ATTORNEY

PARENT'S
GUARDIAN AD LITEM
APPEAL
MINOR'S

PARENT'S:

Under the due process clause of the Fourteenth Amendment, there is a due process right to an attorney in certain cases. As the Supreme Court explained, "[i]f, in a given case, the parent's interests were at their strongest, the State's interests were at their weakest, and the risks of error were at their peak, it could not be said that the factors [under *Matthews v. Eldridge* (1976) 424 U.S. 319] did not overcome the presumption against the right to appointed counsel, and that due process therefore did not require the appointment of counsel. . . . We therefore . . . leave the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings to be answered in the first instance by the trial court, subject, of course, to appellate review." (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 31-32; but see *Turner v. Rogers* (2011) 564 U.S. __ [131 S.Ct. 2507, 2516-2517].) "[T]he ultimate issues with which a termination hearing deals are not always simple, however commonplace they may be. Expert medical and psychiatric testimony, which few parents are equipped to understand and fewer still to confute, is sometimes presented. The parents are likely to be people with little education, who have had uncommon difficulty in dealing with life, and who are, at the hearing, thrust into a distressing and disorienting situation. That these factors may combine to overwhelm an uncounseled parent is evident from the findings some courts have made. [Citation.] Thus, courts have generally held that the State must appoint counsel for indigent parents at termination proceedings. [Citations]" (*Id.*, at p. 30.) Therefore, the due process right to appointed counsel attaches if counsel would have made a "determinative difference" in the proceeding. (*In re Ronald R.* (1995) 37 Cal.App.4th 1186, 1196.)

"In *Lassiter* . . . , the Supreme Court held due process may require the appointment of counsel in a proceeding to terminate parental rights; the determination is to be made on a case-by-case basis, applying the factors from *Matthews v, Eldridge* (1976) 424 U.S. 3, 19." (*In re Angel W.* (2001) 93 Cal.App.4th 1074, 1080.)

Courts have found a due process right to appointed counsel in dependency cases. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1634,fn. 9; *In re Julian L.* (1998) 67 Cal.App.4th 204, 207-208; *Kathryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 972 [when parent not able to attend court]; *In re Christina P.* (1985) 175 Cal.App.3d 115, 129 [depends on the complexity of issues and the likelihood the assistance might sway the

outcome; right to effective assistance, otherwise a hollow right]; *Adoption of Michael D.* (1989) 209 Cal.App.3d 122, 135; *In re Darlice C.* (2003) 105 Cal.App.4th 459, 462 [recognizing a parent has a constitutional right to counsel in some dependency proceedings]; *In re Andrew S.* (1994) 27 Cal.App.4th 541, 548-549 [no constitutional right to appointed counsel at §366.26 hearing]; see *Cleaver v. Wilcox* (9th Cir. 1974) 499 F.2d 940, 945 [whenever the parent facts "a substantial possibility 'of loss of custody or prolonged separation from a child' "]; but see *In re Amanda G.* (1986) 186 Cal.App.3d 1075.) The due process clause requires competent counsel at permanent plan hearing, review hearing, setting of permanent plan hearing and at "any other hearing . . . which [has] the potential of terminating reunification services and setting a 366.26 hearing." (*In re Arturo A.* (1992) 8 Cal.App.4th 229, 239-240 [finding constitutional right to counsel in most dependency cases]; but described as dicta by the same court in *In re Angelica V.* (1995) 37 Cal.App.4th 1007, 1013, fn. 3; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1666; see *Doe v. Mann* (N.D. Cal. 2003) 285 F.Supp.2d 1229, 1239-1240 [tribe had right to effective assistance of counsel to litigate ICWA claim]; see also *In re O. S.* (2002) 102 Cal.App.4th 1402, 1407; but see *Guardianship of H.C.* (2011) 198 Cal.App.4th 160, 169-174 [there is not a due process right to counsel in a Probate Code guardianship].)

The parent has at least a statutory right to competent attorney. (*In re O. S.* (2002) 102 Cal.App.4th 1402, 1408-1409 [not timely assert paternity]; *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255 [did not file 388 petition at § 366.26 hearing], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; *In re Anna M.* (1997) 54 Cal.App.4th 463; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1668 [raised by habeas petition]; *In re Arturo A.* (1992) 8 Cal.App.4th 229, 239-240 [due process right]; *In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13; *In re Christina H.* (1986) 182 Cal.App.3d 47, 50 [even if hired]; but see *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1153, disapproved of in *In re Darlice C.* (2003) 105 Cal.App.4th 459, 465 [*Meranda P.* conflict with Cal. Const., art. VI, § 10]; *In re Brandon C.* (1993) 19 Cal.App.4th 1168, 1170-1171 [habeas petition alleging new evidence to challenge jurisdiction dismissed because a 388 petition provided an adequate remedy at law].) Thus, "a parent has a right to counsel, including appointed counsel, if necessary (Welf. & Inst. Code, § 317, subds. (a)(& (b)), who has not only the ability but also the duty to protect the parent's rights under the ICWA." (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1160.) A parent who has a right to appointed counsel is entitled to competent counsel; otherwise, " 'it will be a hollow right.' [Citations.]" (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1659.)

"Habeas corpus is available in certain civil proceedings. [Citation]. Specifically, 'habeas corpus is available "[where] a parent seeks custody of a child living with another." [Citation.]' [Citation.] A claim of ineffective assistance of counsel in a

dependency matter is generally cognizable in the Court of Appeal on a petition for writ of habeas corpus. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1658-1659, 1667.)" (*In re Carrie M.* (2001) 90 Cal.App.4th 530, 533.) The " 'writ will lie when a person entitled to custody of a minor child is denied possession thereof.' (*In re Barr* (1952) 39 Cal.2d 25, 27.)" (*In re Paul W.* (2007) 151 Cal.App.4th 37, 53.) In such cases, the person having custody of the child may be a proper respondent. (See, e.g., *In re Lukasik* (1951) 108 Cal.App.2d 438, 446; *In re Macedo* (1953) 118 Cal.App.2d 276, 277.) "Because the rules on habeas corpus petitions evolved in the context of prisoners asserting unlawful confinement or conditions of confinement, they do not fit the dependency context well." (Abbott, et al., Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2006 supp.) Appeals and Writs, § 10.113, p. 586.) Nevertheless, habeas petitions are recognized as proper vehicles for raising claims of ineffective assistance of counsel in dependency proceedings. (*In re Kristin H., supra,* 46 Cal.App.4th at pp. 1658, 1663; accord, *In re Carrie M.* (2001) 90 Cal.App.4th 530, 533-534.) A party raising ineffective assistance of counsel in superior court should file habeas corpus petition, not a modification petition, which can permit relief even if it is not in the minor's best interests. (*In re Jackson* (2010) 184 Cal.App.4th 247, 258-260.)

One court has observed that habeas petitions are being filed with increasing regularity. (See *In re Paul W.* (2007) 151 Cal.App.4th 37, 66 (conc. opn. of Bamattre-Manoukian, J.).) For a primer on how to file a habeas petition see *In re Paul W.* (2007) 151 Cal.App.4th 37, 67-71 (conc. opn. of Bamattre-Manoukian, J.).

Habeas petition can be filed concurrently with appeal after termination of parental rights (*In re Carrie M.* (2001) 90 Cal.App.4th 530, 534-535 & fn. 4; accord, *In re Darlice C.* (2003) 105 Cal.App.4th 459, 463; but see *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 [cannot collaterally attack a termination of parental rights].)

Cannot attack previous orders. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150; *In re Carrie M.* (2001) 90 Cal.App.4th 530, 534; but see *In re O. S.* (2002) 102 Cal.App.4th 1402, 1406 [*Meranda P*. not apply here because *Meranda P*. had several opportunities to challenge counsel, but here counsel was appointed after setting the permanent plan hearing]; *In re S.D.* (2002) 99 Cal.App.4th 1068, 1079-1080 [an exception is when it would be a due process violation].)

The respondent to a habeas petition is the one with constructive custody, normally CPS. (*In re Paul W.* (2007) 151 Cal.App.4th 37, 53.)

Ineffective assistance of counsel can be considered on direct appeal only if " 'there simply could be no satisfactory explanation' for trial counsel's action or inaction.' (*People v. Pope* (1979) 23 Cal.3d 412, 426.)" (*In re Dennis H.* (2001) 88 Cal.App.4th 94.) Although ineffective assistance of counsel is usually raised by writ petition, can do so on direct appeal "in the rare case where the appellate record demonstrates 'there

simply could be no satisfactory explanation.' " (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1071, quoting *People v. Pope* (1979) 23 Cal.3d 412, 426.) Can raise ineffective assistance of counsel claim on direct appeal from the termination of parental rights. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1071; *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1259, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

It does not defeat ineffective assistance of counsel claim that a parent never raised an issue or pursued a course of action. "It is the attorney's role to analyze the client's legal position and suggest a strategy or recommend issues that could be explored." (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1079.) "The parent is hardly in a position to recognize, and independently protest, her attorney's failure to properly analyze the applicable law. If we had some reasonable expectation that parents could do so, we would not need to hire attorneys for them at all." (*Id.*, at p. 1080.) Thus, unless can show the parent, not just the attorney, would know of an issue, cannot say the parent waives a claim of ineffective assistance of counsel. (*Id.*, at p. 1082.)

"If, as our adversary system presupposes, accurate and just results are most likely to be obtained through the equal contest of opposed interests, the State's interest in the child's welfare may perhaps best be served by a hearing in which the parents and the State acting for the child are represented by" competent counsel. (*Lassiter v. Dept. of Social Services* (1981) 452 U.S. 18, 28; *In re Paul W.* (2007) 151 Cal.App.4th 37, 64-65; *In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1710.)

"[I]neffective assistance of counsel presents a cognizable claim on appeal from proceedings to terminate parental rights." (*In re James S.* (1991) 227 Cal.App.3d 930, 935.) The ineffective-assistance-of-counsel standard applicable in criminal cases applies. (*Id.* at p. 936.)

No ineffective assistance of counsel for failing to demure because CPS could have amended the petition. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628.)

No ineffective assistance of counsel for failing to file a meritless motion. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223-225.)

No right to same appointed attorney from the office throughout the dependency. (*In re Malcolm D.* (1996) 42 Cal.App.4th 904, 913.)

A court shall provide sufficient experts to assist appointed counsel. However, the court did not need to appoint an expert for the parent to observe visitation. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1012.)

Different offices of the Children's Law Center can represent clients with adverse interests. (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 843-846.)

Reversible error: To prevail on a claim of ineffective assistance of counsel, must show (1) counsel failed to act in a manner expected of a reasonably competent attorney in dependency law, and (2) but for the deficient performance of counsel, there was a reasonable probability the results would have been more favorable. Reasonableness requires a showing that there was no tactical reason for the attorney's decision; therefore, ineffective assistance of counsel may be raised in a habeas petition [*Watson* test]. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1668; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; *In re Dawn L.* (1988) 201 Cal.App.3d 35, 37; cf. *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1259, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re Darlice C.* (2003) 105 Cal.App.4th 459, 466-467 [when there is a prima facie case, issue an OSC returnable to the juvenile court to resolve factual disputes, as DCA should only consider issues of law]; but see *In re David H.* (2008) 165 Cal.App.4th 1626, 1634, fn. 9 [*Chapman* test].)

Reversible error: One case held appellant need only make prima facie showing of ineffective assistance of counsel on direct appeal in order for the court of appeal to reverse the judgement and remand with directions for the juvenile court to hold hearings as to the alleged ineffective assistance and the best interests of the minor. (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1259, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; accord, *In re O. S.* (2002) 102 Cal.App.4th 1402, 1409.)

Court cannot relieve attorney of parent just because the parent is not appearing in court. (*Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 971; *In re Julian L.* (1998) 67 Cal.App.4th 204, 207; *In re Malcolm D.* (1996) 42 Cal.App.4th 904, 914-915; see *In re Andrew S.* (1994) 27 Cal.App.4th 541, 549 [party must show prejudice because the right is statutory not constitutional]; *In re Ronald R.* (1995) 37 Cal.App.4th 1186, 1192-1195 [same]; but see *In re Ebony W.* (1996) 47 Cal.App.4th 1643, 1648 [no need to appoint counsel for absent parent who never requested counsel]; *Janet Q. v. Superior Court* (1996) 42 Cal.App.4th 1058, 1064-1066.)

Reversible error: *Watson* test, usually harmless, even when parent not present. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 772 [though issue waived, error was harmless that court denied right to counsel by examining minors alone in camera]; *In re Malcolm D.* (1996) 42 Cal.App.4th 904, 914-915; *In re Ronald R.* (1995) 37 Cal.App.4th 1186 [*Watson* test for erroneously granting attorney's motion to withdraw]; *In re Ronald R.* (1995) 37 Cal.App.4th 1186, 1192-1195 [client not showing for court]; but see *Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 971 [reverse when no client and no attorney]; *In re Julian L.* (1998) 67 Cal.App.4th 204, 207 [same]; *In re Andrew S.* (1994)

27 Cal.App.4th 541, 549 [relieved because unable to contact client]; *In re Laura H.* (1992) 8 Cal.App.4th 1689, 1696 [Chapman test when denied atty for minor's in chamber testimony; prejudice when contested matter and cross-examination of minor known for lying could have been helpful].)

A parent has a right to represent himself or herself. (*In re A.M.* (2008) 164 Cal.App.4th 914, 923; *In re Angel W*. (2001) 93 Cal.App.4th 1074, 1086.) The court shall hold a *Faretta* hearing when there is a request for self-representation, but the hearing need not be as rigorous as in criminal cases. (*In re A.M.* (2008) 164 Cal.App.4th 914, 923-924; *In re Angel W*. (2001) 93 Cal.App.4th 1074, 1082; *In re Justin L.* (1987) 188 Cal.App.3d 1068, 1077; see *In re Brian R.* (1991) 2 Cal.App.4th 907, 921 [assumed].) Because every hearing has urgency to resolve the minor's situation, use the factors discussed in *People v. Windham* (1977) 19 Cal.3d 121, 128-129. (*In re A.M.* (2008) 164 Cal.App.4th 914, 927.) Therefore, can deny the motion if it would lead to a continuance. (*In re A.M.* (2008) 164 Cal.App.4th 914, 927-928.)

Reversible error. Error in denying self-representation reviewed under the *Watson* test. (*In re A.M.* (2008) 164 Cal.App.4th 914, 928; *In re Angel* W. (2001) 93 Cal.App.4th 1074, 1082, 1085; *In re Justin L.* (1987) 188 Cal.App.3d 1068, 1077-1078.)

Right to a (less rigorous) *Marsden* hearing. (*In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13; *In re Ann S.* (1982) 137 Cal.App.3d 148, 150; see *In re M.P.* (2013) 217 Cal. App. 4th 441, 457-461 [should hold a hearing even if the parent is represented by a guardian ad litem]; *In re Frank L.* (2000) 81 Cal.App.4th 700 [assumed]; *In re Joshua M.* (1997) 56 Cal.App.4th 801 [assumed].) The court need not relieve counsel, though counsel said there was a breakdown in communications, when it was partially the parent's fault. (*In re Z.N.* (2010) 181 Cal.App.4th 282, 288-196.) The court need not hold a *Marsden* hearing when the attorney said the client wants a hearing but the client failed to appear, and when the client did appear said wanted a continuance to retain a new attorney. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 603-605.)

Not only does the parent have a statutory right to counsel, but a right to competent counsel. (Welf. & Inst. Code, § 317.5.) Under section 317.6 and California Rules of Court, procedures must be set up in each county by the superior court for handling client complaints regarding appointed counsel's performance. (Cal. Rules of Court, rule 1438(a)(2)(F).) Courts have adopted the model set forth in *People v. Marsden* (1970) 2 Cal.3d 118 for resolving client complaints against appointed counsel in dependency court. (See, e.g., *In re James S.* (1991) 227 Cal.App.3d 930, 935.)

Reversible error: Error in denying a motion to substitute counsel is subject to harmless error analysis. (*In re Z.N.* (2010) 181 Cal.App.4th 282, 295-296; see *In re Joann E.* (2002) 104 Cal.App.4th 347, 358, fn. 10 [concerning appointment of guardian ad litem, parent cannot be expected to show prejudice when the error was the deprivation

of a hearing].)

"It is presumed that counsel acted with appellant's authority." (*In re Jaime R.* (2001) 90 Cal.App.4th 766, 772.)

A parent generally has the right to discharge retained counsel without a showing of cause. (*In re V.V.* (2010) 188 Cal.App.4th 392, 398-399.) But the court can deny the motion if it would require a continuance. (*In re V.V.* (2010) 188 Cal.App.4th 392, 398-399.)

Standing: Cannot raise incompetence of other parent's attorney. (*In re Joshua M.* (1997) 56 Cal.App.4th 801, 807.)

Standing: A parent does not automatically become a party in another parent's habeas proceeding. (*In re Paul W.* (2007) 151 Cal.App.4th 37, 56, 62-64.)

Waiver: A parent who retains an attorney who is not specially trained in dependency law, and knowingly waived the right to be represented by (appointed) counsel who is, cannot claim ineffective assistance of counsel. (*In re Jackson* (2010) 184 Cal.App.4th 247, 256-257.)

Waiver: A parent who fails to intervene in another parent's habeas proceeding does not have the right to challenge the finding on appeal. (*In re Paul W.* (2007) 151 Cal.App.4th 37, 58.)

GUARDIAN AD LITEM:

"In a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the court. (Code Civ. Proc., § 372; *In re Sara D., supra,* 87 Cal.App.4th at p. 665.) The test is whether the parent has the capacity to understand the nature or consequences of the proceeding and to assist counsel in preparing the case. (*In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1186; *In re Sara D., supra,* at p. 667.) The effect of the guardian ad litem's appointment is to transfer direction and control of the litigation from the parent to the guardian ad litem, who may waive the parent's right to a contested hearing. (*In re Jessica G., supra,* at pp. 1186-1187; *In re Sara D., supra,* at p. 668.) [¶] Before appointing a guardian ad litem for a parent in a dependency proceeding, the juvenile court must hold an informal hearing at which the parent has an opportunity to be heard. (*In re Sara D., supra,* 87 Cal.App.4th at p. 663.) The court or counsel should explain to the parent the purpose of the guardian ad litem and the grounds for believing that the parent is mentally incompetent. (*Id.* at p. 672.) If the parent consents to the appointment, the parent's due process rights are satisfied. (*Id.* at p. 668.) A parent who

does not consent must be given an opportunity to persuade the court that appointment of a guardian ad litem is not required, and the juvenile court should make an inquiry sufficient to satisfy itself that the parent is, or is not, competent. (*Id.* at p. 672.) If the court appoints a guardian ad litem without the parent's consent, the record must contain substantial evidence of the parent's incompetence. (*Id.* at p. 673.)" (*In re James F.* (2008) 42 Cal.4th 901, 910-911.) The court did not err in failing to appoint a guardian ad litem for a parent, though eventually the parent was conserved. (*In re B.C.* (2011) 192 Cal.App.4th 129, 142-143.)

A guardian ad litem is appointed for a parent if the parent is under the age of 18 years, agrees, or if court finds after contested hearing that the parent incompetent under Penal Code section 1367 or Probate Code section 1801 or Code Civil Procedure section 372. There should be notice, and the court should give a parent an opportunity to object and hold a hearing if the parent does object; in which case, a GAL shall be appointed only if the parent is unable to understand the court proceedings or assist counsel. (*In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 92; *In re C.G.* (2005) 129 Cal.App.4th 27, 33, disapproved on another point in *In re James F.* (2008) 42 Cal.4th 901, 914-918 [appointment of GAL violated due process when parent 'consented' without an adequate explanation]; *In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1189, overruled on other grounds in *In re C.G.* (2005) 129 Cal.App.4th 27, 34, disapproved on another point in *In re James F.* (2008) 42 Cal.4th 901, 914-918 [telling parent she will have a GAL is no inquiry at all]; accord, *In re Daniel S.* (2004) 115 Cal.App.4th 903, 912; *In re Joann E.* (2002) 104 Cal.App.4th 347, 355-356 [no consent when not clear from the record that parent knew what a "GAL" was]; *In re Sara D.* (2001) 87 Cal.App.4th 661; *In re Christina B.* (1993) 19 Cal.App.4th 1441, 1451; but see *Contra Costa County Children & Family Services Bureau v. Superior Court (Lynda O.)* (2004) 117 Cal.App.4th 111, 118-119 [*Sara D*. not retroactive].)

"If the parent consents, due process is served. (*In re Daniel S.* [(2004)] 115 Cal.App.4th [903,] 912.) However, if the parent does not consent or is not consulted, the court must 'explain to the parent/child the purpose of the guardian ad litem appointment, the authority the guardian will have (and which the parent will not have) in the litigation, and why the attorney believes the appointment should be made.' (*In re Jessica G.* [(2001)] 93 Cal.App.4th [1180,] 1188.) In addition, ' "the court should make an inquiry sufficient to satisfy it that the parent is, or is not, competent; i.e., whether the parent understands the nature of the proceedings and can assist the attorney in protecting his/her rights." ' (*Ibid.*, quoting *In re Sara D.* [(2001)] 87 Cal.App.4th [661,] 672.)" (*In re C.G.* (2005) 129 Cal.App.4th 27, 32, disapproved on another point in *In re James F.* (2008) 42 Cal.4th 901, 914-918.)

"The test for incompetence in this context is whether the party has the capacity to understand the nature or consequences of the proceeding, and is able to assist counsel in preparation of the case." (*In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1186, overruled on other grounds in *In re C.G.* (2005) 129 Cal.App.4th 27, 34, disapproved on another point in *In re James F.* (2008) 42 Cal.4th 901, 914-918; *In re M.P.* (2013) 217 Cal .App. 4th 441, 453-454 [substantial evidence of incompetence due to the parent's delusional belief in the facts of the case].)

"A guardian ad litem is not a party to the action, but merely a party's representative [citations], an officer of the court with limited powers [citations]. ' "He is like an agent with limited powers." ' [Citations.] 'The duties of a guardian ad litem are essentially ministerial.' [Citation]. [¶] The guardian ad litem's purpose is to protect the rights of the incompetent person. [Citation.] He or she has the right to control the litigation on behalf of the incompetent person. . . . 'Among his powers are the right to compromise or settle the action (Code Civ. Proc, § 372), to control the procedural steps incident to the conduct of the litigation [citation], and, with approval of the court, to make stipulations or concessions that are binding on the [incompetent], provided they are not prejudicial to the latter's interests [citation].' [Citation.]" (*In re Christina B.* (1993) 19 Cal.App.4th 1441, 1454.) Guardian ad litem cannot relinquish a fundamental right of the parent unless there is a significant benefit for the parent by waiving. (*In re Christina B.* (1993) 19 Cal.App.4th 1441, 1442-1445.)

"A guardian ad litem is not a party to the action, but merely a party's representative. . . . A guardian ad litem's role is more than an attorneys but less than a party's." (*Marriage of Cabellero* (1994) 18 Cal.App.4th 919, 928, fn. 9; *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 964.) "There is no change of parties by the appointment of the guardian ad litem. The guardian does not become a party." (*Estate of Cochems* (1952) 110 Cal.App.2d 27, 29-30.) A guardian ad litem is "like an agent with limited powers." (*Robinson v. Wilson* (1974) 44 Cal.App.3d 92, 100.) "Any acts or concessions that apparently waive or surrender any material right of the [incompetent,] such as the right to a trial, should be set aside unless they be shown to be beneficial or, in any event, not prejudicial to the rights and interests of the [incompetent]." (*Id.*, at p. 101; see *Estate of Lacy* (1975) 54 Cal.App.3d 172, 185 [having an adverse interest is a ground for removing a guardian ad litem].)

The court had been required to appoint a guardian ad litem to an parent who was under the age of 18 years and not emancipated. (*In re M.F.* (2008) 161 Cal.App.4th 673, 679-680 [though represented by counsel]; *In re D.D.* (2006) 144 Cal.App.4th 646, 652-654.) These cases were superseded in 2009 by the enactment of Welfare and Institutions Code section 326.7. (See Stats. 2008, ch. 181, § 3.)

Only a guardian ad litem can file a notice of appeal unless it is an appeal challenging the validity of the order of guardianship itself. (See *In re Moss* (1898) 120 Cal. 695, 697.)

Waiver: Failure to immediately appeal appointment of guardian-ad-litem did not waive the issue. (*In re A.C.* (2008) 166 Cal.App.4th 146, 155; *In re Enrique G.* (2006) 140 Cal.App.4th 676, 683; *In re Joann E.* (2002) 104 Cal.App.4th 347, 353.)

The parent can attack earlier orders from the one appealed from. (*In re A.C.* (2008) 166 Cal.App.4th 146, 156; *In re M.F.* (2008) 161 Cal.App.4th 673.)

Reversible error: Appointment of guardian ad litem requires reversal only if there is prejudice, though the court did not articulate which test applied. (*In re James F.* (2008) 42 Cal.4th 901, 914-918.) Some cases hold it is a violation of due process and reviewed under *Chapman* test. (*In re Sara D.* (2001) 87 Cal.App.4th 661, 673; see *In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 95-96 [error is prejudicial when cannot determine what the parent would have done]; *In re Daniel S.* (2004) 115 Cal.App.4th 903, 912 [error harmless beyond a reasonable doubt]; *In re Enrique G.* (2006) 140 Cal.App.4th 676, 686 [harmless because the guardian did not give up any fundamental rights]; *In re Joann E.* (2002) 104 Cal.App.4th 347, 358-360 & fn. 10 [reversible when attorney was going to call witnesses until guardian appointed and parent continued to complain at a *Marsden* hearing that witnesses were not called].) Others say the *Watson* test applied. (*In re A.C.* (2008) 166 Cal.App.4th 146, 157-158 [error was harmless because the parent was too incompetent to care for the child].)

APPEAL:

Right to appointed counsel on appeal when contesting private adoption (*In re J. W.* (2002) 29 Cal.4th 200, 213 [construing Fam. Code, § 7895]; *In re Jacqueline H.* (1978) 21 Cal.3d 170, 177; *Appellate Defenders, Inc. v. Cheri S.* (1995) 35 Cal.App.4th 1819; but see *In re Curtis S.* (1994) 25 Cal.App.4th 687 [overruled on this point in *In re J. W.* (2002) 29 Cal.4th 200, 213.)

No right to appointed attorney if respondent in a dependency case. (*In re Bryce C.* (1996) 12 Cal.4th 226; *In re Joshua B.* (1996) 48 Cal.App.4th 1676 [but court shall exercise its discretion liberally].)

No right to appointed attorney on appeal for de facto parent; matter of court's discretion. (*In re Patricia L.* (1992) 9 Cal.App.4th 61; *In re Rachel C.* (1991) 235 Cal.App.3d 1445; *In re Jody R.* (1990) 218 Cal.App.3d 1615; cf. *In re Joel H.* (1993) 19 Cal.App.4th 1195 [where atty not apptd].)

Despite rules of court in some appellate courts, appellate counsel for the minor shall exercise independent judgment and not presumptively support the actions of the minor's attorney at the juvenile court. (*Sharon S v. Superior Court* (2003) 31 Cal.4th 417, 424, fn. 4; *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1262 & fn. 13, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

Minor's guardian ad litem should be independent of the other parties with the legal knowledge and experience of minor's attorney or trained CASA worker. Its role "operate[s] outside the adversarial roles of other parties and act[s] as an advocate whose duties include investigation, presentation of both facts and available options for disposition, and overall protection of the child's interests/" (*In re Charles T.* (2002) 102 Cal.App.4th 869, 877.)

MINOR'S:

Minor's trial counsel represents his best interests. (*In re Celine R.* (2003) 31 Cal.4th 45, 60.) "The role of counsel for the child is not merely to act as a mouthpiece for the minor child. But neither is counsel to act as a mouthpiece for the government agency concerned. The whole purpose behind section 237.5 is to provide independent counsel, when necessary, for the protection of the minor's interests. We suggest, at a bare minimum, counsel for the minor should thoroughly review the record, interview the child when appropriate, consider such factors as health and age, and consider some type of contact with the child's foster and natural parents in order to make an informed judgment on behalf of his client. Independent medical and psychological assessment might be necessary in appropriate cases. Only by such endeavor can the court be assured that counsel for the minor is truly independent and is informed enough to represent the child's best interest." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208; accord, *In re Kristen B.* (2008) 163 Cal.App.4th 1535, 1542-1543 [minor's counsel can advocate against the minor's wishes]; *In re Alexis W.* (1999) 71 Cal.App.4th 28, 36; *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1253; *In re Richard H.* (1991) 234 Cal.App.3d 1351, 1368.)

Must appoint counsel for child if child's interests may conflict with CPS's (*In re Mary C.* (1995) 41 Cal.App.4th 71; *In re Mario C.* (1990) 226 Cal.App.3d 599, 606; *In re Richard E.* (1978) 21 Cal.3d 349, 353-354; see *In re Jesse C.* (1999) 71 Cal.App.4th 1481; but see *In re Elizabeth M.* (1991) 232 Cal.App.3d 553.) Generally, CPS shall represent the interests of minors in dependency proceedings. (Welf. & Inst. Code, § 280.)

Must appoint separate counsel for minor whose interests conflict with a sibling's. (*Carroll v. Superior Court (San Diego Health and Human Services Agency)* (2002) 101 Cal.App.4th 1423, 1431; *Marriage of Heath* (2004) 124 Cal.App.4th 444, 452 [when minors might be separated from each other].) "[A]n attorney [for the minor] may not represent multiple clients if an actual conflict of interest between clients exists and may

not approve representation of multiple clients if there is a reasonable likelihood an actual conflict of interest may arise." (*In re Celine R.* (2003) 31 Cal.4th 45, 58.) The court need not appoint new counsel if it would cause delay and the interests are adequately protected. (*Id.*, at pp. 60-61.) " 'a conflict arises where minor's counsel seeks a course of action for one child with adverse consequences to another.' (*In re Barbara R.* (2006) 137 Cal.App.4th 941, 953.)" (*In re Paul W.* (2007) 151 Cal.App.4th 37, 55.)

There was not a conflict of interest when only one of several siblings were to be adopted. (*In re T.C.* (2011) 191 Cal.App.4th 1387, 1390-1393; cf. *In re Zamer G.* (2007) 153 Cal.App.4th 1253, 1270-1271 [though the siblings' wishes differed, when their counsel independently decided their best interests were the same plan]) But there was a conflict of interest when counsel needed to impeach one sibling to further the interests of the other. (*Id.* at pp. 1272-1273.)

Welfare and Institutions Code section 317 applies only to the juvenile court. The court has no obligation to appoint counsel for the minor on appeal. (*In re Zeth S.* (2003) 31 Cal.4th 396, 409, 414-415.)

Appellate counsel for the minor could ask to dismiss the appeal if such a decision is approved by the minor's guardian ad litem, which is either trial counsel or, if none, the CASA worker. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 687-688.) Appellate counsel can seek funds for investigation, including seeing the minor, if there is good cause. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 684.)

The minor must have a guardian ad litem, either trial counsel or, if none, the CASA worker. (Welf. & Inst. Code, § 326.5; Cal. Rules of Court, rule 1438; *In re Josiah Z.* (2005) 36 Cal.4th 664, 679-680; *San Diego Dept. of Social Serv. v. Superior Court* (*Miguel S.*) (2005) 134 Cal.App.4th 761, 768 [the CAPTA person (GAL or minor's counsel) is the minor's guardian ad litem in all other proceedings under Cal. Rules of Court, rule 1448(b)]; *In re Christopher I.* (2003) 106 Cal.App.4th 433, 558 ["If an attorney is appointed to represent the minor's interests, the juvenile court need not appoint a separate guardian ad litem."]; see 42 U.S.C. § 5106a(b)(2)(A)(xiii); 45 C.F.R. § 1340.14(g).) The minor's trial counsel or CASA worker continues to be the guardian ad litem on appeal. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 680, 681.)

"[Code of Civil Procedure] [s]ection 372 'represents a recognition by the Legislature that whenever a minor is involved in litigation, his interests cannot be protected unless a guardian ad litem or a similar representative acts for him. The guardian ad litem is an officer of the court, and he has the right to control the lawsuit on the minor's behalf. Among his powers are the right to compromise or settle the action [citation], to control the procedural steps incident to the conduct of the litigation [citation], and, with the approval of the court, to make stipulations or concessions that are

binding on the minor, provided they are not prejudicial to the latter's interests [citation].' (*De Los Santos v. Superior Court* (1980) 27 Cal.3d 677, 683-684.) A civil guardian ad litem's role is 'more than an attorney's but less than a party's, in that a guardian oversees any attorney representing the minor's litigation-related interests and may make tactical and even fundamental decisions affecting the litigation, but always with the interest of the minor in mind.' (*County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303, 1311, italics omitted.)" (*In re Josiah Z.* (2005) 36 Cal.4th 664, 678; accord, *In re Christina B.* (1993) 19 Cal.App.4th 1441, 1454.) "At some point, notwithstanding their legal incompetence, children become capable of giving informed consent to key decisions affecting their circumstances." (*In re Josiah Z.* (2005) 36 Cal.4th 664, 682, fn. 8.)

The requirement for guardian ad litem for minors starting July 1, 2001 does not apply to cases started before then. (*In re S.D.* (2002) 102 Cal.App.4th 560, 564.)

The court must appoint a guardian ad litem to pursue a possible tort claim against the county. (*In re Nicole H.* (2011) 201 Cal.App.4th 388, 396-403.)

Even if minor's counsel does not have a conflict of interest, a CASA worker should be appointed in order to pursue issues beyond appointed counsel's scope, such as pursuing a civil suit. (*San Diego Dept. of Social Serv. v. Superior Court* (*Miguel S.*) (2005) 134 Cal.App.4th 761, 768-769.)

Waiver: Parent waives no guardian ad litem for the minor by not raising it in the juvenile court. (*In re Charles T.* (2002) 102 Cal.App.4th 869, 873.)

Standing: Parent has standing to raise ineffective assistance of minor's attorney. (*In re Cliffton B.* (2000) 81 Cal.App.4th 415, 428 [attorney had conflict of interest when siblings had different permanent plans]; *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 414 [also parent's counsel did not object]; *In re James S.* (1991) 227 Cal.App.3d 930, 933, fn. 6; see *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 565-568; *In re Patricia E.* (1985) 174 Cal.App.3d 1, 4-5; but see *In re Frank L.* (2000) 81 Cal.App.4th 700, 704; *In re Alexis W.* (1999) 71 Cal.App.4th 28, 36-37 [must show how parent prejudiced by minor's counsel's ineffectiveness]; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1560; *In re Ann S.* (1982) 137 Cal.App.3d 148, 150; but *In re S.A.* (2010) 182 Cal.App.4th 1128, 1134-1135.)

Standing: A parent has standing to complain of no guardian ad litem for the minor. (*In re Charles T.* (2002) 102 Cal.App.4th 869, 873; but see *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1000.)

Standard of review: Whether to appoint attorney for minor reviewed for abuse of discretion. (*In re Richard H.* (1991) 234 Cal.App.3d 1351.)

Prejudice: Use the Watson test. (*In re Celine R.* (2003) 31 Cal.4th 45, 59.) Prejudice from a conflict of interest only if reversal would have been required had no attorney been appointed. (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [any error harmless because new counsel would have also supported adoption].) Error in not appointing independent counsel for the minor requires reversal only if it results in a miscarriage of justice. (*In re Richard E.* (1978) 21 Cal.3d 349, 355.)