

Juvenile Law Newsletter
Spring 2007

Elections for New Officers to be Held on May 10, 2007

The CBA Juvenile Law Section will elect our new officers, Chair-elect for the 2008-2009 term and Secretary for the 2007-2008 term, on May 10, 2007 at noon at the CBA CLE Offices, 1900 Grant Street, Suite 300, Denver, CO 80203-4303. At that time, we will welcome **Linda Weinerman**, Chair-elect for the 2007-2008 term, who will officially take office on July 1, 2007.

At this time, we are soliciting nominations for the positions of Chair-elect and Secretary. Please consider submitting your name or the name of a respected colleague for one of these important positions. **The deadline for submitting nominations is Wednesday, March 28th, 2007.** We will then send out an announcement, no later than April 1st, 2007 of the nominees for your consideration.

Although we do not vote on the other important people that make up the Executive Council, we would like to solicit your suggestions for and/or volunteers to head the following subcommittees: Legislative, Membership, Newsletter, and Program. The heads of each of these subcommittees, along with the officers, make up the Executive Council for the section.

The CBA Juvenile Law Section presently has around 200 members and has become a very active and vibrant section. We are currently planning to participate in the NACC Annual Convention in Keystone this August and have many other important activities in the planning stage. Please consider becoming an active leader in your section.

Please contact me to volunteer or submit a nomination by **March 28, 2007** at sthiebault@co.clear-creek.co.us, by phone at (303) 679-2432, or by fax at (303) 679-2444.

Juvenile Law Section Schedule of Future Events

May 10, 2007 – Luncheon meeting at the **CBA CLE Office** to elect new officers for the 2007-2008 year and plan future events and meetings. This noon meeting will take place during the lunch break of the full-day CLE on “Juvenile Law Basics: D&N and Delinquency”. **You do not need to attend the CLE to attend the meeting.**

May 10, 2007 – CBA CLE and the **Juvenile Law Section** present a full-day CLE on “**Juvenile Law Basics: D&N and Delinquency**” at the CBA CLE Offices in Denver, CO. 7 general CLE credits have been applied for. For more information, go to <http://www.cobar.org/calendar/eventdetail.cfm?EventID=JV051007L> or call (303) 860-0608.

Please put these dates on your calendars now and send in your RSVPs when you get the meeting notices from Erica Driver.

Other Events of Interest – Many of these conferences offer special discounts for Juvenile Law Section Members – Be sure to ask when registering for an event

March 21, 2007 - The **Denver Department of Human Services** will sponsor a free CLE on Contempt at the Denver Juvenile Court from noon to 1:30 p.m. Contact Barbara Bosley, Family Court Facilitator at Barbara.bosley@judicial.state.co.us or by phone at (720) 865-8236.

March 22, 2007 – Free 90-Minute Workshop at the **ABA’s Equal Justice Conference** in Denver, Thursday, March 22 from 9:45 to 11:15 a.m., Hyatt Regency at Colorado Convention Center, Mineral Hall A, 3rd Level. This is an invitation to Denver area legal advocates for youth to attend a workshop planned by the ABA Commission of Youth at Rick and the ABA Center on Children and the Law’s National Child Welfare Resource Center on Legal and Judicial Issues.

May 21-25, 2007 - The **National Institute for Trial Advocacy (NITA)** will present its **Annual Child Advocacy Training Program** May 21-25 in Louisville, CO. Registration and full program detail online at: www.nita.org, or call (800) 225-6482 to register by phone.

April 12, 2007 – The **Children’s Law Center** trains and supports private attorneys to work with maltreated children and their families. The quarterly training this spring will be held on April 12, 2007, from 11:30 a.m. until 5:00 p.m. at Brownstein Hyatt Farber & Shreck, 419 Seventeenth Street, Twenty Second Floor, Denver, CO 80202. 6 hours of CLE credits available, including 1.2 hours in ethics. There is no cost for this training in exchange for taking at least one case. RSVP to Melissa Parent (303) 692-1163 or pmelissa@law.du.edu.

April 24, 2007 – **Denver CASA** and **Colorado CASA** free breakfast event – **The Light of Hope Breakfast**, Tuesday, April 24th 2007, from 7:30 a.m. to 8:30 a.m. (registration begins at 7:00 a.m.) at Denver Marriott City Center, 1701 California Street, Denver, CO. There will be a special performance by **Rocky Mountain Children’s Choir**. The breakfast is free, but you must send in your RSVP to Colorado CASA at 303 623-5380 or Suzanne Fasing at Suzanne.Fasing@ci.denver.co.us.

April 27, 2007 – **CBA CLE** presents “**CFI’s and CLR’s – Advanced Family Law Update**” at the CBA CLE Offices in Denver, CO. 6 general CLE credits including 2 ethics. For more information go to www.cobar.org/cle or call (303) 860-0608.

August 15-18, 2007 - The NACC will hold its **30th National Children's Law Conference** in Keystone August 15-18. This is the NACC's annual national training which has not been held in Colorado since 1993. Please mark your calendars. Group registration discounts are available. Download the save-the-date flyer and the presentation abstract form at: <http://www.naccchildlaw.org/training/conference.html>.

Fundraisers Needed

The Juvenile Law Section will host a reception on August 15, 2007, following the first day of the NACC Conference in Keystone, Colorado. The NACC has not hosted a convention in Colorado for the past 13 years and we would like for the section to welcome this national organization in their home state. It will be an excellent opportunity for us to meet and greet professionals from other states who are dedicated to this field of law, as well as professionals from our own state. The funds needed to put on a wonderful reception for the 400 attendees will be raised by our individual members and will not come from our very limited budget. If you would enjoy raising funds for this important event, please contact me at sthibault@co.clear-creek.co.us.

Kudos, Kudos!!

Andrew "Drew" C. Gorgey, Chief Deputy County Attorney for El Paso County, has been nominated as Senior Vice-President of the Colorado Bar Association by the Nominating Committee for the 2007-2008 year. Drew has been very active in promoting the professionalism of juvenile law attorneys and is very active with the Colorado County Child Welfare Association.

Juvenile Law Website

We are continuing to updating the website to include previous newsletters, scheduled events, contact information, and important links. Go to the CBA website at www.cobar.org and click on "Sections/Committees" found at the left of the screen in a menu box, then scroll down and click on "Juvenile Law Section." You can now find back issues of the Newsletters from Summer 2006 through this issue, as well as the 2006 Case Law Summary that was presented on 1/23/07, the Summary of 2007 Bills involving Juveniles, and brochures on scheduled seminars.

Colorado Lawyer – Juvenile Law Articles and Other Articles of Interest

"The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", written by Joe Pickard, **January 2007** edition, at page 33.

Bar News Highlight on Michelle Adams, Executive Director of CASA – A Powerful Voice in the Legal System, written by Michael A Shea, **January 2007**, at page 10.

“The Basics on Juveniles in Probate Court for Protective Proceedings”, written by Fred Rogers, **February 2007** edition, at page 15.

“Ensuring Effective Representation of Parents in Dependency and Neglect Cases”, written by Clare Huntington, **March 2007** edition, at page 37.

Look for a special issue of the Colorado Lawyer featuring all Juvenile Law articles in October 2007. Barbara Shaklee and Linda Weinerman are co-editors of the Juvenile Law Column for the Colorado Lawyer.

Case Law Update

The Section hosted a **2006 Case Law Update** on January 23, 2007. Materials from that meeting can be found online at:

<http://www.cobar.org/group/display.cfm?GenID=9917&EntityID=JUV>

No. 05SC593. Flakes v. People.

___ P. 3d ___, 2007 WL 570414, Colo., February 26, 2007

<http://www.cobar.org/opinions/opinion.cfm?OpinionID=6017&CourtID=2>

CRS § 19-2-517—Children’s Code—Direct File Statute—Sentencing.

Flakes, a juvenile, was charged as an adult with four counts of first-degree murder and two counts of accessory to murder after the fact, pursuant to CRS § 19-2-517, the direct file statute within the Children’s Code. The direct file statute authorizes a prosecutor to charge a juvenile as an adult by filing certain enumerated charges directly in district court. The statute allows the direct filing of enumerated charges, such as murder, but not unenumerated charges, such as accessory to murder.

The accessory to murder charges were brought under the judicially created doctrine of ancillary jurisdiction. Flakes was convicted of the accessory to murder charges and the lesser-included offense of criminally negligent homicide, but not first-degree murder. He was sentenced as an adult.

The Colorado Supreme Court holds that the sentencing provisions of the direct file statute limit mandatory adult sentences to enumerated offenses. However, where a juvenile is guilty of unenumerated offenses, the district court may, at its discretion, sentence a juvenile as a juvenile pursuant to its ancillary jurisdiction. The Court also holds that before imposing an adult sentence for unenumerated offenses, the trial court must make findings similar to those of a court conducting a transfer hearing. Once a district court has decided how to sentence the juvenile, it must impose that sentence in accordance with the relevant statutory provisions.

Flakes raises constitutional challenges premised on his claim that the direct file statute mandates an adult sentence for unenumerated charges, which the Court rejects. Accordingly, the Court holds the statute is constitutional. Finally, because the record was unclear whether the district court exercised its discretion, and because the district court did not make adequate findings before imposing an adult sentence, the Court reverses the judgment of the Colorado Court of Appeals and remands the case for resentencing.

No. 06CA1808. People in the Interest of D.P., a Child, and Concerning T.N. and T.P., Announced March 8, 2007

Termination of Parental Rights – Reasonable Efforts

The crux of mother’s argument is that the department did not make reasonable efforts to implement the treatment plan. Specifically, she asserts that even though the department was aware of her long-term mental illness and low functioning, it improperly left providing services up to other agencies. However, because it is a parent’s responsibility to secure compliance with and success of a treatment plan, he or she must bring any perceived deficiency in the department’s efforts to rehabilitate and reunite the family to the trial court’s attention. This may be done by filing a motion alleging that the department has not made reasonable efforts to assist the parent or by raising this issue at a review or other hearing before the trial court. Otherwise, the parent waives his or her right to raise the issue on appeal. Further, the respondent parent’s counsel must ensure that his or her steps to raise this issue in the trial court are included in the record on appeal.

Had mother made a timely complaint about whether the department was making reasonable efforts to rehabilitate the family, the merits of her complaint could have been investigated. If so, appropriate action could have been taken in a time manner sufficient to allow mother to complete the treatment plan. Simply stated, a parent cannot wait for months to alert the court to the issue of inadequate efforts to implement the plan.

The record does not show mother complained about the efforts made by the department to implement the plan between the date of the adoption of the treatment plan and the date of the termination hearing. If mother believed the department was not making reasonable efforts to implement the plan, she needed to bring that issue to the court’s attention before the termination hearing. The Court of Appeals held that Mother thus had waived this argument.

Legislation Update

A Summary of 2007 Bills, prepared by Toni Gray, Boulder County Attorney’s Office, is available on the Juvenile Law Section website, under the “Legislation” tab.

Summer Newsletter

The Summer Newsletter will go out by June 21, 2007. The deadline for submitting cases, articles and events is June 1, 2007. Please send any submission requests to me at sthibault@co.clear-creek.co.us, or call me at (303) 679-2432 (phone) or by fax at (303) 679-2444.