

**CBA Juvenile Law Section
Spring 2011 Newsletter**

RECENT MEETINGS AND EVENTS

On **March 9, 2011** - The JLS held a **CLE Luncheon Meeting** at the **University of Colorado Law School**, in Boulder, Colorado from noon to 2:00 p.m. **Timothy J. Foster, Psy. D.**, presented on "**Competency Evaluations**" for 1 hour CLE credit.

On **April 1, 2011** - The CBA CLE and the JLS presented the annual full day **Juvenile Law Conference** 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 11, 2011 - The JLS will hold a **CLE Luncheon and Annual Election Meeting** at the **Colorado Bar Association Office**, 1900 Grant Street, 3rd Floor, Denver, CO 80203. **Bonnie Saltzman**, JLS Legislative Liaison, will present on the **2011 Legislative changes for Juvenile Law practitioners** for 1 hour CLE credit.

All meetings held at the **Colorado Bar Association Office**, 1900 Grant Street, Denver, CO 80203, are available by **audio conference** for members who are unable to travel to Denver for the meetings. Please contact Andrea Mueller, our CBA Liaison, to arrange for audio conferencing at amueller@cobar.org.

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 5, 2011 - **Peterson Forensic Interviewing and Training Services** will present, "**Is this Child Credible? Assessing Credibility in Child Forensic Interviews**" from 8:30 to 4:30, at the Broomfield Police Detention/Training Center, 11600 Ridge Parkway, Broomfield, CO 80021. For registration or information, contact Michelle M. Peterson at (303) 550-0441 or at michellepeterson00@gmail.com.

May 9 -14, 2011 - **The Rocky Mountain Child Advocacy Training Institute** will hold their annual **RMCATI Trial Advocacy Training** at the NITA training facility

in Boulder, Colorado. Online registration is available at www.nita.org/csrm511. For more information, contact Mary Commander at (303) 953-6848 or mcommander@nita.org.

July 12 -14, 2011 - ABA Second National Parent's Attorney Conference, in Washington D.C., http://www.americanbar.org/groups/child_law/projects_initiatives/parent_representation.html.

August 29, 2011 - September 1, 2011 - 34th National Child Welfare, Juvenile, and Family Law Conference, Hotel del Coronado, San Diego, CA (Brochure available May 2011) www.NACCchildlaw.org or 1 888-888-NACC.

ANNUAL JUVENILE LAW UPDATE REPORT

The **Juvenile Law Update**, held at the CBA Offices on April 1, 2011 was a really great opportunity to get up to date information on all of the hot topics in our field. The attendees all felt the speakers were very well informed, thought the topic choices were helpful and thorough, and seemed to enjoy the interactive presentations. Topics included: Medical Marijuana: A Panel Presentation on Issues in Juvenile Cases, Prescription Drug Abuse in Juvenile Cases, Case Law Update, Domestic Violence Treatment: The New Standards, Prosecution of Children as Adults: National Research and Local Legislative Reforms, and Ethics: Special Considerations for Juvenile Law Practitioners. The faculty was excellent and included attorneys from the Colorado Supreme Court Office of Attorney Regulation Counsel, District Attorneys, Colorado Juvenile Defender Coalition, County Attorney's Offices, as well as several medical doctors and a District Court Magistrate. If you were unable to attend the event, there will be **video replays on April 20, 2011 in Denver, Colorado Springs, and Grand Junction**. www.cobar.org/cle or (303) 860-0608 or toll free (888) 860-2531.

JUVENILE LAW SECTION EXECUTIVE COUNCIL REPORTS

This year, the Executive Council has focused some of its efforts on outreach to law schools. To this end, JLS was involved in a panel discussion at DU Law School for students considering careers in juvenile law. JLS also held its March meeting at CU Law School to provide a shared learning experience and networking opportunity for practicing lawyers and law students. Additionally, JLS donated \$1,000 to a group of CU law students selected to participate in a Comparative Family Law seminar focused on issues impacting women and children in the United States and India. JLS looks forward to future involvement

with law schools and welcomes future requests to participate in networking opportunities and support experiential learning experiences.

The Executive Council has a conference call meeting at 7:30 a.m. on Wednesday, one week 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. The subcommittees are:

Legislative - Bonnie Saltzman, (303) 333-3554, Saltzmanlaw@aol.com

Membership - (Vacant)

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

Website - Lyn Stewart-Hunter (720) 862-7712, lynstewarhunter@gmail.com

Program - Pax Moultrie, (303) 271-8900 , pmoultri@co.jefferson.co.us

LEGISLATIVE SUBCOMMITTEE REPORT

By Bonnie Saltzman, JLS Legislative Subcommittee Chair

2011 Legislative Session

General Observations: The number of late Bills introduced this session that impact children, youth and families seems to be above average. Some of the bills that were originally thought to be innocuous have become contentious. As expected, most Bills introduced had no or minimal fiscal impact upon the State budget.

Some Highlights

1. SB 11-120: Concerning Rights of Certain Youth in Foster Care
 - Awaiting Governor's signature
 - Youth in foster care and youth who have aged out of the system took the lead in drafting and advocating for this legislation.
 - "Rights" are outlined in the legislative declaration
 - Mandates free credit report to youth 16 – 18 years old who are in foster care
 - Sets out how to address identify theft if such is discovered in the credit reports
2. SB 11-012: Concerning a Public School Student's Authority to Possess Prescription Medications at School
 - Governor signed on March 25, 2011

- School district may set policy allowing students to possess and self-administer any medication that is prescribed by a licensed health care professional
 - Medical marijuana specifically excluded
 - Sets out issues the school policy needs to address
 - This policy can be implemented as an alternative to the school approved treatment plan otherwise required
3. HB 11-1278: Concerning Sex Offender Registration
- Bill pending hearing in House Appropriations Committee (4/6/11)
 - Modifies juvenile deregistration criteria
 - Sets out affirmative defenses for not registering
 - Defines “residence”
 - Sets deadline for registrations and maximum fees
4. HB 11-1287: Concerning Colorado Juveniles Equal Protection
- Failed in House Judiciary Committee (6 – 5 vote)
 - Advocates are urging a re-vote
 - Bill, retroactively, makes juveniles’ sentenced as adults parole eligible if their adult sentence exceeds 40-years.
 - Bill, retroactively, allows juveniles sentenced as adults the opportunity to be placed in the community by DOC at least 10-years before parole eligibility
 - Bill sets out specialized community corrections program to help juveniles sentenced as adults reintegrate successfully back into the community

Conference calls to discuss pending bills take place every Tuesday at 7:30 a.m. These calls provide an opportunity for JLS members to learn from Bonnie about pending bills and to weigh in on any potential JLS comments or positions the CBA may want to take on pending bills. All JLS section members are invited to participate in these calls.

You can review Bonnie's updated Bill matrix at the following link:
<http://www.cobar.org/index.cfm/ID/21807/JUV/JLS-Legislative-Session-Conference-Calls/>.

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

No articles relative to Juvenile Law have appeared this period.

Barbara Shaklee and Linda Weirnerman, both past Chairs 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@denvergov.org or Linda Weirnerman at (303) 860-1517 or lindaweirnerman@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. 08CA2159. People in the Interest of C.Z., and Concerning A.L.L.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7865&courtid=1>
Termination of Parental Rights—Right to Counsel—Substitution of Counsel—
Indian Child Welfare Act—Notice—Active Efforts.

Mother and father appealed from the judgment terminating the parent-child relationship between them and their child, C.Z. The judgment was affirmed.

Following a contested hearing at which they did not appear, mother and father, the biological parents of C.Z., had their parental rights terminated. The parents have a history of alcohol abuse and violence, and they were uninvolved in much of their treatment. In addition, the mother has a history of mental instability and attempted suicide. Father had minimal contact with C.Z. throughout the case.

Counsel for both parents filed notices of appeal on behalf of their respective clients pursuant to C.A.R. 3.4(d), and thereafter filed petitions pursuant to C.A.R. 3.4(g)(1), despite their position that neither mother nor father had any arguable claims on appeal. Substitution of counsel entered for attorneys for both parents, and both parents' new attorneys filed amended petitions, arguing that the order terminating their clients' parental rights must be vacated because the Department of Social Services (Department) did not comply with the Indian Child Welfare Act (ICWA).

The Court of Appeals determined the circumstances under which substitution of counsel may be warranted under C.A.R. 3.4(j) after the petition on appeal is filed.

Parents are afforded the right to court-appointed appellate counsel in dependency and neglect proceedings pursuant to statute. It is not appropriate to appoint substitute counsel based solely on trial counsel's conclusion that the appeal lacks arguable merit. However, that does not prevent substitution of counsel based on good cause.

Both parents claimed that the order terminating their parental rights must be vacated because the Department did not comply with the notice and active efforts requirements of the ICWA. The Court disagreed. The record shows that the Department complied with the notice requirement of the ICWA with respect to father's tribe. In fact, Blackfeet Tribe did not intervene or otherwise participate in the proceedings after it received notice, and notified the court that the child was not eligible for membership in the tribe. Further, the record indicates that the state made active efforts to prevent the breakup of the family, including referrals to and payment of mental health and substance abuse treatment providers, access to parenting classes, and access to public assistance programs, but father and mother failed and/or refused to participate in those efforts.

No. 10CA0522. People in the Interest of A.M., and Concerning A.C.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7870&courtid=1>
Dependency and Neglect—Termination—Parental Rights—Foster Parents—Intervenors—Evidence.

In this dependency and neglect (D&N) proceeding, mother and father appealed the judgment terminating their parental rights with respect to their child, A.M. The Montezuma County Department of Social Services (MCDSS) separately appealed the judgment terminating mother's parental rights, but it supports the judgment terminating father's parental rights. Both the child's guardian ad litem (GAL) and the child's foster parents, L.H. and R.H., who were permitted to intervene in the D&N proceeding, support the judgment with respect to both parents. The judgment was reversed with respect to mother and affirmed with respect to father.

MCDSS, mother, and father contended that the trial court committed reversible error by allowing the foster parents to become "full participant intervenors" at the termination hearing. The Court of Appeals agreed. Foster parents may participate fully in a dispositional hearing, but have only a limited right to provide information at a termination hearing. Therefore, the trial court erred by allowing the foster parents to fully participate at the termination hearing, and that error was not harmless because it substantially affected mother's rights. Further, a foster parent's relationship with a child does not give rise to a constitutionally protected liberty interest. Therefore, the trial court also violated the constitutionally protected liberty interest of mother and father in the parent-child legal relationship by allowing the foster parents to fully participate in the

termination proceeding as intervenors. The termination judgment was reversed and the case was remanded as to mother.

Mother and MCDSS also contended that in terminating mother's parental rights, the trial court erred in failing to consider the totality of the evidence. The Court agreed. The trial court erred in focusing on evidence of mother's progress during the child's first year and not expressly giving more weight to evidence of her progress during the seven-and-a-half months preceding the termination hearing. On remand, the court should consider all of the evidence, but it must attribute more weight to the most recent reports and evaluations.

Father contended that his parental rights also were erroneously terminated as a result of the court's focus on the child's first year and the parents' compliance with their treatment plans during that period. Father's compliance with his treatment plan deteriorated after the parents separated in June 2009 and neither the caseworker nor any of father's treatment providers recommended reunification of father and the child. Because the more recent evidence, as well as the earlier evidence, supports the trial court's findings that father failed to comply with his treatment plan, that he is unfit, and that his conduct or condition is unlikely to change within a reasonable time, the trial court properly terminated father's parental rights.

No. 09CA0647. People v. Pino.

Juvenile Delinquency Petition—Jurisdiction—District Court—Direct Filing—Transfer Hearing.

Defendant appealed the judgment of conviction entered on a jury verdict finding him guilty of second-degree assault. The judgment was affirmed.

Defendant, then age 17, punched the victim in the mouth. The physician who removed the victim's two fractured teeth opined that he had sustained serious bodily injury. The prosecution filed a juvenile delinquency petition alleging that defendant had committed acts that, if committed by an adult, would constitute the offense of second-degree assault. The prosecution requested a transfer hearing to district court. Without conducting a transfer hearing, the juvenile court ordered defendant to appear in district court. The prosecution presented the district court with a motion to dismiss the juvenile case, a petition to directly charge defendant in district court, and an information charging him with a single count of second-degree assault. After defendant was convicted at trial, he filed this appeal challenging the district court's jurisdiction.

Defendant contended that the district court was without jurisdiction because the prosecution first filed a delinquency petition in the juvenile court and did not directly file this information in the district court until after the deadline for requesting a transfer hearing had expired. Under the plain language of CRS §§

19-2-104(1)(b), 517(2), and -518(2), a prosecutor has discretion to proceed by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. Because only conducting a transfer hearing vests the juvenile court with exclusive jurisdiction, it is immaterial whether a prosecutor has requested a transfer hearing in the juvenile court before directly filing charges. Accordingly, even though more than thirty days had elapsed since defendant initially was advised in juvenile court, the district court had jurisdiction because the juvenile court had not conducted a transfer hearing before prosecution directly filed the information.

No. 10CA0529. In re the Petition of C.L.S., in the Interest of E.N.S., and Concerning J.O.
Termination of Parental Rights—Due Process—CRS § 19-5-105(4)—C.R.C.P. 60(b)(2).

Father, allegedly the biological father of the child, appealed pro se from an order denying his motion for relief from a judgment terminating his parental rights. The order was reversed, the judgment was vacated, and the case was remanded with directions.

Before the child was born, mother retained the services of Lutheran Family Services (LFS) to assist her in placing the child for adoption. She represented to LFS and later in court that the child was the product of a rape committed in Douglas County and that she did not know the father's surname or how to contact him. However, mother sent father e-mails and text messages that the child had died.

Immediately after the birth of child, LFS placed her with adoptive parents. LFS then filed a petition for expedited relinquishment in Larimer County, where LFS is located. LFS gave notice to the allegedly unknown father by publication in a newspaper in Douglas County.

The district court granted the petition, terminated both parents' rights, and granted LFS legal custody and guardianship of the child, with authority to place her for adoption. The adoption proceedings took place in Jefferson County, where the adoptive parents lived. The final adoption decree was entered on June 23, 2008 and the child has remained in the adoptive parents' care.

On February 1, 2009, mother sent father a text message telling him the child was alive and had been adopted. In September 2009, father filed a paternity action in Arapahoe County, where mother lived. A magistrate dismissed the case without prejudice, finding a lack of jurisdiction to vacate the Larimer County termination order or the Jefferson County adoption decree.

On November 2, 2009, father filed a paternity action in Larimer County, which was held in abeyance pending resolution of father's pro se motion to vacate the termination order that he filed on December 4, 2009. Father alleged that he was unaware of the relinquishment and adoption proceedings because mother told him the child had died. He provided documents establishing that mother knew his identity and whereabouts and was in contact with him during the relinquishment proceedings. He alleged he first learned the child was alive and had been adopted on March 29, 2009, when he accessed a computer and read mother's text message of February 1, 2009. The district court denied father's motion to vacate as time-barred by the statutory ninety-day deadline for vacating a relinquishment/termination order and the six-month deadline under C.R.C.P. 60(b)(2) for challenging judgments obtained by fraud.

On appeal, father argued that mother's fraudulent misrepresentations to LFS and the court deprived him of notice and an opportunity to be heard. The Court of Appeals construed this as an argument that the proceedings violated his constitutional right to due process. The Court agreed and held that the judgment terminating his parental rights by default was void. It was undisputed that mother intentionally misrepresented to LFS and the court that she did not know father's identity and whereabouts so she could avoid notifying him of the relinquishment proceedings. It was undisputed that father did not have notice of the proceedings. Thus, the termination judgment by default was void.

The Court also held that because the judgment was void, neither the limitations period under CRS § 19-5-105(4) nor C.R.C.P. 60(b) applied. The Court also held that C.R.C.P. 60(b) was inapplicable because subsection (2) allows a court to set aside a judgment for fraud on the court. Here, the undisputed facts show that mother committed a fraud on the court by lying about her knowledge of father's identity and whereabouts. Accordingly, the Court reversed the order denying father's motion, vacated the judgment terminating his parental rights by default, and remanded the case for a contested relinquishment hearing.

No. 09SC483. In the Matter of D.I.S. and Sidman v. Sidman.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7990&courtid=2>

CRS § 15-14-204(2)(a)—Guardianship by Parental Consent—Termination of Guardianship—Parental Presumption—Burden of Proof—Troxel v. Granville.

The Supreme Court reversed the court of appeals' judgment. The Court found that in a guardianship established by parental consent under CRS § 15-14-204(2)(a), fit parents petitioning for termination of the guardianship may invoke the constitutional presumption that they make custodial decisions in the best interests of their child. This presumption, established in *Troxel v. Granville*, 530 U.S. 57 (2000), is not extinguished by the voluntary placement of their child with a third party. Although parents delegate the day-to-day care, custody, and control of their child to the guardians, on a motion by the parents to terminate a

guardianship established under § 15-14-204(2)(a), the guardians bear the burden of proving, by a preponderance of the evidence, that termination of the guardianship is not in the best interests of the child.

WINTER NEWSLETTER

The Summer 2011 Newsletter is scheduled to go out by June 21, 2010. The deadline for submitting cases, articles and events is June 14, 2011. 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.