Colorado Supreme Court 101 West Colfax Avenue, Suite 800 Denver, CO 80202 Certiorari to the Court of Appeals, 2010CA2408 Denver Juvenile Court, City and County of Denver, 2008JV2939 **Petitioners:** L.A.N. a/k/a L.A.C. by and through her Guardian ad Litem and The People of the State of Colorado, **In the Interest of Minor Child:** L.A.N. a/k/a L.A.C., v. **Respondent:** L.M.B.	▲ ▲ **COURT USE ONLY**
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BRIEF OF *AMICUS CURIAE* OFFICE OF THE CHILD'S REPRESENTATIVE

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief complies with C.A.R. 28(g). It contains **9,039** words.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether a guardian ad litem in a dependency and neglect proceeding can waive the child's psychotherapist-patient privilege.

II. Whether the court of appeals erred in determining that the child's psychotherapist-patient privilege was waived with respect to certain materials in the psychotherapist's file.

STATEMENT OF THE CASE AND FACTS

At the time of the filing of the petition in this case, L.A.N. was seven years old. Petition in Dependency and Neglect ¶ 2, (v.I, p.1).[1] She was currently residing at Children's Hospital, having been placed there as a result of out-of-control behaviors and suicidal statements. *Id.* at ¶ 6, (v.I, p.3). Her mental health concerns, the instability of her living environment, and her mother's refusal to follow through with treatment recommendations and attempt to flee with L.A.N. from the hospital led to the filing of the petition. *Id.*

L.A.N. was placed in the temporary legal custody of Denver Human Services (hereinafter "Department") on December 23, 2008. Transcript of December 23, 2008 Hearing, p.17, ll.19-22. Joint temporary legal custody was

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[1] References in parenthesis refer to the record on appeal and will be cited as v. _, p.(pp.)__, l.(ll.)__. The transcripts are not assigned volumes and will be cited as "Transcript of ___ Hearing, p.(pp.)__, l.(ll.)__."

transferred to her maternal grandparents and aunt on June 16, 2009. (v.II, p.504). L.A.N. began seeing an individual therapist in April 2009. Transcript of October 20, 2010 Hearing, p.98, l.24. The therapist provided periodic reports to L.A.N.'s caseworker. (v.I, p.105, v.I, p.142, v.II, p.325). The therapist addressed the court at a hearing on January 25, 2010. (v.II, p.516).

On February 22, 2010, L.A.N.'s Guardian ad litem (GAL) filed a motion for a forthwith hearing seeking reconsideration of the court's order regarding in-home family therapy. (v.I, p.265). The GAL served a report by the therapist on the court and other parties on February 19, 2010. *Id.* at p.248. The report, written in the form of a letter to the GAL, described in general L.A.N.'s trust issues and progress in therapy. *Id.* at pp.236-40. It also referenced some statements made by L.A.N. regarding her extracurricular activities, events that had happened while in the care of her mother, and her feelings regarding her mother. *Id.* The therapist also expressed concerns regarding instability in L.A.N.'s biological family's living situation, the impact of her mother's religious decisions on L.A.N.'s relationships with her peers at school, and the potential that L.A.N.'s mother might unnecessarily medicate L.A.N. *Id.* The therapist set forth a list of what L.A.N. needed to "heal and recover from her trauma history," including but not limited to structure, stability, and "relationships that promote closeness and safety." *Id.* at

p.340. This letter was received by the court and the parties to the case. Transcript of February 23, 2010 Hearing, p.2, ll.3-10. The letter was referenced by the GAL and mother's attorney in their arguments at the February 23, 2010 hearing on the GAL's contested motion and by the Court in its decision on the matter. *Id.* at p.28, ll.23-25, p.9, l.19, p.15, l.13 – p.16, l.3.

On June 28, 2010, counsel for respondent mother served L.A.N.'s therapist with a subpoena for her entire treatment file. (v.II, p.374). The therapist moved to quash the subpoena. (v.II, p.367). The court heard argument on the matter on July 15, 2010. After hearing argument by the parties, the court determined that L.A.N. was not competent to make her own determination regarding waiver of the therapist-patient privilege and that L.A.N.'s mother was unable to make the determination on L.A.N.'s behalf. Transcript of July 15, 2010 Hearing, p.17, ll.8-15. The court stated that it did not know whether the GAL or caseworker were in the position to waive the privilege. *Id.* at pp.16-18. The court ruled that by encouraging and allowing the therapist to report to the court, it had authorized "a very limited waiver of the privilege." *Id.* at p.17, l.19 – p.18, l. 5. The court ruled that it would continue its limited waiver of the privilege to allow mother's attorney to either depose or speak with the therapist but not access to treatment notes, videotapes, or personal records. *Id.* at p.18, ll.6-17. In coming to this conclusion,

the court considered L.A.N.'s significant trust issues and the importance of her relationship with the therapist. *Id.* at p.16, l.24- p.17, l.1. It balanced these interests against the "very real need" of mother's counsel "to appropriately represent her client." *Id.* at p.17, ll.2-4.

Later in the proceedings, the GAL endorsed Kris Newland as a witness for the hearing on the Department's motion to terminate the parent-child legal relationship. (v.II, p.466 (referencing other endorsements located at v.I, p.299, v.II, p.426)). The therapist was called by the Department to testify at the termination hearing and was examined by the county attorney, GAL, and mother's counsel. Transcript of October 20, 2010 Hearing, pp. 94-165, 262-97. During cross-examination of the therapist, counsel for mother renewed her request for the therapist's file. *Id.* at p.263. The court reiterated its order regarding a limited waiver of the privilege. *Id.* at p.249, l.9 – p.265, l.13. Counsel for mother cross-examined the therapist extensively on any bias the therapist may have had against the mother, referencing the therapist's letter, another psychologist's evaluation of L.A.N., the therapist's own recommendations made at various points in the proceeding, and the basis for those recommendations. *Id.* at pp.142-65, 262-80. After hearing evidence, the court entered an order terminating the parent-child legal relationship between L.A.N. and her mother. *Id.* at p.592, ll.15-17.

Mother appealed the order terminating the parent-child legal relationship. The Court of Appeals vacated the juvenile court's termination order. While lack of compliance with the notice provisions set forth by § 19-1-126, C.R.S. (2011) was the primary basis for vacating the order, the Court of Appeals also held that the juvenile court had erred in ruling it had authorized a limited waiver of the privilege. The Court of Appeals specifically held that the actions of the GAL and the Department—specifically, both parties' actions of obtaining privileged information from the therapist then disclosing the information to the court in advocating to terminate parental rights and the GAL's action of releasing the therapist's letter— constituted an express waiver of the therapist-patient privilege.

The Court of Appeals went on to hold that the GAL did have the authority to waive the privilege and, thus, did not rule on the Department's authority to do so. The Court of Appeals held that the juvenile court had erred in its determination of the scope of the waiver, and it ruled that the waiver "extended at least to all material in the therapist's file that supported, related to, or contradicted the therapist's statements and opinions as presented" in the letter and through her testimony at the termination hearing. Acknowledging arguments made regarding the potential impact of the disclosure on L.A.N.'s therapeutic progress, the Court of Appeals directed the parties to determine whether they could proceed "on the

basis of the evidence that remains after excluding all information from the therapist." *People ex rel L.A.N.* No. 10CA2408, 2011 WL 2650589 (Colo. 2011).

INTEREST OF AMICUS CURIAE

The Colorado General Assembly created the Office of the Child's Representative ("OCR") in 2000 for the purpose of ensuring the provision of uniform, high-quality legal representation and non-legal advocacy to children in judicial proceedings. § 13-91-104(1), C.R.S. (2011). All GAL services for children in Colorado are provided exclusively through the OCR, which is funded by general fund appropriations. Colorado Supreme Court Chief Justice Directive (CJD) 04-06; § 13-91-102(2), C.R.S. (2011). In Fiscal Year 2011, the OCR provided services to approximately 21,700 children by contracting with approximately 231 attorneys across the state, employing staff attorneys at its El Paso County Guardian ad Litem (GAL) Office, and contracting with three pilot multidisciplinary staff offices in Denver and Arapahoe Counties. § 13-91-105(1)(a)(X)(2011), C.R.S.; CJD 04-06; OCR 2011 General Assembly Report 6, 15. The OCR's responsibilities include but are not limited to enhancing the provision of GAL services in Colorado by providing training to attorneys and judicial officers, making recommendations to the Chief Justice of the Colorado Supreme Court concerning the establishment of minimum training requirements

and best practice standards, and overseeing the practice of GALs to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures. § 13-91-105(1)(a), C.R.S. (2011).

Although an extensive body of case law exists in Colorado regarding the therapist-patient privilege set forth in § 13-90-107(1)(g), there is little direct guidance on who should be able to invoke or waive the privilege on behalf of a child in a dependency and neglect proceeding. Resolution of the issues presented for review requires consideration of the privacy interests of children, the purpose of dependency and neglect proceedings, and the unique role and responsibilities of GALs in such proceedings, as defined by statute, case law, rule, and chief justice directive. This case presents an opportunity to clarify the privacy interests of children in dependency and neglect proceedings and the role of the GAL in preserving those privacy interests. As the state agency responsible for overseeing and training GALs throughout Colorado, the OCR seeks to provide the Court with information and analysis that may be helpful to its resolution of the issues.

ARGUMENT

The therapist-patient privilege, codified in §13-90-107(1)(g), C.R.S. (2011) protects important privacy interests and serves to promote full participation in treatment.[2] A child subject to a dependency and neglect proceeding needs and deserves to be able to fully participate in therapy without fear that others whom the child may not trust or with interests adverse to the child will receive access to sensitive information revealed during therapy. Society benefits from protection of these privacy interests, as successful participation in therapy and treatment supports vulnerable and victimized children in becoming healthy adults. At the same time that children benefit from the ability to share information with their therapists, information provided to therapists may be relevant to a court's ability to enter orders that protect a child's safety and promote the child's best interests. The Colorado Children's Code strikes a balance between a child's privacy interests and a dependency court's need for information by carving out limited exceptions to the therapist-patient privilege and allowing a court to order examinations and evaluations of a child in prescribed circumstances.

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[2] The OCR will use the term "therapist-patient privilege" to describe the privilege set forth in § 13-90-107(1)(g), C.R.S. (2011), which applies to a number of specifically enumerated professionals and specified agents and employees of such professionals.

Information that remains privileged under the statutory scheme of the Children's Code may at times be necessary to a court's resolution of a matter in a child's best interests. The decision whether to waive the therapist-patient privilege in order to provide such information involves careful balancing of the need for the evidence against any negative impact of disclosure. While children of sufficient age and maturity may be able to make this determination on their own, for children of insufficient age and maturity, the parent is typically regarded as the person who may exercise the privilege on the child's behalf. However, in dependency and neglect proceedings, the interests of parents and children are not necessarily aligned and may be in conflict; this is recognized by the requirement of the appointment of a GAL for every child to act as that child's guardian for the purpose of the litigation and as the attorney for the child's best interests. It is the GAL who must make the determination whether to invoke or waive the child's privilege in a dependency and neglect proceeding. Any suggestion by the Court of Appeals that the Department could waive the privilege on the child's behalf was in error.

A waiver of the therapist-patient privilege must be an intentional waiver as demonstrated by the totality of the circumstances. Moreover, any waiver of the privilege must be narrowly construed to strike the proper balance between the

privilege holder's privacy interests and other parties' need for the information to refute the claim put at issue by the holder. This balancing is performed by the trial court in its sound discretion. A reviewing court must defer to the trial court's factual determination regarding whether an intentional waiver has taken place as well as its discretionary determination regarding any limits on the scope of the waiver.

In this case, the juvenile court did not make factual findings whether the GAL had intentionally waived the therapist-patient privilege on behalf of the child, and the record is insufficient to support a finding of intentional waiver. Additionally, while the record indicates that the juvenile court did balance the child's privacy interests against the respondent mother's need for information in determining that it had authorized a very limited waiver of the privilege, the Court of Appeals disregarded the trial court's analysis and instead held that the GAL had effectuated a broad waiver of the privilege that required disclosure of extensive information. In holding that the GAL had effectuated an extensive waiver that would last throughout the duration of the proceedings, the Court of Appeals erred by: 1) applying the wrong analysis to the determination of whether the GAL had waived the privilege and the scope of any waiver that had might been effectuated

by the GAL; and 2) not giving proper deference to the juvenile court's factual findings.

Standard of Review

This Court reviews *de novo* any issue of statutory construction. *Bostelman v. People*, 162 P.3d 686, 689 (Colo. 2007). The issue of whether the GAL can waive the therapist-patient privilege is an issue of statutory construction, and the standard of review is therefore *de novo*.

The issue of whether the Court of Appeals erred in determining whether the privilege was waived by the GAL in this case presents a mixed question of law and fact which requires a *de novo* standard of review that gives deference to a district court's factual findings. *People v. Alengi*, 148 P.3d 154, 159 (Colo. 2006); *People v. Garcia*, 11 P.3d 449, 453 (Colo. 2000).

I.

The Therapist-Patient Privilege Protects Important Privacy Interests Applicable to Children in Dependency and Neglect Proceedings and Applies to Such Proceedings Unless Specifically Abrogated by the Children's Code

A. The therapist-patient privilege serves important privacy interests applicable to children in dependency and neglect proceedings.

The relationship between therapist and patient is recognized as a "particular relation[] in which it is the policy of the law to encourage confidence and to

preserve it inviolate." § 13-90-107(1), C.R.S. (2011). The privilege serves both public and private interests by preserving the "atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears" necessary for effective psychotherapy. *Jaffee v. Redmond*, 518 U.S. 1, 10-11, 116 S.Ct. 1923, 1928-29 (1996). The privilege protects against testimonial disclosure and pretrial discovery of communications, files, and records made during the course of treatment. *People v. Sisneros*, 55 P.3d 797, 800 (Colo. 2002); *Clark v. District Court*, 668 P.2d 3, 9 (Colo. 1983).

This Court has repeatedly affirmed the important role the privilege serves in "enhance[ing] the effective diagnosis and treatment of illness by protecting the patient from the embarrassment and humiliation that might be caused by . . . disclosure of information divulged." *Clark,* 668 P.2d at 8. *See, e.g., Sisneros*, 55 P.3d at 800; *Hoffman v. Brookfield Republic, Inc.*, 87 P.3d 859, 861 (Colo. 2004); *Bond v. District Court*, 682 P.2d 33, 38 (Colo. 1984). The policy underlying the privilege is "especially pronounced" when the therapy involves treatment for victims of sexual assault because

> 'The knowledge that the alleged assailant would be entitled to discover these otherwise privileged documents could hamper a victim's treatment progress because of her unwillingness to be completely frank and open with the psychotherapist.'

Sisneros, 55 P.3d at 800 (quoting *People v. District Court*, 719 P.2d 722, 726-27 (Colo. 1986)).

As with victims of sexual assault, the need for the privilege is especially pronounced for children subject to dependency and neglect proceedings. Many children are subject to such proceedings because of an injurious environment, lack of proper parental care, maltreatment, and abuse. *See* § 19-3-102(1), C.R.S. (2011) (defining neglected or dependent child). The knowledge that sensitive disclosures may be made to the person responsible for that maltreatment may prevent children from fully participating in therapy. Even children who may not have specific concerns regarding the disclosure of information to persons responsible for their maltreatment may have significant trust issues rendering frank and open communication with their therapists difficult.

> Children who have been abused or neglected often arrive at the legal proceeding in an incredibly disempowered state. They have been violated and hurt by the people who are supposed to love and protect them. They have had their private lives and stories publicized and repeated by those who promised to keep it secret.

Randi Mandlebaum, *Rules of Confidentiality When Representing Children: The Need For A "Bright Line" Test*, 64 Fordham L. Rev. 2053, 2058 (1996). Not only do such experiences make it difficult for children to gain trust in their therapists; the disclosure of confidences made during therapy sessions may further exacerbate

the effects of the maltreatment. *See, e.g., In re Kristine W.*, 94 Cal. App. 4th 521, 528 (2001) (acknowledging that disclosure of child's therapy notes to an agency social worker whom the child did not trust might "inadvertently reinforce" feelings of betrayal and powerlessness caused by her father's physical and sexual abuse).

This case vividly illustrates the significant trust issues experienced by children in dependency and neglect proceedings. L.A.N.'s trust issues were noted by multiple professionals who had worked with L.A.N. at various points in the case. The intake worker who interviewed L.A.N. indicated that she answered many questions by saying, "I don't know" or "I don't want to say." (v.1, p.102). She "didn't want to look at the intake worker and . . . kept her face hidden in the chair she was sitting in." *Id.* L.A.N.'s Court Appointed Special Advocate noted that L.A.N. acted untrusting and shy during their initial meeting in May 2010. (v. II, p.337). L.A.N.'s therapist herself, who began seeing her in April 2009, indicated that "it took constant reassuring and many weeks" for her "to finally begin to open up" in therapy. (v.II, p.387). The report provided by the ongoing caseworker in November 2009 indicated that L.A.N. had just recently begun to trust her therapist and participate in therapy—approximately seven months after L.A.N. began seeing her therapist. (v.1, p.185). In objecting to the release of the therapist's file, L.A.N.'s GAL noted L.A.N's "significant difficulty trusting

anybody" and the importance of the trust she had developed in her therapist to "her ability to get better." Transcript of July 15, 2010 Hearing, p.15, ll.19-25. The Court also recognized L.A.N.'s trust issues and the "good therapeutic relationship" she had developed with her therapist. *Id.* at p.16, l.24- p.17, l.1

There is strong societal interest in promoting effective treatment for children involved in dependency and neglect proceedings. The impact of child abuse and neglect extends far beyond the physical consequences, and its "immediate and emotional effects . . . can translate into lifelong consequences." *See* Child Health and Information Gateway, *Health and Mental Health*, http://www.childwelfare.gov/can/impact/longterm/health.cfm (last visited March 15, 2012). In addition to the trauma from the maltreatment itself, the removal from home and the placement into foster care may also result in emotional trauma that will be "compounded by the ongoing separation, losses, and uncertainty that are endemic to foster care." American Academy of Pediatrics, *Healthy Foster Care America*, http://www2.aap.org/fostercare/mental_behavioral_health.html (last visited March 15, 2012). Studies indicate that children in foster care typically have at least one psychiatric disorder and that they use mental health services 15-20 times more than the general pediatric population. *See* Schuler Center for Analysis and Advocacy, *Risking Their Future: Understanding the Health Behaviors of*

Foster Care Youth, (December 2009) (citations omitted)(available at: http://www.scaany.org/resources/documents/risking_their_future_report.pdf (last visited March 9, 2012)). The rates of PTSD in former foster youth exceed those of veterans. Melanie Delgado & Robert Fellmeth, *Foster Youth: Transitioning Into Self-Sufficient Adulthood*, Child Welfare Law and Practice 483-84 (Donald N. Duquette & Ann M. Haralambie ed. 2010) (citation omitted). Their rates of homelessness, incarceration, mental illness, poverty, and unemployment are higher than those of their peers who have not been in foster care. *Id.* In order to become productive, healthy adults and contributing members of society, it is imperative that children subject to dependency and neglect proceedings be able to fully participate in therapy and treatment.

B. *The Colorado Children's Code strikes a balance between the privacy interests of children and a court's need for information in a dependency and neglect proceeding by carving out limited exceptions to the privilege.*

One of the stated purposes of the Children's Code is "to secure for each child subject to these provisions such care and guidance. . . as will best serve his welfare and the interests of society." § 19-1-102(1)(a), C.R.S. (2011). The court must consider the child's best interests throughout all stages of the proceeding. *See, e.g.,* § 19-3-403(3.6)(a)(V), C.R.S. (2011) (temporary custody hearing); § 19-3-500.2(1)(c), C.R.S. (2011) (sibling placements); § 19-3-507(1)(a), C.R.S. (2011)

(dispositional hearing); §19-3-604(3), C.R.S. (2011) (requiring court at termination hearing to "give primary consideration to the physical, mental, and emotional conditions and needs of the child").

The statutory scheme of the Children's Code is relevant to a determination of whether the patient-therapist privilege applies to dependency and neglect proceeding. *See, e.g., People v. District Court*, 797 P.2d 1259, 1263 (statutory scheme relating to the care and commitment of the mentally ill is relevant to determination of whether privilege prevents certifying doctor from testifying in a civil commitment proceeding). Any statutory inapplicability of the privilege must be supported by a clear legislative intent to abrogate the privilege. *See People v. District Court*, 743 P.2d 432, 435 (Colo. 1987) ("If the General Assembly had intended § 18-3-411(5) to eliminate other privileges. . . it could have used the broad language required to express that intent."); *Dill v. People,* 927 P.2d 1315, 1321 (Colo. 1996). The strong public policy in promoting psychotherapy underlying the privilege must factor into any consideration of the legislature's intent to abrogate the privilege. *See id.*

The Children's Code specifically provides for admitting into dependency and neglect proceedings evidence otherwise privileged if it forms or could form the

basis of a child abuse or neglect report. § 19-3-311, C.R.S. (2011). The Children's Code also gives the court the authority to order evaluations of the child in specific circumstances. For example, the court at the dispositional phase of the proceedings may order the child be examined by a physician, surgeon, psychiatrist, or therapist. § 19-3-508(d)(1), C.R.S. (2011) . Additionally, the court is required in a termination hearing to "review, and order if necessary, an evaluation of the child's physical, mental, and emotional conditions." § 19-3-604(3), C.R.S. (2011). *See also* § 19-3-507(2), C.R.S. (2011) (allowing the court to order a mental health prescreening at the dispositional hearing stage); § 19-3-506, C.R.S. (2011) (setting forth procedures for screening of mental illness, referrals for developmental disability). The court also has an obligation to consider the extent of compliance with the case plan and whether progress has been made on the issues leading to the filing of the petition, *see, e.g.*, § 19-3-702(6)(a)(IV). Depending on the case, this obligation may require the court to review generalized information confirming that a child is receiving therapy.

These provisions set forth a legislative scheme allowing the court to receive information pertinent to its determination of the best interests of the child while protecting the privacy interests of children in their therapy and treatment. In summary, they allow the court to ensure that the child is receiving and attending

therapy in compliance with the treatment plan or other orders, order examinations and evaluations of the child when necessary to make orders in the child's best interests, and to obtain information from ongoing therapy only when such information presents safety concerns that would constitute the basis for a mandatory report of abuse or neglect. Absent a waiver, they do not allow the court to receive information from ongoing therapy meant to serve as treatment for the child. *See Dill*, 927 P.2d at 1321 (Colo. 1996) (construing § 19-3-311 to abrogate the privilege "for only those communications upon which a report is required by section 19-3-304 is based" and not for "later communications between the psychologist and the client relating to the same incident that occasioned the earlier report"). Any broader construction of the Children's Code abrogation of the privilege would be "inconsistent with the legislature's intent to 'shield a child victim from further harm.'" *See id.* at 1321 (citing § 19-3-302).

II.

For Children In Dependency and Neglect Proceedings Who are of Insufficient Age or Maturity to Waive the Therapist-Patient Privilege, the GAL is the Only Party Who May Invoke or Waive the Privilege on Their Behalf

A. *The decision whether to invoke or waive the privilege belongs to the privilege holder.*

Unless the therapist-patient privilege is abrogated by statute, express or implied waiver is the only basis for authorizing disclosure of privileged information. *Clark*, 668 P.2d at 9. There are times when it may be in the interest of a child in a dependency and neglect proceeding to waive the therapist-patient privilege. Privileged communications may be critical to the court's resolution of a matter in the best interests of a child and the only evidence available. The therapist may also serve as an alternative source of information from the child, eliminating the need to call the child as a witness and subject the child to direct and cross-examination on highly sensitive subjects. *See* Marcia M. Boumil, Cristina F. Freitas and Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian ad Litem Practice*, 13 J. L. Fam. Stud. 43, 58-59 (2011).

However, the benefits of waiving the privilege must be weighed against privacy interests and any potential damage to the therapeutic process or other harm that may occur as a result of disclosure. *Id.* Consideration must be given to the

specific information that should be shared and the extent of the waiver that would be effectuated by sharing such information. *See* Part III.B, *infra* (discussing scope of waiver). It is the right of the privilege holder to weigh these considerations and, ultimately, to determine whether to waive the privilege. *See Clark*, 668 P.2d at 9 (only the holder of the privilege can effectuate waiver); *People v. Silva,* 782 P.2d 846, 849 (Colo. App. 1989) ("the privilege of confidentiality is personal and belongs to its holder"); *People v. Pressley*, 804 P.2d 226, 228 (Colo. App. 1990) (while treatment provider by allowing detectives to observe two therapy sessions may have violated the privilege, provider was not the holder of the privilege and could not effectuate a waiver).

B. *Parties with interests unaligned with the privacy interests of the child may neither invoke nor waive the patient-therapist privilege on behalf of the child.*

§ 13-90-107, C.R.S. (2011) does not identify the holder of the privilege when the person receiving treatment is a minor. Colorado appellate courts have not previously considered who may make a determination of whether to invoke or waive the patient-therapist privilege on behalf of the child in a dependency and neglect proceeding.

Colorado courts have generally recognized in other settings that "the privilege is that of the child to be exercised through her parents." *Pressley*, 804

P.2d at 228. In *Lindsey v. People*, 181 P. 531, 535 (Colo. 1919), this Court held that a minor's mother had waived the privilege on his behalf, reasoning "the proper person to claim the privilege as to a minor is the natural guardian of such minor—in this case his mother." *Cf. People v. Wittrein*, 221 P.3d 1076, 1084 n. 6 (Colo. 2009) (noting acknowledgment by parties that the mother of eight-year-old child had expressly waived privileges relating to treatment provider's records).

Colorado courts have also made clear, however, that a party whose interests are not aligned with the privacy interests of another are not able to effectuate waiver of that person's privilege. Injection of someone else's mental condition as the basis for a party's claim or defense cannot "fairly be construed as a manifestation of [the holder's] intent to forego the confidentiality attaching to communications to a treating psychiatrist or psychologist." *Clark*, 668 P.2d at 10-11. The privilege "should not lightly be deemed waived by the holder's unwitting responses to questions posed by persons who have no personal or fiduciary interests in its preservation." *Silva*, 782 P.2d at 849. A district attorney, who appears as the representative of the people of the state, has been held to have "interests and motives. . . not necessarily congruent with the privacy interests" of the victim. *Id.* A division of the Court of Appeals rejected a claim that the privilege had been waived when a treatment provider allowed a police detective to

observe two treatment sessions, reasoning that while the provider may possibly have violated the privilege, the privilege did not belong to the provider. *Pressley*, 804 P.2d at 228.

Similar to a district attorney, the county department has duties and responsibilities independent of the child's best interests. See § 26-1-118, C.R.S. (2011) (duties of county departments). In child welfare cases, counties are bound by the rules and regulations set forth in Volume 7 of the Colorado Code of Regulations and must comply with specific procedures and priorities in order to maintain their federal and state funding. 12 CCR 2509-1, Rule Manual Volume 7, General Information and Policies, 7.000.2, 7.000.6. The county attorney's responsibility is to represent the county department. § 19-3-206, C.R.S. (2011). As with a district attorney in a criminal proceeding, the county attorney brings the petition on behalf of the people of the state of Colorado. § 19-3-502(1), C.R.S. (2011). While the county attorney's case strategy and procedures are dictated by the procedures and rules set forth in the Children's Code, the interests and motives of the county department and the county attorney "are not necessarily congruent with the privacy interests" of the child. *Silva*, 782 P.2d at 850. Akin to the divergence between child and parent in D&N proceedings discussed below, the department's actions or inactions are often at issue in contested hearings. It would

be inappropriate for a county department to invoke or waive the child's privilege given the department's independent and potentially conflicting interests in the proceedings.

To the extent that the Court of Appeals implied that the Denver Department of Human Services may have been able to effectuate a waiver of L.A.N.'s therapist-patient privilege, the Court of Appeals erred.

In dependency and neglect proceedings, the legal interests of parents and children are not necessarily aligned. Often at issue is the parent's ability to care for or protect the child. *See* § 19-3-102, C.R.S. (2011) (definition of neglected or dependent child). The focus of dependency and neglect proceedings is on the child's safety and permanency. *See* § 19-3-100.5(b)(2,), (3), C.R.S. (2011) (describing duties of court and parties to ensure the safety of placements and permanency for children); § 19-3-703, C.R.S. (2011) (requiring children under six to be placed in a permanent home within twelve months of out-of-home placement). Parents are often under the scrutiny of the department of human services and the courts. They are advised at the onset that "termination of the parent-child legal relationship is a possible remedy." § 19-3-502(3)(a), C.R.S. (2011). The requirement of the appointment of an independent attorney to act as the child's GAL is recognition of the inherent conflict between the legal interests

of parents and children in such proceedings. §§ 19-1-103(59), 19-1-111(1), 19-3-203(3), C.R.S. (2011).

Courts across the country have found that a parent whose position is legally adverse to the child should not be permitted to assert or waive the privilege over the child's objection. *See, e.g., In re Berg,* 886 A.2d 980, 987-88 (2005) ("Where therapist-client privilege is claimed on behalf of a parent rather than that of a child, or where the welfare and interest of the minor will not be protected, a parent should not be permitted to either claim the privilege or, for that matter, to waive it."); *In re Daniel C.H.*, 220 Cal. App. 3d 814, 832(1990) (parent cannot waive child's privilege when parent accused of molesting child.); *In re Zappa*, 631 P.2d 1245, 1251 (1981) (parent cannot assert or waive the child's privilege in a termination of parental rights case); *Nagel v. Hooks*, 460 A.2d 49, 52 (1983) (custodial parent cannot assert child's privilege custody case); *People v. Lobiato*, 351 N.W.2d 233, 240-41 (1984) (parent cannot assert child's privilege to exclude damaging information in parent's criminal case); *In re D.K.*, 245 N.W. 2d 644, 648-49 (S.D. 1976) (parent cannot assert child's privilege when the parent's own conduct is at issue); *Attorney ad Litem for D.K. v. Parents of D.K.*, 780 So.2d 301, 307 (Fl. App. 2001) (parents involved in litigation regarding the best interests of the child may not assert or waive privilege on the child's behalf). These cases are

consistent with the holding of Courts in Colorado that those with interests incongruent to those of a child in a legal proceeding are the wrong individuals/entity to make a waiver determination.

C. *For a child of insufficient age and maturity in dependency and neglect proceedings, it is the GAL, appointed to act as the guardian for the purpose of the litigation and the attorney for the child's best interests, who must make the determination whether to invoke or waive the privilege on the child's behalf.*

In Colorado, the GAL is the only party in a dependency and neglect proceeding whose fiduciary interests are to the child and who should be able to make the waiver determination on the child's behalf when the child is of insufficient age and maturity. The GAL is an attorney at law appointed to act in the best interests of the child. §19-1-103(59), C.R.S. (2010). The GAL is charged with "the representation of the child's interests" and is statutorily charged with investigating, examining and cross-examining witnesses, introducing the GAL's own witnesses, making recommendations to the court, and "participat[ing] further in the proceedings to the degree necessary to adequately represent the child." § 19-3-203(3), C.R.S. (2011). Ultimately, the GAL is "tasked with acting on behalf of the child's health, safety, and welfare." *People v. Gabriesheski*, 262 P.3d 653, 659 (Colo. 2011). The GAL serves as the guardian for the purpose of the proceeding

and the representative of the child's best interests. *Id.* (citing Black's Law Dictionary).

The GAL is bound by the rules and standards of the legal profession. C.J.D. 04-06.V.B. "The 'client' of a GAL . . . is the best interests of the child," and the GAL's ethical obligations "flow from this unique definition of 'client.'" *Id.* The best interests of the child dictate the objectives of the GAL's representation and the "means by which they are to be pursued." 1.2(a). The GAL must be loyal to the best interests of the child and may not act as the GAL for multiple children whose best interests are adverse to one another. C.R.C.P. 1.7(a). The GAL must consult with the child in a developmentally appropriate manner regarding the child's position on issues before the court and must make the child's position known to the court. CJD 04-06(b), (D)(1). The GAL must engage in a thorough, timely, and independent investigation of the child's best interests, which includes but is not limited to meeting with the child in placement, reviewing records and reports, and interviewing professionals and other persons who may have information regarding the child's interests, including therapists. *See* CJD 04-06(4), (5).

As the child's guardian for the purposes of the litigation and the attorney for the child's best interests, the GAL must constantly strategize how to present relevant information to the court in a way that advances the best interests of the

child. Although a GAL is not prevented from revealing confidential information provided by the child when such information is necessary to ensure the child's best interests, CJD 04-06(V)(C), the GAL's professional obligation and duty of loyalty to the child's best interests prevent the GAL from revealing information contrary to those interests. The GAL's decision whether to invoke or waive the privilege must include consideration of the probative value of the evidence, the impact of waiver on the therapeutic relationship and the safety and welfare of the child, and the possibility of seeking a limited scope of the waiver to serve the best interests of the child. No other party to the proceeding has this fiduciary duty to the child's best interests.

A ruling by this Court that it is the GAL in a dependency and neglect proceeding who can effectuate a waiver of the privilege would be consistent with decisions in other states, which have generally held that when a child has an attorney or GAL, that person is the proper person to exercise the privilege on the child's behalf. *See, e.g., Daniel C.H.*, 220 Cal. App 3d at 829 (child's attorney in dependency case the proper person to assert the child's privilege); *Sosebee v. State*, 380 S.E. 2d 464, 466-67, *cert. denied*, 493 U.S. 333 (1989) (GAL appointed for child victim in criminal case could assert or waive the physician-patient privilege on behalf of the child); *Zappa*, 631 P.2d at 639 (child's attorney in

termination of parental rights case the proper person to assert the child's privilege); *Nagel,* 460 A.2d at 51 (court should appoint guardian ad litem for child in post divorce custody case to decide whether to assert or waive the child's psychotherapist-patient privilege). It would also be consistent with the apparent practice of courts in Colorado. *See, e.g., Wittrein*, 221 P.3d at 1083 n. 4 (noting trial court's appointment of GAL to represent the child's interests in the mental health records).

D. *Children of sufficient age and maturity should be allowed to make their own decision whether to waive or invoke the therapist-patient privilege.*

In this case, the court determined that the child was not of sufficient age or maturity to make a decision regarding waiver of the privilege. Specifically, the court stated that because of L.A.N.'s age, " she's not in a position to waive her own privilege, she does not have the competence to make that determination." Transcript of Termination Hearing on July 15, 2010 p.16 ll.8-12. Although not specifically raised by the facts of this case, the question of whether and when a minor stands in the position to assert or waive the privilege on his or her own behalf is an important one, as courts in dependency and neglect proceeding have continuing jurisdiction until a "child" is 21 years of age. § 19-3-205(1), C.R.S. (2011). Because the GAL must take into consideration the child's position

regarding any matter before the court, *see* CJD 04-06(D)(1), and because the GAL's determination of what is in a child's best interests will include consideration of the privacy interests of the child and the impact of waiver on the child's progress in treatment, the number of circumstances in which a mature child's position regarding waiver will differ from that of the GAL's is likely to be minimal. Nevertheless, unlike a traditional attorney, the GAL does not represent the stated objectives of the child and there are circumstances in which a GAL's position on waiver will be different from the child's.

Courts in other states considering this issue have determined that children of sufficient age or maturity should be able to assert or waive the privilege on their own behalf. *See, e.g., Berg*, 886 A.2d at 666 (Even if parents and a guardian ad litem agree that a child's therapist-client privilege should be waived, the child has a separate interest that the court must consider, and if the minor is mature enough to assert the privilege personally, that assertion may be given substantial weight.); *Attorney ad Litem for D.K. v. Parents of D.K.*, 780 So.2d 301, 307 (Fl. App. 2001) (child, who was over seventeen years old, had ability to obtain own treatment and sufficient mental capacity to assert the privilege). These rulings are consistent with the important privacy and policy interests recognized by Colorado courts, *see* Part I.A., *supra*, as well as Colorado's statutory scheme concerning the care and

treatment of persons with mental illness, which allows children as young as fifteen to consent to their own mental health treatment and limits the information that may be disclosed to their parents. § 27-65-103(2), C.R.S. (2011). Colorado statutes also view children ages ten and over as presumptively competent to testify, allow such children to be subject to the jurisdiction of the juvenile court in delinquency proceedings, and provides children ages ten and over the right to counsel in juvenile delinquency proceedings. § 13-90-106(b)(I); § 19-2-104(1)(a); § 19-2-706(2), C.R.S. (2011).

Should the Court determine whether a child is of sufficient age and maturity to exercise the privilege on his or her own behalf must be made on a case-by-case basis, the GAL will put the juvenile court on notice of the need to make that determination. At every hearing in a dependency and neglect proceeding, the GAL must inform the court of the child's position regarding the disposition of the matters before the court, unless the child's position is not ascertainable because of the child's developmental level or unless the child has directed the GAL not to disclose the child's position. CJD 04-06(D)(1). The GAL's obligation to inform the court of the child's position includes the child's position regarding waiver of the privilege. A GAL's representation that the child's position on waiver is contrary to the GAL's position would prompt the court to make a determination

regarding whether the child is of sufficient age and maturity to exercise the privilege on his or her own behalf.

III.

Because A GAL's Waiver of the Psychotherapist-Patient Privilege Must Be a Knowing Waiver and Narrowly Construed, the Court of Appeals Erred in Holding that the GAL had Waived the Privilege With Respect to Certain Contents in the Therapy Records

A. *It is the burden on the party asserting a waiver of the privilege to establish the waiver, and a court must find that the waiver was intentional.*

It is the burden on the party asserting a waiver of the privilege to establish that a waiver has occurred. *Clark*, 668 P.2d at 10. In determining waiver, "[r]elevance alone cannot be the test, because such a test would ignore the fundamental purpose of evidentiary privileges, which is to preclude discovery and admission of relevant evidence under prescribed circumstances." *Johnson v. Trujillo*, 977 P.2d 152, 157(1999) (quotations omitted); *see also Hoffman*, 87 P.3d at 864 (holding that district court erred in considering opposing party's need for evidence as part of the waiver analysis); *District Court*, 719 P.2d at 726 ("In view of the strong policy embodied in the statute, the limitation it imposes on the scope of cross-examination is justified.").

To demonstrate waiver, a party must put forth evidence demonstrating that that the privilege holder has "expressly or impliedly forsaken his claim of

confidentiality with respect to the information in question." *Clark,* 668 P.2d at 8-10. A party waives his or her therapist-patient privilege when the party has "injected his physical or mental condition into the case as the basis of a claim or an affirmative defense ." *Id.* A showing of such injection requires more than the mere filing of a pleading in a case in which physical or mental condition of the privilege holder might be at issue. *See id.* A generic claim of mental suffering incident to physical injuries in a civil case will not be deemed a waiver of the privilege when the harm alleged "does not exceed the suffering and loss an ordinary person would likely experience in similar circumstances." *Johnson*, 977 P.2d at 863. Providing additional detail related to a "garden variety mental suffering claim" and disclosing that one has received therapy in response to questions in interrogatories and during a deposition does not constitute a waiver of the privilege when there is no showing that the party intends to call the therapist as a witness at trial or to seek therapy costs as damages. *Hoffman*, 87 P.3d at 864.

Disclosure of information that is not privileged does not constitute a waiver of the privilege. In *Dill*, 927 P.2d at 1316-17, a child had been brought to a psychologist for the purpose of evaluating her report of sexual abuse; the psychologist prepared a written report of her evaluation to the local police department and then provided ongoing therapy to the child. This Court held that

the introduction of testimony by the psychologist regarding the evaluation sessions, which was not privileged under § 19-3-311, did not require a waiver of the therapist-patient privilege applicable to the ongoing therapy sessions. *Id.* at 1321. Similarly, acknowledging that one has received therapy does not waive the privilege as to the contents of the therapy session. *See Hoffman*, 87 P.3d at 864. *See also Johnson,* 977 P.2d at 154.

In the criminal context, this Court has applied a totality of the circumstances analysis to determine whether a victim waived the therapist-patient privilege. *Sisneros*, 55 P.3d at 801-2. The following considerations were relevant to the Court's totality of the circumstances analysis: the victim was not a party asserting a claim or defense; the victims' testimony did not place at issue the substance of her treatment sessions; and "the circumstances of her testimony [did] not reflect an intent to forego the protections of the privilege." *Id.* Applying a totality of the circumstances analysis, the Court of Appeals rejected a defendant's argument that the victim, by testifying she had sought counseling as a result of the assault, had waived the privilege. *Silva*, 782 P.2d at 849-50. The Court of Appeals also rejected a claim of waiver based on a detective's observations of therapy sessions, noting that there was no evidence that the mother, the holder of the privilege in that

case, had been advised of her right to claim a privilege or ever agreed to/authorized the presence of the officer. *Pressley,* 804 P.2d at 228.

Similar to the victim in a criminal proceeding, the child in a dependency and neglect case is not a party initiating the proceedings. The mere relevance of the child's mental or emotional condition does not operate as a waiver of the child's privilege. Instead, the court must apply a totality of the circumstances analysis to determine whether the evidence shows that the child, through his or her GAL if of insufficient age and maturity, has demonstrated intent to forsake his or her claim to the confidentiality of the sessions. Additionally, the GAL's use of any information that is not privileged under the statutory scheme of the Children's Code does not operate as a waiver of the child's privilege with respect to ongoing therapy and treatment.

B. *Any waiver of the therapist-patient privilege must be narrowly construed to balance the privacy interests of the child with the other parties' need to refute the information*

This Court has held in a civil proceeding that waiver of a privilege does not automatically entitle other parties to the litigation access to all of a therapist's records; a court must balance the holder's interests in protecting the confidentiality of the records against the interests of the other parties in "obtaining sufficient evidence" to contest the claim or defense. *Bond*, 682 P.2d at 40. In the civil

context, this balancing occurs pursuant to C.R.C.P. 26(c), which allows a court to enter protective orders to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." *Bond,* 682 P.2d at 40. The party seeking to limit the scope of discovery has the burden of demonstrating the need for the protective order and the potential impact of disclosure on his or her mental health and progress in treatment. *Compare Shield v. Hewitt Packer*, 826 P.2d 396, 398 (Colo. App.1991) (assertions regarding impact of disclosure on treatment, without supporting evidence, did not suffice to meet the burden required for a protective order) *with Bond*, 682 P.2d at 39 (referencing affidavit of mental health provider describing negative impact of disclosure on privilege holder's therapeutic progress). The balancing of these interests will be left to the sound discretion of the trial court. *Bond*, 682 P.2d at 39.

C.R.C.P. 26(c) applies to dependency and neglect proceedings only when ordered by the court or stipulated to by the parties. C.R.C.P. 26(a). However, the rationale for the balancing test required by the Court in *Bond* applies to dependency and neglect cases and is even stronger in such cases, where the child is not even a party to the action and is not the person who made the decision to bring the matter of her protection and best interests before the court. *See* § 19-1-111(3), C.R.S. (2011) (GAL is party to the action); § 19-3-502(1), (2), C.R.S.

(2010)(petition is brought in the interest of a child and must set forth facts bringing child within court's jurisdiction). The court in a dependency and neglect proceeding has an obligation to safeguard the child's best interests *See, e.g., In the Interest of A.R.S.*, 502 P.2d 92, 93-94 (Colo. App. 1972)(in light of stated purpose of Children's Code, parties may not stipulate to any restrictions on the court's "duty to protect the best interests of the child").

In considering the scope of a waiver made by the GAL, the court must consider the limited scope of the GAL's appointment. The GAL's appointment is for the purpose of the litigation and does not extend beyond the dependency and neglect proceeding. *See* § 19-1-103(59), C.R.S. (2010); CJD 04-06 V.C. (requiring GAL to act within the scope of the appointment order and to seek expansion of the terms of the appointment if necessary and in the child's best interests). Hence, the scope of any waiver of the privilege by a GAL must be limited to the dependency and neglect proceeding.

A court's determination as to the scope of the waiver must also take into consideration whether the information sought was actually made known to the GAL. Because the GAL has not been participating in therapy, the GAL does not automatically know the extent of sensitive information disclosed by the child to the therapist. Although § 19-3-203 requires that the GAL "be provided with all reports

relevant to a case . . . including reports of examination of the child or persons responsible for the neglect or dependency of the child," 19-3-203(2), GALs may not always have access to the full record of a therapist. Other state or federal privacy laws may prevent the full disclosure of the information to the GAL. *See, e.g.,* 45 CFR § 164.508(a)(2) (limiting disclosure of psychotherapy notes to specified uses and procedures). Any waiver effectuated by a GAL should not include information that was not accessible to the GAL. Should a court determine that due process may require access to more information than that accessed by the GAL, the court should first enter orders allowing the GAL to access and review the file to determine whether it is still in the child's best interests to waive. *See, e.g.,* 45 C.F.R. § 164.512(e)(permitted disclosures for judicial proceedings).

C. *The Court of Appeals erred by failing to apply a totality of the circumstances analysis to the question of the GAL's waiver, failing to apply the appropriate balancing test in determining the scope of the waiver, and not deferring to the juvenile court's discretionary ruling regarding the scope of the waiver.*

In this case, the Court of Appeals ruled that by releasing the letter, the GAL had effectuated a waiver that "extended at least to all material in the therpaist's file that supported, related to, or contradicted the therapist's statements and opinions as presented in the February 18 letter and the therapist's testimony at the hearing." Slip op. at 23. While the Court of Appeals acknowledged that arguments were

made regarding the negative impact that disclosure would have on the therapeutic relationship, it did not acknowledge the role of such consideration in determining the scope of the waiver. Instead, the Court instructed the parties on remand to determine whether they wished to allow the court to decide the case "on the basis of the evidence that remains after excluding all information from the therapist." *Slip op.* at 24.

Although the Court of Appeals was correct in its conclusion that the GAL could waive the privilege on behalf of L.A.N., it erred when it determined that by releasing the therapist's letter, the GAL had effectuated a waiver that would extend throughout the duration of the proceedings. The scope of the GAL's waiver was a factual determination for the juvenile court in its sound discretion. *See Bond*, 682 P.2d at 39. The district court did engage in a balancing of L.A.N.'s interests against opposing counsel's need for information to provide effective representation, and the Court of Appeals should have deferred to the juvenile court's findings in this regard. Additionally, even were the Court of Appeals within is authority in engaging in this discretionary and factual determination, it did not factor the child's privacy interests into its consideration as required under this Court's precedent. *Id.*

Second, the Court of Appeals erred in determining that the GAL had waived L.A.N.'s privilege through her examination of the therapist at the termination

hearing. These actions by the GAL subsequent to the juvenile court's ruling that it was the holder of the privilege and that it had effectuated a limited waiver of the privilege could not be regarded as an intentional waiver of the privilege under the totality of the circumstances.

CONCLUSION

While the Court of Appeals was correct in holding that the GAL was able to waive L.A.N.'s therapist-privilege, the Court of Appeals erred in its determination that the GAL had effectuated a waiver of the patient-therapist privilege. In doing so, the Court of Appeals failed to defer to the trial court's discretionary ruling regarding the limited scope of any waiver that had occurred and failed to consider L.A.N.'s privacy interests and the role these interests play in determining the scope of any waiver of her privilege. The OCR respectfully requests that this Court reverse the Court of Appeals' decision.

Respectfully submitted this 20th day of March, 2012,

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CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the above and foregoing **BRIEF OF AMICUS CURIAE, THE COLORADO OFFICE OF CHILD'S REPRESENTATIVE** were placed in the United States mail, postage prepaid, this 20th day of March, 2012, addressed as follows:

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ADDENDUM PURSUANT TO C.A.R. 29(f)

§ 13-90-107. Who may not testify without consent.

Archive

Colorado Statutes

Title 13. COURTS AND COURT PROCEDURE

WITNESSES

Article 90. Witnesses

Part 1. GENERAL PROVISIONS

Current through Chapter 5 of the 2012 Legislative Session

§ 13-90-107. Who may not testify without consent

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a) (I) Except as otherwise provided in section **14-13-310(4)**, C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section **18-1.3-401(1)** (a) (IV) and (1) (a) (V), C.R.S. In this instance, during the marriage or afterward, a husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

(III) Communications between a husband and wife are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a marriage for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the marital privilege shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his or her profession pursuant to the laws of this state or any other state shall not be examined without the consent of his or her patient as to any information acquired in attending the patient that was necessary to enable him or her to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article **3** of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

(C) The Colorado medical board, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section **13-64-502** in connection with a civil action to which section **13-64-502** applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f) A certified public accountant shall not be examined without the consent of his or her client as to any
(I) communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or

through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III) (A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", **15 U.S.C. sec. 7201**.

(IV) (A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article **2** of title **12**, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article **2** of title **12**, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section **12-2-103(6)**, C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article **4** of title **24**, C.R.S., the open records laws, article 72 of title **24**, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential

pursuant to this paragraph (f) or the open records laws, article 72 of title **24**, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section **7-90-102(20)**, C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, a registered psychotherapist, or a certified addiction counselor shall not be examined without the consent of the licensee's, certificate holder's, or registrant's client as to any communication made by the client to the licensee, certificate holder, or registrant or the licensee's, certificate holder's, or registrant's advice given in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, a registered psychotherapist, or a certified addiction counselor be examined without the consent of the employer of the secretary, stenographer, or clerk concerning any fact, the knowledge of which the employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section **13-90-202**, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section **19-1-103(26)**, C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j) (I) (A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section **24-4-105**, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section **13-25-126.5(2)**.

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section **13-25-126.5(3) or (4)**.

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k) (I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section **18-6-800.3(1)**, C.R.S., or a victim of sexual assault, as described in sections **18-3-401** to **18-3-405.5**, **18-6-301**, and **18-6-302**, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or

sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (l):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during,

or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section **18-6-401**, C.R.S., or actual or suspected child neglect, as described in section **19-3-102**, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections **27-81-111** and **27-82-107**, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section **27-65-102**, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the Colorado medical board or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section **12-36-135**, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section **16-8-103.6**, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section **16-8-103.6**, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

History. L. 1883: p. 290, § 3. G.S. § 3649. R.S. 08: § 7274. L. 11: p. 679, § 1. C.L. § 6563. L. 29: p. 642, § 1. CSA: C. 177, § 9. CRS 53: §153-1-7. L. 61: p. 603, § 16. C.R.S. 1963: § 154-1-7. L. 67: p. 809, § 12. L. 76: (1)(d) R&RE and (2) added, pp. 525, 526, §§ 2, 3, effective July 1. L. 81: (1)(b) amended, p. 900, § 1, effective May 26. L. 83: (1)(d) and (2) amended, p. 636, § 1, effective May 25; (1)(a) amended, p. 663, § 1, effective July 1. L. 84: (1)(g) amended, p. 1118, § 8, effective June 7. L. 87: (1)(h) added, p. 572, § 2, effective April 23; (3) added, p. 623, § 5, effective July 1. L. 88: (1)(a) and (1)(c) amended, pp. 708, 630, §§ 3, 1, effective July 1. L. 89: (1)(i) added, p. 943, § 2, effective March 27; (1)(d)(VI) added, p. 763, § 5, effective July 1. L. 93: (1)(f) amended, p. 15, § 3, effective March 2; (1)(g) amended, p. 363, § 1, effective April 12. L. 94: (1)(j) added, p. 1869, § 2, effective June 1; (1)(k) added, p. 2031, § 7, effective July 1. L. 95: (1)(k) amended, p. 948, § 4, effective July 1; (3) amended, p. 1249, § 2, effective July 1. L. 96: (1)(a)(II) amended, p. 1842, § 6, effective July 1. L. 98: (1)(g) amended, p. 1158, § 29, effective July 1; (1)(i)

amended, p. 819, § 16, effective August 5. L. 99: (1)(j)(II) amended, p. 301, § 2, effective April 14. L. 2000: (1)(a)(I) amended, p. 1537, § 3, effective July 1. L. 2002: (1)(c) and (1)(l)(I) amended, pp. 1146, 1145, §§ 3, 2, effective June 3; (1)(l) added, p. 399, § 1, effective August 7; (1)(a)(II) amended, p. 1489, § 127, effective October 1. L. 2003: (1)(f) amended, p. 1391, § 1, effective August 6. L. 2004: (1)(g) amended, p. 919, § 25, effective July 1. L. 2005: (1)(m) added, p. 89, § 1, effective July 1. L. 2006: (1)(m)(IV)(D) amended, p. 1396, § 38, effective August 7. L. 2010: (1)(m)(IV)(C) and (1)(m)(IV)(D) amended, (SB 10-175), ch. 188, p. 782, § 18, effective April 29; IP(1)(d), (1)(d)(III)(C), and (2) amended, (HB 10-1260), ch. 403, p. 1985, § 72, effective July 1. L. 2011: (1)(g) amended, (SB 11-187), ch. 285, p. 1327, § 68, effective July 1.

§ 19-1-111. Appointment of guardian ad litem.

Archive

Colorado Statutes

Title 19. CHILDREN'S CODE

Article 1. General Provisions

Part 1. GENERAL PROVISIONS

Current through Chapter 5 of the 2012 Legislative Session

§ 19-1-111. Appointment of guardian ad litem

(1) The court shall appoint a guardian ad litem for the child in all dependency or neglect cases under this title.

(2) The court may appoint a guardian ad litem in the following cases:

(a) For a child in a delinquency proceeding where:

(I) No parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at the first or any subsequent hearing in the case;

(II) The court finds that a conflict of interest exists between the child and parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent; or

(III) The court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interests of the child and such specific findings are included in the court's order of appointment.

(b) For a child in proceedings under the "School Attendance Law of 1963", article 33 of title **22**, C.R.S., when the court finds that the appointment is necessary due to exceptional and extraordinary circumstances.

(c) For a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent in dependency or neglect proceedings who has been determined to have a mental illness or developmental disability by a court of competent jurisdiction; except that, if a conservator has been appointed, the conservator shall serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, the conservator shall be informed that a guardian ad litem has been appointed.

(3) The guardian ad litem for the child shall have the right to participate in all proceedings as a party, except in delinquency cases.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the appointment of a guardian ad litem pursuant to this section shall continue until such time as the court's jurisdiction is terminated.

(b) The appointment of the guardian ad litem shall terminate in a delinquency proceeding:

(I) At the time sentence is imposed, unless the court continues the appointment because the child is sentenced to residential or community out-of-home placement as a condition of probation; or

(II) When the child reaches eighteen years of age, unless the child has a developmental disability.

(c) The court may terminate the appointment of a guardian ad litem in a delinquency proceeding on its own motion or on the motion of the guardian ad litem when the appointment is no longer necessary due to any of the

following reasons:

(I) The child's parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at a hearing in the case;

(II) The conflict of interest described in subparagraph (II) of paragraph (a) of subsection (2) of this section no longer exists; or

(III) The appointment no longer serves the best interests of the child.

(5) The guardian ad litem shall cooperate with any CASA volunteer appointed pursuant to section **19-1-206**.

(6) Any person appointed to serve as a guardian ad litem pursuant to this section shall comply with the provisions set forth in the chief justice directive 97-02, concerning the court appointment of guardians ad litem and other representatives and of counsel for children and indigent persons in titles 14, 15, 19 (dependency and neglect only), 22, and 27, C.R.S., and any subsequent chief justice directive or other practice standards established by rule or directive of the chief justice pursuant to section **13-91-105**, C.R.S., concerning the duties or responsibilities of guardians ad litem in legal matters affecting children.

History. L. 87: Entire title R&RE, p. 702, § 1, effective October 1. L. 92: (1) amended, p. 221, § 4, effective July 1. L. 96: (5) added, p. 1089, § 2, effective May 23. L. 98: (2)(a)(I), (2)(a)(II), and (2)(c) amended, p. 1405, § 62, effective February 1, 1999. L. 2000: (6) added, p. 1774, § 4, effective July 1. L. 2006: (2)(c) amended, p. 1400, § 52, effective August 7. L. 2009: (2)(a)(III), (2)(b), and (4) amended, (SB 09-268), ch. 207, p. 942, § 3, effective May 1.

Editor's Note:

This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

§ 19-3-203. Guardian ad litem.

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Colorado Statutes

Title 19. CHILDREN'S CODE

Article 3. Dependency and Neglect

Part 2. GENERAL PROVISIONS

Current through Chapter 5 of the 2012 Legislative Session

§ 19-3-203. Guardian ad litem

(1) Upon the filing of a petition under section **19-3-502** that alleges abuse or neglect of a minor child, the court shall appoint a guardian ad litem. Nothing in this section shall limit the power of the court to appoint a guardian ad litem prior to the filing of a petition for good cause.

(2) The guardian ad litem shall be provided with all reports relevant to a case submitted to or made by any agency or person pursuant to this article, including reports of examination of the child or persons responsible for the neglect or dependency of the child. The court and social workers assigned to the case shall keep the guardian ad litem apprised of significant developments in the case, particularly prior to further neglect or dependency court appearances.

(3) The guardian ad litem shall be charged in general with the representation of the child's interests. To that end, the guardian ad litem shall make such further investigations as the guardian ad litem deems necessary to ascertain the facts and shall talk with or observe the child involved, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, introduce and examine the guardian ad litem's own witnesses, make recommendations to the court concerning the child's welfare, appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the guardian ad litem, if in the best interest of the child, shall seek to assure that reasonable efforts are being made to prevent unnecessary placement of the child out of the home and to facilitate reunification of the child with the child's family or, if reunification is not possible, to find another safe and permanent living arrangement for the child. In determining whether said reasonable efforts are made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

History. L. 87: Entire title R&RE, p. 761, § 1, effective October 1. L. 92: (1) amended, p. 224, § 9, effective July 1. L. 93: (3) amended, p. 2013, § 3, effective July 1. L. 98: (3) amended, p. 1417, § 3, effective July 1. L. 2001: (3) amended, p. 846, § 7, effective June 1.

Editor's Note:

This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 and 19-10-113 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

§ 19-3-206. Representation of petitioner.

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Colorado Statutes

Title 19. CHILDREN'S CODE

Article 3. Dependency and Neglect

Part 2. GENERAL PROVISIONS

Current through Chapter 5 of the 2012 Legislative Session

§ 19-3-206. Representation of petitioner

In all proceedings brought under this article, the petitioner shall be represented by a county attorney, special county attorney, or city attorney of a city and county.

History. L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's Note:

This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

§ 19-3-311. Evidence not privileged.

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Colorado Statutes

Title 19. CHILDREN'S CODE

Article 3. Dependency and Neglect

Part 3. CHILD ABUSE OR NEGLECT

Current through Chapter 5 of the 2012 Legislative Session

§ 19-3-311. Evidence not privileged

(1) The incident of privileged communication between patient and physician, between patient and registered professional nurse, or between any person licensed pursuant to article **43** of title **12**, C.R.S., or certified or licensed school psychologist and client, which is the basis for a report pursuant to section **19-3-304**, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3. In addition, privileged communication shall not apply to any discussion of any future misconduct or of any other past misconduct which could be the basis for any other report under section **19-3-304**.

(2) The privileged communication between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3.

History. L. 87: Entire title R&RE, p. 771, § 1, effective October 1. L. 89: Entire section amended, p. 699, § 6, effective June 7. L. 90: Entire section amended, p. 1024, § 3, effective July 1. L. 2008: (1) amended, p. 1893, § 65, effective August 5.

Editor's Note:

This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-10-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.