

## **RECENT MEETINGS AND EVENTS**

At the **October 26, 2009** JLS meeting, **Terri James Banks**, with the Kempe Children's Center presented on "**Effects of Internet Pornography by caregivers on children – consideration for parenting and /or placement**". A copy of Terri's power point presentation is available on the JLS website.

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## **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.

**January 13, 2010** –from noon to 1:30 p.m. **Chris Lobanov-Rostovsky**, Program Manager, Colorado Division of Criminal Justice Sex Offender Management Unit will present on "**Sex Offender issues in regards to Juveniles**" at the **Colorado Bar Association Office**, 1900 Grant Street, 9<sup>th</sup> Floor, Denver, CO 80203

**March 12, 2010** – All day JLS CLE Annual Update – "**Effective Advocacy During the Current Budget Crisis**" - at the **Colorado Bar Association Office**, 1900 Grant Street, 9<sup>th</sup> Floor, Denver, CO 80203. Registration and information at [www.cobar.org/cle](http://www.cobar.org/cle).

**May 12, 2010** – **JLS Annual Election meeting**. CLE topic and location of the meeting to be decided.

**July 14, 2010** – First meeting of the 2010-2011 fiscal year with new officers. CLE topic and location of the meeting to be decided.

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

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## **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**

**January 21, 2010** – CLE in the **Denver Juvenile Court Series** presents Corey Johnson at Denver DHS with updates on his research. For more information contact Barbara Bosley at 720 865-8236 or [barbara.bosley@judicial.state.co.us](mailto:barbara.bosley@judicial.state.co.us).

**January 25 to 27, 2010 – CWLA** conference in Washington D.C. Information available at [www.cwla.org/conferences](http://www.cwla.org/conferences).

**February 25, 2010** - CLE in the **Denver Juvenile Court Series** presents Judy Martinez from the Department of Education and Office of Dropout Prevention. For more information contact Barbara Bosley at 720 865-8236 or [barbara.bosley@judicial.state.co.us](mailto:barbara.bosley@judicial.state.co.us).

**March 14 to 17, 2010 – NCJFCJ** conference in Las Vegas, NV. Information available at [www.ncjfcj.org](http://www.ncjfcj.org).

**May 17 to 21, 2010 – NACC** Rocky Mountain Children's Advocacy Trial Institute Conference in Louisville, CO. Information available at [www.NACCchildlaw.org](http://www.NACCchildlaw.org).

**October 20 to 23, 2010 – NACC 33<sup>rd</sup>** National Juvenile and Family Law Conference in Austin, TX. Information available at [www.NACCchildlaw.org](http://www.NACCchildlaw.org)

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## **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.

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## **LEGISLATIVE SUBCOMMITTEE REPORT**

The first regular session of the General Assembly began in January 2010. **Bonnie Saltzman**, JLS Legislative Subcommittee Chair, will be 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](mailto: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>.

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## **COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST**

Barbara Shaklee, 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](mailto:barbara.shaklee@dhs.co.denver.cu.us) or Linda Weinerman at (303) 860-1517 or [lindaweinerman@coloradochildrep.org](mailto:lindaweinerman@coloradochildrep.org).

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**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](mailto:martin.maureen@tchden.org)

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**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. 09CA0576. **People in the Interest of E.D., M.D., and A.D., and Concerning S.D. and M.D.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7380&courtid=1>  
*Dependency and Neglect—Allocation of Parental Rights—Offer of Proof—Dismissal of the Department of Human Services.*

In this dependency and neglect case, the children, through their guardian ad litem, appealed from an order dismissing the Arapahoe County Department of Human Services (Department), and keeping the case open under the supervision of the guardian. The order was affirmed in part and reversed in part, and the case was remanded for the court to close the dependency and neglect case and terminate jurisdiction.

The Department became involved with the family after receiving information that one of the children needed specialized mental health treatment. The parents were separated. The children were in father's custody and the Department supervised visits with their mother.

The Department moved to allocate parental responsibilities. At the hearing, the Department moved to be dismissed from the case, stating that the parents were doing what was requested of them and providing medical care, and that there were no protective issues. The Department also stated that it was "providing no services."

The guardian ad litem objected to the allocation and dismissal motions, arguing they were premature because (1) there were "serious issues"; (2) the children had special needs; and (3) the oldest child wasn't doing well. The trial court accepted the guardian's statements as an offer of proof in lieu of testimony, agreed with the Department, and entered an order allocating parental responsibilities jointly to father and mother, with the children residing the majority of time with father. The court further ordered that the case be filed as a domestic relations case for any future proceedings and dismissed the Department.

On appeal, the guardian argued it was error to proceed with an offer of proof at the allocation of parental rights hearing. The Court of Appeals disagreed, finding

that the offer of proof provided sufficient information to the court to evaluate the Department's motion.

The guardian also challenged the court's dismissal order, arguing that the Department was required to provide reasonable efforts; devise a case plan and a treatment plan; and either provide, contract for the provision of, or make referrals for service. The Court disagreed. The Court noted that the decision to dismiss parties will not be reversed absent an abuse of discretion. Based on the record, the Court found no abuse of discretion in dismissing the Department.

The Court also held that it was not proper for the trial court to order the case remain open under the supervision of the guardian after dismissing the Department. CRS § 19-1-103(87) provides statutory authority for the provision of protective supervision by the court, Department, or other agency but not by a guardian in lieu of an agency. The case was remanded for the court to close the dependency and neglect case and terminate jurisdiction.

No. 07CA2393. **People v. Buerge**.

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7389&courtid=1>

*Attempted Sexual Assault on a Child—Fictional Person—Sexually Violent Predator.*

Defendant appealed the trial court's determination of him as a sexually violent predator. The judgment was affirmed.

Defendant made contact with a purported 14-year-old female, "Kelly," in an Internet chat room. However, Kelly was a fictional person created by two undercover police officers investigating Internet crimes against children. After defendant proposed to meet with Kelly and one of her friends to perform oral sex and use drugs, one of the investigators, posing as Kelly, spoke with defendant on the telephone and arranged a meeting. When defendant arrived at the designated meeting area, police officers arrested him and found drugs and sexual paraphernalia in his possession. Defendant pled guilty to attempted sexual assault of a child under the age of 15 and possession of more than one gram of a schedule II controlled substance.

On appeal, defendant argued that the trial court erred when it found that a fictional 14-year-old girl, created by two police officers conducting an Internet sting operation, can be a "victim" within the meaning of the sexually violent predator statute (SVP statute). The Court of Appeals disagreed. The term "victim" means "intended victim" in the context of a conviction for attempted sexual assault.

Defendant also contended that the SVP statute requires the court to make specific findings of fact, and that the trial court failed to do so here. The Court

disagreed. The trial court adopted the findings and conclusions in the risk assessment, which indicated that defendant met the criteria for classification as a sexually violent predator. The trial court's findings were more than sufficient to meet the statutory requirement that it make specific findings of fact to support its determination. The trial court's order was affirmed.

No. 08CA1899. **In the Interest of C.A.B.L.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7393&courtid=1>  
*Kinship Adoption—Termination of Parental Rights—Magistrate—Jurisdiction—Unique Circumstances Doctrine—C.A.R. 4(a)—Expert.*

Mother appealed from (1) a magistrate's orders terminating the parent-child legal relationship with her daughter and decreeing the child's kinship adoption; and (2) the district court's orders upholding the magistrate's first order and determining that it lacked jurisdiction to review the second. The appeal was accepted, the judgment was reversed, and the case was remanded.

Mother asserted that the district court erred in concluding that it had no jurisdiction to address her petition for review of the magistrate's November 20, 2007 order. Because mother consented to proceeding before the magistrate, any review of the magistrate's order should have been appealed pursuant to C.R.M. 7(b). Accordingly, the district court correctly concluded that it lacked jurisdiction to hear mother's petition for review of the magistrate's order.

Mother asserted that the Court of Appeals should have accepted her untimely notice of appeal under the unique circumstances doctrine. The doctrine allows an appellate court to grant relief from the operation of mandatory language in applicable rules of procedure when the failure to comply resulted from the party's reliance on an erroneous district court ruling. The Court held, as a matter of first impression in Colorado, that in a kinship adoption appeal governed by C.A.R. 4(a), the unique circumstances doctrine allows it to accept notices of appeal filed past the seventy-five-day period set forth in that rule. Here, the magistrate twice erroneously advised mother and her counsel to appeal her rulings by seeking review within fifteen days in the district court. Relying on the magistrate's advice, mother filed her petitions for review with the district court, the first of which was denied on the merits and the second of which was denied based on lack of jurisdiction to review the magistrate's order. Considering the fundamental liberty interest in the parent-child relationship, and because the magistrate's advisements and the lack of notice required by C.R.M. 7(b) contributed to mother's failure to file a timely notice of appeal, mother's notice of appeal was timely.

Mother contended that the magistrate erred in refusing to allow mother's proffered expert, a licensed clinical social worker, to testify as an expert at the hearing on the motion to terminate her parent-child relationship. The Court

agreed. The social worker's expert testimony concerned the threshold issue of whether termination of parental rights would be in the best interests of the child, and mother provided sufficient notice of this testimony. Accordingly, the judgment and orders of the magistrate and the district court were reversed and the case was remanded for further proceedings.

No. 09CA0522. **People in the Interest of N.D.V., and Concerning Y.R.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=7439&courtid=1>

*Dependency and Neglect—Termination of Parental Rights—Subject Matter Jurisdiction—Unfit Parent—Rehabilitation.*

Mother appealed from the judgment terminating the parent-child relationship between her and her son. The judgment was affirmed.

Mother contended that the court failed to satisfy the requirement of subject matter jurisdiction. CRS § 19-1-104(1)(b) bases jurisdiction on the child's status as neglected or dependent. Here, mother admitted that status, and the court accepted her admission, establishing the essential factual predicate for exercise of its jurisdiction.

Mother argued that an adjudication of dependency or neglect was a prerequisite to a termination order. Mother's parental rights were terminated under CRS § 19-3-604(1)(c), which allows the court to conclude that the child is neglected or dependent as part of its findings regarding termination. Because the court's failure to enter an adjudicatory order was not an error affecting jurisdiction, and mother voluntarily participated in two termination proceedings without objecting to the absence of an adjudicatory order, mother waived any procedural error arising from the statute.

Mother asserted that the trial court erred in finding that she was an unfit parent. However, the trial court properly considered (1) the child's multiple injuries; (2) mother's neglect in failing to obtain medical care for the child's injuries; and (3) the fact that the child was placed out of the home for seventeen months. Accordingly, there was record support for the trial court's findings and conclusion.

Mother argued that the Department of Social Services (Department) failed to make reasonable efforts to rehabilitate her. However, mother declined to participate in individual therapy, failed to take any responsibility for the child's placement or injuries, and failed to request more time with the child. Thus, the record supports the trial court's finding that the Department made reasonable efforts to rehabilitate mother.

Mother also contended that the trial court erred in determining that no additional time would allow her to become fit. Because mother's inability to care for the child persisted after seventeen months, the trial court did not err when it found

that mother's conduct or condition was unlikely to change within a reasonable time to meet the child's needs.

The Court of Appeals also rejected mother's argument that placement with her relatives, approved by a home study in September 2008, was a less drastic alternative to termination. The child did not have a relationship with mother's relatives, was bonding with his foster family, and needed the security and permanency that only termination and adoption would provide. Accordingly, the trial court did not err in finding there were no less drastic alternatives to termination. The judgment was affirmed.

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## **SPRING NEWSLETTER**

The Spring 2010 Newsletter is scheduled to go out by March 21, 2010. The deadline for submitting cases, articles and events is March 14, 2010. Please send any submission requests to [sthibault@co.clear-creek.co.us](mailto:sthibault@co.clear-creek.co.us), or call (303) 679-2432 (phone) or by fax at (303) 679-2444.