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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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) **BLANKET ORDER RE: WIC 346 AND**
) **PUBLIC AND MEDIA ATTENDANCE**
) **AT DEPENDENCY COURT HEARING**
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Welfare and Institutions Code section 346 provides:

“Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.”

As the statute and the cases discussed below suggest, Dependency Courts are not completely closed. These cases provide a basis for the Los Angeles Dependency Court to establish an orderly process to allow appropriate access to the Dependency Court. That process is contained in the Order contained herein.

In *Brian W. v. Superior Court* (1978), 20 Cal.3d 618, 623, the California Supreme Court stated with respect to Welfare and Institutions Code (hereinafter WIC) section 676, the predecessor statute to WIC section 346, “We conclude that in vesting the judge with discretion to admit to juvenile court proceedings persons having a ‘direct and legitimate interest in the particular case or the work of the court’, it was the purpose of the Legislature to allow press attendance at juvenile hearings.” (See also *In re A.L.* (2014) 224 Cal.App.4th 354, 365.

In the case of *San Bernardino County Dept. of Public Services v. Superior Court* (1991) 232 Cal.App 3d 188, 195, the Court of Appeal held that the holding of *Brian W.* applied to WIC section 346. In addition, in *San Bernardino, Id.*, at 205, the Court of Appeal provides the most complete instructions as to how dependency court judges must apply this statute. The appellate court held that the “constitutional right of access does not extend to dependency proceedings.” *Id.*, at 197. However, after noting that public or press access is within the dependency court’s discretion, the appellate court constrained and guided that discretion, as follows:

“First, and foremost, the court’s discretion must be directed at determining what is in the best interests of the minors, for that obviously is its primary concern at all times in the juvenile proceedings. At the same time, the court should give proper consideration to the important social values which are fostered by allowing public or press access to the proceedings. The legislature in enacting 346 has clearly endorsed the view that ‘the press can assist juvenile courts in becoming more effective instruments of social rehabilitation by providing the public with greater knowledge of juvenile court processes, procedures and unmet needs.’ ”

Id., at 207, citing *Brian W. v. Superior Court* (1978) 20 Cal.3d 618, 623.

The appellate court references both the public “or” press access in this part of its decision. Further, in applying the statute, the appellate court instructs trial courts to consider the following:

“[P]ublic access serves an important educative function which is no less compelling in the context of the juvenile court. The public’s ability to understand how the system operates and, in turn, its ability to make informed decisions regarding the need for positive changes to the system will be enhanced by allowing access to the proceedings. (*Matter of N.H.B., supra*, 769 P.2d 844, 849: ‘[P]ublic awareness and understanding of the juvenile court system ... would promote public involvement in

the governmental processes and might deter inappropriate actions on the part of some participants.’) Accordingly, we believe that public access can play ‘a significant positive role in the functioning’ of juvenile court dependency proceedings.”

Id., citing *Press Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 8.

Checking judicial abuse is another benefit to public openness, according to the appellate court. *Id.*, at 202. Moreover, “[p]ublic access to juvenile dependency proceedings can serve ‘an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.” *Id.*, at 203, citing *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 571.

Finally, the court in *San Bernardino* instructed as to how to apply this reasoning to the facts of each case:

“In attempting to balance these competing interests, the court should attempt to apply these broad principles to the unique facts of this case and may properly consider such factors as the age of each child, the nature of the allegations, the extent of the present and/or expected publicity and its effect, if any, on the children and on family reunification. (*Div. of Youth & Fam. Serv. v. J.B.*, *supra*, 576 A.2d 261, 269.) Although not constitutionally required, the court should consider whether it would be feasible to allow press access to portions of the proceedings and excluding the press from other portions.”

Id., at 207.

Interpreting WIC 346, the appellate court instructs that the press does have a legitimate interest in access to Dependency Court hearings and that a trial court “should allow press access unless there is a reasonable likelihood that such access will be harmful to the child’s or children’s best interest in this case.” *Id.*, at 208.

On the other hand, as WIC 346 essentially states, without the request or consent of the child, the public shall not be admitted to a hearing unless the court finds that “such persons have a direct and legitimate interest in the particular case or the work of the court.” However, consistent with the authorities cited, once that threshold is met, the court may still exclude the public if there is a “reasonable likelihood that such access will be harmful to the child’s or children’s best interest in the case.”¹ (See also *In re A.L.*, supra at 366).

In re A.L., supra at 368, also provides some guidance on the implementation of WIC section 346. First, there is no burden on the child to discover the identity of strangers in the courtroom or to voice an objection before access can be denied.

Second, with regard to press attendance, the case states, “...the press must ultimately persuade the court that the balance of competing interests should be weighed in its favor—that is, there is no reasonable likelihood that access will be harmful to the child’s interests.” However, “(t)his does not mean the child or party opposing access has no burden to produce evidence; unless the opposing party produces some evidence of the likelihood of harm, a judge or referee would be free to find, based on information in the record already before him, that the member of the press has a legitimate interest and there is no reasonable likelihood of harm to the child. But the press in the end must persuade the court on this point.” (*In re A.L.*, supra at 369).

ORDER

Following the authorities and reasoning above, and in order to provide guidance to judicial officers, parties, the press and members of the public as to how access to the Los

¹ The Court is aware of federal law which is factored into this threshold. Specifically, the federal Child Abuse Prevention and Treatment Act (CAPTA) of 42 U.S.C. 5106a(b)(2) provides:

“Nothing in paragraph (A) shall be construed to limit the State’s flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.”

Angeles Dependency Court may be permitted within the meaning of Welfare and Institutions Code section 346, the following procedures shall apply:

1. Before all hearings the Court shall determine all persons present and permit access to all persons entitled to be present within the scope of WIC section 349 and California Rules of Court, Rule 5.530 (b).
2. With regard to persons not statutorily entitled to be present at the hearing, the Court shall ask the person to specifically state the purpose of his/her presence. The Court may permit that person to remain at the hearing if the Court finds that person has a direct and legitimate interest in the particular case or the work of the court and, based on the record before it, there is no reasonable likelihood that access will be harmful to the child's best interests.²
3. Any party may object to a person's access even after the Court has made the findings in No. 2 above. The party objecting shall produce evidence that harm to the child or family is reasonable likely to occur because access is allowed. The person seeking access shall have the burden of persuading the Court that there is no reasonable likelihood that access will be harmful to the child's best interests.
4. In exercising its discretion, the Court may consider such factors as the age of each child, the nature of the allegations, the extent of the present or expected publicity and its effect, if any, on the child and on family reunification and permanence, and the safety and well-being of the child, parents and family, consistent with the overriding purpose of the proceeding to protect the child and advance his or her best interests.

² In exercising its discretion to determine whether a person has a direct and legitimate interest in the particular case or the work of the court, the Court should be guided by the language in both *Brian W. v. Superior Court* (1978) 20 Cal.3d 618, 623, and *San Bernardino County Dept. of Public Services v. Superior Court* (1991) 232 Cal.App.3d 188, 208, which strongly suggests the direct and legitimate interest of the press.

The Court should also consider the direct and legitimate interest of caregivers to be present at all hearings in addition to review and permanency hearings at which they are already entitled to be present pursuant to WIC 16010.4(b).

5. The Court's finding at one hearing or portion of the hearing shall not prejudice a party or the court from making a similar motion at a subsequent hearing or later in the same hearing.
6. No person should be denied access to a hearing unless the Court has found, based on the evidence before it, including any argument presented, (a) that the person has no legitimate interest in the case or the work of the court, or (b) that the person does have a legitimate interest in the case or the work of the court but, after considering the evidence before it including arguments in opposition to access and the response of the person seeking access, and after weighing the considerations set forth in No. 4 above, that access should be denied.³
7. No party or any other person shall be permitted to record, videotape or photograph any hearing without complying with California Rules of Court, Rule 1.150.

IT IS SO ORDERED.

DATED: August 8, 2014



MICHAEL NASH
PRESIDING JUDGE OF JUVENILE COURT

³ This does not apply to a motion to exclude a witness or potential witness from a hearing.