

CONGRATULATION TO OUR NEW OFFICERS

At the Annual Election Meeting, held on May 10th, members of the Juvenile Law Section elected **Bonnie Saltzman** as Secretary for the July 1, 2007 to June 30, 2008 term and elected **Doris Waters** as Chair Elect for the July 1, 2008 to June 30, 2009 term. Congratulations to both Bonnie and Doris!

The section will formally welcome **Linda Weirnerman** as the incoming Chair at the next general meeting on July 11, 2007, from noon to 1:30 p.m. at the CBA Offices, 1900 Grant Street, Suite 900, Denver CO 80203. That meeting will be the planning meeting for the new fiscal year to schedule meetings, develop programs, and discuss ideas and activities for the section in the coming year. Linda will also be naming the members of the Executive Council. Please contact Linda directly at LindaWeirnerman@coloradochildrep.org if you are interested in working on the Legislative, Membership, Newsletter, or Program sub-committees. 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 the Juvenile Law Section this year.

JUVENILE LAW SECTION SCHEDULE OF FUTURE EVENTS

July 11, 2007 – JLS Planning meeting for the new fiscal year, from noon to 1:30 p.m., CBA Office, 1900 Grant Street, Suite 300, Denver CO 80203. Audio Conferencing will be available for those unable to be present.

August 15, 2007 – JLS will co-sponsor a reception from 5:00 to 6:00 with the National Association of Counsel for Children at the Keystone Conference Center following the first day of the 30th National Juvenile and Family Law Conference.

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

July 25, 2007 - The **Denver Juvenile Court** will offer a free CLE presentation at noon by Alicia Davis & Sheri Danz of SCAO on CO Legislative update. For more information, contact Barbara Bosley at (720) 865-8236.

July 23, 2007 – Youth at Risk Committee Meeting will be held from 1:00 -2:30 p.m. at the Division of Workforce Development in Denver, CO

August 10-12, 2007 – Bench & Bar Family Law Institute will be held at the Beaver Run Resort & Conference Center. For conference details, 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 co-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 the Juvenile Law Section would like 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 the field of juvenile 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 can help by raising funds for this important event, please contact Linda Weinerman at: LindaWeinerman@coloradochildrep.org.

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

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

People v. Ramirez, 155 P.3d 371, (Colo., March 26, 2007) (No. 06SC71)

<http://www.cobar.org/opinions/opinion.cfm?OpinionID=6060&CourtID=2>

Criminal Law—Expert Opinion Testimony—C.R.E. 401, 402, 403, 702, and 705—"Reasonable Medical Probability/Certainty"—Speculative Testimony. The Colorado Supreme Court overrules any cases that suggest that "reasonable medical probability" or "reasonable medical certainty" is the current standard for the admission of expert medical testimony. The Court confirms that the Colorado Rules of Evidence govern admissibility of expert opinion testimony.

Ramirez was convicted of one count of sexual assault on a child. During the trial, a nurse practitioner testified that she uses a four-point scale to label findings from sexual assault examinations, ranging between "normal" and "definitive." Her examination of the victim revealed a "suspicious" finding, which is the third point of the scale, adjacent to "definitive." She also explained why an earlier examination of the victim that was normal would not necessarily rule out sexual abuse. Ramirez argued on appeal, and the Colorado Court of Appeals agreed, that the testimony should not have been admitted by the trial court because the testimony was speculative and therefore not a competent basis for an expert opinion. Ramirez also argued that the testimony should not have been admitted because it was not based on a reasonable degree of medical certainty.

The Colorado Supreme Court determines that "reasonable medical probability/certainty" is an outdated standard that has been replaced by the Colorado Rules of Evidence. Further, the Colorado cases that used this standard were based in prior cases addressing sufficiency of evidence rather than admissibility of expert testimony. Applying the Colorado Rules of Evidence, the Court holds that the nurse's testimony was sufficiently reliable and useful to the jury to be admissible. In addition, the Court notes that the testimony was not speculative, even though it was not definitive and the nurse used the descriptive term "suspicious" to label the category for her finding. Inadmissible speculative testimony is opinion testimony that has no analytically sound basis. The nurse's testimony was based on her medical examination of the victim for signs of sexual assault, which is a reasonably reliable scientific principle.

People in the Interest of C.H., and Concerning M.J.S., ___ P.3d ___, 2007 WL 1704199, Colo.App., June 14, 2007 (No. 06CA1567)
<http://www.cobar.org/opinions/opinion.cfm?OpinionID=6185&CourtID=1>

Termination of Parent-Child Legal Relationship—Sufficiency of the Evidence—Effective Assistance of Counsel.

M.J.S. appeals from a judgment terminating the parent-child relationship between her and her child, C.H., based on insufficiency of the evidence. The case is remanded with directions

A trial court may terminate a parent-child legal relationship under CRS § 19-3-604(1)(c) and (3) if it finds the following facts have been proved by clear and convincing evidence: (1) the child has been adjudicated dependent or neglected; (2) an appropriate treatment plan, approved by the trial court, has not been complied with by the parent or has not been successful in rehabilitating the parent; (3) the parent is unfit; (4) the parent's conduct or condition is unlikely to change within a reasonable time; (5) there is no less drastic alternative to termination; and (6) termination is in the child's best interests. The Colorado Court of Appeals concludes that the record supports the trial court's findings as to all these factors.

M.J.S. also contends she did not receive effective assistance of counsel. The Court remands for an evidentiary hearing. To make such a claim, the parent must show that counsel's performance was outside the wide range of professionally competent assistance and the parent was prejudiced by counsel's errors.

M.J.S. contends that her therapist should have been called to testify as a witness. She asserts that her attorney simply failed to do so without making an informed strategic decision. She also asserts that the trial court would have reached a different decision if the therapist had been called. At the Court's request, M.J.S.'s appellate attorney submitted an offer of proof in support of this allegation. Because the allegation is specific and the proffered evidence, if true and credited by the trial court, could establish an ineffective assistance claim, the Court remands to the trial court to address the allegation in the first instance.

People in the Interest of M.A.M., ___ P.3d ___, 2007 WL 1704195, Colo. App., June 14, 2007 (No. 06CA1961)

<http://www.cobar.org/opinions/opinion.cfm?OpinionID=6186&CourtID=1>

Juvenile Delinquent—Prerequisites for Appellate Review—Petition for Review—Excusable Neglect—Inexcusable Neglect.

M.A.M. (juvenile) appeals the district court's order denying his untimely request for review of a magistrate's judgment adjudicating him delinquent. The order is reversed and the case is remanded for further proceedings.

A delinquency petition was filed alleging juvenile had committed acts that, if committed by an adult, would constitute the offenses of conspiracy and second-degree assault. Juvenile was advised of the right to a jury trial, but he did not exercise it. He also did not exercise his right under CRS § 19-1-108(3) to have the trial heard by a judge. The matter was tried before a magistrate, who found juvenile guilty and imposed sentence on September 8, 2005.

Juvenile's counsel did not file a petition for review in district court within fifteen days but instead filed a notice of appeal with the Colorado Court of Appeals. The Court issued a show cause order noting the absence of a petition for district court review. Juvenile's counsel asserted that, pursuant to C.R.M. 7(b), the filing of such a petition was not a prerequisite to appellate review because the matter had been tried before a magistrate with the consent of the parties. A division of the Court dismissed the appeal without prejudice.

Juvenile's counsel then filed a petition in district court seeking review of the magistrate's order. The district court issued a show cause order asking why the petition should not be dismissed with prejudice as untimely. The district court dismissed the petition with prejudice, finding juvenile had not demonstrated "good cause to reinstate the [p]etition for [r]eview."

On appeal, juvenile argues the district court did not adequately state the basis for its refusal to accept the untimely petition and, therefore, it is not possible to determine whether it acted within its discretion. The Court disagrees, finding that it is clear that the district court was not persuaded that counsel's misunderstanding of the law amounted to "good cause," justifying the acceptance of an untimely petition for review.

The Court considers whether counsel's inexcusable neglect constitutes good cause to consider juvenile's petition for review. The district court's order denying juvenile's petition as untimely does not indicate whether the court considered the *Estep* [*Estep v. People*, 753 P.2d 1241 Colo. 1988] and *Baker* [*People v. Baker*, 104 P.3d 893 (Colo. 2005)] factors, such as the potential prejudice the appellee may suffer from a late filing, the interests of judicial economy, and the propriety of requiring the defendant to pursue other remedies to redress his counsel's neglect. Because these require resolving factual issues, in particular how the late filing would prejudice the People, the Court remands for reconsideration.

People ex rel. J.A.S., --- P.3d ----, 2007 WL 64456 Colo.App., January 11, 2007 (06CA1441)

"[A]lthough mother was not advised of the tribes' determinations [that the children were not tribal members] until the termination hearing, additional time in which to ascertain the children's tribal membership would have been unavailing because the tribes' determinations were conclusive." Thus ICWA did not apply.

Background: The department of human services filed a petition to terminate mother and father's parental rights to their children. The Juvenile Court for the City and County of Denver, [Karen M. Ashby](#), J., terminated parental rights. Parents appealed.

Holdings: The Court of Appeals, [J. Jones](#), J., held that:

(1) the Indian Child Welfare Act (ICWA) did not apply to termination of

parental rights proceeding;

(2) evidence was sufficient to support finding that mother failed to substantially comply with her treatment plan;

(3) trial court error, if any, in admitting onto evidence father's Colorado Bureau of Investigation criminal history report (CBI report) was not reversible error; and

(4) evidence supported finding that the department made reasonable efforts to rehabilitate father.

Affirmed.

People ex rel. K.D., --- P.3d ----, 2007 WL 416335 Colo.App., February 08, 2007 (No. 06CA1916)

Termination of Parent-Child Legal Relationship – Indian Child Welfare Act – Active Efforts – Expert Witness – C.R.S. 19-3-604(1)(b) – Emotional Illness – Less Drastic Alternatives

Father appeals from the judgment terminating his parent-child legal relationship with his son. The Colorado Court of Appeals affirms the judgment.

Son was removed from his parents' care twice by the local Department of Human Services (DHS). After both removals, parents completed their treatment plans and son was returned to their care. Son was again removed from parents' care and DHS began dependency proceedings. Mother's rights eventually were terminated. Because father asserted that he is Native American, the Citizen Potawatomi Nation (CPN) was notified. The CPN did not object to the proceedings and requested that father not be offered another treatment plan. DHS filed a motion asserting that no appropriate treatment plan could be devised for father because he suffered from an emotional illness. DHS also sought termination of father's parental rights. Following a hearing, the trial court granted the motion.

The Court determines there is record support for the trial court's findings that "active efforts" were made to reunite the family as required by ICWA, and that it would have been futile to offer additional services to father. The Court also determines that the expert witness testimony concerning the negative effects of placing son back with father is sufficient to support the findings necessary under the ICWA to terminate parental rights.

The Court finds there is record support for the trial court's ruling that father had an emotional illness and termination was appropriate under C.R.S. 19-3-604(1)(b). Finally, the Court determines the evidence supports the trial court's findings that there were no less drastic alternatives to termination of parental rights and that termination was in son's best interests. Affirmed.

In re Adoption of K.L.L. ex rel. V.M.D., --- P.3d ----, 2007 WL 851640 Colo.App., March 22, 2007

This case is a warning to kin without a guardianship court order that if the parent wants custody of the child, the kin will probably not be able to adopt. If there is any question that a parent wants custody of a child and kin wish to oppose the parent and adopt the child, the kin need to obtain counsel. If there is no court order, this case indicates that the court will probably consider the guardianship a temporary one. By power of attorney a parent or legal guardian of a minor may delegate any power to another person by power of attorney for up to 12 months, except the power to consent to marriage or adoption. Section 15-14-105, C.R.S. Even if the power of attorney did not so state, it would expire after 12 months by this statute.

The Colorado Court of Appeals reversed the judgment of the trial court and vacated the decree of adoption and the order terminating parental rights. The Court held the petitioners in this case were not the child's legal guardians when they attempted to seek adoption because the initial six-month temporary guardianship had expired. The court entered an order expanding the temporary guardianship; however, this order was void due to lack of notice to the biological mother and father. The petitioners were also not the legal custodians of the child as there was no action divesting the parents of legal custody. The appeals court thus held that the petitioners lacked standing to seek adoption as the child's legal guardians and/or legal custodians. *Weekly Case Summary—National Center for Adoption Law and Policy*, 4/5/07

In re Estate of Morgan, --- P.3d ----, 2007 WL 686079 Colo.App., March 08, 2007

Guardianship-Authority of Court to Appoint Governmental Agency as Guardian

The El Paso County Department of Human Services (DHS) appeals the trial court order appointing it as permanent guardian for the minor ward. The court had appointed DHS to serve as Morgan's permanent guardian over its objection.

The Court of Appeals reviews the statutory scheme and determines that a court has the authority to appoint a governmental agency as a guardian even though it does not appear on the priority list in CRS 15-14-310(1)(a). Although the

statutory scheme contemplates the possibility a court can appoint DHS as a guardian for an incapacitated person, the scheme does not provide a basis for forcing DHSD to accept such an appointment over its objection. The Court determines that there is no indication the General Assembly intended to empower courts to order agencies like DHS to serve as guardians when there is no qualified person willing and able. Reversed.

*The Background and Holdings sections are from Westlaw.

**Thanks to Toni Gray, Assistant County attorney for Boulder County, for input.

***Some case summaries were taken from [The Colorado Lawyer](#).

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>

LEGISLATION UPDATE

The 2007 legislative session is over and many important bills affecting children were signed by Governor Ritter. The section will host a 2007 Legislative Update in the fall. Some important new legislation to be aware of include:

HB 1090 - Adoption of a Child By A Person Convicted of a Felony Offense

Allows a licensed child placement agency to check the background of someone applying to adopt a child. Sets certain conditions for which a previous felon may adopt.

SB 002 – Extending Medicaid Eligibility for Persons Who Are in the Foster Care System Immediately Prior to Emancipation

Expands Medicaid eligibility to those who are under 21 years of age and who were in the foster care system immediately prior to their 18th birthday or emancipation. The bill specifies that the funding source for this Medicaid expansion is the Health Care Expansion Fund.

SB 064 – Child Foster Care Adoption Task Force

Creates a Governor’s Task Force on Foster Care and Permanence to identify and recommend solutions to problems in the state’s foster care and adoption systems.

SB 226 – Concerning Necessary Changes to Statutes to Comply With Federal Law Regarding Placement of a Child Outside of the Home

Requires courts to consult with a juvenile in an age appropriate manner in all JD permanency hearings. Requires courts to consult with a child in an age appropriate manner in all D&N permanency hearings. Requires that notice of all hearings and reviews in both delinquency and dependency cases be given to placement providers, including: foster parents, per-adoptive parents, or relatives. Extends requirements for criminal background checks on prospective adoptive parents.

FALL NEWSLETTER

The Fall Newsletter will go out by September 21, 2007. The deadline for submitting cases, articles and events is September 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.