

RECENT MEETINGS AND EVENTS

On **March 12, 2009** the JLS and CBA-CLE co-hosted **Juvenile Law Hot Topics** at the CBA-CLE Classroom. The full-day CLE was very well attended and the CBA provided a reduced tuition to JLS members.

The most recent JLS meeting was also held on **March 12, 2009** at the CBA Office. Chairperson, **Doris Waters**, solicited nominations for new JLS officers for the 2009-2010 fiscal year. The election of new officers is scheduled to occur during the May 20, 2009 meeting.

SCHEDULE OF FUTURE JLS EVENTS

****All meetings for the remainder of the year will be held on the 3rd Wednesday of each odd numbered month, from noon to 1:30 p.m., at the Colorado Bar Association Office, 1900 Grant Street, 9th Floor, Denver, CO 80203.**

****All meetings are available by audio conference for members who are unable to make it to Denver for the meetings. Please put these dates on your calendar now and send in your RSVP when you get the meeting notice from Andrea Mueller.**

May 20, 2009 – Effective Visitation Decisions will be presented by **Diane Baird** from the Kempe Children's Center. In addition to the presentation, the JLS will hold its annual election to elect the Chair-elect for the 2010-2011 year and the Secretary for the 2009-2010 year. The meeting will be held from **noon to 1:30 p.m.**, at the **Colorado Bar Association Office, 1900 Grant Street, 9th Floor, Denver, CO 80203.**

July 15, 2009 – 2009 Legislative Update will be presented by **Bonnie Saltzman**, JLS Legislative Subcommittee Chair. In addition to the presentation, the in-coming Chair, Barbara Shaklee will schedule future meetings for the 2009-2010 year and solicit ideas for topics and speakers from the general membership. The meeting will be held from **noon to 1:30 p.m.**, at the **Colorado Bar Association Office, 1900 Grant Street, 9th Floor, Denver, CO 80203.**

ELECTIONS WILL BE HELD AT THE MAY 20, 2009 MEETING

Currently the following JLS members have been nominated for Officers:

Chair-elect:

Sheri Danz, Office of the Child's Representative
Magistrate Melanie A. Gilbert, Denver District Court
Bonnie E. Saltzman, Law Offices of Bonnie E. Saltzman, LLC

Secretary: (Unopposed)

Kris Ward, The Ward Law Firm, PC

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

May 1, 2009 – Gang Issues in Colorado will be presented from 10:00 to 12:00 p.m. in the Jury Assembly Room, Arapahoe County Justice Center, 7325 S. Potomac Street, Englewood, CO 80112. Recognizing indicia of gang membership is key to obtaining appropriate prevention and intervention services for youth, and an awareness of potential gang involvement can inform GAL's advocacy and recommendations. This presentation will provide an up to date overview of Colorado's current gang issues, Colorado's gang and indicia of membership in these gangs, and best practices for intervention and prevention. Mr. Lucero will also highlight available resources and developing initiatives for working with gang-involved youth in Colorado. For more information please visit <http://www.coloradochildrep.org/training/schedule>.

May 5-8, 2009 – 10th Annual Child Abuse & Family Violence Summit will be held in Portland, OR. For more information please visit www.childabusesummit.com.

May 18-22, 2009 – 14th Annual Rocky Mountain Child Advocacy Training Institute will be held in Louisville, CO. This is a five-day intensive professional trial skills training program for lawyers who represent the interests of children. Participants learn a variety of trial skills through lecture, demonstration, discussion, and participatory workshops. The majority of the training takes place in a simulated courtroom setting, where participants perform as trial lawyers. The training is presented by the National Association of Counsel for Children in conjunction with National Institute for Trial Advocacy and the Rocky Mountain Children's Law Center. For more information, please visit www.naccchildlaw.org.

May 28, 2009 – Fostering Connections to Success and Increasing Adoptions Act will be presented by **Sharen Ford** of the CDHS at the Denver Juvenile Court. Please contact Barbara Bosley, Family Court Facilitation for

more information. Barbara.bosley@judicial.state.co.us or Phone (720) 865 8236, Fax (720) 865-8270.

June 2-5, 2009 – 2nd Annual Colorado Summit on Children, Youth and Families will be presented at the Keystone, CO Conference Center. On Tuesday June 2nd, there will be the Best Practices Teams Annual Forum. Beginning on Wednesday, June 3rd, will be **A Collaborative Conference on Safety, Permanency and Well-being**. For more information, please visit <http://www.cosummit.com>.

August 19-22, 2009 – NACC 32nd National Juvenile and Family Law Conference will be held in Brooklyn, NY. For more information, please visit www.naccchildlaw.org.

LEGISLATIVE SUBCOMMITTEE REPORT

Bonnie Saltzman, JLS Legislative Subcommittee Chair, reports on the status of bills (as of April 15, 2009) that the JLS has been following:

HB 09-1007 - Improving Child Protection Efforts by Adding DV Experts to Interagency Oversight Groups in Collaborative Mgmt Programs - Governor signed 3/20/09 – JLS took no position on this bill

HB 09-09-1044 – Expungement of Records Relating to Criminal Matter for which Juvenile is Sentenced as a Juvenile after being Charged by the Direct Filing of Charges in District Court – Governor signed 3/18/09 – JLS supported this bill

HB 09-1078 – Training for Foster Parents in Regard to IEPs – Governor signed 3/19/09 – JLS supported this bill

HB09-1122 – Increases the Age of Persons Eligible for Sentencing to the Youthful Offender System – Governor signed 4/2/09 – JLS supported this bill

HB 09-1125 – Limitations on the Incentives of Local Educational Providers may Provide for Participation in Public Education Programs – Sent to Governor 4/6/09 – JLS took no position on this bill

HB 09-1225 – Risk Assessments of Students Applying for Admission to a Public School Who Have a Potential Risk of Harm to Themselves or Others – Postponed Indefinitely – JLS opposed this bill

HB 09-1286 – Repeal and Reenactment of Uniform Parentage Act – Postponed Indefinitely – JLS to participate with summer task force to redraft bill – JLS opposed bill

HB 09-1306 – Concerning Protection of Youth in Juvenile Facilities in DHS - Postponed Indefinitely – JLS did not review bill for position prior to postponement

HB 09-1314 – Safety in Day Treatment Centers – Postponed Indefinitely – JLS was seeking additional information when bill was postponed

HB 09-1321 – Placement of a Juvenile Who is Awaiting Trial in District Court – Sent to Appropriation on 4/13/09 – JLS supports as amended

SB 09-011 – Creation of the Behavioral Health Commission for the Purpose of Guiding the Development of an Integrated Behavioral Health System in Colorado, and, in Connection therewith, Requiring a Post-enactment Review of the Implementation of this Act – Postponed Indefinitely – JLS took no position on this bill

SB 09-030 – Concerning the “Child Mental Health Treatment Act” – Sent to Governor 4/14/09 – JLS took no position on this bill

SB 09-048 – Financial Audit for the Office of Children’s Representative – Sent to Governor 4/7/09 – JLS took no position on this bill

SB 09-058 – Immunity for Attorneys Contracting with State Judicial Department Agencies to Provide Statutorily Mandated Services – Postponed Indefinitely – Sponsor pulled bill to redraft as a result of CTLA and ADC negotiations – JLS supports this bill

SB 09-079 – Improving Well-Being of Children in Foster Care by Improving the Ability of Birth Siblings to Maintain Long-Term Connections – Signed by Governor 3/25/09 – JLS supported bill, as amended in Committee

SB 09-104 – Concerning the Provision of Verifiable Documents to Youth Leaving Foster Care – Passed out of Senate, In House Appropriations 4/24/09 – JLS supports this bill with requested amendments

SB 09-164 – Requiring Certain Persons Serving in the State Child Welfare to Demonstrate the Necessary Competencies to Perform their Job Responsibilities – 4/15/09 referred to Senate as a whole from Appropriations – JLS did not reach a consensus on this bill and therefore took no position

SB 09-264 – Concerning Changes to Conform to Portions of Federal Public Law 110-351 Relating to Kinship – Laid over for 3rd reading in Senate – JLS supports this bill with requested amendments

SB 09-268 – Clarifying the Appointment of State-Paid Professionals in Cases Involving Children – 4/15/09 passed House 2nd reading – JLS took no position on this bill

These bills were selected by Bonnie E. Saltzman, as the JLS Legislative Subcommittee Chair. There may be other bills that may be relevant which have not been identified here. Please contact Bonnie at 303-333-3554 or Saltzmanlaw@aol.com to notify her of additional bills that should be followed. This summary is provided as information only. To check updated and current status of bills go to: <http://www.leg.state.co.us>.

JUVENILE LAW SECTION EXECUTIVE COUNCIL REPORTS

The JLS **Executive Council** has been holding a conference call meeting each Tuesday morning at 7:30 a.m. to discuss pending legislation and discuss whether the JLS should advise the Colorado Bar Association Legislative Policy Committee that it wishes to take a position either supporting or opposing a bill. The Executive Council would like to hear from members of the JLS concerning pending and/or proposed legislation. To convey your thoughts, concerns, support or opposition regarding particular legislation, please contact a council member by Monday prior to the next scheduled meeting. The Executive Council members are:

Doris Waters (303) 988-9100; doris@dwaterslaw.com

Amity Strauss (303) 431-0807 jsamity@aol.com

Sue Thibault (303) 679-2432 sthibault@co.clear-creek.co.us

Bonnie Saltzman (303) 333-3554 SaltzmanLaw@aol.com

Kris Ward (303) 275-7145 Kris@wardlawfirmpc.com

Barbara Shaklee (720) 944-2965 Barbara.Shaklee@denvergov.org

Linda Weirnerman (303) 860-1517 ext. 3 lindaweirnerman@coloradochildrep.org

Magistrate Gail Meinster (303) 888-6696 ann.meinster@Judicial.state.co.us

The Executive Council meets between 11:30 and noon before each scheduled meeting of the section.

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

The **October 2008** issue of *The Colorado Lawyer* is a Special Issue devoted entirely to **Family Law**. It contains articles relevant to juvenile law such as adoption and juvenile delinquency. By reading all of the articles, taking the self-tests, and mailing in the “affidavit of accreditation”, you can get seven CLE credits (including one ethics credit). Please see the instructions for obtaining CLE credit found on page 15 of the October issue. Credit for reading the October 2008 articles will be granted for two years (through October 31, 2010).

The **November 2008** issue of *The Colorado Lawyer* has two articles of interest: “Parental Financial Liability for Juvenile Delinquents”, by Daniel S. Foster and Nicole M. Mundt, found on page 49, and “The Expanded Jurisdiction of the Probate Court Under *In re J.C.T.*”, by Paula Constantakis Young, found on page 83.

The **January 2009** issue of *The Colorado Lawyer* has two articles of interest: “Postsecondary Education Expenses After Chalcat: Paying College Expenses After Divorce”, by Robin Lutz Beattie and Amy Hedges Shaw, found on page 19, and “An Overview of Special Education Law – Part I” by Theresa Sidebotham, found on page 25.

The **March 2009** issue of *The Colorado Lawyer* has “An Overview of Special Education Law – Part I” by Theresa Sidebotham, found on page 59.

**Barbara Shaklee, Chair-elect of the JLS, and Linda Weinerman, past Chair of the JLS are Co-editors of the Juvenile Law articles that appear in *The Colorado Lawyer*. For information about submitting articles please contact Barbara Shaklee at (720) 944-2965 or barbara.shaklee@dhs.co.denver.cu.us or Linda Weinerman at (303) 860-1517 or lindaweinerman@coloradochildrep.org.

CASE LAW UPDATE

*** Please note, Colorado Court of Appeal Summaries and links to the full opinions for are also available online by going to <http://www.cobar.org/opinions/index.cfm?CourtID=1> and clicking the appropriate case date ***

The Court of Appeals summaries are written for the Colorado Bar Association by licensed attorneys Teresa Wilkins (Denver) and Paul Sachs (Steamboat Springs). Please note that the summaries of Opinions of the Colorado Court of Appeals are provided as a service by the Colorado Bar Association and are not the official language of the Court. The Colorado Bar Association cannot guarantee the accuracy or completeness of the summaries.

No. 07CA2109. *In re the Parental Responsibilities of M.J.K.*, ___ P.3d ___ (Colo. App., November 13, 2008).

Guardianship—Termination—Best Interests—Endangerment—Parental Responsibilities—Notice—Consent—Due Process—Child and Family Investigator.

Pursuant to uncontested orders, grandmother received guardianship of M.J.K. and R.A.K. and decision-making responsibility and primary residential care of M.K.D. and Z.D.D. The children had been in grandmother's care since 2003. In December 2005, mother filed a motion for modification requesting that primary residential care and sole decision-making responsibility be returned to her. In June 2007, mother filed petitions to terminate the guardianships. Following an evidentiary hearing, the court denied mother's petitions and her motion to modify. Finding that the best interests of the children would be served by "preserving the stability the children have known for years," the court determined that grandmother should remain the primary residential caretaker with sole decision-making authority.

On appeal, mother argued that the original order allocating parental responsibilities is void and not binding on her because she did not receive proper notice of the proceedings leading to it. The Court of Appeals disagreed. It is undisputed that mother joined in the petition as co-petitioner and thus knew of and sought the same relief requested by grandmother. Hence, she consented to the allocation of parental responsibilities entered by the court and abided by it without any previous challenge. In these circumstances, any such due process violation has been waived.

Mother also argued that the trial court erred by applying the best interests and endangerment standards without according her the parental preference required under the Due Process Clause arising from her fundamental rights as a biological parent. The Court of Appeals held that where a parent's role as day-to-day caregiver of a minor is relinquished through contested or uncontested judicial proceedings and with no indication by the court that the relinquishment was intended to be temporary, the parent has enjoyed and exercised his or her fundamental rights. It further held that subsequent application of the statutory standards for terminating guardianships or modifying allocations of parental responsibility, which standards certainly allow a court to consider the relationship between the biological parent and the child, does not violate the parent's constitutional rights. Here, the trial court clearly considered the nature of the agreement between mother and grandmother and correctly applied the best interests analysis in light of the evidence presented.

The Court also rejected mother's contention that the trial court erred by relying on the recommendations of the child and family investigator. Mother argued that the CFI was biased and based his recommendations largely on hearsay and

information not in evidence at hearing, and that the CFI did not give her the benefit of the parental presumption in forming his recommendations. However, the record reflects that the CFI maintained his objectivity as required, and any information he shared with the parties was properly used to encourage them to settle their differences. For these reasons, the trial court did not abuse its discretion by relying on the CFI and his recommendations. The order was affirmed.

No. 05CA2591. *People v. Rodriguez*, ___ P.3d ___ (Colo. App., December 11, 2008).

Sexual Abuse of Children—Presence at Trial—CRS § 16-10-402—C.R.E. 403—Expert Witness Testimony.

Defendant facilitated her husband's abuse of their youngest daughter, M.R., as well as M.H., defendant's son from a previous relationship, by bringing the children to him to be sexually abused. At trial, defendant asserted that she acted under duress as a result of husband's extreme emotional, physical, and sexual abuse perpetrated against her. The jury found defendant guilty of the twenty-four counts charged against her. After merging several of those convictions, the trial court sentenced defendant to an aggregate term of 118 years to life imprisonment.

On appeal, defendant argued that the trial court violated her rights to be present at trial and to confront adverse witnesses as a result of the procedure it used to obtain the testimony of M.R. The Court of Appeals concluded that reversal was not warranted. CRS §16-10-402 authorizes the use of a closed-circuit television procedure at trial to obtain the live testimony of a sex assault victim who is less than 12 years old, when "the testimony by the witness in the courtroom and in the presence of the defendant would result in the witness suffering serious emotional distress or trauma such that the witness would not be able to reasonably communicate." Here, M.R. testified in open court, defendant watched M.R. testify via closed-circuit television, and the trial was suspended periodically to allow defendant's counsel to consult with defendant about M.R.'s testimony. Although defendant was removed from the courtroom, instead of the witness and counsel as required by the statute, the error was harmless. The statute also requires that the defendant be allowed to communicate by an appropriate electronic method with defense counsel during the testimony; however, the record reflects that there was no reasonable possibility that any error contributed to defendant's conviction.

Defendant also contended that the trial court denied her constitutional right to present a defense by erroneously excluding evidence that, during her husband's prior marriage, husband had severely physically and sexually abused his family members. The Court disagreed. Defendant waived any claim of error by failing to call the other daughter and first wife as witnesses. Additionally, the former wife's

testimony would have been largely cumulative of the matters testified to by defendant and was excludable under C.R.E. 403.

The Court rejected defendant's argument that the trial court improperly excluded expert witness testimony. The trial court properly excluded the testimony on the following grounds: (1) the question was outside the scope of the prosecutor's cross-examination; (2) the expert had not been shown to be aware of the specific facts of the case; and (3) any opinion by the expert in this area had not properly been disclosed to the prosecution. The judgments of conviction were affirmed.

No. 08CA1219. *People In the Interest of O.R.*, ___ P.3d ___, (Colo. App., December 24, 2008)
Juvenile Delinquency—"Concealed" Firearm.

A police officer responded to a report of a man with a gun possibly trying to sell it on the streets. The officer located O.R., who fit the description of the suspect, and chased him on foot. The officer could see "[a] silver object which appeared to be a handgun in [O.R.'s] left rear pocket." The officer could see the "end of a pistol" and never lost sight of it until O.R. threw the gun away. The officer then arrested O.R.

The juvenile court determined that to be "concealed" for purposes of CRS § 18-12-105(1)(b), a firearm need not be completely concealed, but that it is sufficient if it was partially obstructed. On appeal, the Court of Appeals looked to the dictionary definition of "concealed." The definition is consistent with the prosecution's assertion that the test is "whether a weapon is so carried as not to be discernible by ordinary observation." In this case, the juvenile court did not find that the gun was placed out of sight so as not to be discernible by ordinary observation. The Court found that the juvenile court erred in determining that a partially concealed—but readily discernible—firearm is "concealed" for purposes of § 18-12-105(1)(b). In addition, the evidence presented was insufficient to prove beyond a reasonable doubt that O.R. carried, or even attempted to carry, a concealed firearm. The juvenile court's decision was reversed, and the case was remanded with directions to dismiss the delinquency petition.

No. 08CA0885. *People v. Boston*, ___ P.3d ___, (Colo. App., March 5, 2009).
Sexual Assault on a Child by One in a Position of Trust—Statute of Limitations—Rule of Lenity.

The victim alleged defendant sexually assaulted her numerous times between January 1, 1987 and December 31, 1992, but did not report the incidents to the police until June 19, 2007. On November 7, 2007, the People charged defendant with sexual assault on a child by one in a position of trust and incest.

Defendant filed a motion to dismiss, arguing that the prosecution was barred by the statute of limitations. The People stated that the victim's birthday was October 21, 1980, and the statute of limitations contained in House Bill (H.B.) 02-1396 permitted the charge of sexual assault on a child by one in a position of trust to be brought within ten years after the victim's 18th birthday. Defendant argued that the effective date of H.B. 02-1396 provides that it applies to offenses committed on or after the effective date of the bill (June 3, 2002), which conflicts with the date contained within the substantive amendments extending the statute of limitations for ten years after the victim's 18th birthday for offenses committed on or after July 1, 1992; therefore, the rule of lenity should be applied to bar the prosecution. The district court agreed with defendant and dismissed the charges. The same argument was made on appeal.

In H.B. 02-1396, the legislature amended CRS § 18-3-411(2) and the general statute of limitations, CRS § 16-5-401. The effective date clause stated that the act "shall take effect upon passage, and shall apply to offenses committed on or after said date." The safety date clause stated, "The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation for the public peace, health, and safety." The Colorado Constitution, Article V, § 19, provides that an act takes effect on the date stated in the act. The safety clause is designed to immunize an act from attack through the referendum process. Thus, an effective date clause in conjunction with a safety clause allows a bill adopted by the General Assembly and approved by the governor to take effect prior to ninety days following the final adjournment of the session. The Court of Appeals held that the effective date clause did not conflict with the substantive amendments extending the statute of limitations for ten years after the victim's 18th birthday for offenses committed on or after July 1, 1992, and that the rule of lenity is inapplicable. The order was reversed.

No. 07CA2169. *In the Matter of the Petition of J.A.V.*, ___ P.3d ___ (Colo. App., March 5, 2009).

Stepparent Adoption—Abandonment—Parental Responsibilities.

Father appealed from the district court's order granting J.A.V.'s petition for stepparent adoption of father's daughter, N.K.B. The Court of Appeals reversed the order.

Father and mother are the natural parents of N.K.B., who was born in June 2004. In May 2005, father filed a pro se petition for allocation of parental responsibilities, and mother filed a county court restraining order action against father. Following a June 2005 permanent protection hearing, the magistrate entered an order providing that father was prohibited from having contact with N.K.B. In January 2006, father, who then was represented by counsel, filed a

motion to modify parenting time, a motion for appointment of a child and family investigator (CFI), and a motion to continue a February 2006 hearing.

Stepfather filed this stepparent adoption proceeding in August 2006, less than three weeks after his marriage to mother. Following a hearing, the stepparent adoption was granted in April 2007. In September 2007, a district court judge—who was not the judge involved in the parental responsibilities case—denied father’s petition for review of the magistrate’s order.

On appeal, father contended that clear and convincing evidence did not establish that he intentionally abandoned N.K.B., but rather showed that he sought to exercise parental rights and supported her. CRS § 19-5-203(1)(d)(II) provides for a stepparent adoption if, as relevant here, a parent has abandoned the child for at least one year before the petition was filed. Abandonment requires leaving a child willfully and without intent to return. Here, for most of the one-year period prior to the filing of the petition for stepparent adoption, father was under a court order prohibiting any meaningful contact concerning the child, despite the fact that he filed a petition for allocation of parental responsibilities and motioned the court to modify parenting time.

The district court in the parental responsibilities case stayed the parental responsibilities hearing until the Court of Appeals ruled on the stepparent adoption case. The magistrate hearing the stepparent adoption case found that father "took no actions to pursue this relationship or have access to his daughter." In ignoring father’s efforts to obtain parenting time with his child, the magistrate and the district court erred by not properly applying the definition of abandonment. Regardless of whether father might have done more to enforce his rights, the record demonstrates that he did not intend to abandon his rights with respect to his child. Further, the magistrate erred in deferring to the stay in the parental responsibilities case and proceeding with the stepparent adoption absent a prior resolution of father’s motion for parenting time. The order terminating father’s parental rights was reversed and the case was remanded to the trial court to proceed with the parental responsibilities case.

People in the Interest of L.O.L., 197 P.3d 291 (Colo. App. 2008).
ICWA – Burden of Proof

The GAL appealed the trial court’s order requiring the department to present evidence beyond a reasonable doubt to prove its motion for termination. The Court of Appeals held that the trial court erred by using the burden of proof required by the Indian Child Welfare Act because (1) more than ten days had elapsed after the tribes’ receipt of notice; (2) at least two tribes had responded that the child was not eligible for enrollment; and (3) no tribe had indicated the child was an Indian child. Moreover, although a copy of mother’s grandfather’s death certificate inferred the department did not make continuing efforts to

determine whether the child was an Indian child, mother did not request a continuance to require the department to send proper notice to the tribe(s).

People in the Interest of T.M.W., No. 08CA2335 & 08CA2336, ____ P.3d ____,
(Colo. App., April 2, 2009).
ICWA – Notice

The juvenile court found at the termination hearing that the case was not an ICWA case because, although mother had made some indication that she was of American Indian heritage, she was not an enrolled member and did not follow through to see if she could be enrolled. The department had sent ICWA notice to one but not both tribes and had named one but not both children in the notice. Because it was undisputed that the proper notices were not sent to all relevant tribes, the judgments were vacated and the cases remanded so that proper notice could be given. The Court of Appeals then addressed the merits of Mother's argument - that the department had not made reasonable efforts to reunify - and found that mother had waived that argument because she did not bring it to the trial court's attention prior to the termination hearing. The judgments were vacated, and the cases were remanded with instructions that notice be given in accordance with the provisions of the ICWA and the Children's Code. The juvenile court's judgments terminating parental rights shall be reinstated and stand affirmed if it is ultimately determined, after proper notice, that neither child is an Indian child.

SUMMER NEWSLETTER

The Summer Newsletter will go out by June 21, 2009. The deadline for submitting cases, articles and events is June 14, 2009. Please send any submission requests to sthibault@co.clear-creek.co.us, or call (303) 679-2432 (phone) or by fax at (303) 679-2444.