

APPELLATE PROCEDURE

APPEALABILITY:

WAIVER:

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APPEALABILITY

Must file notice of appeal within 60 days. (*In re Ryan R.* (2005) 122 Cal.App.4th 595, 597-600 [dismiss appeal when notice filed more than 60 days after termination of parental rights where parent was not present and notice of the decision and appellate rights was sent to the wrong address]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 53-54; *In re Julie M.* (1999) 69 Cal.App.4th 41, 47; *In re Cathina W.* (1998) 68 Cal.App.4th 716, 719-724 [parent's responsibility to file notice of appeal]; *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 [even if IAC claimed, unless would violate due process]; *Steven J. v. Superior Court* (1996) 35 Cal.App.4th 798, 812; *In re Megan B.* (1991) 235 Cal.App.3d 942, 950.) The 60 days for filing an appeal generally starts the day (after) the oral order is made in court. (*In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1254 [no constructive filing]; *In re Markaus V.* (1989) 211 Cal.App.3d 1331, 1337 [but order dismissing dependency is effective upon filing the written order]; *In re Tanyann W.* (2002) 97 Cal.App.4th 675, 678 [but factual finding more than 60 days before filing notice of appeal reviewable when the final order was made from the appealed order].)

“Section 395 provides in relevant part: ‘A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment’ ‘A consequence of section 395 is that an unappealed dispositional or postdispositional order is final and binding and may not be attacked on appeal from a later appealable order.’ (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed. (*Ibid.*) ‘Permitting a parent to raise issues going to the validity of a final earlier appealable order would directly undermine dominant concerns of finality and reasonable expectation,’ including ‘the predominant interest of the child an state’ (*In re Janee J.* (1999) 74 Cal.App.4th 198, 207.) Accordingly, ‘By failing to appeal, [the parent] has waived any complaint she may have regarding the [reunification] plan as ordered.’ (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.)” (*Sara M. v. Superior Court* (2005) 36 Cal.4th

998, 1018.)

A notice of appeal is timely, though filed more than 60 days after the appealable order, if it is filed within 20 days of another filing a notice of appeal. (*In re P.C.* (2006) 137 Cal.App.4th 279, 286.)

Under California Rules of Court, rule 1416(b)(3), when a referee decides most matters, the order is final ten days after sending a copy of the order with explanations to the judge. A notice of appeal filed less than 60 days from then is timely. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 537-538.)

Denial of rehearing by a judge is effective when the judge signs the order, not when the clerk prepares the minute order. (*In re B.A.* (2006) 141 Cal.App.4th 1411, 1418-1420.)

An appellant cannot attack appealable orders not appealed from. “Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.” (*Polster, Inc. v. Swing* (1985) 164 Cal.App.3d 427, 436.)

“Dependency proceedings are proceedings of an ongoing nature. While different hearings within the dependency process have different standards and purposes, they are part of the overall process and ongoing case.” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 878-879, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

“If an order is appealable, however, and no timely appeal is taken therefrom, the issue determined by the order are res judicata.” (*In re Matthew C.* (1993) 6 Cal.App.4th 386, 393.) “An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed.” (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.) Thus, “an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) Failure to timely appeal an appealable order waives the claim. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1251; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 668 [failure to appeal order denying discovery waived the issue].)

Must file a notice of appeal within 60 days under Welfare and Institutions Code section 395. “This statute makes the dispositional order in a dependency proceeding the appealable ‘judgment.’ [Citation.] Therefore, all subsequent orders are directly appealable without limitation, except for post-1994 orders setting a .26 hearing when the circumstances specified in section 366.26, subdivision (*l*), exist. [Citations.] A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.

[Citations.]” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150; accord, *In re Nada R.* (2001) 89 Cal.4th 1166, 1178-1179; *Wada B. Superior Court* (1996) 41 Cal.App.4th 1391, 1395-1396; see *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

“Code Civil of Procedure section 906, which applies in dependency cases [citation], states: ‘Upon an appeal [from a final judgment or a postjudgment order], the reviewing court may review the verdict or decision and any intermediate rulings, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party’” (*In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1404.)

“The waiver rule as applied in dependency cases flows from section 395, under which the dispositional order is an appealable judgment, and all subsequent orders are directly appealable without limitation except for post-1994 orders setting a .26 hearing, which are subject to writ review ([former] rule 39.1B) and related limitations (§ 366.26, subd. (I)). A consequence of section 395 is that an unappealed dispositional or postdispositional order is final and binding and may not be attacked on appeal from a later appealable order. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150; *In re Janee J.* (1999) 74 Cal.App.4th 198, 206.) In other words, ‘A challenge to the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed.’ (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.) The rule serves vital policy considerations of promoting finality and reasonable expedition, in a carefully balanced legislative scheme, and preventing late-stage ‘sabotage of the process’ through a parent’s attack on earlier orders. (*In re Janee J., supra*, at p. 207.)” (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355; accord, *In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1190-1191 [appointment of guardian ad litem without due process permits challenging orders not immediately appealed; otherwise, a Catch-22].)

Hearing not specified in the notice of appeal are not appealable. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1502-1503 [although notice of appeal specified the § 388 petition, it was filed more than 60 days after the denial of the petition, so it was no longer appealable]; *In re Brandon M.* (1997) 54 Cal.App.4th 1387, 1400-1401; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1251; *In re Melvin J.* (2000) 81 Cal.App.4th 742, 753 [delinquency]; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831-1834; see *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47 [notice of appeal limited to orders of specified date insufficient to give appellate court jurisdiction over other matters]; but see *In re Vincent M.* (2008) 161 Cal.App.4th 943, 954, fn. 10 [when appeal from order of Feb. 15, 2007 can also challenge related order of Mar. 19, 2007]; *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1449-1451 [notice of appeal filed

within 60 days of denial of § 388 petition which specified only the § 366.26 hearing included the denial of the § 388 petition]; *In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1115 [notice of appeal valid though it did not expressly state the order terminating parental rights was being appealed from]; *In re Josiah S.* (2002) 102 Cal.App.4th 403, 418 [though notice of appeal not specify denial of section 388 hearing, it is appealable as part of the same hearing or proceeding]; *In re Daniel Z.* (1992) 10 Cal.App.4th 1009, 1017 [notice of appeal liberally construed; notice specifying the dispositional hearing deemed to include the jurisdictional hearing]; Civ. Code, § 3528 [“The law respect form less than substance.”].)

The parent should sign the notice of appeal, especially when the parent was absent from the hearing being appealed from. (*In re Steven H.* (2001) 86 Cal.App.4th 1023, 1029; *In re Sean S.* (1996) 46 Cal.App.4th 350, 352-353; *In re Alma B.* (1994) 21 Cal.App.4th 1037, 1043; but see *In re Helen W.* (2007) 150 Cal.App.4th 71, 80 [attorney who signed notice of appeal was presumed to be authorized to do so unless there was evidence to the contrary]; *In re Asia L.* (2003) 107 Cal.App.4th 498, 505 [okay when client went to the hearing, though left early, and appellate attorney submitted a declaration saying communicated with client who wished the appeal]; *In re Malcolm D.* (1996) 42 Cal.App.4th 904, 910 [attorney presumed authorized to act for client]; *In re Jaime R.* (2001) 90 Cal.App.4th 766, 772 [“It is presumed that counsel acted with appellant’s authority.”].)

Jurisdictional findings appealed from the dispositional order. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 624 [the jurisdictional order is interlocutory, so review when appeal the dispositional order; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112.)

The dispositional order is a final order and is appealable unless reunification services are denied and the matter is set for a permanency plan hearing. (Welf. & Inst. Code, § 395; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1250; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 668 [“The first appealable order in the dependency process is the dispositional order.”]; *In re Benjamin E.* (1996) 44 Cal.App.4th 71, 76 [same]; *In re Wanda B.* (1996) 41 Cal.App.4th 1391, 1393-1396 [order denying services but not setting PPH is appealable].) “The term ‘judgment’ in the statute [Welf. & Inst. Code, § 395] refers to the dispositional order in a dependency proceeding.” (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 702.)

The parent must sign the notice of intent to file juvenile writ. (*Janice J. v. Superior Court* (1997) 55 Cal.App.4th 690, 692; *Suzanne J. v. Superior Court* (1996) 46 Cal.App.4th 785, 788.)

“When notice [of the writ requirement] is not given, the parent’s claims of error occurring at the setting hearing may be addressed on review from the disposition following the section 366.26 hearing.” (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 838; see also Welf. & Inst. Code, § 366.26, subd. (l)(3)(A); *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110; see *In re Merrick V.* (2004) 122 Cal.App.4th 235, 248-249 [though clerk’s transcript said parent was advised, court permitted raising issues because such an advisement was not in the reporter’s transcript; parent was allowed to appeal the setting of the PPH]; *In re Athena P.* (2002) 103 Cal.App.4th 617, 625 [when set PPH and not give notice of writ requirement, can raise issues at the next appealable order (usually the PPH)]; *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1038; *In re Rashad B.* (1999) 76 Cal.App.4th 442, 447-448; *In re Cathina W.* (1998) 68 Cal.App.4th 716, 719-724, 726.) Parent can raise issues from the termination or denial of services if the court of appeal summarily denies a timely writ petition. (*In re Kenneth M.* (2005) 123 Cal.App.4th 16, 18, fn. 2.) The parent cannot appeal the setting of section 366.26 hearing when the parent was not advised of the writ requirement; the parent must wait to appeal the section 366.26 order. (*Jennifer T. v. Superior Court* (2008) 159 Cal.App.4th 254, 259-260; but see *In re Merrick V.* (2004) 122 Cal.App.4th 235, 248-249.)

Collateral orders made while setting permanent plan hearing are unappealable; the party must file a writ petition. (*In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-817; *In re Rashad B.* (1999) 76 Cal.App.4th 442, 447-448; *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 153-156; but see *In re Natasha A.* (1996) 42 Cal.App.4th 28, 33-34 [visitation].)

Orders not signed by commissioners are not void or voidable and must be appealed in a timely manner. (*In re Jesse W.* (2002) 93 Cal.App.4th 349, 356.)

Treated habeas petition after deadline for extraordinary writ passed as motion for relief from default. (*In re Emmanuel H.* (2001) 92 Cal.App.4th 150, 151-152.)

Under Family Code section 7894, subdivisions (b) and (c) can contest on appeal only insufficiency of the evidence or evidentiary error from private adoption; legality of default judgment not grounds. (*Adoption of Clarissa H.* (2003) 105 Cal.App.4th 120, 122.)

A permanent protective order under the Welfare and Institutions Code is appealable under Code of Civil Procedure section 904.1, subdivision (a)(6) as an injunction. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208-209 [but the notice of appeal must be filed within 60 days under Cal. Rules of Court, rule 1435(f) and former

rule 39].)

Under the disentitlement doctrine, a parent cannot appeal while he has absconded with the minor. “It is illogical and inequitable for appellant to seek appellate review of the very orders [the appellant] blatantly violated.” (*MacPherson v. MacPherson* (1939) 39 Cal.2d 271, 277 [took kids out of country during divorce]; *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1299-1300 [guardians who kidnapped minor and arranged for her marriage while appealing returning her to parent]; *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, 1227; *Adoption of Jacob C.* (1994) 25 Cal.App.4th 617, 623-624 [parent who stole kid lacked standing]; but see *In re Claudia S.* (2005) 131 Cal.App.4th 236, 245 [not apply when parent flees with children after being told CPS considering filing a petition but no petition filed yet]; *Kathryn S. v. Superior Court* (2000) 82 Cal.App.4th 958 [can appeal after the minor is returned].)

Though minor did not file a notice of appeal, and thus is the respondent, will consider minor’s objection on appeal. (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 83 [p. 87: Welf. & Inst. Code, § 317 permits minor’s attorney to present new evidence to the court of appeal], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 527, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

No issue in opening brief amounts to an abandonment. (*In re Sade C.* (1996) 13 Cal.4th 952; *In re Sara H.* (1997) 52 Cal.App.4th 198, 200-202; *Cherly S. v. Superior Court* (1996) 51 Cal.App.4th 1000 [writs].)

WAIVER:

Failing to object generally serves as a waiver. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [listing]; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339 [listing]; *In re Michelle M.* (2000) 80 Cal.App.4th 1139, 1148, fn. 7.)

“It is unfair to the trial court and the adverse party to give appellate consideration to an alleged procedural defect which could have been presented to, and may well have been cured by, the trial court. [Citation.] If we were to examine the issue now raised by the Department, we would in effect sanction a practice of allowing a party to keep its legal contentions secret during trial and later pursue a theory on appeal never tendered to the trial court.” (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810-811.)

But an issue is not waived, though appellant did not raise it below, when the court had the opportunity or did address the issue because the policy of waiver is to not be able to raise issues on appeal without giving the court the opportunity to correct it. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1121, fn. 9.)

“[T]he doctrine of invited error applies where a party, for tactical reasons, persuades the trial court to follow a particular procedure. The party is estopped from claiming that the procedure was unlawful.” (*In re Jaime R.* (2001) 90 Cal.App.4th 766, 772.)

Failing to object to whether CPS met its burden of proof at a hearing does not waive an issue. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623 [adoptability]; Code Civ. Proc, § 647.)

Failing to object to evidence waives the issue. (*In re Clara B.* (1993) 20 Cal.App.4th 988, 1000; *In re Mark C.* (1992) 7 Cal.App.4th 433, 446 [admissibility of psychological report].)

Failing to object to deficiencies in the social worker report waives the issue. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502 [assessment of the adopting parent]; *In re Urayna L.* (1997) 75 Cal.App.4th 883, 8785-887 [adoption assessment]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-413 [adoption assessment]; *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258 [deny reunification services]; *In re Jannilee T.* (1992) 3 Cal.App.4th 212, 222 [insufficient evidence to deny services]; but see *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1475-1476 [no information at all]; *Katherine S. v. Superior Court* (2000) 82 Cal.App.4th 958, 973 [same]; *In re Rebecca H.* (1991) 227 Cal.App.3d 825 [psychologist not qualified to deny services].)

Failing to object to no attorney in chambers during minor’s testimony waives the issue. (*In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1200; but see *In re Laura H.* (1992) 8 Cal.App.4th 1689.)

No waiver when a pure question of law. (*In re Jasmine C.* (1999) 74 Cal.App.4th 198, 208-209; *In re Damonte A.* (1997) 57 Cal.App.4th 897, 899.)

There should be no waiver if it is not clear the conduct would result in waiver. (*People v. Champion* (1995) 9 Cal.4th 879, 908, fn. 6.)

STANDING:

“Standing to appeal is jurisdictional.” (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 837; accord, *In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) “In order to assert a claim of error, appellant must demonstrate that she was aggrieved by the alleged error.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 414.)

“Black’s Law Dictionary defines standing as a ‘party’s right to make a legal claim

or seek judicial enforcement. . . . Also termed *standing to sue*.’ (Black’s Law Dict. (8th ed. 2004) p. 1442, col. 1.) ‘A litigant’s standing to sue is a threshold issue to be resolved before the matter can be reached on the merits. [Citation.] . . . We will not address the merits of litigation when the plaintiff lacks standing, because “ ‘California courts have no power . . . to render advisory opinions or give declaratory relief.’ ” [Citation.] Standing “ ‘goes to the existence of a cause of action.’ [Citation.]” (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 862, p. 320.) [¶] . . . [¶] “Standing requirements will vary from statute to statute based upon the intent of the Legislature and the purpose for which the particular statute was enacted.” [Citation.]’ (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000-1001.)” (*Librers v. Black* (2005) 129 Cal.App.4th 114, 124.) “ ‘Standing’ is a party’s right to make a legal claim and is a threshold issue to be resolved before reaching the merits of an action.” (*Said v. Jegan* (2007) 146 Cal.App.4th 1375, 1382.)

“Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor [citation]; nor can a parent raise the minor’s best interest as a basis for standing [citation]. Without a showing that a parent’s personal rights are affected by a ruling, the parent does not establish standing. [Citation.] To be aggrieved or affected, a parent must have a legally cognizable interest that is affected injuriously by the juvenile court’s decision. [Citation.] In sum, a would-be appellant ‘lacks standing to raise issues affecting another person’s interests.’ [Citation.]” (*In re D.S.* (2007) 156 Cal.App.4th 671, 674.)

“A party of record is a person named as a party to the proceedings or one who takes appropriate steps to become a party of record in the proceedings. (*Eggert v. Pac. States S. & L. Co.* (1942) 20 Cal.2d 199, 201.) A person does not become a party of record merely because his or her name and interest appear in documents filed with the court or are referenced in the judgment. (*Ibid.*)” (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715; *In re Silva R.* (2008) 159 Cal.App.4th 337, 345, internal quotation marks omitted.)

To have standing, the party must have a beneficial interest. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361-362; *Syngenta Crop Protection, Inc. v. Hellker* (2006) 138 Cal.App.4th 1135, 1182; see Code Civ. Proc., § 1086; *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439.)

Only the party aggrieved, the one harmed, may appeal. (Code Civ. Proc., § 902; *In re Daniel M.* (2003) 110 Cal.App.4th 703, 709; *In re Carissa G.* (1999) 76 Cal.App.4th 731, 734; *In re Nachele S.* (1996) 41 Cal.App.4th 1557, 1560.) “[T]o have standing on appeal, a person generally must be both a party of record and sufficiently ‘aggrieved’ by

the judgment or order.” (*Marsh v. Mountain Zephyr, Inc* (1996) 43 Cal.App.4th 289, 295.) A party is not aggrieved by a judgment or order rendered in its favor. (*Nevada County Office of Ed. v. Riles* (1983) 149 Cal.App.3d 767, 779.)

“Generally, a parent who is an aggrieved party may appeal a judgment in a juvenile dependency matter. [Citation.] To be aggrieved, a party must have a legally cognizable interest that is injuriously affected by the court’s decision. [Citation.]” (*In re Barbara R.* (2006) 137 Cal.App.4th 941, 953; accord *In re H.G.* (2006) 146 Cal.App.4th 1, 9; *In re Lauren P.* (1996) 44 Cal.App.4th 763, 768.)

For an appellant “[t]o have standing, a person must have *rights* that may suffer injury.” (*In re P.L.* (2005) 134 Cal.App.4th 1357, 1361.) “One is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment. [Citations.] Appellants interest ‘must be immediate, pecuniary, and substantial, and not nominal or a remote consequence of the judgment.’ [Citation.]” (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737; accord *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.) “‘[A] to the question who is the party *aggrieved*, the test . . . seems to be the most clear and simple that could be conceived. *Would the party have had the thing, if the erroneous judgment had not been given?* If the answer be yea, then the person is the “party aggrieved.” But his right to the thing must be immediate, and not the remote consequence of the judgment, had it been differently given.’ (*Adams v. Woods* (1857) 8 Cal. 306, 315.)” (*Cook v. Contreras* (2002) 95 Cal.App.4th 1194, 1201, emphasis in original.)

One can be a party aggrieved and thus have standing on appeal, even if one lacked standing in superior court. (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1294.)

Joinder is allowed if interests of the parties interwoven. (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6; see *In re Frank L.* (2000) 81 Cal.App.4th 700, 702-704.)

“We liberally construe the issue of standing and resolve doubts in favor of the right to appeal.” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 948; accord, *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.)

Standing: A nonparty has standing to appeal when he or she would be bound by res judicata. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295; see also *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736.) A person has standing on appeal to contest whether had standing in the superior court. (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1294; *In re Stewart* (1969) 276 Cal.App.2d 211, 215; *Ginsberg Tile Co. v. Faroane* (1929) 99 Cal.App. 381, 389?)

Standing: When a party claims there is a conflict of interest in a public interest law firm with different divisions representing different parties, the firm has standing. (*In*

re Jasmine S. (2007) 153 Cal.App.4th 835, 841-842 [Children’s Law Center]; *In re Mark B.* (2007) 148 Cal.App.4th 61, 67 [Sacramento].)

Waiver: The issue of standing is waived without raising it in the respondent’s brief. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1115, fn. 3; *In re Christopher I.* (2003) 106 Cal.App.4th 533, 548, fn. 1.)

MOOTNESS:

Dismissal of dependency matter does not make initial assumption of jurisdiction moot. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193 [though minor was returned to the parent, the jurisdictional finding would affect future dependencies]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544 [an appeal from the dismissal order at the dispositional hearing removing the child from one parent and placing it with the other was not moot]; but see *In re Michelle M.* (1992) 8 Cal.App.4th 326, 327-328 [appeal of dispositional order changing custody to the other parent became moot when subsequent dismissal of the dependency was not appealed].)

Appeal becomes moot after trial counsel stipulated to the findings at a subsequent hearing. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 405-406 [stipulation at dependent review that would be detrimental for minor to be at home and visitation appropriate waives these appeal of these orders from the dispositional hearing]; *In re Erica A.* (1999) 73 Cal.App.4th 1390, 1394-1395 [stipulated at dependent review that there are reasons for removal]; but see *In re Jennifer V.* (1998) 197 Cal.App.3d 1206, 1209-1210 [stipulate to dispositional hearing not waive jurisdiction].)

Appealing granting more reunification services become moot because the services were already given; the court of appeal “cannot rescind services that have already been received by the parents.” (*In re Pablo D.* (1998) 67 Cal.App.4th 759, 761; but see *In re Alvin R.* (2003) 108 Cal.App.4th 962, 974 [not moot because could lead to termination of parental rights (whether there was reasonable services)]; *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158 [not moot because affected subsequent court rulings].)

Failure to hold contested hearing does not become moot when court subsequently grants a contested hearing if it cannot be determined whether the contested hearing encompassed the same issues. (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 415-416.)

Failure to appeal after termination of parental rights makes prior appeals moot. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316-1317; *In re Melissa S.* (1986) 179 Cal.App.3d 1046; *In re Lisa M.* (1986) 177 Cal.App.3d 915, 920; *In re Albert G.* (2003) 113 Cal.App.4th 132, 135 [relative’s appeal for placement became moot after termination

of parental rights].)

Detention order always moot? (See *In re Raymond G.* (1991) 230 Cal.App.3d 964, 967.)

Contesting guardianship becomes moot when minor marries (or becomes adult or is emancipated). (*Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1299-1300.)

Issue of placement not moot when minor was returned to parents because the minor could be removed again and prior determination that a relative was not fit would disqualify the relative from placement. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 550.)

STANDARD OF REVIEW:

“There is no blanket exception to the rule for juvenile dependency appeals. Review of such appeals is governed by generally applicable rules of appellate procedure, with proper deference to be paid to the factual findings and uncontested rulings of the juvenile court, and all appropriate inferences to be drawn in favor of the judgment below. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

The appropriate test for abuse of discretion is “whether the trial court exceeded the bounds of reason. When two or more inferences can be reasonably deduced from the facts, the reviewing court has no authority to substitute its decision for the trial court.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) However, finding an abuse of discretion only in those circumstances in which the judge acted arbitrarily, capriciously or whimsically would be misleading since “it implies that in every case in which a trial court is reversed for an abuse of discretion its action was utterly irrational.” (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.) Rather, the “scope of discretion always resides in the particular law being applied, i.e., in the ‘legal principles governing the subject of [the] action . . .’ [Citations omitted.]” (*Ibid.*) “Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we shall call such action an ‘abuse’ of discretion.” (*Ibid.*)

“In juvenile cases, as in other areas of law, the power of an appellate court asked to assess sufficiency of the evidence begins and end with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the Respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can be reasonably deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.” (*In re*

Katrina C. (1988) 201 Cal.App.3d 540, 547; accord, *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135.)

The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. (*In re Brandon C.* (1999) 73 Cal.App.4th 1530, 1534.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re Autumn H.* [(1994)] 27 Cal.App.4th [567,] 576.) The appellant has the burden of showing the finding or order is not supported by substantial evidence. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Abuse of discretion often equivalent to substantial evidence. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1066.)

Substantial evidence test described. (*In re Rubiesela E.* (2000) 85 Cal.App.4th 177, 184-195 [not reweigh the evidence]; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75 [of solid value]; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067 [equivalent to abuse of discretion test].) The appellate court “construe[s] all reasonable inferences in favor of the juvenile court's findings” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.) “The ‘clear and convincing’ standard specified in section 361.5, subdivision (b), is for the edification and guidance of the trial court and not a standard for appellate review. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.) “Whether the test at the trial court is preponderance of the evidence or clear and convincing evidence, a substantial evidence standard of review applies on appeal.” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581, fn. 5; accord, *Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *In re Heidi T.* (1978) 87 Cal.App.3d 864, 871.)

“Substantial evidence must be of ponderable legal significance. It is not synonymous with ‘any’ evidence. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) The evidence must be reasonable in nature, credible, and of solid value. (*DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336.)” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “We review the trial court's findings for substantial evidence. [Citation.] We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*Ibid.*) “A judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exist and the trial court might have

reached a different result had it believed other evidence.” (*Id.* at p. 230.) “Certainly, it is possible to identify many harms that *could* come to pass. But without more evidence than was presented in this case, such harms are merely speculative.” (*In re David M.* (2005) 134 Cal.App.4th 822, 830.)

“On appeal, we view the evidence in the light most favorable to the trial judge’s order, drawing every reasonable inference and resolving all conflicts in support of the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) An appellate court does not reweigh the evidence. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Rather, we must determine whether there is substantial evidence from which a reasonable trier of fact could by clear and convincing evidence find a factual basis for the finding as to the child’s adoptability. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.)

Appellate court cannot uphold the judgment by relying on theories the juvenile court rejected. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695-696, 699.)

PREJUDICE:

Generally, errors by the juvenile court do not require reversal of the juvenile court orders unless there was a miscarriage of justice. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624; *In re Celine R.* (2003) 31 Cal.4th 45, 59; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1668; *In re Ronald R.* (1995) 37 Cal.App.4th 1186, 1195; see generally *People v. Watson* (1956) 46 Cal.2d 818, 836-837.) Failure to transport a parent from prison is reviewed under *Watson*. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.) Failure to appoint conflict-free counsel for the minor reviewed under *Watson*. (*In re Celine R.* (2003) 31 Cal.4th 45, 59.)

A violation of a parent’s substantive or procedural due process rights under the Fourteenth Amendment are presumed prejudicial unless the state can show beyond a reasonable doubt that error was harmless. (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132 [preventing parent from testifying]; *In re Joann E.* (2002) 104 Cal.App.4th 347, 359 [appointment of guardian-ad-litem without adequate hearing]; *In re Angela C.* (2002) 99 Cal.App.4th 389, 394 [notice]; *In re Clifton V.* (2001) 93 Cal.App.4th 1400, 1406 [unjustified denial of contested § 388 hearing]; *In re Sara D.* (2001) 87 Cal.App.4th 661, 673 [appointment of guardian ad litem without hearing]; *In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1426 & fn. 9 [denied right to cross-examination and notice of appeal rights]; *In re Nemis M.* (1996) 50 Cal.App.4th 1334, 1355 [cross-examination]; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 446-447 [cross-examination]; *In re Andrew S.* (1994) 27 Cal.App.4th 541, 547; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377; *In re Amy M.* (1991) 232 Cal.App.3d 849, 867-868 [present witnesses]; but see *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1514-1515 [stating error must be harmless

by only clear and convincing evidence in dependency proceedings]; compare *In re Mark A.* (2007) 156 Cal.App.4th 1124, 1145-1146 [disagreeing with *Denny H.*]; see generally *Chapman v. California* (1967) 386 U.S. 18, 24.)

But constitutional error requires reversal only if procedures were fundamentally unfair. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1153; *In re Malcolm D.* (1996) 42 Cal.App.4th 904, 919; *Lassiter v. DSS* (1981) 452 U.S. 18, 32-33.)

Failure by the court to properly advise a parent at a hearing reversible per se. (*In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1115-1116; *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 558 .) But most courts have held that it will not result in a reversal unless prejudice is shown. (See, e.g., *In re Ronald E.* (1977) 19 Cal.3d 315, 321; *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1420 [questioning *Judith P.* in light of *In re Cerline R.* (2003) 31 Cal.4th 45, 58-59; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.)

“While it is true that normally an appellant has the burden of producing a record of the hearings and orders that contain the alleged error [citation], here the alleged error is that no hearing occurred. We cannot expect [appellant] to produce a record of something that did not happen or, at a minimum, was not reported or entered in the minutes.” (*Joann E.* (2002) 104 Cal.App.4th 347, 358, fn. 10.)

Cumulative error. (*In re David D.* (1994) 28 Cal.App.4th 941 [“one error was compounded upon another, resulting in a situation analogous to putting these children on a train with only one destination”]; *In re David C.* (1984) 152 Cal.App.3d 1189; *In re Anna M.* (1997) 54 Cal.App.4th 463, 469.)

Remedy: When reverse and order, remand for the court to determine what to do, considering the best interests of the minor. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 701.)

Remedy: Denial of contested section 388 hearing at permanent plan hearing requires reversal of the permanent plan order as well. (*In re Clifton V.* (2001) 93 Cal.App.4th 1400, 1406.)

WRITS:

Trial counsel represents parent during the writ. (*Rayna R. v. Superior Court* (1993) 20 Cal.App.4th 1398, 1404 [need not have transcript].)

Attorney should not file writ if not authorized by parent. (*Lisa S. v. Superior Court* (1998) 62 Cal.App.4th 604 [parent must *sign* the petition]; *Janice J. v. Superior*

Court (1997) 55 Cal.App.4th 690; *Suzanne J. v. Superior Court* (1996) 46 Cal.App.4th 785, 788; *Guillermo G. v. Superior Court* (1995) 33 Cal.App.4th 1168; *In re Alma B.* (1994) 21 Cal.App.4th 1037.)

Attorney need not file a petition if he or she believes there are no issues of merit. (*Sue E. v. Superior Court* (1997) 54 Cal.App.4th 399, 404; *Ronald S. v. Superior Court* (1995) 34 Cal.App.4th 1467, 1468-1469 [no *Wende* writ petitions].)

Attorney who fails to file meritorious petition against client's wish renders ineffective assistance of counsel. (*In re Sade C.* (1996) 13 Cal.4th 952; *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 956; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.)

Failure to comply with former rule 39.1B may lead to dismissal. (*Rayna R. v. Superior Court* (1993) 20 Cal.App.4th 1378, 1406 [form writ is insufficient]; *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157; *Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1056; *Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005; *Cresse S. v. Superior Court* (1996) 51 Cal.App.4th 947, 956; *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1512 [dismissal on procedural default, however, preserves the issue for appeal]; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570 [and report attorney to state bar].)

Untimely writ dismissed and issue barred on appeal. (*Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, 1829-1830; *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1506; *Roxanne H. v. Superior Court* (1995) 35 Cal.App.4th 1008, 1012-1013.)

Cannot raise issues in former rule 39.1B petition that occurred in the hearing before the hearing setting the permanent plan hearing. (*Joe B. v. Superior Court* (2002) 99 Cal.App.4th 23, 27.)

But can raise any issue in writ which would reverse the setting of the permanent plan hearing; thus, can raise failure to give notice under ICWA. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 260.)

Issue raised in writ petition cannot be raised on appeal if decided on the merits. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 46-47; *In re Julie S.* (1996) 48 Cal.App.4th 988, 991 [if court issues OSC].)

Relief from default notice of intent to file writ. (*Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826 [otherwise dismiss]; *In re Catherine W.* (1998) 68 Cal.App.4th 716 [same]; *Karl S. v. Superior Court* (1995) 24 Cal.App.4th 1394, 1404.)

Former rule 39.1B(I) and (o) is unconstitutional. The court must give a written opinion on every writ petition. (*Meribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469.)

There is no automatic stay when filing a writ petition. (*In re Brandy R.* (2007) 150 Cal.App.4th 607, 609-611.)

OTHER:

Can combine statement of case and fact. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522, fn. 2.)

Sometimes, appellate counsel should use only initials because minor's name is unusual. (*In re S.D.* (2002) 99 Cal.4th 1068, 1070, fn. 1.)

“While we recognize the need for timely resolution of child custody proceedings, respondent cannot benefit from the delay it created.” (*In re Kahleen W.* (1991) 223 Cal.App.3d 1414, 1425-1426.)

No costs shall be awarded in dependency appeals. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1181.)

California Rules of Court, rule 39(a) no longer says criminal rules apply, but rules 37-38.6 are not the exclusive rules that apply and “one must look elsewhere in the rules of appellate procedure general for rules concerning topics for which no special dependency rule is set out.” (*In re Josiah Z.* (2005) 36 Cal.4th 664, 675, fn. 3.)

“The juvenile court is a superior court of special jurisdiction arising from the juvenile court law. Dependency proceedings are governed by the Welfare and Institutions Code, rather than the Civil Code or Family Code. [Citation.] Statutes that are not part of the Welfare and Institutions Code do not apply to juvenile court proceedings unless they are expressly applicable.” (*In re Alexander M.* (2007) 156 Cal.App.4th 1088, 1098.) “Dependency proceedings in the juvenile court are special proceedings with their own set of rules, governed, in general, by the Welfare and Institutions Code.” (*In re Chantel S.* (1996) 13 Cal.4th 196, 206 [Fam. Code, § 3190 did not apply to dependency visitation exit orders]; but *In re Claudia E.* (2008) 163 Cal.App.4th 627, 636-637 [discussion in *Chantel S.* was a generalization, not a blanket rule; thus minor could sue for declaratory judgment].) “Dependency proceedings are special proceedings governed by their own rules and statutes. [Citation.] Statutes applicable to civil cases are not applicable to dependency actions unless expressly made so.” (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 198.) Thus, the “rules applicable to

civil cases are not applicable to dependency actions unless expressly made so. 'Dependency proceedings in the juvenile court are special proceedings governed by their own rules and statutes. [Citations.] Unless otherwise specified, the requirements of the Civil Code and the Code Civil of Procedure do not apply. [Citations.]' [Citations]" (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 328, quoting *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 711.) "However, in the absence of a dispositive provision in the Welfare and Institutions Code, we may look to these requirements for guidance. (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 911.)" (*In re Josiah Z.* (2005) 36 Cal.4th 664, 679; accord *In re Francisco W.* (2006) 139 Cal.App.4th 695, 707, fn. 7.)

" '[B]asic appellate principles codified in Code of Civil Procedure sections 901 through 923 apply in juvenile dependency proceedings, at least to the extent not inconsistent therewith.' " (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208.)

Part I of Code of Civil Procedure apply in dependency proceedings. (*In re Mark B.* (2007) 148 Cal.App.4th 61, 79.)

When a matter is remanded to the superior court, the court shall consider the best interests of the minor, including evidence of events after the appeal. (*In re Arturo A.* (1992) 8 Cal.App.4th 229, 244.)