

ATTORNEY NAME, SBN 000000
ADDRESS
TELEPHONE
EMAIL [OPTIONAL]
Attorney for Appellant [NAME]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE [COURT] APPELLATE DISTRICT

In the Matter of
[MINOR'S NAME],
Person Coming under the Juvenile
Court Law.

[COUNTY] COUNTY
[DEPARTMENT OF HEALTH AND
HUMAN SERVICES], Plaintiff and
Respondent.

v.

[APPELLANT], Defendant and
Appellant.

No. [APPELLATE CRT #]

[COUNTY] County
No. [TRIAL COURT #]

MOTION TO CONSTRUE
NOTICE OF APPEAL AS
APPEAL FROM
JURISDICTIONAL
FINDINGS AND
DISPOSITIONAL ORDERS

TO THE HONORABLE [NAME], PRESIDING JUSTICE, AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA, [NAME] APPELLATE DISTRICT:

Appellant [NAME] respectfully moves this court to construe the original,
timely filed notice of appeal in this case in the following manner:

1. To amend the description of the orders appealed from in paragraph 1
to read as follows: "The jurisdictional findings made March 9, 2006,
and the dispositional orders made March 17, 2006."

2. To amend to list of hearing dates contained in paragraph 1 to read as follows: “2/23/06, 2/24/06, 2/27/06, 3/1/06, 3/2/06, 3/6/06, 3/8/06, 3/9/06, 3/13/06, 3/14/06, and 3/17/06.”

A copy of the notice of appeal as filed is attached as Exhibit A.

Appellant is concurrently filing a motion to augment the record to include the omitted reporter’s transcripts.

This motion is made on the grounds that the notice of appeal timely filed by appellant clearly indicated the nature of the findings and orders which [APPELLANT] was appealing, but included the incorrect dates.

This motion is based on the records, pleadings and files in this case and the attached memorandum of points and authorities.

Dated: [DATE]

Respectfully submitted,

[ATTORNEY NAME]
Attorney for Appellant [APPELLANT]

MEMORANDUM OF POINTS AND AUTHORITIES

[SAMPLE FACTS:] Appellant’s two children, M1 and M2, and her husband’s daughter who lived with them, M3, were removed from parental custody on January 30, 2006. Petitions were filed alleging that all of the children were described by Welfare and Institutions Code section 300, subdivisions (a), (b) and (j), in that they were at risk because the father had physically abused M3, the parents locked the children in their bedroom and disciplined them with a belt, and the parents engaged in domestic violence in the presence of the children. (Clerk’s Transcript [“CT”] 1-19.)

Appellant and her husband were both represented by the same trial counsel,

[TRIAL ATTORNEY]. This attorney prepared the notices of appeal for both appellant and her husband.¹

Trial on the allegations of the petition commenced on February 23, 2006. Trial proceedings were conducted on February 23, 24 and 27, 2006, and March 1, 2, 6, 8 and 9, 2006. The court made its findings that the allegations of the petition were true as amended on March 9, 2006. (CT 666.)

Contested hearings on disposition were conducted on March 13, 14 and 17, 2006. The court made its dispositional orders on March 17, 2006.

The notice of appeal prepared by appellant's trial attorney identified, at paragraph 6.1., the orders appealed from as the "Section 360 (declaration of dependency, [r]emoval of custody from the parent or guardian, with review of section 300 jurisdictional findings." (CT 669.)

However, at paragraph 1, the form stated that appellant's appeal was "from the disposition hearing held on March 8, 2006." (CT 668.) This date is incorrect.

California Rules of Court, rule 8.400,² governs appeals in juvenile matters generally. Subdivision (c)(2) of that rule provides: "The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed."

Appellant's notice of appeal satisfied the requirement of rule 8.400, in that it clearly identified, in paragraph 6, that appellant was appealing from the jurisdictional findings and dispositional orders. However, the notice of appeal specified an incorrect date in paragraph 1, and, in paragraph 6, incorrectly identified the dates those findings and orders were made, and failed to include all

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The undersigned appellate counsel for [APPELLANT] does not represent the husband on appeal and this motion is filed only on behalf of [APPELLANT].

²

All subsequent references to rules are to the California Rules of Court.

of the trial dates which resulted in those findings and orders.

That this was merely a clerical error is obvious. No jurisdictional findings or dispositional orders were made on March 8, 2006. (CT 428-29.) The jurisdictional findings were made the next day, March 9, 2006. (CT 430-33.) The disposition orders were made on March 17, 2006, on the third day of trial following the jurisdiction findings. (CT 487-99.) The minute orders for all of the hearing dates reflect that [TRIAL ATTORNEY] represented both parents on all dates, and it was he who prepared the notice of appeal.

The first appealable orders in this case were the dispositional orders, entered March 17, 2006. (Welf. & Inst. Code § 395; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) It is clear from paragraph 6 that appellant intended to appeal those orders, as well as the jurisdictional findings, in her notice of appeal timely filed on May 5, 2006.

The long-standing policy of the courts is to hear appeals on their merits, to avoid forfeiture of substantial rights on technical grounds. (*People v. Chapman* (1971) 5 Cal.3d 218, 225; *People v. Acosta* (1969) 71 Cal.2d 683, 685; *People v. Casillas* (1964) 61 Cal.2d 344, 345-346.) All doubts should be resolved in favor of the right to appeal. (*People v. Bailey* (1969) 1 Cal.3d 180, 187; *People v. Diehl* (1964) 62 Cal.2d 114, 117; *People v. Tucker* (1964) 61 Cal.2d 828, 832.) Although these are criminal cases, they are construing and applying the language of former rule 31 (now renumbered 8.304), which is substantively identical to the language of rule 8.400.

This policy would be served by providing appellant the relief she is seeking.

Accordingly, appellant respectfully requests this court to construe her original, timely filed notice of appeal in this case in the following manner:

1. To construe the description of the orders appealed from in paragraph 1 to read as follows: “The jurisdictional findings made March 9,

2006, and the dispositional orders made March 17, 2006.”

2. To construe the list of hearing dates contained in paragraph 1 to read as follows: “2/23/06, 2/24/06, 2/27/06, 3/1/06, 3/2/06, 3/6/06, 3/8/06, 3/9/06, 3/13/06, 3/14/06, and 3/17/06.”

Dated: [DATE]

Respectfully submitted,

[ATTORNEY NAME]

Attorney for appellant [NAME]