

Case No. 05-17080

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ABHIJIT PRASAD,
Plaintiff and Appellant,

vs.

SANTA CLARA DEPARTMENT OF SOCIAL SERVICES, et al.,
Defendants and Appellees.

AMICUS CURIAE BRIEF OF CALIFORNIA STATE ASSOCIATION OF
COUNTIES IN SUPPORT OF DEFENDANTS AND APPELLEES
SANTA CLARA DEPARTMENT OF SOCIAL SERVICES, ET AL.

On Appeal from the United States District Court
for the Northern District of California
(U.S. District Court No. 5:14-cv-00179-BLF)
The Honorable Beth Labson Freeman

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
II. ARGUMENT	2
A. The Case Management System Is Designed To Assist Social Workers; It Is Not A List To Be Checked Prior To Granting A License, Legal Right, or Benefit	2
B. The Case Management System Is A Closed And Confidential System	4
C. The Information In The Case Management System Is Used For Investigatory And Case Management Purposes And Thus Does Not Stigmatize Those Whose Names Are Contained In The System.....	6
D. The Material Contained In The Case Management System Does Not Stigmatize Those Mentioned In Its Files.....	8
III. CONCLUSION	9
CERTIFICATION OF COMPLIANCE	11
STATEMENT OF RELATED CASES	12
CORPORATE DISCLOSURE STATEMENT.....	13

TABLE OF AUTHORITIES

Cases

Humphries v. County of Los Angeles (9th Cir. 2009) 554 F.3d 1170 2

Los Angeles County, Cal. v. Humphries (2010) 562 U.S. 29 2

Statutes

Cal. Family Code § 7901 7

Cal. Penal Code § 11167.5..... 6

Calif. Welf. & Inst. Code § 827 6

Other Authorities

Calif. C.D.S.S., CWS/CMS Overview 3

California Structured Decision Making System Policy and Procedures
Manual at pages 63-73 6

Child Welfare Services Automation Study, April 16, 2012 at p. I-3 8

Los Angeles County DCFS, Child Welfare Policy Manual, 0500-501.20
(July 1, 2014)..... 5

Orange Cnty. Grand Jury, *CACI: Child Abuse Central Index: Guilty Until
Found Innocent*, 2009-2010 3

Orange Cnty. Policy 0-0412 Abuse Investigation-Practices 9

I. INTRODUCTION

In an attempt to show that the “stigma plus” test is met in this case, Appellant portrays the Child Welfare Services/Case Management System (Case Management System) as akin to, if not worse than, the Child Abuse Central Index (Child Abuse Index) in its ability to stigmatize and deprive innocent parties of rights and subject them to public opprobrium. In fact, the Case Management System was created to assist social workers in managing their cases so that they may most effectively protect and support the children and families they serve. In recognition of the confidential information the Case Management System contains, access to it is difficult to obtain and subject to many restrictions. There are also policies in place that guide social workers in assessing and using data contained in the Case Management System. The appearance of information in the Case Management System does not give rise to a stigma-plus injury that triggers a due process right to a hearing.

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II. ARGUMENT

A. The Case Management System Is Designed To Assist Social Workers; It Is Not A List To Be Checked Prior To Granting A License, Legal Right, or Benefit

There are profound differences between being listed in the Child Abuse Index and having your name and identifying information contained in a Case Management System file. As another panel of this Court noted: “The mere maintenance of such investigatory files apart from the CACI does not raise concerns under the Due Process Clause. What California has done [in creating the Child Abuse Index] is not just maintain a central investigatory file, but attach legal consequences to the mere listing in such files. Once California effectively required agencies to consult the CACI before issuing licenses, the CACI ceased to be a mere investigatory tool. *The fact of listing on the CACI became, in substance, a judgment against those listed.”*

Humphries v. County of Los Angeles (9th Cir. 2009) 554 F.3d 1170, 1201, as amended (Jan. 30, 2009) rev'd and remanded sub nom. *Los Angeles County, Cal. v. Humphries* (2010) 562 U.S. 29, emphasis added. In other words, the Child Abuse Index is used by employers or organizations that have interaction with children to protect children from individuals who might pose a risk, or to aid in the investigation of child abuse. *See generally,*

Orange Cnty. Grand Jury, *CACI: Child Abuse Central Index: Guilty Until Found Innocent*, 2009-2010.¹

The Case Management System is a horse of a different color. Unlike the Child Abuse Index, it is not a stigmatizing index or a judgment against an individual. It is a system designed to assist social workers in performing their jobs and to manage their cases. It “is designed so caseworkers can move through the application, performing work in the sequence that is most appropriate. The application allows caseworkers to open and track cases through the components of the Case Management System program. The system assists caseworkers in recording client demographics, contacts, services delivered, and placement information. The system also enables caseworkers to record and update assessments, create and maintain case plans, and manage the placement of children in the appropriate foster homes or facilities. The system will generate and manage many forms associated with a client or case. The application also collects data for the purposes of State, county, and federal reporting.” Calif. C.D.S.S., CWS/CMS Overview.²

¹ Available at <http://www.ocgrandjury.org/pdfs/child-abuse/child-abuse-report.pdf> (last visited July 23, 2015.)

² Available at <http://www.childsworld.ca.gov/PG1328.htm> (last visited July 23, 2015.)

The purpose of the Child Welfare system is to protect those who are among the most vulnerable in our society. The Case Management System is a tool designed to assist counties in managing a complex area with many moving parts and numerous state and federal requirements. For instance, reviewing prior contacts can help a social worker assess for any risk that they might encounter when making an in-person contact or assess the urgency needed in responding to the reported child abuse report. Additionally, there are numerous reporting requirements and audits that necessitate a complete and computerized system. As noted by the District Court, Appellant has failed to show that his privacy interests were so affected by the information contained in the Case Management System as to have a right to demand its removal. [ER 11: 9-14.]

B. The Case Management System Is A Closed And Confidential System

The need for a secure system for the sensitive data contained within the Case Management System is taken seriously. See, CWS/CMS sign-in page.³ For instance, access to the Case Management System records by non-DCFS employees or their attorneys in California's largest county, Los Angeles, requires a request (i.e., a release of information form, JV-570, a signed

³ Available at <https://cwscms.osi.ca.gov/Login?returnurl=%2fPortal%2fBusiness-Intelligence-Portal%2fBusiness-Intelligence-Documents> (last visited July 22, 2015.)

DCFS 4389 with written request from agency or department, caregiver request, etc.) which must be filed with the appropriate department or person (e.g., the social worker's out-stationed attorney or supervising county counsel, Custodian of Records, etc.) assigned to oversee issues of confidentiality. In processing such a request, the social worker verifies with the County Counsel if the person making the request has a right to the requested information. If that requestor does not have the right to the requested information, or if the request is not in the best interest of the child, an objection to the request is filed. The social worker also documents the date, the name, title and agency of the requestor, the address and phone number of the requestor, the information requested, and the reason for the request. Los Angeles County DCFS, Child Welfare Policy Manual, 0500-501.20 (July 1, 2014).⁴

The Legislature has provided limited statutorily specified access to information contained within the Case Management System, but there is no indication that the information is used in a stigmatizing manner, as is assumed by Appellant. See, Appellant's Opening Brief (AOB) at p. 19. For example, among those who may have access under California Penal Code

⁴ Available at <http://policy.dcfslacounty.gov> (last visited July 23, 2015.)

section 11167.5, subdivision (b) are those treating abused children, such as multidisciplinary teams. Cal. Penal Code § 11167.5, subd. (b) (11).

While Appellant notes that California Welfare and Institutions Code section 827 provides access to certain enumerated persons, the purpose of that provision is “to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.” Calif. Welf. & Inst. Code § 827, subd. (b)(1). The purpose of granting access to information is to aid in providing services and in investigations, not to stigmatize those individuals whose names appear in the information contained within the Case Management System.

C. The Information In The Case Management System Is Used For Investigatory And Case Management Purposes And Thus Does Not Stigmatize Those Whose Names Are Contained In The System

Appellant assumes that a history of child abuse reports can only have negative consequences for the alleged abuser.⁵ But, for example, in a

⁵ Appellant refers to having his ethnicity raise his risk level in the Structured Decision Making Risk Assessment Tool, yet the California Structured Decision Making System Policy and Procedures Manual at pages 63-73 does not mention ethnic origin in the Family Risk Assessment section. In the Families Strengths and Needs assessment at pages 78 and 83 there is a

contentious family custody case, or a case involving a punitive neighbor or other party, a social worker reviewing the prior child abuse reports might reasonably conclude that the alleged abuser is a victim of a vendetta, as demonstrated by numerous prior calls from the same source, or about the same alleged type of abuse, that were found not to be substantiated.

Appellant also argues that his inclusion in the Case Management System is stigmatizing because, with respect to adoption , Section 7901 Article 3 of California's Family Code permits a state receiving a child to obtain from a sending state such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of the Interstate Compact on Placement of Children. (AOB at 35; Cal. Family Code § 7901). First, Appellant has not alleged that he has any plans to adopt, making any injury speculative. Second, to the extent Appellant's concern is that the law permits a substantiated determination to be provided to a receiving state in an adoption scenario, that information is available from the Child Abuse Index, not just from the Case Management System. The District Court correctly found that Appellant failed to show that his

Cultural Identity component that focuses on whether the caregiver's cultural identity is supportive or causes conflict. Available at http://www.childsworld.ca.gov/res/pdf/SDM_Manual.pdf (last visited July 23, 2015.)

privacy interests were so affected by the information contained in the Case Management System to have a right to demand its removal. [ER 13: 13-18.]

D. The Material Contained In The Case Management System Does Not Stigmatize Those Mentioned In Its Files

Appellant also appears to complain that information about his relatives and other contacts is also contained in the Case Management System. AOB at 18-23. First, Appellant has no standing to complain about any information about other individuals contained in the Case Management System. Second, following Appellant's arguments to their logical conclusion would require a hearing for anyone whose name appears among the information contained in the Case Management System – something that is both unnecessary and unworkable. A 2012 report found that each month 31,500 cases are investigated and that 60,000 families per year receive services for the 100,000 children in out-of-home care. Child Welfare Services Automation Study, April 16, 2012 at p. I-3. Assuming an average of four contacts per case (a low estimate of two parents, one child, and one reporting party), that would mean some 378,000 investigations per year spread out over the 58 counties, with over 1.5 million contacts to be noticed. Given that the investigation of each case involves interviews with numerous contacts, under Appellant's scenario, a staggering number of persons would need to be notified and given a right to a hearing. *See generally*, Orange Cnty.

Policy 0-0412 Abuse Investigation-Practices. Thus, following Appellant's argument to its logical conclusion would likely require tens of thousands of hearings each year regarding material in a system that is designed as an investigative and supportive tool to aid social workers in performing their case management duties.

III. CONCLUSION

Appellant – who was previously given notice that the child abuse allegations would be reported to the California Department of Justice for inclusion in the Child Abuse Index and was provided due process in challenging the Respondent County's determinations – now claims that the content of the Case Management System creates a stigma-plus injury that triggers due process hearing rights. Moreover, he has proffered an argument that, taken to its logical conclusion, would mean notifying each and every contact and giving them a right to hearing. But the Case Management System is not a stigmatizing index like the Child Abuse Index; it is a tool designed to aid social workers in providing services to those in need of services and protection. The Child Abuse Index assigns guilt in a manner that could prejudice someone for years to come; in stark contrast, the Case Management System simply provides a critical clearinghouse for information to be used by those compiling and accessing information in

child protection matters. Neither inclusion of an alleged abuser's name in that system, nor inclusion of the names of other persons input into the Case Management System during an investigation, constitute a stigma-plus injury that triggers a due process right to hearing.

Dated: July 29, 2015

Respectfully Submitted,

s/ Jennifer B. Henning

Jennifer B. Henning, SBN 193915

Counsel for Amicus Curiae
California State Association of Counties

CERTIFICATION OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface in compliance with Fed. R. App. P. 29-2(c)(2). According to the “Word Count” feature in my Microsoft Word software, this brief contains 2,168 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of July, 2015 in Sacramento, California.

s/ Jennifer B. Henning

Jennifer B. Henning, SBN 193915
Counsel for Amicus Curiae
California State Association of Counties

STATEMENT OF RELATED CASES

There are no related cases pending before this Court.

Dated: July 29, 2015

Respectfully Submitted,

s/ Jennifer B. Henning

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CORPORATE DISCLOSURE STATEMENT
[F.R.A.P. Rule 26.1(a), 29(c)]

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties. No publicly-held corporation owns 10% or more of stock in CSAC.

Dated: July 29, 2015

Respectfully Submitted,

s/ Jennifer B. Henning

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