

#### **IV. THE MINORS' COUNSEL HAD AN UNAVOIDABLE CONFLICT OF INTEREST BY REPRESENTING THE THREE CHILDREN WITH DIVERGENT INTERESTS AND NEEDS**

Reversal is also required in this case because minors' counsel had an unavoidable conflict of interest representing Alisha, Brandon, and Tristen.

A trial court has a duty to make an assessment when made aware of a potential conflict of interest. (*Wood v. Georgia* (1981) 450 U.S. 261, 272.) A failure to explore whether a conflict of interest exists in such a situation demands reversal and remand. (*Id.*, at p. 273.) Appellant has standing to raise this issue. (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 565 [father had standing to assert his child's right to independent counsel, because independent representation of the children's interests impacts upon the father's interest in the parent-child relationship].)

Here, the court appointed a single attorney to represent a group of children with very differing interests. . . . [discussion of factual distinctions in the children's interests].

Each minor was statutorily entitled to appointed counsel who was free of actual conflict. (§ 317, subd. (c); *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252.) An attorney may not represent siblings in a dependency proceeding when there is an actual conflict of interest among them. (*Carroll v. Superior Court* (2002) 101 Cal.App.4th 1423, 1431; *In re Candida S., supra*, at p. 1252.) Indeed, if "an actual conflict of interest between the minors arises, the attorney is obliged to withdraw from representing the clients [citation] and the court is required to relieve the attorney and appoint new counsel." (*Carroll v. Superior Court, supra*, at p. 1428, citing Cal. Rules of Prof.

Conduct, rule 3-310(C)(2).)

Although appellant contends the *Chapman* review for prejudice applies, the error here was not harmless, even under *Watson*. There is a reasonable probability the outcome would have been different but for the error. As the Supreme Court has made clear, under *Watson*, “a ‘probability’ in this context does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*. [Citations.]” (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715, emphasis in original.)

Here, as already discussed, the minors did have adverse interests, but the prejudice lies in the fact that these were of such a quality that counsel could not strongly advocate for the interests of one without effectively undermining the interests of the other. For example, . . . [factual discussion].

The error was made that much more prejudicial by the failure of the Department, the minors’ counsel, and the court to discharge their statutorily mandated duties to consider the wishes of the children as to serious issues which would affect them forever. In *Adoption of Jacob C.* (1994) 25 Cal.App.4th 617, a non-dependency termination of parental rights case, the court failed to appoint an independent counsel for minors and failed to conduct an *in camera* interview with the older of the children. The Court of Appeal held: “The trial court’s failure to conduct this interview makes it more likely that the absence of independent counsel prejudiced the interests of the minors.” (*Id.*, at p. 626.) The court reasoned that children should have independent counsel to explain the consequences of adoption and termination of parental rights: “The views of a child of the age of Jacob may be invaluable to the court in arriving at an appropriate disposition.

For these views to be meaningful, it is imperative that the child has a reasonable understanding of how the rights and responsibilities of the interested parties will be affected, should the petition be granted.” The court concluded that

. . . the best interests of the children are paramount, and this requires that they be represented by independent counsel in this unusual proceeding of such importance to their futures. We must therefore remand for appointment of counsel for the minors, and a rehearing on the issues presented by the petitions with the participation of counsel.

*(Jacob C., supra, 25 Cal.App.4th at p. 626.)*

For the same reasons set forth in *Jacob C.*, this court should reverse and remand for a new hearing with independent counsel for the minors.