

## Spring



OCR updates serve to inform OCR attorneys and other interested professionals of recent court decisions, studies, and current events relating to child advocacy, OCR activities, GAL activities, and resources and events that may be beneficial to you or your clients. Please feel free to email the OCR with any feedback or information that you wish to have posted in the next update.

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# OCR NEWSLETTER

## Court Opinions (June 2010-March 2011)

The summaries below highlight aspects of cases relevant to child representation, but they are neither official nor complete court opinions. Decisions may be subject to multiple interpretations, and attorneys should consult with the original decision prior to citing it. The full text of many of the following decisions can be accessed on the Colorado Court of Appeals website, <http://www.courts.state.co.us/coa/coaindex.htm>, or the Colorado Supreme Court website, <http://www.courts.state.co.us/supct/supctcaseannctsindex.htm>. If you are not able to access a decision online, please feel free to contact the OCR's Staff Attorney, Sheri Danz, (303)860-1517, ext. 102, for assistance.

### Colorado Supreme Court

*People in the Interest of A.J.L.*, No. 09SC1036, 243 P.3d 244 (March 21, 2010) - Supreme Court reverses Court of Appeals' reversal of trial court decision terminating parental rights, holding Court of Appeals did not properly apply the clearly erroneous standard of review to the trial court's findings regarding fitness and likeliness to change within a reasonable period of time. Court of Appeals had held trial court should have attributed more weight to more recent evidence. This ruling was error; Court of Appeals improperly substituted its judgment for that of the trial court regarding witness credibility and weight, sufficiency, and probative value of the evidence. Trial court may properly attach weight to more recent evidence but is not required to do so. Trial court is in unique position to assess witness credibility and the sufficiency and probative value of the evidence. Supreme Court found ample evidence existed in the record to support trial court's findings and legal conclusions.

*In the Matter of Minor Child, D.I.S.*, No. 09SC483 (November 30, 2011) - Parents petitioning for termination of guardianship established by parental consent under §15-14-204(2)(a) are entitled to a constitutional presumption that they make custodial decisions in the best interests of their child(ren). *Troxell v. Granville*, 530 U.S. 57 (2000). Unless guardianship order contains an express provision limiting parents from asserting this presumption, guardians bear the burden of proving, by preponderance of the evidence, that termination of guardianship is not in the best interests of the child(ren). Court distinguishes consensual guardianships established under §15-14-204(2)(a) from cases in which the State acts to impose a guardianship in the best interests of the child. In such guardianships, which are addressed by §15-14-204(b)-(c), parents seeking to terminate may not assert the presumption that the child(ren)'s best interests are served by termination. *Justice Martinez, joined by Justices Bender and Coats, dissents.*

*Glab v. Julian*, 10SA146, 242 P.3d 1128 (November 30, 2011) Supreme Court makes rule to show cause absolute in C.A.R. 21 proceeding, setting aside district court order requiring visits with former foster parents over biological father's objection. In contested APR proceeding involving biological father who had been reunited with children and former foster parents, district court ordered overnight visits at the recommendation of CFI to assist in CFI's evaluation. Supreme Court holds constitutional presumption that fit parent acts in the best interests of the child applies to all stages of an APR proceeding and that court considering ordering any parenting time to a non-parent over a parent's objection must apply: 1) presumption in favor of parental determination; 2) opportunity to rebut presumption with a showing by non-parents through clear and convincing evidence that parental determination is not in child's best interests; and 3) placement of the ultimate burden on the non-parents to establish by clear and convincing evidence that APR to them is in best interests of child. In allowing any parenting time to non-parents, court must make findings of fact identifying those "special factors" on which it relies. (referring to *Troxel v. Granville*, 530 U.S. 57 (2000) and *In re Adoption of C.A.*, 137 P.3d 318 (Colo. 2006)). Because presumption in favor of parent's decision applies throughout proceeding, there is no "investigatory" exception allowing ordering of parenting time to assist in completion of CFI report.

## U.S. SUPREME COURT CASES TO WATCH

### **Camreta v. Greene**

⇒ Concerns whether police officers investigating suspected child abuse violated child's and parents' Fourth Amendment rights by questioning her at school without warrant, probable cause, or parental consent.

⇒ Oral argument held 3/1/11.



### **JDB v. North Carolina**

⇒ Concerns whether age of child should factor into determination of whether child is in custody for purposes of Miranda advisement.

⇒ Oral argument held 3/23/11.

*In re the Marriage of Hall*, Case No. 10SA161, 241 P.3d 540 (October 25, 2010). In a C.A.R. 21 proceeding, Supreme Court makes rule to show cause absolute, holding trial court abused its discretion by denying mother's request under §14-10-127, C.R.S. for an evaluation by a licensed mental health professional. In denying mother's request, trial court had reasoned it could decide the issue of her out-of-state relocation without an evaluation. Supreme Court holds §14-10-127 does apply to relocation cases—trial court under plain language of the statute did not have the discretion to deny mother's request. Court also holds it is proper for it to exercise its original jurisdiction under C.A.R. 21 in this proceeding because trial court abused its discretion and appeal is not an adequate remedy.

## Colorado Court of Appeals Cases

*In the Interest of A.M., and Concerning A.C. and N.M. and L.H. and R.H.*, 10CA0522 (December 23, 2010). (petition for cert. pending). Court holds district court erred by allowing foster parents to participate as full intervenors in termination of parental rights proceedings. Such error was deemed harmless with respect to termination of father's parental rights and reversible with respect to termination of mother's parental rights. Based on ambiguity of intervention statute, § 19-3-507(5)(a), its legislative history, precedent, including *A.W.R.*, 17 P.3d at 197, and constitutional analysis of parents' liberty interest in parent-child relationship, the court concludes foster parents may intervene as full participants under §19-3-507(5)(a) only in dispositional hearings. Pursuant to §19-3-502(7), foster parents may exercise their right to be heard during the termination hearing. Because foster parents do not have a constitutionally protected liberty interest to advocate for the termination of parental rights, foster parents at termination hearings may not call or cross-examine witnesses, or argue that rights of parents should be terminated or that child should be placed with them. Dissent contends §19-3-507(5)(a) unambiguously provides right to intervene at any hearing following the dispositional hearing, including termination, and foster parents' participation at termination hearing does not violate parents' due process right to fundamentally fair procedures at the hearing.

*In re the Parental Responsibilities of A.M., and Concerning Goebel*, Case No. 09CA1430 (September 16, 2010). Court of Appeals holds in proceedings to change grandparent visitation under §19-1-117, grandparents bear the burden of proving, by clear and convincing evidence, that biological parents' decision to terminate visitation is not in the child's best interests. Court reasons that under *Troxel v. Granville*, 530 U.S. 57 (2000), parents' fundamental rights in the care, custody, and control of their children remain paramount and are entitled to special weight. Parents who wish to modify §19-1-117 visitation orders do bear the burden of presenting some evidence of a material change in circumstances impacting the child's best interest in support of their request to modify visitation; however, once that initial burden is met, the burden shifts to grandparents, who must establish by clear and convincing evidence that modification of visitation order is not in child's best interests. In this case, mother met the burden of moving forward in her motion to modify through evidence of a new marriage, subsequent adoption of A.M. by her new spouse, and testimony by A.M.'s therapist regarding A.M.'s description of incidents suggestive of drug abuse in grandparents' home.

*People in the Interest of B.S.M.*, Case No. 09CA1116 (July 8, 2010). Court of Appeals holds district court erred in requiring stepfather of child to reimburse county department of social services for foster care fees pursuant to §19-1-115. Although stepfather had previously been awarded joint custody of child in a dissolution of marriage proceeding in another state, §19-1-115 applies only to parents, who are defined as biological or adoptive parents under §19-1-103(82). Court of Appeals rejects argument that §14-7-102 allows departments to seek reimbursement from legal guardians and "other person[s] responsible for the support of such child," relying on *M.S. v. People*, 812 P.2d 632 (Colo. 1991) to conclude that the more specific provisions of §19-1-115, which were more recently enacted than §14-7-102, control the determination of responsibility to pay.



***In the Interest of C.Z. and concerning A.L.L.*, 08CA2159 (November 24, 2010).** After Colorado Supreme Court's ruling that appellate counsel for parents would not be allowed to withdraw solely because counsel determines the appeal to be without merit, Court of Appeals considers appropriate standard for review of district court's decision to allow substitute counsel for both parents and ICWA issue raised by new counsel. With regard to the substitution of counsel permitted by the trial court, the Court of Appeals holds that standards from criminal law should govern a court's analysis of whether CAR 3.4's good cause standard justifies substitution of counsel. Good cause examples in the criminal context include conflict of interest, a complete breakdown of communication, or an irreconcilable conflict that may lead to an unjust verdict, and disagreement over the strength of the case does not constitute a conflict of interest. Substitution of counsel is a discretionary matter for court, and court should consider need for orderly and expeditious administration of justice and should balance that need against particular facts underlying the motion. Applying these standards, substitution of counsel for both parents was proper. Court does not address C.A.R. 3.4(g)(1) and (h)(1) "extraordinary circumstances" standard. With regard to ICWA issue, court rejects father's claim that record did not establish compliance with ICWA's notice requirements and rejects both parents' claims that active efforts were not made to provide remedial and rehabilitative services and to prevent the breakup of the family. Department is required to provide active, not futile, efforts.

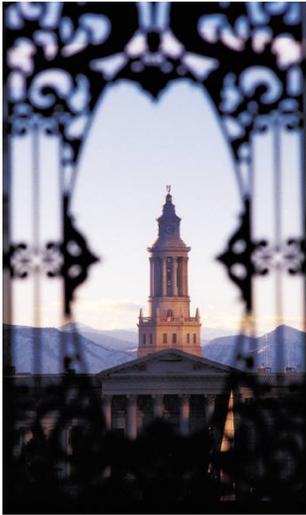
***In the Interest of E.C., and Concerning S.C.*, Case No. 10CA1117 (October 28, 2010).** Court holds district court's order granting allocation of parental responsibilities to child's aunt at a permanency planning hearing and transfer of jurisdiction to district court was final and appealable because it effectively ended the proceedings in the D&N court. Court of Appeals remands for district court determination of department's compliance with ICWA's notice provisions. Although parents had advised district court at shelter hearing that the child possibly had Apache relatives, the record on appeal does not contain any information regarding whether the department did give notice to any tribe or to BIA. Court rejects additional arguments by father: father waived any argument regarding lack of reasonable efforts to return home by not bringing any perceived deficiency to the trial court's attention; court did not erroneously find father was in agreement to place the child with the aunt; trial court's failure to make specific oral findings regarding procedural safeguards to preserve parental rights and reasonable efforts as §19-3-702(3.5)'s was not reversible error given the evidence in the record; record supported court's findings regarding lack of compliance with treatment plan; record supported court's findings regarding aunt's fitness and willingness to care for the child.

***In re the Petition of C.L.S., in the Interest of E.N.S., and Concerning J.O.*, Case No. 10CA0529 (March 3, 2011).** In case in which biological father challenges termination of parental rights pursuant to §19-5-103.5 based on mother's knowledge of his identity and fraudulent failure to disclose the information to the court, Court of Appeals holds district court's judgment terminating father's rights by default is void. Mother had informed father that child had died, child was adopted on June 23, 2008, and father learned that child was alive on March 29, 2009. District court erred in concluding that the ninety-day limitations period set forth in §19-5-105(4) and the six-month limitations period set forth by C.R.C.P. 60(b)(2) left it without discretion to grant father relief from the judgment. Court of Appeals reverses order denying father's motion, vacates judgment terminating his parental rights by default, and remands case to district court for contested relinquishment hearing under §19-5-103.5(2)(d)(III) and §19-5-105.

***In re the Petition of J.M.A., and Concerning E.B.R.A.*, Case No. 09CA2620, 240 P.3d 547 (June 10, 2010).** Court of Appeals reverses District Court order denying father's C.R.C.P. 60(b) motion for relief of order terminating his parental rights after mother's relinquishment of child pursuant to §19-5-103.5. District court erred in determining that §19-5-105(4) 90-day limitation period left it without discretion to consider father's argument that he was deprived of due process by mother's fraudulent failure to disclose his identity and adoption agency's subsequent notice by publication. Application of the 90-day limitation period for alleging fraud violated father's due process rights. Court of Appeals reverses decision and remands for consideration of father's motion for relief of order terminating his parental rights.

***In re the Parental Responsibilities of M.B.M.*, 09CA2447 (January 20, 2011).** Court of Appeals holds district Court erred in adopting the latter of two written orders by magistrate. Under the Colorado Rules for Magistrates and the Colorado Rules of Civil Procedure, once a magistrate has entered a written and signed order on a matter without consent, the magistrate may not alter/amend the written order, except to correct clerical errors.

***People v. Pino*, 09CA0647 (March 3, 2011).** In direct file case, Court of Appeals rejects defendant's argument that the district court was without jurisdiction because charges had originally filed as juvenile charges and prosecutor's dismissal of JD case and filing of adult charges occurred over thirty days after initial juvenile court advisement. Although C.R.J.P. 3.2(e) requires written request for transfer hearing must within thirty days of advisement and §19-2-518(2) allows prosecution to directly file an information "after filing of charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing," a prosecutor has discretion to direct file in district court until the juvenile court actually conducts a transfer hearing.



*The Federal Office of Child Support Enforcement, pursuant to the Federal Fostering Connections Act, has promulgated a rule allowing the use of the Federal Parent Locator Service to assist in finding non-custodial parents, relatives, and siblings.*

**Cornerstone Advocacy Update:** *GALs in some jurisdictions have initiated a look into how their local county jails may be able to make visits more family-friendly for children and their parents. The OCR will continue to report on the progress of these initiatives in upcoming newsletters. In the meantime, contact Sheri Danz for more info.*

## More Cases...

*In re the Petition of S.D., and Concerning R.M.S., Case No. 10CA0210 (September 30, 2010).* Court of Appeals affirms district court's denial of S.D.'s request to rescind her adoption or challenge her adoption as void. S.D. was adopted at ten months of age in 1974. In 2003, S.D.'s adoptive mother informed her that her birth father had not relinquished his rights (note that under the then-existing statute, requirements for consent to adoption by unmarried biological father of a child were different than under current law). S.D. filed motions to rescind her adoption and to obtain a copy of her birth certificate in November 2008 and in November and December 2009, all of which were denied by the district court. Court of Appeals rejects S.D.'s argument that she is entitled to rescind her adoption without a finding that the adoption was void and holds that she is barred by the statute of limitations from attacking her adoption decree. Court of Appeals does not rule on whether the statute of limitations could have been tolled by her minority status or lack of knowledge of the alleged deficiency with the adoption, reasoning that S.D. did not file the motion until she was thirty-five years old and had known of the alleged deficiency for five years.

*People in the Interest of T.M. and J.M., and Concerning S.M., Case No. 09CA2709, 240 P.3d 542 (June 10, 2010).* In appeal of district court order terminating, through summary judgment, incarcerated father's parental rights of two children, ages 3 and 8 at the time of the filing of the D&N petition, Court of Appeals upholds district court's TPR for 3-year-old and reverses TPR for 8-year-old. Genuine issue of material fact did not exist concerning whether father would be paroled from incarceration prior to the minimum 36-month period but did exist regarding whether father would be eligible for parole prior to 6 years after the date of the adjudication. District court erred in applying 36-month determination to 8-year-old. Neither the policies underlying expedited procedures for cases involving children under six or the sibling placement preferences set forth under Title 19 permitted the application of the thirty-six month incarceration period under §19-3-604(1)(b)(III) to a proceeding involving the termination of parental rights to a child over the age of six at the time of the filing of the petition.

## RESOURCES

- ⇒ *Preventing Litigation in Special Education Workbook: A Supplement to the Everyday Guide to Special Education Law*, Dr. Jacque Phillips, Esq., Randy Chapman, Esq. (Copyright 2011). Provides an overview of key cases and concepts in special education law in an interactive and practical format. Covers IDEA and Section 504 of the ADA. Can be ordered at [www.thelegalcenter.org](http://www.thelegalcenter.org).
- ⇒ *Engaging Noncustodial Fathers in Child Welfare Cases: A Guide for Children's Attorneys and Lawyer Guardian ad Litems* [www.fatherhoodqic.org](http://www.fatherhoodqic.org)
- ⇒ *It's Your Life* (website for LGBTQ Youth in Foster Care and those who work with them) <https://newabonet.org/child/Pages/lgbtq.youth.aspx>



## ARTICLES AND PUBLICATIONS

**Neglected Infants in Family Court, *Family Court Review*, Volume 48 Number 3 (July 2010).** Offers best practice guidance, based on early childhood development principles, for judicial officers and professionals charged with acting in the best interests of neglected infants. Identifies implications of social science research (e.g., traumatized mothers neglecting their infants will not benefit from traditional forms of intervention/support and will instead need a sophisticated interventions/assessments tailored to their trauma/loss); highlights limitations in the application of social science research to individual cases (e.g., approximately 30% of typical infants will fall into insecure category while 14% of maltreated infants will classify as securely attached, so a comprehensive look at quality of relationship in the context of overall risk instead of sole reliance on “bonding assessments” is better); and sets forth questions to consider in investigating infant neglect cases.

**Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency, *Juvenile and Family Court Journal*, Volume 61 No. 3, (Summer 2010).** Discusses the research connecting exposure to childhood trauma and involvement in delinquency proceedings, and highlights top ten areas with which juvenile court judges must be familiar in order to assist the youth who appear in their courtrooms. Identifies benefits of trauma assessments, existence of mental health treatments that are effective in helping youth experiencing childhood traumatic stress, compelling need for family involvement, and need for juvenile justice system to be trauma-informed at all levels.

**Children’s School Experiences upon Entering Foster Care: Study Reveals Challenges and Suggests Practice Tips, *ABA Child Law Practice* (February 2011):** Discusses findings and practice implications of recent Chapin Hall, University of Chicago study. Relevant tips include: supporting involvement in early childhood education and systemic assessment of educational needs of children entering into care; support efforts to reengage children who are not attending school and implementation of trauma-informed responses to address students’ academic and behavioral needs; consideration of students’ best interests in decisions about school changes. (Study, *Looking Back, Moving Forward: Using Integrated Assessments to Examine the Educational Experiences of Children Entering Foster Care*, is available at [www.about.chapinhall.org/research/report/looking-back-moving-forward-using-integrated-assessments-examine-educational-experie](http://www.about.chapinhall.org/research/report/looking-back-moving-forward-using-integrated-assessments-examine-educational-experie)).

**Notifying Relatives in Child Welfare Cases: Tips for Attorneys, *ABA Child Law Practice* (October 2010).** Suggests strategies for attorneys’ implementation of Section 103 of the Fostering Connections and Increasing Adoptions Act of 2008 (notice provisions). Discusses both due diligence standard and adequate notice requirements for notification of adult grandparents and other relatives. Sets forth sample questions for conducting a comprehensive interview and assessing a child’s background and family dynamics.

**Helping Pregnant and Parenting Teens Find Housing, *ABA Child Law Practice* (July 2010).** Describes various programs providing housing options for pregnant and parenting teens, including but not limited to: Section 8 Vouchers, Section 8 Family Unification Program Vouchers, Homeless Prevention and Rapid Rehousing Program, Maternity Group Homes, and TANF.

***The Fleecing of Foster Children*, (2011).** Criticizes foster care agencies’ practice of using SSI funds for reimbursement of costs of care and argues that federal law should require foster care agency to notify child, GAL, or court when it has applied to or has been appointed as a child’s representative payee. [http://www.caichildlaw.org/Misc/Fleecing\\_Report\\_Final\\_HR.pdf](http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf).

**Policy Update: Parent-Child Interactions within Correctional Systems, *ABA Child Law Practice* (July 2010).** Summarizes key material from action plan developed by Council of State Governments Justice Center (with support from the Annie E. Casey Foundation and the Open Society Institute) to raise awareness of the needs of children of incarcerated parents, including research on benefits of contact, barriers and challenges, and promising programs.

**Mentoring, Skills Development Improves Mental Health in Foster Children, *ABA Child Law Practice* (September 2010)** Summarizes findings of study on Fostering Healthy Futures in Denver Metro area (study appears on August 2010 Archives of Pediatric and Adolescent Medicine). Fostering Healthy Futures program contained both a skills-based component and mentoring by a graduate student. Children participating showed fewer symptoms of dissociation and fewer reports of posttraumatic stress.

## UPCOMING TRAININGS AND CONFERENCES

OCR-Sponsored Trainings (details and registration information available at <http://coloradochildrep.org/training/schedule/>. (\* indicates webinar option available).

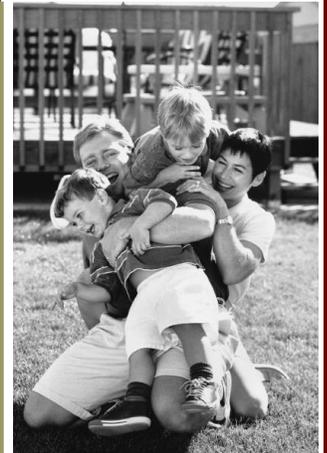
- ◆ Where's the Money? Part 1, April 8, 2011, Noon-1:15, Denver City and County Building\*
- ◆ Using Department Regulations and CFSR in Your Advocacy, April 15, 2011, noon-1:15 p.m., Greeley \*
- ◆ Holding Quality Permanency Planning Hearings, May 2, 1011, Noon-1:15 p.m., Colorado Springs\*
- ◆ GAL's Role in Independent Living and Life Skills Planning, May 16, 2011, Noon-1:15, Colo. Springs\*
- ◆ Hot Topics in Dependency and Neglect, June 20-21, 2011, Location TBD
- ◆ Colorado's Kin Programs, July 26, 2011, Noon-1:15 p.m., Adams County Courthouse\*
- ◆ Advocacy Skills Bootcamp, September 12-13, 2011, Location TBD

### Other Trainings/Conferences:

- ◆ 48<sup>th</sup> Annual Association of Family and Conciliation Courts Conference, June 1-4, 2011, Orlando Florida. Register at [www.afcnet.org](http://www.afcnet.org).
- ◆ National Association of Counsel for Children 34th National Child Welfare, Juvenile, and Family Law Conference, August 29, 2011 –September 1, 2011, San Diego, CA. [http://www.naccchildlaw.org/?page=National\\_Conference](http://www.naccchildlaw.org/?page=National_Conference)
- ◆ Rocky Mountain Child Advocacy Training Institute, May 9, 2011–May 14, 2011, Boulder, CO. Register at [http://www.naccchildlaw.org/events/event\\_details.asp?id=152579](http://www.naccchildlaw.org/events/event_details.asp?id=152579).
- ◆ North American Council on Adoptable Children Annual Conference, August 4-6, 2011, Denver, CO <http://www.nacac.org/conference/conference.html>
- ◆ ABA Second National Parent's Attorney Conference, July 12-14, Washington, D.C. [http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/parent\\_representation.html](http://www.americanbar.org/groups/child_law/projects_initiatives/parent_representation.html)

## OCR IN BRIEF

- ⇒ Applications for OCR contracts are due 4/15/2011. Please remember to submit your affidavit of compliance with your application (Attachment B to CJD04-06). Applications are available on the OCR's website at [http://coloradochildrep.org/attorney\\_center/applications\\_contracts/](http://coloradochildrep.org/attorney_center/applications_contracts/).
- ⇒ Beginning in July 2011, the OCR will begin the use of KIDS, an online case management and billing system. The OCR will require all GALs to use KIDS, and the current web-based billing system will no longer be available for work performed after 7/1/11. A fact sheet about KIDS is available on the OCR's website at [http://coloradochildrep.org/attorney\\_center/applications\\_contracts/](http://coloradochildrep.org/attorney_center/applications_contracts/). Implementation of KIDS has begun in OCR's model staff offices, and the attorneys working with it are finding it to be an extremely useful case management tool. Keep posted for announcements on upcoming trainings regarding the use of KIDS.
- ⇒ The OCR wants to thank those GALs who generously agreed to present at the recent Juvenile Delinquency Conference in Colorado Springs: Jamie Henderson, Skeet Johnson, Jenna Reulbach, and Ed Rogers. The sessions at this conference were thought-provoking, informative, and inspiring. Conference DVDs will be available soon.
- ⇒ The OCR's pilot staff offices in Denver and Arapahoe counties are up and running. As reported by Bettenberg, Sharshel, and Maguire, *BSM has been so happy to see how well a multidisciplinary staff office can work when you assemble a great team! Having different perceptions and backgrounds has already broadened the direction some of our cases have taken. It has been a welcome change in the right direction! Visitors are welcome anytime, we'd love to share what we're learning!* Contact BSM at (303) 952-4949.



***Do you want to know what Denver's mayoral candidates have to say about Denver's child protection issues? Attend a forum to find out :***

**Tuesday, April 19, 2011**

**Holme, Roberts & Owen LLP**

**1700 Lincoln St., Suite 4100**

**Denver, CO**

**Continental breakfast 8:00 AM - 8:30 AM**

