009) 174 Cal. App. 4th 1426. 1626 (past infliction of serious harm sufficient)
- See also California Juvenile Courts Seiser & Kumli § 2.84[1]

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However

- **In re J.N.** – (2010) 181 Cal. App. 4th 1010 – (drunk driving accident)
- Yes! Risk needs to be current, disagrees with J.K

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Substantial increase in the number of appeals regarding jurisdictional issues

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Just in the last three years

- **In re JK**
- **In re JN**
- Sex abuse and siblings
  - **In re Carlos T.** - (2009) 174 Cal. App. 4th 795 (sub (d) doesn't require current risk)
  - **In re Andy G.** (4/20/10) 183 Cal. App. 4th 1405
  - **In re B.T.** (2/9/11) 193 Cal. App. 4th 685
  - **In re R.C.** (6/14/11) 196 Cal. App. 4th 741
- Marijuana
  - **In re Alexis E.** (2009) 171 Cal. App. 4th 438
- Smoking
  - **KC v. SC.** 182 Cal. App. 4th 1388

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### FAMILY LAW AND/OR EMOTIONAL ABUSE

- In re Christopher C. (2010) 182 Cal. App. 4th 73
- 10 year battle in family law crosses over to dependency.
- In re A.J. (6/30/11) 197 Cal. App. 4th 1095
- The child's risk of suffering emotional damage was great based on the continued barrage of harassment by the mother and the child's fear and nightmares directly related to mother.

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### DOMESTIC VIOLENCE

- In re Daisy H. (2/8/11) 192 Cal. App. 4th 713
- Under WIC 300(b) there was no evidence that the physical violence between the parents was likely to continue, or that it directly harmed the child physically or placed the child at risk of physical harm. Court of Appeal noted that neither 300(a) nor (b) provide for jurisdiction based upon emotional harm.

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### On The Other Hand

- In re Ethan C. (9/24/10) 188 Cal. App. 4th 992
- The court noted that even though the parents were living apart at the time of the dispositional hearing, fewer than four months had passed since the last event and the mother was clearly still desirous of reuniting with the father. "Thus it is not unrealistic for the juvenile court to conclude that William's claims the parties were permanently separate was premature."

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300(g)-Failure to Provide

- **In re Anthony G.** (3/30/11) 194 Cal. App. 4th 1060
- **In re V.M.** (12/22/10) 191 Cal. App. 4th 245
- **In re X.S.** (11/17/10) 190 Cal. App. 4th 1154  
No risk to child for father's failure to participate in the child's life or provide support! (Why are the children in dependency court?)

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300(i) Cruelty

- **In re D.C.** (5/23/11) 195 Cal. App. 4th 1010 (i)
- Intent of parent not relevant

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300(f)-Death of a Child

- **In re A.M.** (8/11/10) 187 Cal.App. 4th 1380  
No need to find current risk under (f)
- **In re Ethan C.** (9/24/10) 188 Cal. App. 4th 992  
Criminal negligence not necessary to sustain an (f) count. (Note: petition for review filed)

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### MEDIATION AND NEGOTIATED PLEAS

- **In re N.M.** (6/10/11) 197 Cal. App. 4th 159
- Is it appropriate to negotiate a plea deal, including the case plan, and then challenge the sufficiency of the agreed-upon language on appeal.
- **NO!**

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### WHERE DO WE GO FROM HERE?

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### Remember?

- WIC 300  
*1987 ch. 1485 § 4, operative January 1, 1989, 1989 ch. 913 § 3, repealed operative January 1, 1992, 1991, ch. 1203 § 1.5 (repealing provision deleted), 1992 ch. 382, 1996 chs. 1082, 1084 § 1.5, 1998 ch. 1054, 2000 ch. 824 § 3, 2005 chs. 625 (SB 116) § 3, 630 (SB 500)*

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## Is it time to look at a wholesale review and re-write of the W and I Code?

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## What Has Changed?

- Better research and understanding of child development and the impact of abuse on children
  - Domestic Violence and child welfare
  - Post Traumatic Stress Disorder
- Renewed controversy over the "shaken baby" diagnosis.
- Internet and social networking

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- Adoption of the Elkins Laws in Family Law and its impact on family law cross-over cases
- Incarcerated Parents amendments
- AB12/212
- Opening juvenile courts to the public.

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## WHAT DO YOU THINK?

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## OTHER ISSUES

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## GREEN

- The US Supreme Court has spoken(???)
- What did they say?
- What does it mean for us?

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### Evidentiary Issues

- **In re R.R.** (8/30/10) 187 Cal. App. 4th 1264  
Medical records
- **Karen P. v. Superior Court of Los Angeles** (11/9/11)  
Patient/psychotherapist privilege and the issue of due process.

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### VISITATION

- In re Brittany C.** (1/20/11) 191 Cal. Rptr. 3d 1343  
What evidence necessary to limit or curtail visitation as emotionally or physically damaging to the child.
- Contrary to **In re C.C.** (2009) 172 Cal. App. 4th and 1481 and **In re Hunter S.** 142 Cal. App. 4th 988

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### VISITATION IN A NEUTRAL/THERAPUTIC SETTING

- What does this really mean?
- Can it ever be implemented?

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## Ethics

- Do we need to re-examine the traditional roles of Dependency Judges? Attorneys for parents? Children?
- **In re Jackson W.** (2010) 184 Cal. App. 4th 247
- 317 and the independent obligation of children's' counsel under 317, a minority view.
- (see also AB12/212)

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**In re P.C.** (9/8/11) 198 Cal. App. 4th 1533

- "Finally, we are troubled by this appeal. At oral argument, counsel for mother acknowledged that she has had *no* contact with mother, her client. Neither counsel nor the agency has been able to locate mother. Mother's attorney stated that she had some contact with mother's trial counsel, who filed and signed the notice of appeal on behalf of mother, but appellate counsel had no contact with her client.

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- It is troubling that counsel has chosen to pursue an appeal that is borderline frivolous on behalf of a nominal client. We appreciate that appellate counsel for parents in dependency cases frequently find themselves in the position of representing a client whose whereabouts are unknown. In such situations, counsel clearly have an obligation to pursue vigorously issues that affect the rights of the parents.

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- However, dependency proceedings involve children who have been abused or neglected and a delay will generally be detrimental to the child. Thus, counsel have a heightened responsibility not to pursue issues of questionable merit, especially at the stage where the lower court has terminated parental rights and the child's interests are of paramount importance.

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- "Here, despite receiving no direction from her client and despite being aware of her client's apparent abandonment of any relationship with her child, counsel pursued a marginal appeal.

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- For counsel, who has no reason to believe her client has any interest in this appeal, to take it upon herself to try to reverse the finding of adoptability, which was supported by the opinion of five experts, and thereby prevent P.C.'s chance of having an adoptive parent, raises, in our view, a significant ethical issue. This ethical issue, however, is one that may be unique to the dependency process and not directly addressed by the canons of professional conduct."

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- **In re Z.K.** 10/25/11 CA3
- The Court of Appeal had nothing good to say about the child welfare agency, the trial court judge or the mother's lawyer!

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