



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
CNPA Services, Inc.

2000 O Street, Suite 120, Sacramento, CA 95811 ♦ Ph: 916.288.6000 ♦ Fax: 916.288.6002 ♦ www.cnpa.com

March 31, 2011

Honorable Mike Feuer
California State Assembly
State Capitol Room 2013
Sacramento, California 95814

Dear Assemblyman Feuer:

RE: Support AB 73 (Feuer)

I am writing to you on behalf of the California Newspaper Publishers Association to express the Association's support of your AB 73, which we understand is proposed to be amended by the Judiciary Committee in mock-up form at the committee's hearing on April 5. AB 73 would establish a presumption of public access to dependency court hearings unless the court finds that admitting the public would not be in the child's best interest. The presumption of closure, under current law, prevents the public from understanding whether these courts and the various state and local agencies relied upon by the courts are succeeding or failing to adequately protect the staggering number of children and families that come before them.

AB 73, by providing access to these proceedings, would promote the integrity and credibility of dependency courts. It would have a similar effect on the courts' supporting agencies by revealing the level of proficiency of their investigations, findings and conclusions and thereby holding these institutions accountable for their performance. By achieving these objectives, the bill would promote justice by strengthening public confidence in these institutions and most importantly provide greater protection for society's most vulnerable.

CNPA, however, has several concerns about AB 73. Section (d), with the exception of permitting Judicial Council to adopt guidelines for the courts to consider when determining the best interest of the child, should be deleted. The standard that section (d) would establish for the courts to consider when a closure motion has been made is "whether opening the proceedings to the public is contrary to the child's best interest." This standard is inconsistent with the presumption of access established in Section (b) as well as the current standard for closure of criminal and civil proceedings established by case law and the Rules of Court.

CNPA urges replacing section (d) with the following: *"The court may close the proceeding if it finds, on the record, that the presumption of openness is overcome by substantial evidence that the child's best interest will be harmed if the proceeding is not closed."*

CNPA also urges that the second sentence in proposed Welfare and Institutions Code Section 346.5(b) and all of Section 346.5(c) be deleted from the bill.

In proposed Section 346.5(b), the measure would establish the presumption of openness unless it is not in the best interests of the child to do so. However, in the next sentence, the bill requires a dependency court to "inquire of the parties if there is any reason the hearing should be closed to

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the public.” Additionally, section (c) of the bill would require the child’s attorney, or if there is no attorney, require the court to advise the child of his or her right to close the hearing.

After the court has just explained the presumption and the standard for closure, to then require the court to restate the standard for closure again is a not-so-subtle implication that the court thinks that it may be in the best interest of the child to close the courtroom. Moreover, none of the other states that have established a presumption of openness to dependency proceedings chose to include these repetitive admonitions in their proceedings. Presumably, if these states believed the admonitions would serve to protect the child, they would have been included in the statutes.

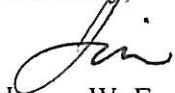
While proposed Section 346.5(e) would require the court to take appropriate action to keep confidential personally identifiable information, as defined, about the child, a sibling or parent, a better model for handling this information may be found in Rule of Court 8.104 and Chapter 5, Sections 5.9 and 5.10 of the Style Manual which currently apply to the documents created or used by a court when hearing a dependency case on appeal.

In the alternative, if the currently proposed Section 346.5(e) is used, the last phrase that says, “or any other distinguishing characteristic that tends to identify ‘a particular person’” should be changed to “or any other distinguishing characteristic that tends to identify ‘the child, the child’s sibling or parent.’” This change would prevent the inadvertent application of this section to any person other than those individuals who the bill seeks to protect.

CNPA believes that its proposed changes strengthen AB 73 and would prevent children who have already been abused and neglected from being re-victimized by a system of secrecy that has been shown only to protect those individuals other than the kids who are involved in the system.

CNPA appreciates your efforts to focus the legislature on this important issue and we look forward to working with you to obtain the Governor’s signature on AB 73.

Sincerely,



James W. Ewert
CNPA Legal Counsel

cc: Ron Redfern, CNPA President, Publisher, *The Press-Enterprise*
Karlene Goller, CNPA Governmental Affairs Committee Chairwoman, Vice President and Deputy General Counsel,
Los Angeles Times
Jack Bates, CNPA Executive Director
Thomas W. Newton, CNPA General Counsel
Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mark Redmond, Consultant, Assembly Republican Caucus