

Notes from the Presentation of Justice M. Kathleen Butz, California Court of Appeal, Third District, to the March 25, 2006 CADC Conference - Dependency Breakout Session

In providing the court's perspective at last month's seminar, Justice Butz had the following advice for dependency practitioners with cases in the Third District appellate court:

Record

- **Completeness**

Check with the trial counsel to make sure that all parts of the record have been identified.

- **Motions to Augment**

Do not move for judicial notice of an item that you have successfully moved to augment.

- **Motions for Judicial Notice**

A motion for judicial notice is appropriate for legislative intent material, but be sure to provide authority for each part of the material that you seek to have judicially noticed.

Beware of the problems in taking judicial notice of subsequent events that were not before the trial court. A stipulation to facts that undermine the basis of the judgment may be appropriate, but it is an exception to the general rule.

Briefs

- **Statements**

Detailed statements may be necessary in a dependency case. But be "judicious." Focus on the important information. Shorten or leave out items that are irrelevant to the issues on appeal.

- **Argument Development**

The court does not wish to discourage the use of "canned briefing," but be sure to tailor it to the facts of your case.

Be "up front." Address rather than avoid the negative facts in your case.

Similarly, acknowledge and explain in the opening the issues that are being raised in the appeal that were not raised in the trial. Forfeiture should be addressed from the beginning.

- **Style**

Please proofread. It is important!

When referring to the record, cite to it, not just in the statements, but also in the argument.

Oral Argument

- **Preparing for Oral Argument**

Do not be intimidated by receiving an “rda” [routine disposition appeal] letter. Request argument if you think it is appropriate.

Argument can make a difference.

When arguing the case, do not restate the facts. The court knows the facts.

Address the problem areas in your case, just as you would in a brief.

Respond to the court’s questions. Be prepared to deviate from what you prepared.