

RECENT MEETINGS AND EVENTS

On **May 12, 2010** the **JLS** held its **annual election meeting** at the **Colorado Bar Association Office**, 1900 Grant Street, 9th Floor, Denver, CO 80203. The CLE planned for May has been rescheduled for the July meeting.

NEW OFFICERS FOR THE 2010-2011 FISCAL YEAR ARE:

Chair: **Sheri Danz**, Office of the Child's Representative

Chair-elect: **Kris Ward**, The Ward Law Firm, PC

Secretary: **Pax Moultrie**, Assistant County Attorney, Jefferson County Attorney's Office

Our new officers will assume their positions on July 1, 2010 and continue through June 30, 2011. Congratulations and welcome!

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.

July 14, 2010 – CLE Luncheon 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.

This will be the first meeting of the 2010-2011 fiscal year with our new officers. Chair elect, **Kris Ward** will fill in for **Shari Danz**, Chair, who will be on maternity leave with her new baby daughter.

September 8, 2010 – CLE Luncheon Meeting. **Bonnie Saltzman, JLS Legislative Subcommittee Chair** will present on the current legislative changes relevant to our practice, at the **Colorado Bar Association Office**, 1900 Grant Street, 3rd Floor, Denver, CO 80203.

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. 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

July 22, 2010 – Denver Juvenile Court CLE – Judge David Furman, Court of Appeals presents at noon at the new Lindsay-Flanigan Courthouse, location to be determined. For more information contact Barbara Bosley at barbara.bosley@judicial.state.co.us.

August 17, 2010 – Denver Juvenile Court CLE – Nathan O’Neal and the Fatherhood Initiative presentation at noon at the new Lindsay-Flanigan Courthouse, location to be determined. For more information contact Barbara Bosley at barbara.bosley@judicial.state.co.us.

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. The subcommittees are: Legislative, Membership, Newsletter, Web, and Program.

This year, the Executive Council approved changes to the current **JLS Bylaws**, which have been emailed to all JLS members for their approval. The amendment clarifies that the JLS is a Section, rather than a Committee or Forum. Additionally, the amendments add some clarifying provisions concerning the Executive Council and Committees within the JLS. Please review the proposed changes which were sent out on June 16th, and respond by email to Andrea Mueller **no later than Thursday July 1, 2010**.

If you did not receive the email from Andrea or have erased it, please contact her at amueller@cobar.org to have it sent to you again.

LEGISLATIVE SUBCOMMITTEE REPORT

The 2010 regular session of the General Assembly has come to a close and the JLS owes much gratitude to **Bonnie Saltzman**, JLS Legislative Subcommittee Chair, who did an excellent job reporting to the JLS Executive Committee on the status of bills. Bonnie attended numerous legislative sessions and meetings with

legislators, held weekly conference calls with the JLS Executive Committee, and very competently represented the JLS's position regarding many bills to the CBA Legislative Committee. Bonnie will present on the legislative changes made during this legislative session at the **JLS CLE Luncheon on September 8, 2010**. Don't miss it!

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

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

Barbara Shaklee, Outgoing Chair of the JLS, and Linda Weinerman, 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 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. 09CA0854. In re the Marriage of Parr and Lyman.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7641&courtid=1>
Modification of Parenting Time – Medical marijuana.

In a post-dissolution of marriage proceeding, the trial court restricted parenting time of David Lyman (father) with his minor child. Father appealed the court's ruling. The Court of Appeals affirmed in part and vacated in part.

The marriage between father and mother was dissolved in 2007. At that time, the parties signed a complete parenting plan that detailed a gradual increase in father's parenting time over a period of seven months, from short supervised visits to unsupervised alternating weekend overnights with the child. The father's

visits were to be governed by ongoing urinalysis tests and drug screenings to demonstrate that he had not returned to marijuana use.

Approximately a week after signing the parenting plan and the same day it was incorporated by the court into the decree, father learned he had been approved for listing on the state of Colorado Medical Marijuana Registry (Registry) due to his debilitating back and knee pain from a motorcycle accident. He filed a pro se motion with the magistrate requesting that the urinalysis portion of the parenting plan be waived.

The magistrate concluded father's voluntary signing of the parenting plan left him "stuck with it." Father filed a timely petition for review but the trial court took no action. Five months later, mother filed a pro se motion to restrict father's parenting time, arguing that he had not provided urinalysis drug screens and had asked the child to keep secrets about his drug use. No hearing was held on this motion.

More than a year after father filed his petition for review, and nearly nine months after mother filed her motion, the trial court denied father's petition. The court modified the urinalysis provision somewhat, and required supervised parenting time until he demonstrated to the court by clear and convincing evidence that his use of medical marijuana is not detrimental to the child. Father appealed.

On appeal, father argued that the trial court erred in modifying the provision restricting him to supervised parenting time without a finding that, absent such a restriction, the child would have been physically endangered or her emotional development would have been significantly impaired. Additionally, father argued the record contained no evidence that would support such a finding. The Court agreed with both arguments and therefore vacated the modified provision.

No. 06CA0697. People v. Trujillo.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7655&courtid=1>

Incest—Aggravated Incest—Sexual Assault on a Child—Hearsay—Victim—Age—CRS § 13-25-129.

Defendant Trujillo appealed the judgment of conviction entered on a jury verdict finding him guilty of aggravated incest and sexual assault on a child by one in a position of trust. The judgment was affirmed.

Before trial, the prosecution moved to admit separate hearsay statements that the victim, Trujillo's daughter, had made about the assault to her mother, a physician, and a social worker. After a hearing, the trial court found that the statements were admissible under CRS § 13-25-129. They were presented to the jury, although the victim also testified at trial.

Defendant's sole contention on appeal was that the trial court erred by admitting the victim's hearsay statements under § 13-25-129. Trujillo asserted that the statute should be interpreted as applying to victims who were "less than fifteen years of age at the time of the offense"; here, the victim was 16 years old when the alleged assault occurred. However, the phrase "when the victim was less than fifteen years of age at the time of the commission of the offense" in § 13-25-129(1) applies only to a victim of incest under § 18-6-301. Because Trujillo was charged with aggravated incest and sexual assault on a child by one in a position of trust, the trial court did not err by admitting the victim's hearsay statements under § 13-25-129.

No. 09CA2620. In re the Petition of J.M.A. and Concerning E.B.R.A.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7671&courtid=1>
Termination of Parental Rights—CRS § 19-5-105(4) Limitations Period—Due Process.

Father, a possible father of E.B.R.A., appealed from the order denying his C.R.C.P. 60(b) motion for relief from a March 25, 2009 order terminating his parental rights after the child's birth mother relinquished custody of the child pursuant to CRS § 19-5-103.5. There was no evidentiary hearing and no factual findings were made; therefore, the Court relies on father's allegations in his verified motion and statements made in the response filed by Bethany Christian Services of Colorado (Bethany). Father alleged that after mother became pregnant, he attended prenatal appointments and ultrasounds with her.

Mother ceased all contact with him months before the child's birth. Without father's knowledge, prior to the birth, she retained the services of Bethany to assist her in placing the child for adoption. She represented to Bethany that she did not know the identity of the father. Bethany stated that notice of the relinquishment and termination proceeding was given to the unknown father by publication in a newspaper in El Paso County. No one replied and the court terminated father's parental rights and granted Bethany legal custody and guardianship of the child and authority to place him for adoption. He was placed in March 2009.

Father learned the child had been born and tried to contact mother, but she refused to speak to him. He filed a paternity action in El Paso County District Court on October 2, 2009, and served mother on October 13, 2009. On October 15, Bethany contacted father's counsel to advise him that his parental rights had been terminated in a proceeding in Clear Creek County and that an adoption proceeding was set for October 19 in Arapahoe County District Court. Father stated that was his first notice of either proceeding.

On October 16, 2009, father filed a Rule 60(b) motion seeking relief from the Clear Creek County judgment. He argued his right to due process had been

violated. Bethany did not dispute that mother had perpetrated a fraud. On November 2, the court denied father's motion, citing CRS § 19-5-105(4), and noted that the termination order had entered on March 25, 2009 and that father's motion for relief was filed on October 16, 2009, more than ninety days after the order had entered. Father appealed.

The Court construed father's argument as one that contended that applying the ninety-day limitations period unconstitutionally deprived him of due process under the circumstances of this case. The Court agreed.

To ensure proper notice is given when one parent relinquishes or proposes to relinquish or consent to the adoption of a child, the court is required to "cause inquiry to be made" to identify the other parent so that notice of the proceeding may be given to the other parent. Notice by publication is proper only if the other parent has not been identified or if his location has not been determined after diligent efforts. Under the facts of this case, where mother knew how to contact father and where publication notice was attempted one-and-a-half months before the child was born, it was error for the district court to conclude it did not have discretion to determine whether father was denied due process.

The Court also rejected the argument that father, being a putative father, was not entitled to notice. In Colorado, the requirement is that "all possible parents" be given notice and an opportunity to participate in a termination proceeding. The judgment was reversed and the case was remanded for a hearing on father's motion for relief from the order terminating his parental rights. If the court determines father's right to due process was not violated, the order may stand; however, if the court determines that his right was violated, it must determine whether father is entitled to relief from the termination order.

No. 09CA2709. People In the Interest of T.M. and J.M., and Concerning S.M. <http://www.cobar.org/opinions/opinion.cfm?opinionid=7672&courtid=1>
Termination of Parent–Child Relationship—Summary Judgment—CRS § 19-3-604(1)(b)(III).

Father, S.M., appealed the termination of his parent–child relationship. The Court of Appeals affirmed in part the trial court's summary judgment, reversed it in part, and remanded the case.

In April 2009, a dependency and neglect petition was filed. T.M was 3 years old and J.M was 8. The children were adjudicated dependent and neglected as to their mother, in June 2009, and she confessed to the termination of her parental rights in January 2010. The court adjudicated T.M. and J.M dependent and neglected as to father in August 2009.

The Boulder County Department of Housing and Human Services (Department) moved for summary judgment to terminate father's parental rights under CRS § 19-3-604(1)(b)(III). In support, the Department asserted that it was undisputed that father was serving two consecutive twelve-year sentences in the Department of Corrections (DOC), and an additional concurrent sentence of six years related to a habitual offender count, with 771 days credit for time served. The Department averred that the sentences were far in excess of the statutory criteria, and it attached certified copies of the sentencing order and the mittimus.

The court granted summary judgment. Based on clear and convincing evidence, the court found that no appropriate treatment plan could be devised; that father was subject to long-term confinement of such duration that he would not be eligible for parole for at least thirty-six months after the children's adjudication date; that termination was in the children's best interests; and that there were no less drastic alternatives.

On appeal, father first argued it was error to grant summary judgment, because a genuine issue of material fact existed regarding his parole eligibility date and the length of his actual confinement. The Court agreed in part.

In his response to the summary judgment motion, father disputed the description of his present sentence and indicated he intended to appeal the six-year sentence he received for being a habitual offender, which he claimed would bring him under the minimum thirty-six month period of incarceration until parole eligibility. Father's response was not verified, he provided no opposing affidavits or other support, and the court had nothing before it to suggest that the department had incorrectly represented his sentence. Thus, the Court concluded the Department met its burden as to T.M. and termination was appropriate.

The Court reached a different conclusion as to J.M. (who was older than 6 years). The Department presented no specific evidence that father would not become eligible for parole for at least six years after the date of the adjudication. Also, the trial court made no specific findings. It was clear father would be confined for over thirty-six months; however, the Court could not conclude his confinement would exceed six years. The summary judgment as to J.M. was reversed and remanded for further proceedings.

Father also argued that the trial court erred in applying to both children the thirty-six month incarceration period that only applies to T.M. The Court agreed. Therefore it was error for the court to apply to both children the expedited procedures that are only to be applied to children under the age of six.

No. 09CA0848. People in the Interest of A.D.T.
<http://www.cobar.org/opinions/opinion.cfm?opinionid=7600&courtid=1>
Juvenile—Unlawful Sexual Contact and Harassment.

A.D.T. appealed her adjudications for acts that would constitute unlawful sexual contact and harassment if committed by an adult. The Court of Appeals reversed the juvenile court's judgment and remanded the case, ruling the juvenile court erred when it: (1) failed to review victim files; (2) failed to disclose certain documents it did review; and (3) failed to make sufficient findings to support its reason for not disclosing documents.

On September 28, 2008, both A.D.T. and the victim were minors living in the Family Crisis Center (Center). A.D.T. was in the lobby when the victim returned from a game of kickball. A.D.T. allegedly stopped the victim and prevented her from returning to her unit. The girls played tag and danced and while dancing A.D.T. allegedly touched the victim's breasts and vagina over her clothes.

A supervisor discovered them and took the victim to her room. The victim told the supervisor A.D.T. told her she would kill her if she told anyone what had happened. A.D.T. was arrested and taken into custody and later charged with unlawful sexual contact and harassment.

Prior to trial, defense counsel learned that the victim may have previously sexually assaulted someone. Counsel requested that the juvenile court review the Department of Human Services (DHS) files in camera and disclose any pertinent records. The prosecution objected, arguing counsel's proffer was not specific enough. The court, through a senior judge assisting the juvenile judge, rejected prosecution's assertion; however, because the victim's DHS records comprised nine volumes, the court decided it would review only the most recent volumes over defense objection. The court ordered that the review be done by the juvenile court judge who was presiding over this case and the dependency and neglect proceedings concerning victim's family. The judge reviewed only the ninth volume of the DHS records and made a determination based on her "limited knowledge of the prosecution and defense cases" that there was no basis to conclude that any of the material contained in that volume was discoverable.

Prior to trial, defense counsel also sought disclosure of a security video of the lobby taken during the alleged incident. The juvenile court viewed the video and entered an order allowing the parties to see it and to make it available on the day of trial. The parties stipulated to its admission into evidence. However, at trial, a senior judge who was presiding over the case noted that he could not tell anything from the video and refused to admit it or allow defense counsel to use it to impeach the victim.

The trial turned on the credibility of A.D.T. and the victim. The juvenile court found A.D.T. guilty of both charges.

A.D.T. argued the juvenile court abused its discretion in reviewing only one of the nine DHS files and not allowing her access to those documents that might be necessary for the determination of an issue before the court. The Court agreed.

The juvenile court determined that A.D.T. had made a sufficient showing to warrant in camera review of the DHS records. It was then obligated to review all the records, regardless of the burden on the court. The case was remanded with directions that the juvenile court conduct an in camera review of all the DHS records. If the court identifies information that might have been necessary to the determination of an issue before it, it must disclose the pertinent documents to the parties and give A.D.T. an opportunity to demonstrate a reasonable probability that, had those records been disclosed to her, the result of the proceeding would have been different. If such a showing is made, the court must grant A.D.T. a new trial.

A.D.T. also argued it was an abuse of discretion for the court to refuse to disclose any of the information contained in volume nine of the DHS records. The Court held that it could conduct its own in camera review of volume nine and, following such review, concluded it was error for the juvenile court to fail to order disclosure of certain records that were exculpatory or impeaching. It also found that certain records appeared to satisfy the disclosure requirements, because they would have materially assisted in preparing a defense. However, because the disclosure of the latter documents is discretionary, it remanded to the juvenile court to determine whether to disclose them and to make specific findings if they are not disclosed.

After disclosing the records, the juvenile court must allow A.D.T. an opportunity to demonstrate a reasonable probability that, had they been disclosed, the result would have been different. If A.D.T. meets that burden, a new trial must be granted. Finally, the Court ruled that any error in the juvenile court's refusal to allow use of the security video was harmless.

FALL NEWSLETTER

The Fall 2010 Newsletter is scheduled to go out by September 21, 2010. The deadline for submitting cases, articles and events is September 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.