

[ATTORNEY NAME & Address, including State Bar No.]

Attorney for Minor and Appellant,

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

[FIRST] APPELLATE DISTRICT,

[DIVISION ]

In re [MINOR],

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff and Respondent,

v.

[MINOR] ,

Defendant and Appellant.

Appeal No. [ ]

(Superior Court No. [ ])

**MOTION FOR JUDICIAL NOTICE UNDER EVIDENCE CODE  
SECTIONS 452, 454, AND 459; MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION IN SUPPORT**

Appellant hereby requests, pursuant to section 459, section 453 and subdivisions (c), (g) and (h) of section 452, of the California Evidence Code, that this court take judicial notice of the reports attached to this motion. The reports are, as discussed in the attached Memorandum, official acts of the executive branch of the state government,

and/or reports the accuracy of which has been admitted by the Attorney General on November 16, 2004. Thus, the information in these documents is not reasonably subject to dispute.

The documents submitted with this application all concern the state of conditions existing at the California Youth Authority at the time the juvenile court committed the minor to that institution, and which still are prevalent there. Consideration of this extrinsic evidence is central to this court's decision on the primary issue in this case, whether the juvenile court abused its discretion when it committed the minor to the Youth Authority because conditions existing there, which were a matter of public record and media scrutiny, precluded any finding of probable benefit to the minor from the commitment under Welfare and Institutions Code section 734.

The reports are as follows:

- [1. Review of the Intensive Treatment Program by the Office of the Inspector General of the State of California;
2. Management Review Audit by the Office of the Inspector General of the State of California;
3. Report and Findings of Mental Health and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities by Drs. Eric Trupin and Raymond Patterson;
4. Education Program Review of California Youth Authority by Drs. Thomas O'Rourke and Robert Gordon;



## POINT AND AUTHORITIES

### I. THE COURT OF APPEAL MUST TAKE JUDICIAL NOTICE AS REQUESTED.

#### A. General Principles Of Judicial Notice

Judicial notice may be taken of “official acts of the . . . executive . . . department . . . of any state.” (Cal. Evid. Code § 452, subd. (c).) Judicial notice may also be taken of “facts . . . that are not reasonably the subject of dispute.” (*Id.*, subds. (g) and (h).) Judicial notice of such facts are mandatory upon request where the opposing party is permitted to raise objections and the court has enough information about the facts in order to make a determination that they come within a category subject to proper judicial notice. (Cal. Evid. Code § 453.) A reviewing court is permitted to judicially notice facts in the same manner as a trial court. (Cal. Evid. Code § 459.)

“Judicial notice is the recognition and acceptance by the court, for use . . . by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (2 Jefferson, Cal. Evidence Benchbook, [(3d ed. 1997) Judicial Notice,] § 47.1, at pp. 1064-1065.)” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th 875, 882; Evid. Code § 454.) “The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is not reasonably subject to dispute.” (*Lockley v. Law Office of Cantrell, Green, et al.*, *supra*, 91 Cal.App.4th at p.882; Evid. Code § 452, subd. (h).)

#### B. The Reports

Here, there can be no doubt that the reports by Drs. Trupin, O'Rourke and Krisberg are not reasonably subject to dispute. In addition to the fact that the reports were done at the Attorney General's and the Youth Authorities requests, on November 16, 2004, both the Director of the California Youth Authority and the Attorney General signed a Consent Decree settling a lawsuit challenging the appropriateness of the care and services provided at the Youth Authority. (See Attached Consent Decree, p. 22.) In that document, both parties acknowledged that "[t]he experts were selected jointly by the parties and compensated by the CYA." (Consent Decree, p. 2, line 9.) Further, the parties "agree[d] that the facts and opinions contained in the Reports are substantially correct." (*Id.*, lines 20-21.) Because the reports prepared for the Youth Authority law suit have been publicly acknowledged by the Attorney General as accurate, they cannot be subject to dispute here.

Further, because the Inspector General's reports were prepared as an official act of the executive branch of the government, they must be judicially noticed. (See, e.g., *People v. Crusilla* (1999) 77 Cal.App.4th 141, 147 [Court of Appeal took judicial notice as requested by the Attorney General of the truth of the contents of a publication from that office establishing state jurisdiction over the property on which the defendant was arrested]; *Department of Mental Hygiene v. Rosse* (1960) 187 Cal.App.2d 283, 287 [the trial court properly took judicial notice of the truth of the contents of a patient's account, submitted by the state in an action to recover costs from the parents of a person housed in a state hospital]; *Wilson v. Loew's* (1956) 142 Cal.App.2d 183, 188 [judicial notice by the

Court of Appeal of the truth of the content of the proceedings of the House Committee on Un-American Activities; incorporation of the facts into the complaint for the purpose of ruling on a demurrer].) Further, where, as here, the contents of the Inspector General's reports are corroborated by the Trupin, O'Rourke and Krisberg reports, they are not reasonably subject to dispute.

This court also can judicially notice the content of the reports. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 219.) In *Giles*, a case involving a suit brought to stop use of public monies for services provided through private contractors, the defendants asked the reviewing court to take judicial notice of "the fact that . . . the [chief administrative officer] for the County *made a finding* that contracting out the case management functions for the CalWORKS project to those entities was more economical and efficient than to have those services provided by civil service employees. (*Ibid.*, emphasis added.) The expert reports in this case are offered for the same reason as in *Giles*, that is, to ask this court to consider the findings in these reports as they are relevant to the resolution of this appeal: did the juvenile court abuse its discretion in finding that the minor would probably benefit from a commitment to the Youth Authority despite the well-substantiated inadequacies of that institution's performance.

This court can consider the reports even though they did not exist at the time the juvenile court made its commitment order. The "high level of political turmoil and controversy which this [complaint and subsequent reports] has generated" is a sufficient basis to grant judicial review. (*Powell v. Superior Court* (1991) 232 Cal.App.3d 785,

790.) *Powell* involved defendants's request for a change of venue. The *Powell* defendants were police officers accused of police brutality which had been independently videotaped and broadcast on television. The appellate court found it could take judicial notice of "continuing and pervasive" news media coverage of "the ongoing political controversy" irrespective of that fact that it had not been considered by the lower court and "occurred subsequent to the ruling of that court." (*Id.* at fn.2, citing *People v. Jurado* (1981) 115 Cal.App.3d 470, 482.)

Similarly here, at the time the court made its ruling, the complaint was a matter of public record and had generated enough controversy that this state's Attorney General commissioned the reports at issue here, and the issue continues to generate news media coverage (see, e.g., Sebastian, *Moratorium urged for CYA - S.F. Public Defender says 'it's a criminal training ground,'* S.F. Chronicle (Feb. 10, 2004) p. A-17 and Kim, *San Mateo County Boycotts Youth Authority*, S.F. Chronicle (Feb. 13, 2004) p. 27-A.)

### **C. The Farrell Complaint**

This court can judicially notice the complaint filed in the lawsuit of *Farrell v. Harper*. A complaint is a proper subject of judicial notice, particularly if pertinent to an issue raised in an appeal. (*People v. Hayes* (1990) 52 Cal.3d 577, 611, fn. 3; Evid. Code, § 452, subd.(d).) In *Hayes* the issue was whether prosecutorial misconduct occurred when defense counsel marked for identification an original, rather than an amended, complaint. The amended complaint showed the prosecution witness had been charged with an additional felony petty theft charge which could have been used for impeachment,

elevated from a misdemeanor offense on the original complaint. On appeal the court granted defendant's request for judicial notice, noting the amended complaint was a proper subject of judicial notice and was "pertinent to an issue raised on appeal," even if not part of the appellate record. (*Id.*, at p. 611, fn. 3.)

### CONCLUSION

Therefore, this court must, after expiration of opposing counsel's opportunity to respond under rule 41(a)(3) of the California Rules of Court, grant appellant's motion to judicially notice the attached materials.

DATED: [            ]

Respectfully submitted,

By: \_\_\_\_\_  
[            ]

## DECLARATION OF COUNSEL

1. I am an attorney in good standing licensed to practice before the courts of this state;
2. I have been appointed to represent appellant in this appeal;
3. The attached reports from the Office of the Inspector General are true copies of documents available from that office's web site (<http://www.cdpac.ca.gov/reports.asp>);
4. The attached reports from Drs. Trupin and Patterson, O'Rourke and Gordon, and Krisberg are true copies of documents available on the website of the Prison Law Office (<http://www.prisonlaw.com/events.php>);
5. The attached Consent Decree is a true and correct copy of the Consent Decree available on the website of the Prison Law Office (<http://www.prisonlaw.com/events.php>);
6. I personally downloaded these documents on [                    ];
7. The Consent Decree has been published to the press, and Governor Schwarzenegger's comments on its validity have been broadcast to the public (KQED's Morning Edition news program, November 17, 2004);
8. I personally heard this news broadcast as it was aired.

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_<sup>th</sup> day of \_\_\_\_\_ at \_\_\_\_\_, California.

\_\_\_\_\_  
[       ]