

**RESOLUTION 5-10-2002**

**DIGEST**

Child Dependency: Corroboration of Minor’s Testimony

Amends California Rules of Court, rule 1450, to prohibit a finding of jurisdiction in a child dependency case based solely on the uncorroborated testimony of a disqualified witness.

**RESOLUTION COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

Reasons

This resolution amends California Rules of Court, rule 1450, to prohibit a finding of jurisdiction in a child dependency case based solely on the uncorroborated testimony of a disqualified witness. This resolution should be approved to clarify an uncertain area of law involving juvenile dependency matters.

California Rules of Court, rule 1450, and Welfare and Institutions Code section 355 permit a finding of jurisdiction in a child dependency matter on legally admissible evidence. A “social study” by the petitioning agency is not made inadmissible by the fact that it contains hearsay evidence.

The Supreme Court has held that section 355 is constitutional even where the only evidence supporting a finding of jurisdiction is the hearsay statement of a child under the age of twelve who was disqualified as a witness due to the child’s inability to tell truth from falsity. (*In re Lucero L.* (2002) 20 Cal.4<sup>th</sup> 1227.) The Court found that, to be admitted, the child’s hearsay statements must be found by the trial court to be reliable. The Court did not require that there be any corroborating evidence to support the child’s hearsay statement.

This resolution would require that there be corroborating evidence. That evidence can include changes in the child’s behavior, expert testimony that the child was abused, opportunity of the suspect to commit the act, or any number of other factors. (Myers, *Evidence in Child Abuse and Neglect Cases* (John Wiley, 3d ed. 1997) Vol. 2, Hearsay, § 7.53, Child Hearsay Exception, pp.361 -362.)

The consequences of a finding that a child is a dependent of the juvenile court are significant. Ultimately, parental rights may be terminated. Even where those rights are not terminated, the child may be placed in foster care for many months and a parent may be required to undergo extensive reunification services. Often the only evidence of abuse or neglect comes from the child. Where the child has been disqualified as a witness, the court should be required to make a finding that the child’s statement is both reliable and corroborated.

This is a companion resolution to Resolution 5-09-02.

**SECTION/COMMITTEE REPORT**

FAMILY LAW SECTION EXECUTIVE COMMITTEE

Recommendation: Approve in Principle

Reasons: The Committee agrees with the reasoning set forth by the proponent.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates recommends that the Judicial Council amend California Rules of Court, rule 1450, to read as follows:

- 1 Rule 1450
- 2 (a) If the parent or guardian denies the allegations of the petition, the court shall hold a contested
- 3 hearing and determine whether the allegations in the petition are true.
- 4 (b) Except as provided in section 355.1 and subdivisions (c), (d), and (e), the admission and
- 5 exclusion of evidence shall be in accordance with the Evidence Code as it applies to civil cases.

- 6 (c) A social study, with hearsay evidence contained in it, is admissible and is sufficient to support a  
7 finding that the child is described by section 300.
- 8 (1) The social study shall be provided to all parties and their counsel by the county welfare  
9 department within a reasonable time before the hearing.
- 10 (2) The preparer of the report shall be made available for cross-examination on the request of any  
11 party. The preparer may be on telephone standby if the preparer can be present in court within a reasonable  
12 time.
- 13 (d) If a party makes an objection with reasonable specificity to particular hearsay in the report and  
14 provides petitioner a reasonable period to meet the objection, that evidence shall not be sufficient in and of  
15 itself to support a jurisdictional finding, unless:
- 16 (1) The hearsay is admissible under any statutory or judicial hearsay exception;
- 17 (2) The hearsay declarant is a child under 12 years of age who is the subject of the petition, unless  
18 the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is  
19 therefore unreliable.
- 20 (3) The hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher and  
21 the statement would be admissible if the declarant were testifying in court; or
- 22 (4) The hearsay declarant is available for cross-examination.
- 23 (e) If any party to the jurisdictional hearing raises a timely objection to the admission of specific  
24 hearsay evidence of a disqualified witness contained in the social study, the specific hearsay evidence shall  
25 not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional  
26 finding is based, unless the petitioner establishes that the time, content, and circumstances of the statement  
27 provide sufficient indicia of reliability and there is independent evidence of the child abuse or neglect that  
28 corroborates the statement made by the child.
- 29 (f) The privilege not to testify or to be called as a witness against a spouse, and the confidential  
30 marital communication privilege, shall not apply to dependency proceedings.
- 31 (fg) If the court determines by a preponderance of the evidence that the allegations of the petition  
32 are true, the court shall make findings on each of the following, noted in the minutes:
- 33 (1) Notice has been given as required by law;
- 34 (2) The birthdate and county of residence of the child;
- 35 (3) The allegations of the petition are true;
- 36 (4) The child is described under one or more specific subdivisions of section 300.
- 37 (gh). After making the findings in subdivision (f), the court shall proceed to a disposition hearing  
38 under rules 1451 and 1455.
- 39 (hi) If the court determines that the allegations of the petition have not been proved by a  
40 preponderance of the evidence, the court shall dismiss the petition, terminate any detention orders relating to  
41 the petition, and make the following findings, noted in the order of the court:
- 42 (1) Notice has been given as required by law;
- 43 (2) The birthdate and county of residence of the child;
- 44 (3) The allegations of the petition are not proved.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Suzanne Evans, Eleanor Adams, Gina Dronet, Donna Kaiser, Diane Letarte, Robert Lynn, Kathleen Mallinger, Lilys McCoy, Patricia Saucier, Alice C. Shotton, Joseph Tavano

#### STATEMENT OF REASONS

Existing Law: Currently hearsay from children that is made part of the social worker's report can be admitted and is only excluded if it can be shown to be a product of fraud, deceit, or undue influence.

This Resolution: Would amend California Rules of Court, rule 1450, to ensure that a court's decisions comply with due process when it considers whether to take dependency jurisdiction over a child.

The Problem: In a juvenile dependency proceeding, the court takes jurisdiction when it decides that the child has been abused or neglected. Under the current version of the law, hearsay from children who are too young to know

the difference between truth and falsehood can be incorporated into the social worker's report. This hearsay can then be admitted into evidence and serve as the sole basis upon which the court takes jurisdiction of the child. Taking jurisdiction over the child is the first step on the path to termination of parental rights. It can be a gross violation of a parent's right to due process if a juvenile court takes jurisdiction over his or her child solely on the basis of hearsay from the child when the child does not know the difference between the truth and a lie. Hearsay from a truth incompetent child should not be legally admissible evidence unless the circumstances show that the hearsay is reliable, and it is corroborated.

The California Supreme Court addressed this issue directly in *In re Lucero L.* (2000) 22 Cal.4th 1227. In that case the Court had no majority opinion. The court splintered into a plurality and two separate concurrences. Although the Court affirmed the Court of Appeal's determination that substantial evidence supported taking jurisdiction, the plurality noted that the question was close. The concurrences agreed on the result, but not on how the law should be applied. This outcome illustrates the need for a clear rule which the proponent believes this proposal provides. Otherwise, a family's constitutional right to remain intact without unjust interference from the state is threatened.

#### IMPACT STATEMENT

This resolution affects Welfare and Institutions Code section 355. See companion resolution seeking to amend that section.

AUTHOR AND/OR PERMANENT CONTACT: Suzanne Evans, 3200 Fourth Avenue, Suite 208, San Diego, CA 92103; (619) 683-2546; [sevans4@san.rr.com](mailto:sevans4@san.rr.com)

RESPONSIBLE FLOOR DELEGATE: Suzanne Evans

#### COUNTERARGUMENT

##### WOMEN LAWYERS ASSOCIATION OF LOS ANGELES

Dependency jurisdictional hearings protect children from their abusers after children employ the only defense at their disposal — their voice. When there isn't evidence of the abuse other than the child's statements there is little else that would protect the child. If the child's hearsay statement could be excluded based on a simple objection, then there is little point to the child's making the allegation and risking the abuser's ire. Allowing this resolution would silence the child victim and deprive her/him from asserting an already limited body of protective rights in initiating these protections and could serve to exacerbate the psychological damage already inflicted by the alleged parent-abuser.

Moreover, California law already provides safeguards to prove the veracity of the child's testimony such as requiring corroborative evidence and verification by an independent neutral third party before the child is removed from the parent's home. (Welf. & Inst. Code § 358; Cal. Rule Ct. 1455). These safeguards serve to preserve the family unit and ultimately assure that parental due process rights are not violated.