



Colorado Office of the Child's Representative

1300 Broadway Ste 320, Denver 80203 | P (303) 860-1517 | F (303) 860-1735 | www.coloradochildrep.org

Summer 2016 Newsletter

Notes from the Executive Director

I have been thinking a lot lately about what makes a great GAL, especially at this time of year when we are evaluating attorney services and interviewing new applicants. Knowledge of the law, good trial skills, sound judgement and an ability to connect with children and young people certainly come to mind in considering what makes a great GAL. Equally important, though, are many intangibles: passion for the work, empathy and a desire to make things better for kids are all part of being a great GAL. The role itself is a unique hybrid of litigator and social services professional and all of us are somewhere along that continuum. Some great GALs lean towards the social work side, demonstrating great communication and collaboration skills. Others lean toward the litigator end of the spectrum, taking a position and using evidence and testimony to convince the decision maker. All of the great GALs have skills on both ends of that continuum.

At the end of the day, I think the defining quality of a great GAL is ownership. An exceptional GAL accepts responsibility for each kid's best interest—viewing that child as you view your own children or children close to you. It means not taking no for an answer, thinking outside the box and following through with commitments made to the child. It also means not giving up when a young person falters, when

nothing is going right and when there just doesn't seem to be a resolution. It means never settling for less than what the child needs, no matter what.

I believe this is an intrinsic quality—I don't think it can be learned over time, gleaned from case law or statute or taught in a CLE. A GAL has it or they don't—and I believe that all of you have embraced this quality in yourselves. I've often said that my criteria for contracting with an attorney is whether I would want that lawyer to represent my own children if they were involved in the court system. In fact, recently a caseworker responded to our stakeholder survey with a comment that a particular GAL was the one lawyer the caseworker would request for her own child—I can't think of a greater compliment. ♦



Linda Weinerman
Linda Weinerman,
Executive Director



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Meet an OCR Attorney

Each quarter, the OCR features an attorney in our newsletter and on our website. Learn about the individuals who make OCR's mission a reality through their passion, skill, and dedication to Colorado's kids!



Peggy Fulks practices as a Guardian ad Litem in the Fourth Judicial District's Teller County.

► **Why did you choose to practice child welfare law?** Having an interest in children, students with special needs, and criminal law, I took a juvenile law class which primarily focused on the juvenile delinquency system, but touched on the history of the child welfare and juvenile delinquency systems, truancy, and special education issues. My third year, I was active in the public interest law club, and represented indigent clients through the law school clinic and supervised fellow clinic students. Through those activities, I was aware of a variety of fields where attorneys were needed to represent indigent clients and youth. I received the "best law school clinic student" award, which helped my confidence to the point I began thinking maybe I could actually be a good lawyer. I wanted to be in the courtroom, working directly with clients, and on a variety of matters.

I worked for a different personal injury firm between taking and passing the bar, spoke with numerous sole practitioners about private practice, and spent a significant amount of time researching, reading, and observing a variety of case types and court proceedings. I wanted to focus on the rural county in which I lived, knowing I would have to accept cases in both counties in my judicial district while building my practice. I wanted to open my own practice so I could choose the types of cases and clients I represent. While observing D&N cases, I not only observed the RPCs, GALs, county attorneys, and Judges, but also the parents, caseworkers, court clerks, and the witnesses who testified. I "fell in love" with the child welfare system and knew that is where I belonged.

► **What has been the most rewarding moment for you while working with children and families in the delinquency system?** When adults or children approach me, sometimes during the case or years later, offering hugs and thanks, and sharing their successes, information about their children, and acknowledging my role in their lives.

► **Describe a challenge you face doing this work and your strategy to overcome it.** For 28 years, my husband and I have lived and worked in a relatively small town in a rural county where we raised our own children. It is sometimes difficult to grocery shop, get gasoline, eat out, attend church, enjoy an activity or holiday event without running into someone who wants to discuss their situation, ask legal questions, give input on a case their neighbor told them about, or provide an update on their current case. A few times people have come to my home, on a Saturday morning, asking for help. I tell every person involved in a case that to protect their privacy and confidentiality I will not approach them in public to discuss their situation, and they should not feel compelled to approach me in public about their case. When we meet by chance, I am just being me, a private person, and I am not at that time the GAL involved in their case. For the most part, I keep my personal life separate from my professional life. If I'm with my family in public and someone approaches me, if I introduce that person as "this is so and so from xyz" they know it is OK to include that person in what we are doing or talking about. But, if someone approaches me and I say, "this is (first name only)", that indicates to my family that this person is somehow involved in my work, which is confidential. It works!

► **What advice do you have for an attorney who is new to child welfare law?** Ask the division clerks who they believe are the best GALs/RPCs and seek out their guidance. Then, ask those people who they believe are the best at what they do. You should then have access to the best attorneys in your area!

Be aware when you decide you like someone or you do not like someone on a case. As soon as you make that decision, you are no longer objective. If you like someone, your decisions and recommendations probably reflect that. If you do not like them, your decisions and recommendations probably reflect that as well, and may have a greater impact on that person. Things to consider:

- You may be the only consistent person in your child client's life throughout the case. You should be someone they trust!
- You are making recommendations/life changing decisions about someone's life!
- They are not making recommendations about your family.
- These cases are not about you. So, do not make it about you.
- If we, the professionals, do not hold ourselves accountable, how can we hold the parents, or your child clients, accountable for their actions or inaction?
- Each child is the best client you will ever have!
- Your reputation is at stake, daily!

► **Share a litigation strategy or case example when you were successful despite opposition from other parties to the case.** What does the opposition have to support their position? If you have the facts and the law in your favor, and you provide the Judge with the information necessary to rule in your favor, you most likely will be successful. ♦

We invite you to read more of Peggy's responses on our website. See our full Q&A with Peggy by visiting www.coloradochildrep.org/meet-an-ocr-attorney.



Nominate, share your own story, and view our archive on our [Meet an OCR Attorney](#) page online!

Summer Legal Review

Summaries of new cases and legislation brought to you by OCR's Staff Attorneys

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■ 1. CO Supreme Court: Recent & Pending Cases

People in the Interest of C.G., 15SC677. Whether the Court of Appeals erred in holding that a dependency and neglect case in which the subject child is deceased is not moot under the "collateral consequences" doctrine because the father's request for post-judgment relief in the dependency and neglect case may impact the parents' separate federal civil rights suit.

In re S.J. 16SA96. Whether a juvenile charged as an adult in district court waives her psychotherapist-patient privilege in all existing mental health records simply because she exercises her right to request transfer of the proceedings to juvenile court under 19-3-517(c). Whether the district court erred by ruling that a juvenile charged as an adult must always submit to a "mental health or psychological assessment or screening" by the Colorado Mental Health Institute at Pueblo whenever she exercises her right to seek transfer to juvenile court, notwithstanding the Court of Appeals' prior holding that "a juvenile who objects cannot be ordered to undergo a psychological evaluation for the purpose of a transfer hearing." *In re A.D.G.*, 895 P2d 1067, 1073 (Colo. App. 1994). **Oral argument occurred June 9, 2016.**

In re B.H. 16SA94. Whether the trial court erred in declining to suppress at an upcoming reverse transfer hearing a psychological examination conducted pursuant to a magistrate's order. **Oral argument occurred June 9, 2016.**

People in the Interest of J.G., 2016 CO 39 (May 23, 2016). This case involves a respondent parent's challenge to the juvenile court's departure from a pattern jury instruction concerning injurious environment. Specifically, the jury instruction given by the juvenile court excluded the parental fault language contained in CJI-Civ. 41:17, Question 4. Based on the instruction, the jury found the children's environment was injurious to their welfare. The Court of Appeals reversed, reasoning that the jury instruction at issue "misstated the law and misled the jury by not suggesting that the children could be deemed to be dependent or neglected without considering, for each child, the actions or omissions of each parent and each parent's availability, ability, and willingness to provide reasonable parental care."

The Supreme Court reverses the Court of Appeals' decision, holding that neither the statutory scheme of the Children's Code nor *Troxel* requires a county department of social services to prove parental



fault for an adjudication on the grounds of injurious environment. Specifically, the Court holds that "*Troxel's* due process requirements do not necessitate that the State prove that both parents lack the availability, ability, or willingness to provide reasonable parental care before a child may be adjudicated dependent or neglected." The court also holds that the jury instruction at issue was consistent with § 19-3-102(1)(c), which does not require the jury to make findings of parental fault. The Court reiterates its *K.D. v. People*, 139, P.3d 695 (Colo. 2006) statement that "adjudications are not made as to the parents but, rather, relate only to the status of the child as of the date of the adjudication." (internal citations removed). The Court explains that when the statutory grounds for dependency or neglect reference parental conduct, parental conduct is relevant to adjudication but that when statutory grounds do not reference parental conduct, "parental conduct or condition is relevant only to the treatment plan . . . rather than the need for adjudication."

People in the Interest of C.E.M., 2016 CO 40 (May 23, 2016). In this case, the Supreme Court affirms a Court of Appeals decision upholding the termination of the parent child legal relationship based on mother's failure to report to the department her contact with the children's father. While the treatment plan allowed contact between mother and father, the treatment plan did require mother to report contact to the caseworker. The Court holds that the trial court had sufficient evidence to find that mother repeatedly violated the treatment plan's requirement that she report contacts with the father, who had not addressed his substance abuse and domestic violence issues, and for that reason could not demonstrate the appropriate protective capacity to ensure her children's safety.

■ 2. CO Court of Appeals

People v. Sandoval, 2016 COA 57 (April 21, 2016). In a case concerning the subject matter jurisdiction of the Denver Juvenile Court and the corresponding lack of subject matter jurisdiction of the Denver District Court over delinquency proceedings, the Court of Appeals holds that the Denver District Court had never acquired subject matter jurisdiction over a juvenile charged with offenses that did not qualify for district court filing under the direct file statute. This decision focuses solely on the unique jurisdiction of Denver Juvenile Court and analyzes the constitutional implications of its statutory framework. Although the case proceeded in Denver District Court based on the mistaken assumption that one of the charges constituted a charge eligible for direct file in district court, its lack of subject matter jurisdiction could not be waived.

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Summer Legal Review

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People v. E.M., 2016 COA 38 (March 10, 2016). In a case involving an analysis of the interrelationship between Articles Three and Five of the Children's Code, the Court of Appeals holds that a county department of social services may not move to involuntarily terminate parental rights in a relinquishment case under Article Five when the children are subject to a pending dependency and neglect proceeding under Article Three. A motion to terminate the parent-child legal relationship filed by the GAL in the dependency and neglect proceeding resulted in the mother's decision to relinquish her parental rights; the county department then filed petitions in separate relinquishment cases for each child to terminate the father's parent-child legal relationship. Analyzing the differing purposes of Articles Three and Five and the jurisdictional provisions of the Children's Code, the Court holds that the "dependency and neglect court maintains continuing, exclusive jurisdiction over the status of a child who is alleged to be dependent and neglected until the child reaches majority or until the court's jurisdiction over the case is otherwise terminated." The trial court therefore erred in terminating father's parental rights under the relinquishment statute.

■ 3. Appellate Rules

On May 23, 2016, the Supreme Court adopted amendments to C.A.R. 3.4, effective July 1, 2016 for cases filed on or after July 1, 2016. Highlights of these amendments include:

- The rule now specifically includes judgments, decrees, or orders allocating parental responsibilities pursuant to 19-1-104, final orders entered pursuant to 19-3-612 (reinstatement of parental rights statute), and 19-3-605 (placement determinations post termination) in addition to previously enumerated orders.
- The Opening Petition has been renamed the Opening Brief, and its content requirements have been revised. The time frame now applicable to the filing of the opening brief is 21 days after the filing of the record (provisions pertaining to an unedited transcript have been eliminated).
- The Opening Brief must contain a statement of compliance with the Indian Child Welfare Act that includes citations to the record of each date on which the court made an ICWA inquiry,

copies of ICWA notices, postal return receipts, responses to the notices, and rulings as to whether the child is or is not an Indian child.

- The Response to Petition has been renamed the Answer Brief. Its content requirements have been revised, and it now must include under a separate heading whether the appellee agrees with the appellant's statements concerning ICWA compliance.

■ 4. Legislative Update

The Second Regular Session of the Seventieth General Assembly (GA) adjourned on May 11, 2016. The GA considered 684 bills and 89 resolutions. The OCR analyzed, provided expertise on, suggested amendments to, and helped pass several bills over the 120-day session. Below are bills worth noting:

- **HB 16-1405 Long Bill.** OCR's request for continuation funding passed through both chambers and was signed by the Governor on 4 May 2016.
- **HB 16-1448 Relative Guardianship Assistance Program.** Colorado's Relative Guardianship Assistance Program (RGAP) established in 2010 as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 is expanded by HB 16-1448. The bill amends § 26-5-110, C.R.S. (2015), to allow subsidies when a relative finalizes an Allocation of Parental Responsibility (APR) and when foster parents with a significant relationship with youth 12 years of age or older finalizes guardianship or APR under certain circumstances established in § 19-3-702, C.R. S. (2015). The Governor signed HB 1448 on 10 June 2016.
- **HB 16-1316 Change in Venue.** Section 19-3-201, C.R.S. (2015) requires the court to set a hearing and the petitioner to provide notice to the proposed receiving county upon the filing of a motion for change in venue. The proposed receiving county has a right to be heard and the court must consider statutory factors in ruling on the motion. The Governor signed HB 16-1316 on 21 April 2016.
- **HB 16-1224 Concerning Child Abuse Involving Human Trafficking of Minors.** The bill amends the statutory definition of "child abuse or neglect" found at § 19-1-103(1)(a), C.R.S. (2015) to include any case in which a child is subject to human trafficking for involuntary sexual servitude. The Governor signed HB 16-1224 on 15 April 2016.
- **HB 16-1328 Concerning Statutory Provisions Related to the Use of Seclusion on Individuals.** The bill strengthens the safety provisions for the use of restraint and seclusion on individuals, particularly youths, who are being detained by a state or local agency. The bill was sent to the Governor on 18 May 2016.
- **SB 16-110 Concerning Protecting the Privacy of Child Victims When Releasing Criminal Justice Records.** The bill requires that, before releasing a criminal justice record related to a child-victim crime, the releasing agency delete the name and any other information that would identify a child victim of the offense. Governor signed on 14 April 2016.

Please contact Dorothy Macias at 720.351.4346 or dorothymacias@coloradochildrep.org to share your thoughts or for further information. ♦





ICWA Regulations

The Acting Assistant Secretary for Indian Affairs signed and submitted for publication in the Federal Register his final rule concerning improved implementation of the Indian Child Welfare Act. The unofficial version is available at tinyurl.com/zqkl2zq. The version currently available is not an official version of the rule for purposes of compliance. The official version will be published in the Federal Register and appear on the Government Printing Office's website. The rule is effective 180 days after publication in the Federal Register. We will let you know as soon as it is published.

Please note that the document is lengthy due to the requirement that it contain comments received to the proposed rules; the rules begin at page 321.

- ICWA applies to any Indian child custody proceeding, any emergency proceeding involving an Indian child, and any proceeding involving status offenses resulting in the need for out-of-home placement of the child. §23.103(a).
- ICWA does not apply to a proceeding regarding a criminal act that is not a status offense. §23.103(b)(2).
- The regulations echo the February 25, 2015 Guidelines' requirement that the court inquire in every emergency, involuntary and voluntary child custody proceeding if a participant (1) knows or (2) has reason to know that the child is an Indian child. §23.107(a). The court must apply ICWA standards if it has a reason to know the child is an Indian child and until it has confirmation that the child is not an Indian child. §23.107(b)(2). Circumstances establishing a "reason to know" are found at §23.107(c) and include situations where any participant, officer of the court, Indian Tribe, Indian organization or agency "informs the court that it has discovered information indicating that the child is an Indian child."

An FAQ is available at tinyurl.com/zex657h. The National Indian Child Welfare Association and the Native American Rights Fund released a summary of key provisions of the final rule (25 CFR Part 23) on June 13, 2016. The summary is available at tinyurl.com/jg4qavp. ♦

Awards & Accolades!

We wish a happy retirement to **Jamie Henderson**. Jamie, we wish you the very best as you begin a new chapter in life! Your advocacy for children throughout the years will be remembered.

Congratulations to **Wendy Hammack Smith** who was awarded the Lohman Award for Excellence in representing children by the El Paso County Bar Association.

Congratulations to **Melissa Beato** who received the IMPACT Exceptional Collaborator of the Year Award! IMPACT is a Boulder County multi-agency partnership created in 1997 to improve services and systems that work with high-risk children, youth, and families. ♦

Budget Update

OCR experienced a significant increase in billing for the month of May. While we anticipate overall expenditures to be within our current budget for the fiscal year that will end June 30, 2016, we will be closely monitoring billing activity. The state's budget for the upcoming fiscal year 2017 was recently passed by the General Assembly and signed by the Governor. OCR's fiscal year 2017 budget reflects a slight decrease in its appropriation for court appointed counsel due to caseload projections and the transfer of the child and family investigator (CFI) function to the State Court Administrator's Office. OCR expects the upcoming budget to adequately fund its operations for the next fiscal year. ♦

Case Management & Billing Using the C.A.R.E.S. System

Litigation Support

The OCR Litigation Support list (found at www.coloradochildrep.org/attorney-center/appointment-lists) includes attorneys who provide GAL support on appeals, immigration issues, and education issues. This activity can be entered into CARES as Consultation with Litigation Support/ GAL. Below is information about each type of litigation support.



➤ Appeals

Pre-approval is not required to obtain litigation support on an appeal. The appellate case is set up in CARES with a CA case number. The appellate attorney can create an appointment and designate the Capacity "GAL for Child" under the appellate case number. The GAL of record remains the same for the underlying D&N case.

➤ Immigration

Pre-approval is required for consultation with litigation support on immigration issues. The OCR has made arrangements with Rocky Mountain Immigration Advocacy Network to bill OCR directly for case consultation.

➤ Education

Pre-approval is also required for consultation with litigation support on education issues. Educational Consultant can be added as an assignment type in CARES. In those cases, the attorney who is providing the consultation can be added to the underlying case and enter case activity in CARES. ♦



SPOTLIGHT ON Camp To Belong Colorado

Camp To Belong Colorado is a nonprofit organization dedicated to reuniting siblings separated through out-of-home care.

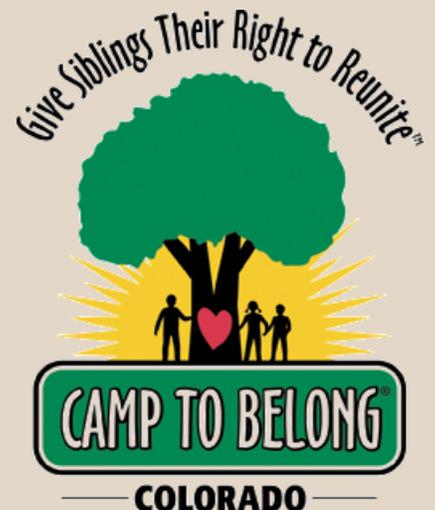
Mini-Camp / Carnival Day

Date: Saturday, July 23, 2016

Time: Drop off at 11:00am and Pick-up at 3:00pm

Location: Mt. View United Church, 10700 E Evans Ave, Aurora, CO 80014

For more information about the program or the mini-camp on July 23rd, please visit the website at ctbcolorado.org or contact Stacey Sanders at 303-810-0865 or staceys@ctbcolorado.org. ♦





How do Court Reporters Get Trained?

This topic recently came up as a potential career path for youth; we thought others may be interested in what we learned. The National Court Reporter Association is predicting an extreme shortage of court reporters by the year 2025, making this an excellent time to get into the field. While there are no physical schools in Denver, all programs are available online. Training requirements include two to three years of training with a six-week internship at the end of training and “testing” out of the program at 225 words per minute. Graduates can elect to work in an “officialship” or as a freelancer. Court reporters can also provide CART (Computer Access Realtime Translation), a service for deaf and hard-of-hearing individuals. These services are utilized at many universities now to accommodate their students and this also can be a full- or part-time position. Reporters can earn anywhere from \$40,000 to \$80,000 per year depending on how many hours they elect to work. ♦

<https://www.ncra.org/>



Recent News & Resources



- **“Every Transition Counts”** (tinyurl.com/hdz3gs4) A recent report by researchers at the University of Northern Colorado provides an overview of educational stability of Colorado children in foster care and the correlation between educational stability and academic achievement.
- **“Elements of Effective Practice for Children and Youth Served by Therapeutic Residential Care”** (tinyurl.com/zfgoo4u) This Casey Family Program Research Brief explores elements of effective practice in residential settings.
- **The Strengthening Families Act** As states across the nation work to implement the Strengthening Families Act, efforts are underway in Colorado to define the reasonably prudent parent standard and normalcy for youth in foster care.
 - Letting Kids be Kids: The Strengthening Families Act (tinyurl.com/hghu5lp)
 - Normalcy: Providing Age and Developmentally Appropriate Services (tinyurl.com/zd5cl5p)
- **Recent Resources from the ABA Center on Children and the Law**
 - “Engaging Youth in Court – A National Analysis” (tinyurl.com/jlt2ysv)
 - Colorado “Quick Guide to Child Welfare & Immigration Law” (tinyurl.com/zznhd9y)
- **NCJFCJ Releases “Enhanced Resource Guidelines”** (tinyurl.com/gu3pbgu) Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges.
- **The U.S. Department of Education Foster Care Transition Toolkit** (tinyurl.com/hldnjij), developed in partnership with the U.S. Departments of Health and Human Services Housing and Urban Development, Transportation, and Labor, in addition to youth and practitioners involved in the child welfare system, includes tips and resources intended to help foster youth access and navigate social, emotional, and educational and skills barriers as they transition into adulthood.
- **Strip-Searching Directive** (tinyurl.com/ift3q6y)
On October 30, 2015, DHS and DYC adopted a directive regarding searches after professional visits that overrode the April 2015 policy on this issue. The Directive ends the policy of mandatory strip searches after professional visits and it provides that no strip searches will occur after professional visits unless there is some specific reason to believe that particular kid has contraband. Strip searches, however, were replaced with pat downs. It has recently come to OCR’s attention that some facilities may be strip searching youth after meeting with therapists from outside of the facility. As we continue to monitor the implementation of this directive, we ask that you inquire with youth about strip-search practices at facilities and notify OCR if you become aware of post professional visit strip searches.

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Recent News & Resources

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- **Expungement and Deregistration:** The Colorado Juvenile Defender Center created fillable forms for both expungement and deregistration. Find the following Expungement and Deregistration Forms at tinyurl.com/gpb3hxr.
- Deregistration Only
 - Expungement Only
 - Denver Expungement and Deregistration (includes Denver's Modified Expungement Order)
 - Denver Expungement (includes Denver's Modified Expungement Order)



Attorneys are encouraged to reach out to CJDC (fellow@cjdc.org) for assistance with filings as well as consulting on substantive issues. CJDC can also offer clients assistance accessing employment resources post-expungement/deregistration. Additionally, it is very helpful for CJDC to be able to gather data on the outcomes of these cases to use the information to help with future policy reforms.

- **Gault at 50 Campaign Kicks Off:** On Monday, May 16, the National Juvenile Defender Center started a year-long campaign to commemorate the 50th anniversary of *In re Gault*, the U.S. Supreme Court decision that gave children the right to an attorney in juvenile court. Learn more about the Gault at 50 Campaign at www.gaultat50.org.
- **Questions about Core Service Funding?** Contact information for county-based Medicaid Core Service Funding Coordinators is available here: tinyurl.com/jerqadm. ♦

MISSION STATEMENT

The mission of the Office of the Child's Representative (OCR) is to provide competent and effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted by high conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings.

OCR Board of Directors

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