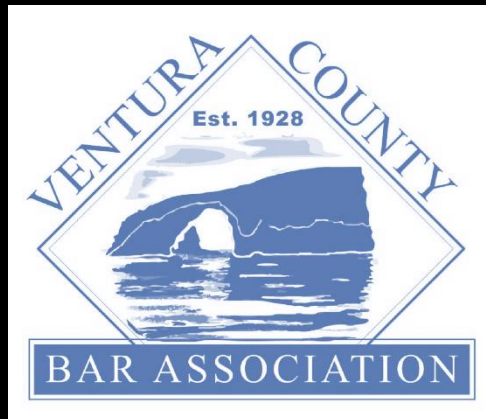


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SEEKING SPECIAL
IMMIGRANT JUVENILE
FINDINGS THROUGH
CALIFORNIA COURTS

Outline for Today

1. Introduction
2. Audience Poll – Who are you?
3. SIJS Overview
4. Probate Court
5. Family Court
6. The immigration process
7. Questions?



Who are you?

Poll

- What area of law do you practice?
 - Estates
 - Family
 - Immigration
 - Other
- Have you ever obtained SIJ Findings in any CA state court?
 - Yes/No
- Have you ever filed a SIJS petition with the immigration service?
 - Yes/No

SIJS Overview

What is Special Immigrant Juvenile Status (“SIJS”)?


- A humanitarian protection available to juveniles who have been abused, abandoned or neglected by one or both parents
- Eligibility requirements:
 - Juvenile is under 21 *and* unmarried
 - State court order placing juvenile in the custody of an individual/agency appointed by the court (or making them dependent on the court itself)
 - State court findings that the child has been abused, abandoned or neglected by one or both parents *and* that it would not be in the child’s best interest to return to their home country

The Two (Three?) Step SIJS Process

First, obtain state court orders from state juvenile court



Second, apply for Special Immigrant Juvenile Status with United States Citizenship and Immigration Services ("USCIS")



Third, apply for Adjustment of Status with USCIS
- can sometimes apply concurrent with SIJS application

California Law on SIJS

- California Code of Civil Procedure section 155
 - Expressly provides that California superior courts have the jurisdiction to make qualifying custody orders and SIJ Findings, including “the juvenile, probate, and family court divisions of the superior court”
 - Requires the state court to make the findings if they are requested and the evidence supports them
 - Evidence contemplated is the child’s declaration
- California Appellate Decision
 - *O.C. v. Superior Court* (2019) 44 Cal. App. 5th 76
 - *B.F. v. Superior Court* (2012) 207 Cal. App. 4th 621
 - *Leslie H. v. Superior Court* (2014) 224 Cal. App. 4th 340
 - *Eddie E. v. Superior Court* (2015) 234 Cal. App. 4th 319

Assessing a Case

Legal Considerations:

Is your client eligible for SIJ Findings through a state court action?

- Is your client under 21 and unmarried?
- Does your client live with a non-parent caregiver or only one parent?
- Can your client reunify with one or both of their non-custodial parents? If not, why not? Has your client suffered abuse, abandonment, or neglect?
- Is it in your client's best interest to remain in the United States?

Assessing a Case

Legal Considerations (continued):

If your client is SIJS-eligible and lives with a non-parent caregiver (or is over 18 and lives with one parent), you will file a guardianship case in probate court

Assessing a Case

Legal Considerations (continued):

- If your client is SIJS-eligible, under 18, and lives with a parent, you will file an action in family court – but what type of action?
 - Parentage action: If the child's parents were not married when the child was born, or were never legally married, or were married but not cohabitating when the child was born
 - Custody action: If the child's parents were legally married *and* cohabitating when the child was born
 - Any other options?

Assessing a Case

Client-specific considerations for state court actions:

Your child client (and many times their parent/caregiver) are likely both traumatized in different ways

Do you want to meet with your client alone or with their caregiver?

Does your client even want the caregiver with whom they live to have full custody over them?

Is the child's living situation with their caregiver stable?

Guardianships in California Probate Courts

- Guardian has “care, custody, and control of” a ward. Cal. Prob. Code § 2351(a)
- Probate court is authorized to appoint a guardian if it “appears necessary or convenient.” Prob. Code § 1514(a)
 - “Best interest” standard – health, safety, and welfare. Fam. Code §§3011(a), 3022(a)
 - If parent objects, must also find continued custody by parent is detrimental. Fam. Code §3401(a)
 - *Adoption of Michelle T.*, 44 Cal. App. 3d 699, 707 (Ct. App. 975) – fact specific determination
- Probate Code §1510.1 – authorized guardianships for consenting youth 18, 19, 20 who are also seeking SIJ Findings
- In general, parent cannot be a guardian except for youth 18 – 20 years old

Nuts and Bolts of a Guardianship

Before
you
file:

Check your local court rules

Are there local forms?

Talk to experienced practitioners in your court about local procedures

Forms to File for a Guardianship

1. Request to Waive Court Fees [FW-001]
2. Order on Court Fee Waiver [FW-003]
3. Order Prescribing Notice [DE-200]
4. Petition for Appointment of Guardian of Minor [GC-210]
5. Guardianship Petition – Child Information Attachment [GC-210(CA)]
6. Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice [GC-211].
7. Declaration Under Uniform Child Custody Jurisdiction Act (UCCJEA) [GC-120]
8. Confidential Guardian Screening Form [GC-212]
9. Request for SIJ Findings [GC-220]
10. Supporting Declaration(s)
11. Memorandum of Points and Authorities (only if needed)
12. Local Forms

Preparing the Client's Declaration

Make sure the declaration is in the client's own words

Take time to build trust with your client in order to prepare the declaration

Remember what you are trying to establish

Less is more

Certificate of translation (if the child's best language is other than English)



After Filing: Service and Notice

- Who to serve?
 - In person: parents (Prob. Code § 1511(b))
 - By mail: grandparents, siblings over the age of 12 (Prob. Code § 1511(c)), Child Services, California Department of Social Services
- Waiver of Notice (Prob. Code § 1514)
 - Form GC-211
 - Other form to waive notice of SIJ Findings?
- Notice not needed if:
 - Cannot be given with reasonable diligence or is contrary to the interests of justice (Prob. Code § 1511(g))
 - Due Diligence declaration
- Cal. Court Rule 7.1020(c)
 - Requires notice of SIJ Findings request

After Filing: the Investigation

- The probate investigation will make recommendations to the court on a guardianship
- Probate investigation:
 - In Ventura County, an investigator from Child Services will go to the client's home
- Potential issues:
 - School attendance/grades
 - Criminal record in the home
 - Discussing smuggling/immigration case

Preparing for a Guardianship Hearing


- Steps to take:
 - Review probate investigation/child protective services report and probate notes
 - Ensure that there will be a court-provided interpreter
 - Let your client know what to expect
 - Ensure child and guardian will attend the hearing
 - Know your legal arguments
 - Prepare your orders:
 - Duties of Guardian [GC-248]
 - Order Appointing Guardian [GC-240]
 - Letters of Guardianship [GC-250]
 - Special Immigrant Juvenile Findings [GC-224]

AB 900/Probate Code 1510.1

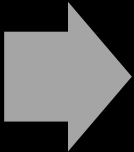
- Authorizes youth ages 18, 19, and 20 to obtain a guardianship and SIJ Findings
- Point to legislative intent
- These guardianships are “particularly necessary in light of the vulnerability of this class of unaccompanied youth, and their need for a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment. These custodial arrangements promote permanency and long-term well-being.”
- Client should affirmatively state in declaration that they understand they are giving up rights they would otherwise hold as an adult

AB 2090

Authorizes a parent to be a guardian for an AB 900 case



Probate Code 1510.1(a)(2)
- A petition for guardianship of the person of a proposed ward who is 18 years of age or older, but who has not yet attained 21 years of age, may be filed by a parent, relative, or any other person on behalf of the proposed ward, or the proposed ward



Again, point to legislative intent if you get pushback

The Threshold Question in Family Court

- The type of action appropriate for your client's case will depend on whether the child's parents were legally married *and* cohabitating at the time of your client's birth

Filing a Parentage Action in Family Court

- Legal Considerations:
 - Jurisdiction for purposes of custody orders is governed by the Uniform Child Custody Determination and Enforcement Act (“UCCJEA”)
 - Family Code section 3402(g) defines home state as “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.”

Filing a Parentage Action in Family Court

Legal Considerations (continued):

- Parties
 - Minor as petitioner
 - Appointment of Guardian ad Litem
 - Custodial parent as respondent
 - Joinder issues
- Notice

Filing a Parentage Action in Family Court

Forms Filed Prior to Hearing
FL-200 Petition to Establish Parental Relationship
FL-210 Summons
FL-105 Declaration Under UCCJEA
FL-935 Application and Order for Appointment
FL-300 Request for Order, Child Custody
FL-356 Confidential Request for Special Immigrant Juvenile Findings
Supporting Declaration(s)
Memorandum of Points and Authorities (if needed)
Proofs of Service

Filing a Parentage Action in Family Court

Peremptory Challenges

- In most jurisdictions, you will be assigned a judge upon filing your case. In other jurisdictions, you may not be assigned a judge until you file Form FL-300, Request for Order, which triggers a hearing
- A peremptory challenge allows you to request a new judge without providing any specific reason, and each county has its own form or practice for “papering” a judge. *See* CCP § 170.6

Filing a Parentage Action in Family Court

Respondent

<u>SERVICE</u> <u>What to Serve</u>
FL-200, Blank FL-220
FL-210
FL-105, Blank FL-105
FL-300, Blank FL-320
FL-356, Blank FL-358
Memorandum (if filed with the court)
Declarations
Proposed Orders (if filed with the court)

**Absent
Parent**

But what if...

The child's parents were married and living together when the child was born?



Filing a Custody Action in Family Court

- Parentage may be established without a parentage action through various means, including where the conclusive presumption of parentage applies
- A conclusive presumption of parentage exists when a child is born to married, cohabitating parents. A parentage action is therefore not necessary or appropriate because the identities of the child's parents have already been legally established
- In such cases, the California Family Code allows "a spouse to bring an action for the exclusive custody of the children of the marriage." Fam. Code § 3120. This action is called a Petition for Custody and Support

Filing a Custody Action in Family Court

Considerations

- Jurisdiction
 - The court does not need to establish personal jurisdiction over either parent in order to make custody orders. Instead, jurisdiction is established if the state where the court is located is the child's "home state." Fam. Code § 3421(c)
- Parties
 - Parent v. Parent

Filing a Custody Action in Family Court

Forms Filed Prior to Hearing

FL-260 Petition for Custody and Support of Minor Children

FL-210 Summons

FL-105 Declaration Under UCCJEA

FL-300 Request for Order, Child Custody

FL-356 Confidential Request for Special Immigrant Juvenile Findings

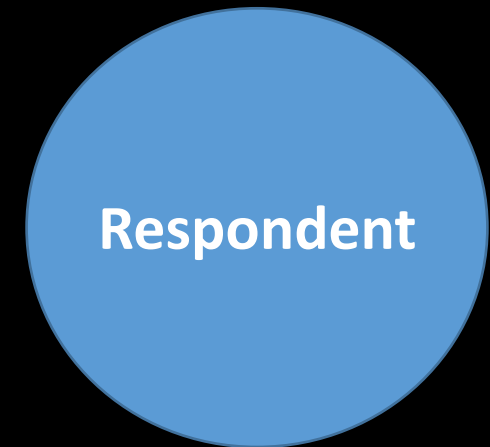
Supporting Declaration(s)

Memorandum of Points and Authorities (if needed)

Proofs of Service

Filing a Custody Action in Family Court

<u>SERVICE</u> <u>What to Serve</u>
FL-260, Blank FL-270
FL-210
FL-105, Blank FL-105
FL-300, Blank FL-320
FL-356, Blank FL-358
Memorandum (if filed with the court)
Declarations
Proposed Orders (if filed with the court)



Preparing for Your Hearing

- Once you have filed your parentage or custody action and submitted your request for custody orders and SIJ Findings, you will be scheduled for a Request For Order (“RFO”) and SIJ Findings hearing before the family court

Preparing for Your Hearing

Regardless of whether you file a custody or parentage action and assuming that the requests for custody and SIJ Findings are set for the same hearing date, you will need to prepare:

- Form FL-340, Findings and Orders After Hearing
- Form FL-341, Child Custody and Visitation (Parenting Time) Order Attachment
- Form FL-357, Special Immigrant Juvenile Findings

Bringing your Case to Judgement in Family Court

- The court's orders, placing your client into the custody of their parent and making SIJ Findings on their behalf, do not end your case before the family court
- In order to receive final orders and close your case with the family court, you will need to seek a judgment. In most parentage or custody SIJ cases, you will be proceeding via a default judgment

SIJ Findings Under California Law – Crafting the Order

It is extremely important to craft a complete SIJ order for the probate or family court judge to sign – if not, USCIS might not approve your client's I-360 petition

- Name your child client's non-custodial parent(s) in the GC-224 or FL-357!
- Add California statutory and/or case law citations in order to show why, under state law, your client was abused, abandoned, or neglected and why it would be in their best interest to remain in the US with their custodial parent:
 - Abuse: Fam. Code § 6203; Welf. & Inst. Code § 300(a)
 - Abandonment: Fam. Code §3402(a); Welf & Inst. Code § 300(g)
 - Neglect: Welf. & Inst. Code § 300(b)
 - Avoid “similar legal basis”

SIJ Findings Under California Law – Crafting the Order

Provide

Provide a factual basis for each finding

Do not cite

Do not cite California Code of Civil Procedure Section 155 in your proposed order – USCIS views that as a state law that exists expressly for immigration purposes

Do not cite

Do not cite to the Immigration and Nationality Act

SIJ Findings Under California Law – Crafting the Order

- Sample SIJ Findings:
 - John Doe cannot reunite with his father, Frank Doe, due to abandonment. John's father died when John was about six years old; John has therefore not seen or had contact with his father in over 11 years. Under California law, the death of a child's parent is treated as abandonment for dependency purposes. A child in John's situation – that is, a child that has experienced the death of one parent – is treated similarly as a child that has been abused, neglected, or abandoned because all of those situations leave that child “without any provision for support.” Although being “left without any provision for support” is different from being “willfully abandoned,” California law treats these two bases for dependency identically – both result in a holding that a child is dependent on the Court. See Welf. & Inst. Code § 300. Another section of the Welfare and Institutions Code that treats death as a similar basis to abandonment is Section 11250, which discusses when families with children under the age of 18 are eligible to receive aid from the state. According to that section, “Aid, services, or both shall be granted under the provisions of this chapter . . . to families with related children under the age of 18 years . . . in need thereof because they have been deprived of parental support or care due to: (a) the death, physical or mental incapacity, or incarceration of a parent. . . . (c) Continued absence of a parent from the home due to . . . desertion” See Welf. & Inst. Code § 11250. Thus, children whose parents are deceased are treated the same way as children whose parents have deserted or abandoned them – children in both situations are eligible for state aid.

Filing the I-360

- If you've gotten your SIJ Findings from state court, congratulations! The next step in the SIJS process is to prepare and file an I-360 petition with U.S. Citizenship and Immigration Services (USCIS)
- An I-360 packet contains:
 - Form I-360
 - Form G-28
 - A copy of the SIJ Findings
 - Client's birth certificate with a certified English translation (if applicable)



What Comes After the I-360?

- The I-360 can be filed concurrently with an I-485 application for adjustment of status – the application to get a green card/obtain permanent residence – only if the client is not in removal proceedings (with one exception) and a visa number is available
 - If the client is in removal proceedings, they must be terminated before an I-485 can be filed (unless the client was charged as an “arriving alien”)
 - If a visa number is not yet available, you need to wait until the client is current to file for adjustment per the State Department’s Visa Bulletin

QUESTIONS?

Please also feel free to email
me at:

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