



CHAMBERS OF
MICHAEL NASH
PRESIDING JUDGE

JUVENILE DIVISION
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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**

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.”

In *Brian W. v. Superior Court* (1978), 20 Cal. 3d 618, 623, the California Supreme Court stated with respect to Welfare and Institutions Code (WIC) 676, the predecessor statute to WIC 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.”

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 346. In addition, in *San Bernardino County Dept. of Public Social Services v. Superior Court* (1991), *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 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 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

ORDER

Following the authorities and reasoning above, and to provide guidance to the parties, the press and members of the public as to how the Los Angeles Juvenile Dependency Court will apply Welfare and Institutions Code section 346, the following orders and procedures shall apply:

1. Members of the press are deemed to have a legitimate interest in the work of the court.
2. Members of the press shall be allowed access to Juvenile Dependency Court hearings unless there is a reasonable likelihood that such access will be harmful to the child’s or children’s best interests. (See #5)
3. Members of the public shall be admitted to Juvenile Dependency Court hearings at the request of or with the consent of a child about whom a petition has been filed. Members of the public seeking access in cases where a child does not request or consent to admission may enter the courtroom and be present at a hearing if the court finds that such persons

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.”

In addition, the federal Social Security Act at 432 U.S.C. 671(c) provides:

“Subsection (a) (8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B of this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.”

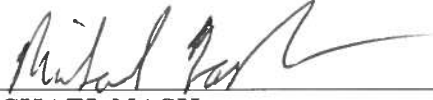
have a direct or legitimate interest in the case or the work of the court. Upon request of the court, such persons shall identify themselves and specifically state the purpose of their presence.

4. Any party may object to access by members of the press or the public even after the court has made a finding of a legitimate interest in access. In addition to any other basis for the objection, the party objecting must demonstrate that harm or detriment to the minor child is reasonably likely to occur in the case as a result of permitting the public or press access to the proceeding.
5. Upon such an objection being made, the court will 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 children 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.
6. The court's finding at one hearing or one 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.
7. No member of the public or press shall be denied access to a courtroom until an objection has been made and the court has found, based on the evidence and argument presented, that either the member of the public has no legitimate interest in the case or the work of the court, or if there is a legitimate interest, that, after balancing the considerations set forth in #5 above, access must be denied.²
8. No party, member of the public or press shall be permitted to record, videotape or photograph any proceeding without complying with California Rules of Court, Rule 1.150.

² This does not apply to a motion to exclude a witness or potential witness from a hearing.

IT IS SO ORDERED.

DATED: 3/5/13

A handwritten signature in black ink, appearing to read "Michael Nash", written over a horizontal line.

MICHAEL NASH
PRESIDING JUDGE OF JUVENILE COURT