

RECENT MEETINGS AND EVENTS

On **March 12, 2010**, the JLS CLE Annual Update – “**Effective Advocacy During the Current Budget Crisis**” – was held at the **Colorado Bar Association Office**, 1900 Grant Street, 9th Floor, Denver, CO 80203.

SCHEDULE OF FUTURE JLS EVENTS

Please put these dates on your calendar now and send in your RSVP when you get the meeting notice from Andrea Mueller.

May 12, 2010 – JLS CLE Luncheon and Annual Election meeting. **Diane Baird, L.C.S.W.** from the Kempe Center will present on “Sibling Relationships: What to Know and What to Consider When Making Placement Decisions,” at the **Colorado Bar Association Office**, 1900 Grant Street, 3rd Floor, Denver, CO 80203.

July 14, 2010 – First meeting of the 2010-2011 fiscal year with new officers. Chair elect, **Shari Danz**, will assume the position of Chair on July 1, 2010. CLE topic and location of the meeting to be decided.

All meetings held at the **Colorado Bar Association Office**, 1900 Grant Street, 9th Floor, Denver, CO 80203, are available by **audio conference** for members who are unable to travel to Denver for the meetings.

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 17 to 21, 2010 – NACC Rocky Mountain Children’s Advocacy Trial Institute Conference in Louisville, CO. Information available at www.NACCchildlaw.org.

October 20 to 23, 2010 – NACC 33rd National Juvenile and Family Law Conference in Austin, TX. Information available at www.NACCchildlaw.org

JUVENILE LAW SECTION EXECUTIVE COUNCIL REPORTS

The Executive Council meets between 11:30 and noon just prior to each scheduled meeting of the section. If you have any interest in serving on any of the subcommittees, please contact one of the officers, Barbara Shaklee, Chair, Sheri Danz, Chair-elect, or Kris Ward, Secretary. The subcommittees are: Legislative, Membership, Newsletter, Web, and Program.

LEGISLATIVE SUBCOMMITTEE REPORT

The first regular session of the General Assembly began in January 2010. **Bonnie Saltzman**, JLS Legislative Subcommittee Chair, has done an excellent job reporting on the status of bills that she feels are important for the JLS to follow. Please contact Bonnie at 303-333-3554 or Saltzmanlaw@aol.com to notify her of additional bills that should be followed. To check updated and current status of bills go to: <http://www.leg.state.co.us>.

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

Barbara Shaklee, Chair of the JLS, and Linda Weirnerman, a former 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 Weirnerman at (303) 860-1517 or lindaweirnerman@coloradochildrep.org.

Court Facility Dogs – Easing the Apprehensive Witness by Gabriela Sandoval appears in the April 2010 Issue, Vol. 39, No. 4.

CHILD WELFARE LAW ATTORNEY CERTIFICATION IS NOW AVAILABLE **The following letter was written by Maureen Martin, NACC Staff Attorney**

Dear Colorado Attorneys –

The NACC is excited to announce that the Child Welfare Law Attorney Certification Program is open in Colorado!!

Child Welfare Attorney Certification is a program of the National Association of Counsel for Children whereby the NACC certifies qualified attorneys as Child Welfare Law Specialists (CWLS). Attorneys receive the CWLS credential from the NACC by showing proficiency in child welfare law through a comprehensive child welfare law competency process.

Colorado joins 13 other states which recognize NACC's Child Welfare Attorney Certification: California, Connecticut, the District of Columbia, Georgia, Iowa, Michigan, New Hampshire, New Mexico, New York, North Carolina, Tennessee, Texas, and Utah.

Please review the attached Program Summary for more information or visit the NACC Certification website: <http://www.naccchildlaw.org/?page=Certification>

If you are interested in applying for certification – please fill out the last page of the attached Program Summary and return it to the NACC. The NACC will then send you an application packet.

Please watch for opportunities to learn more about the program. The NACC is working with State partners to provide trainings on the application process and bring the Red Book exam preparation course to Colorado.

The deadline for the applications is **May 31, 2010**. Eligible applicants will sit for the Certification Exam in the Spring 2011.

If you have questions, please contact Maureen Martin at 303.864.5321 or martin.maureen@tchden.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. 08CA2428. In re the Parental Responsibilities of Reese, and Concerning E.B.H.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7493&courtid=1>
Parental Responsibilities—Best Interests—Clear and Convincing Evidence.

Adriana Henderson, the adoptive mother of E.B.H., appealed from the order awarding sole decision-making authority and majority parenting time to Randy and Candice Reese. The order was vacated and the case was remanded.

Henderson began caring for E.B.H. soon after the child was born in 2004. The Reeses attended the same church as Henderson and offered to assist her in caring for the child. Henderson agreed. According to the Reeses, their care gradually increased, and by early 2005, the child was living full-time with them. Nonetheless, Henderson adopted the child in July 2005. For the next three years, Henderson did not object to the Reeses' care for the child, which included taking her out of Colorado for vacations.

On appeal, Henderson argued that the trial court did not give special weight to her determination of the child's best interests and, in so doing, violated her constitutional rights as a parent. The Court of Appeals agreed. Mother was entitled to a presumption that, as a fit parent, she would act in the best interests of the child. This presumption could be rebutted only by findings based on clear and convincing evidence that the grant of decision-making responsibility and parenting time to the Reeses is in the child's best interests. Because the trial court did not apply this standard of proof, the order was vacated and the case was remanded for factual findings based on clear and convincing evidence.

No. 09CA2295. People in the Interest of A.R.Y.-M, and Concerning R.Y.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7556&courtid=1>
Termination of Parent–Child Relationship—Indian Child Welfare Act of 1978—
Notice Provisions.

Mother appealed the judgment terminating her parent–child relationship with her son, A.R.Y.-M. The judgment was affirmed.

The Denver Department of Human Services (Department) filed a dependency and neglect petition on A.R.Y.-M.'s behalf shortly after his birth. Mother, who was a minor, was also in the Department's legal custody. The caseworker reported that mother had Native American ancestry through her biological father. Notice was sent to the Navajo Nation and the Eastern Shawnee Tribe of Oklahoma. The Navajo Nation responded it had "been unable to verify" that A.R.Y.-M. was available for enrollment and asked the Department to notify the tribe if it received additional information that would assist in the determination. The Eastern Shawnee Tribe responded that the child was not a member of the tribe and not eligible for enrollment. Mother received social services for almost three years and then, after a contested hearing, the court terminated her parental rights.

On appeal, mother asserted several violations of the notice provisions of the Indian Child Welfare Act of 1978 (ICWA). The Court of Appeals agreed that the notices sent did not comply with all the provisions of the ICWA. However, based on the responses from the tribes, the Court found that any errors in the notice were harmless.

Mother also argued reversal was required because notice of the termination hearing was not sent to the tribes. The Court disagreed. After the tribes responded, additional notice was required only if the Department acquired new information about the child's heritage that would have assisted a tribe in making eligibility determinations. Accordingly, the judgment was affirmed.

No. 09CA1970. In the Matter of the Petition of A.T.M., and Concerning S.C.M. <http://www.cobar.org/opinions/opinion.cfm?opinionid=7564&courtid=1>
Expedited Relinquishment Petition—Withdrawal—CRS § 19-5-103.5.

Mother appealed the order terminating the parental rights of her daughter. The order was reversed.

Mother was an unmarried 21-year-old when she conceived a child with a man later incarcerated for assaulting her. During her pregnancy, mother was counseled by an adoption agency. On June 18, 2009, mother gave birth to a daughter. The next day, she signed an affidavit of voluntary relinquishment. On June 25, 2009, mother filed an expedited relinquishment petition, but later sought to withdraw it before it was acted on. The district court refused to allow mother's petition to be withdrawn and, over mother's objection, granted it. Mother appealed.

Mother argued that the district court erred in not allowing her to withdraw her relinquishment petition before a final order was issued. The Court of Appeals agreed. CRS § 19-5-103.5 does not preclude withdrawal of an expedited relinquishment petition prior to actual entry of an order terminating parental rights. Here, the court's ruling was contrary to the statute, which grants finality only to relinquishment orders and not to petitions. Additionally, the court could not make a finding that the relinquishment decision was voluntary at the time the order was entered because mother objected to the relinquishment and had moved to withdraw her petition. Accordingly, the order terminating mother's parental rights was reversed and the case was remanded for further proceedings.

No. 09CA1451. People in the Interest of A.G., A.G., R.B., and N.B., and Concerning C.M. <http://www.cobar.org/opinions/opinion.cfm?opinionid=7588&courtid=1>
Termination of Parent–Child Legal Relationship—Recusal of Trial Judge—Sufficiency of Findings.

In a case involving charges of abuse and neglect, mother appealed the district court's ruling to terminate the parent–child relationship. The judgment is reversed and the case is remanded.

The Otero County Department of Human Services (Department) obtained emergency custody of A.G., A.G., R.B., and N.B. (children) in October 2007 after the 4-year-old child of mother's boyfriend died in mother's home. The child died because of bacterial sepsis due to chronic abuse and neglect. A dependency and neglect petition was filed on the children's behalf, and mother was charged with child abuse.

The children were placed with their respective fathers in December 2007. That month, the court determined the children were dependent and neglected as to mother. The following month, the court adopted a treatment plan for mother. By June 2008, mother had completed the required psychological evaluation (Department was awaiting results), as well as substance abuse and mental health evaluations, which concluded she needed treatment and counseling.

In August 2008, Department moved the court to "turn over custody" of the children to their respective fathers and to terminate mother's parental rights. In September 2008, the court gave custody of the children to their fathers; in October, mother began serving a six-year prison sentence.

In April 2009, the trial court terminated mother's parental rights. Mother filed a motion to recuse the trial judge because his court clerk was her caseworker's mother. She also filed a motion for a new trial because the judge should have recused himself, and her counsel was ineffective for failing to file a motion to recuse. The judge denied the motion because he had no contact with the caseworker except in court.

On appeal, mother argued it was error for the trial judge not to recuse himself and to deny her motion for new trial and recusal. The Court of Appeals held it was error for the trial judge to determine the relationship between the clerk and the caseworker did not warrant recusal. The case was remanded to determine whether mother waived her right to raise this claim and whether mother received ineffective assistance of counsel and therefore has not waived her right to raise the claim.

The Court noted that the judge considered the recusal issue by examining his relationship with the caseworker. The Court stated that the proper question was whether his relationship with his clerk and her relationship to the caseworker created the appearance of impropriety sufficient to warrant recusal. Here, the Court concluded that an objective, disinterested observer would conclude that grounds for recusal existed based on the relationship between a judge and his clerk. This gave at least the appearance of impropriety.

Mother also argued that the court did not make adequate findings that no appropriate treatment plan could be adopted or that Department made reasonable efforts to reunite the family. Also, that the court made no findings that

no less drastic alternatives existed or that termination was in the children's best interests. The Court agreed that the findings were insufficient.

The Court held the termination order did not make findings that conformed to the statutory criteria for termination. Therefore, if a second judge determines mother's counsel was effective and she has waived her right to seek the first judge's recusal, the second judge must transfer the matter back to the first judge to make new findings of fact.

No. 09CA1699. People in the Interest of K.M.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7589&courtid=1>

Juvenile Delinquency—Restitution—Crime Victim Compensation Board.

The prosecution appeals the trial court's order, entered in a juvenile delinquency proceeding against K.M., that denied the restitution sought by the Crime Victim Compensation Board (CVCB). It argues that the court lacked authority to request confidential documents necessary to calculate the amount of disbursements that the CVCB had made for victim expenses, which the court previously concluded were compensable. We affirm.

K.M. and D.D. were involved in an altercation at school that led to a delinquency petition being filed alleging that K.M. had committed acts that, if committed by an adult, would constitute second-degree assault and interference with staff, faculty, or students of an educational institution. K.M. pled guilty to a single count of harassment pursuant to a plea bargain. The original delinquency counts were dismissed and K.M. was sentenced to probation.

At the restitution hearing, in addition to other testimony, an employee of the district attorney's office testified that the CVCB had made disbursements for D.D.'s medical expenses (\$1,755.70) and for his mother's lost wages (\$2,630.53). Following argument, the court invited both parties to submit additional written pleadings. The prosecution filed a statement of authorities asserting that under CRS § 24-4.1-107.5(2), all materials submitted to the CVCB in connection with a reimbursement request are confidential and not subject to disclosure unless a court conducts an in camera review and concludes that the materials are necessary for the resolution of a pending issue.

The court refused to award restitution to the CVCB for payments it had made for D.D.'s hand injury, because it related to the first punch that was thrown by D.D. and therefore was not caused by K.M.'s initial push of D.D. It also concluded K.M. had used unreasonable force when he punched D.D. in the jaw and that he was responsible for the expenditures made by the CVCB.

The court ordered the prosecution to supplement the record by breaking down the medical costs incurred by the CVCB. Instead, the prosecution filed a

"Response to Restitution Order," which reiterated the same arguments it had made at the hearing and averred that it did not have access to the CVCB's records due to the above-cited confidentiality provisions. The court ruled "no order of restitution shall enter," because the prosecution declined to provide the information it ordered. The prosecution appealed.

The prosecution argued the trial court erred by applying principles of self-defense when establishing the amount of restitution and neglecting to make any findings regarding the expenditure for D.D.'s mother's lost earnings. The Court of Appeals concluded it could not review these claims due to the prosecution's failure to comply with the trial court's order.

The only question the Court found it could resolve, based on the state of the record, was whether it was an abuse of discretion to refuse to order restitution. The Court held it was not, because to enter such an order would require the court to base the amount on pure speculation. The order was affirmed.

No. 09CA0756. In re the Parental Responsibilities of A.D., and Concerning Rueda.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7570&courtid=1>

Paternity—Presumptive Natural Father—Standing.

In this paternity action, mother appealed the trial court's judgment declaring Nicholas Rueda to be the presumed natural father of her child, A.D., and awarding him joint decision-making authority and parenting time. The judgment was affirmed.

Mother and Rueda lived with A.D. as a family from July 2002 until January 2007, during which time Rueda openly held A.D. out as his natural child. Mother thereafter ended her relationship with Rueda, moved in with her current husband, and discontinued Rueda's contact with A.D. In April 2008, Rueda initiated this proceeding, seeking an allocation of parental responsibilities and making a claim to establish paternity. Although Rueda had not legally adopted A.D. and was not her biological father, the trial court determined that he established his paternity of A.D. as a presumed natural father under CRS § 19-4-105(1)(d). The court ordered joint decision-making, awarded Rueda parenting time with A.D., and ordered him to pay child support to mother.

On appeal, mother argued that the court's declaration of paternity and allocation of parental responsibility was invalid because the court failed to order that the alleged biological parent be notified of these proceedings as a parent and interested party, and did not join him as an indispensable party. The Court of Appeals disagreed, holding that mother lacked standing to assert these issues because they only affect the alleged biological father's rights.

Mother also argued that the trial court abused its discretion by not making A.D. a party to the action and by not appointing a guardian ad litem to represent A.D. The Court disagreed. CRS § 19-4-110 no longer requires that the child be joined in a paternity action or that a guardian ad litem be appointed for the child. Further, mother did not have standing to raise this issue, because the right to be joined belongs to the child.

The Court also rejected mother's contention that the trial court erred by determining that Rueda is A.D.'s presumptive natural father when he had admitted that he was not her biological father. A man will be presumed to be the natural father of a child if he received the child, while a minor, into his home and openly held the child out as his natural child. This presumption may be rebutted only by a court decree establishing paternity of the child by another man. Here, the trial court's findings are supported by the record, and there was no such court decree establishing paternity by another man.

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SUMMER NEWSLETTER

The Summer 2010 Newsletter is scheduled to go out by June 21, 2010. The deadline for submitting cases, articles and events is June 14, 2010. 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.