



Colorado Office of the Child's Representative

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Spring 2018 Newsletter

Notes from the Executive Director

Every March, our Newsletter focuses on developments at the State Capitol, as it is the halfway point of the legislative session. This year, the General Assembly is considering a number of bills that directly impact children in the court system. Those bills include a juvenile specific definition of competency (HB18-1050), the elimination of detention as a sanction in truancy cases (HB18-1104), and protections for youth victims of human trafficking (including immunity for some crimes committed as a result of their victimization) (SB18-084). Our Legislative Liaison Ashley Chase and I continue to monitor these closely and are always available should you have any questions or comments on pending legislation.

Most importantly, March is when the Joint Budget Committee conducts figure setting to establish Colorado's budget for the next fiscal year. On March 21, the JBC voted unanimously to approve our rate increase request. This includes an increase to \$80 per hour for attorneys and an increase to \$32 per hour for paralegals. In addition, our request establishes a separate social worker rate of \$44 per hour. The JBC approval means the funds for these increases are included in the proposed budget for FY19 which is known as the Long Bill. The proposed budget must be approved by both chambers of the Legislature and signed by the governor. Once signed by the Governor, the rate increases will be effective with work done July 1, 2018, forward. The JBC's approval is a huge step in the process and would not have been possible without your help-thanks to all who actively reached out to the JBC members to

educate them about the impact of your work on children in their communities.

Thanks as well to everyone who volunteered to test our new CARES application. The feedback we have received has been mostly positive and we have received many good suggestions for tweaks to make the system as user friendly as possible. The new system will rollout on Monday April 2, 2018, for work done as of April 1, 2018. For an overview of the new system, please view our *First Look at the New CARES Application* webinar on our website. **Please remember that the new system is a monthly invoicing system; while you can still enter billing on a daily or weekly basis, you will only generate one invoice per month. This means you will need to plan; beginning in May, you will only be paid once per month.**

This March issue is also about people. Please be sure to read our GAL profile of Ruth Acheson. Ruth is a talented attorney who eloquently details the challenges and rewards of being a GAL. In this issue we also say goodbye to Melanie Jannicelli who has been with us since 2006. Melanie has been the "woo" of our agency. Her outgoing personality and people-oriented approach has been appreciated by every one of us. I know you all join me in wishing her nothing but the best for her bright future.



Linda Weinerman

Linda Weinerman, Executive Director



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Meet an OCR Attorney

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



Ruth Acheson practices as a *Guardian ad Litem* in the 12th Judicial District in dependency and neglect and juvenile delinquency cases. She mainly works in the San Luis Valley, which has some of the highest poverty rates in the state.

Why did you choose to practice child welfare law? In some ways, I think child welfare law chose me. After a 25-year stint as a public defender, culminating in managing the Alamosa Regional Public Defender's Office, I found myself wanting to engage in a totally different practice of law that positively impacted my community. A friend who had worked as a GAL for two decades recruited and mentored me. In retrospect, I think the work has given to me in so many unexpected ways, perhaps more than I have given to it.

What has been your most rewarding moment while working with children and families in D&N cases? Seeing the joy of a teen able to reunify with family/community was one. Keeping another off the witness stand in an incest case was another. Reconnecting with a young mother who told me that her experiences in "the system" were helping her to be a better parent.

Please describe a challenge you face doing this work and your strategies to overcome it. The local opioid epidemic has been disheartening, particularly when coupled with an influx of families who moved here believing they could "make a million" growing pot. The latter have no "roots" in the community and therefore little-to-no support system. They are also suspicious of, if not outright resistant to, offers of help. As to the opioid problem, even those who engage in treatment and appear successful frequently have serious relapses that endanger their children. I believe we are only addressing pieces of this puzzle, even in our family treatment court and with our local methadone clinic. The level of poverty and lack

of opportunity are systemic problems that are difficult to adequately address. On a positive note, there are dedicated, determined people in local organizations working diligently to address these issues from a more global perspective. Networking with others and evaluating efficacy and availability while promoting new efforts is one of my strategies (e.g., using Medicaid transportation funding for those who must get to the methadone clinic daily, which could be over 100 miles roundtrip).

What advice do you have for attorneys new to child welfare? Get organized! From my perspective, the work we do involves high stakes and is too often unpredictable. Since we lack crystal balls, being organized, informed, and connected helps us respond without overreacting. The unpredictable happens and can impact the posture of the case. Being organized so we are informed and connected is critical to assessing options and developing/implementing plans that move towards permanency for children. Being calm in the eye of the storm, so to speak, can also help others deescalate and improve their decision-making, as well as their confidence in your judgment. Calendaring reminders of important data points and working with spread sheets helps me quickly see what needs my attention. Frontloading when I open a new case, so I calendar time to cover the initial work as quickly as possible means I don't have to play catchup with the curveballs. The unpredictability of life is frustrating but also invigorating.

What drives you to continue in this line of work and do you have any advice for seasoned attorneys? This work forces me to stretch. Finding options and solutions to seemingly intractable problems/issues is demanding. I am humbled by the resilience and courage I see in children and have been forced to confront my own biases and accept my inability to ensure outcomes. Although life is unpredictable, I work hard not to be. Even when I am unsure where a case is heading (perhaps because a parent is struggling/failing), I work to provide accurate information about the process, what has been accomplished, and what will be important to me and others when making decisions. When there is disagreement, I listen and work to find ways to incorporate or adapt requests into recommendations. Transparency, kindness, not making promises I can't keep, and keeping promises I make helps me build bridges. Staying abreast of research related to trauma, healing, addiction, and motivation/change assists me in making wiser choices.

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Nominate, share your story, and view our archives on the online Meet an OCR Attorney page.

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Share a litigation strategy or case example when you were successful despite opposition. Perhaps the most meaningful for me was keeping a sibling group together when the department claimed there were no adoptive homes available that would accept three children, one with special needs. I filed a motion and subpoenaed department personnel and records

to establish what efforts had been made to find a home for the children and endorsed an expert witness to testify about the impact separation would have on the children. The department caved. It took additional time and resources, but eventually they were adopted into the same family. ♦

District Spotlight



Bob Tweedell, a GAL in Delta County, shared his insight concerning the 7th Judicial District (JD).

The 7th JD is made up of six counties and is about the same size as Vermont. It includes the towns of Delta, Montrose, Gunnison, Telluride, Ouray, and Lake City.

There is no “pickup calendar” in the 7th JD. Due to the distances involved in the District, each county works more or less independently of the others. There are very few D&N cases filed in Hinsdale County, San Miguel or Ouray Counties.

Bob reports that youth in court is a controversial issue in the 7th JD, as most of his teenage kids don’t want to come to court, despite his best efforts.

Bob indicates that collaboration is a big theme in Delta County, and by that, he means collaboration between the

department, school district, probation, Center for Mental Health, treatment providers, law enforcement, and many others. Bob would estimate that over 60% of the D&N cases in Delta County involve methamphetamine abuse by one or both parents. He reports that Delta has an excellent Family Treatment Court backed by the strong support of the court and the Department. He indicates that it is labor intensive, has experienced a lot of success, and really makes a difference in the lives of the involved children.

Challenges for GALs in the 7th JD include:

- A lack of local RCCFs, as kids placed in RCCFs are usually 250-300 miles away.
- A lack of specialized treatment providers. Bob reports that the GALs in the 7th JD make do with what they have, but this is an inherent problem in rural jurisdictions that

is unlikely to change any time soon. He indicates that the idea that, “Let’s not give them what we have, let’s give them what they need,” is simply impossible, as they cannot send people to the Front Range for services. ♦



Contributor Bob Tweedell is a GAL in Delta County who has practiced law for 39 years and served on the Delta County School Board for eight years.

Spring Legal Review

Summaries of new cases and legislation

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■ 1. Colorado Supreme Court

C.W.B., Jr. v. A.S., 2018C08. In this decision, the Colorado Supreme Court holds that foster parents do not have standing to appeal a trial court order denying a motion to terminate the parental-child legal relationship, reverses the judgment of the Court of Appeals, and remands the case with instructions to dismiss the appeal.

The foster parents intervened in the trial court proceedings pursuant to section 19-3-507(5)(a) and participated as intervenors in the hearing on the GAL's motion to terminate the parent-child legal relationship. The trial court denied the termination motion. The foster parents appealed the ruling. After issuing an order to show cause why the appeal should not be dismissed for lack of standing, the Court of Appeals held that the foster parents had standing because they suffered an injury in fact and section 19-3-507(5)(a) gave them a right to represent the best interests of the child.

The Supreme Court first concludes that the foster parents had not suffered an injury in fact to a legally protected interest. Unlike the Court of Appeals, the Supreme Court views the foster parents' ability to adopt the child as speculative due to the numerous steps and events that would have to occur before they could be considered positioned to adopt, and states that a speculative injury does not satisfy the injury in fact requirement. Notably, while the intervention right provided in section 19-3-507(5) recognizes qualifying foster parents' ability to provide the court with valuable and current information about a child in their care, it does not give foster parents a stake in the outcome of the termination proceeding or provide them an in-dependent right to pursue termination when the department and GAL do not seek to do so.

Second, the Supreme Court holds that that allowing foster parents to assert the best interests of the child on appeal is unnecessary "because the Children's Code expressly charges the GAL with doing so." The record in this case provided no indication that the GAL was unable or unwilling to advocate for the best interests of the child.

Finally, the Supreme Court notes the potential practical problems involved in permitting foster parents acting alone to appeal a trial court order denying termination. The department believed the foster parents had become an obstacle to the permanency goal of reunification because the foster parents were attached to the child and wanted to adopt. Therefore, the foster parents had a conflict of interests between the best interests of the child and their personal interest in wishing to adopt the child.

Ybanez v. People, 18C016. In this decision, the Colorado Supreme Court holds that a juvenile defendant (defendant) charged as an adult with first-degree murder whose parent is a victim of the crime and a prosecution witness has neither a constitutional due process nor statutory right to a GAL. In so holding, the Supreme Court states that the provisions of section 19-1-111 regarding the appointment of GALs in delinquency proceedings applies to the appointment of GALs in direct file proceedings and analyzes the three triggering provisions for the appointment of GALs under section 19-1-111(2)(a) to determine that the trial court did not abuse its discretion in not appointing a GAL.

The Supreme Court also determines that it did not need to decide whether the defendant's attorney had a conflict of interest impacting the defendant's right to assistance of counsel, as the defendant failed to demonstrate prejudice.

Finally, the Supreme Court rejects the defendant's claim that he is entitled to an individualized determination concerning the length of his sentence, instead holding that the defendant is only entitled to an individualized determination of whether he should have the possibility of parole after 40 years.

Based on these holdings, the Colorado Supreme Court affirms the judgement of the Court of Appeals and remands with directions to return the case to the trial court for resentencing.

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Legal Review

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■ 2. Colorado Court of Appeals

People in Interest of C.J., 2017COA157. In this appeal of a termination order, mother contended that the placement procedures of the county department violated her rights to due process and counsel.

The county department filed a petition in dependency and neglect after the child was born addicted to methadone and opiates. When the child was released from the hospital, the department placed the child in foster care. The paternal aunt contacted the department six months later, requesting to care for the child. Due to delays in confirming paternity, the aunt did not begin visits until the child was 18 months old. The department conducted a home study. Concerns about the aunt prompted an administrative review by the department (an internal department process, not a CDHS Administrative Review). The department decided against recommending placement with the aunt. The GAL reported the department's decision at a subsequent court hearing and mother did not challenge the department's decision.

The department moved to terminate mother's parental rights and asked the court to reduce the aunt's visits. Mother did not object to the reduction in visits, and the court entered a written order reducing visits and finding the aunt was not an appropriate placement. Subsequently appointed counsel for the mother challenged the department's recommendations, and filed a motion asking the court to increase visitation and consider the aunt as a permanent placement. The trial court held a hearing on mother's motion and denied the motion, citing the child's emotional needs, her bond with the foster parents, and her lack of attachment with the aunt. The trial court terminated parental rights.

On appeal, mother contended that the procedures used to recommend against kinship placement violated her rights to due process and assistance of counsel.

First, the Court of Appeals holds that the Children's Code does not entitle mother to notice of the administrative review or assistance of counsel during that review because the department did not seek a change in the child's placement. The Court further holds that mother's due process rights were protected by her opportunity to challenge the department's recommendations at the termination and motions hearings. Citing *People in the Interest of T.W.*, 642 P.2d 16, 17 (Colo. App. 1981), the Court notes that because "[i]t is within the exclusive jurisdiction to determine the placement of a child adjudicated neglected, dependent, or delinquent... a court is not bound by a department's placement recommendations."

Finally, the Court rejects mother's argument that she was denied timely notice of the court's review of the placement

decision and timely receipt of the home study because the GAL notified the court and parties within one week of the department's review and mother did not request a copy of the home study.

People in Interest of S.L., 2017COA160. In this decision, the Court of Appeals holds that parents are not entitled to have counsel present during an *in camera* interview of a child in a dependency and neglect proceeding. The Court further holds that whether to grant such a request is within a trial court's sound discretion, based upon a number of case-specific considerations.

The children were adjudicated dependent and neglected after the mother and father admitted that the children lacked proper parental care. One month after the court adopted a permanency plan, the GAL filed a motion asking the court to conduct an *in camera* interview of the children – nine-year-old twins. The trial court granted the motion and interviewed the children together.

Later, the county department moved to terminate the parent-child legal relationship. After a three-day trial, the trial court ordered termination. The mother and father appealed, raising a number of issues.

Relying on *People in Interest of H.K.W.*, 2017COA70, and the authority cited therein, the Court of Appeals first holds that trial courts may conduct *in camera* interviews of children and a record of the interview must be made available upon request.

Second, the Court of Appeals holds that the issue of whether counsel must be permitted to be present during *in camera* interviews "is best left to the discretion of the trial court on a case-by-case basis," and lists a number of factors trial courts should consider, including the age and maturity of the child, the nature of the information to be obtained, the relationship between the parents, the child's relationship with the parents, any potential harm to the child, and any impact on the court's ability to obtain information from the child.

Third, the Court of Appeals clarifies other procedures trial courts must follow when conducting *in camera* interviews. Trial courts should allow parents or trial counsel to submit questions for the child(ren), which the court may ask in its discretion. A transcript must be made available. In determining the weight to accord the information obtained during the interview, the trial court must be mindful that the information "did not pass through the crucible of cross-examination."

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The Court of Appeals also notes that in communicating with children, a judge must maintain impartiality to avoid the appearance of favoring a particular outcome.

The Court of Appeals also rejects the parents' challenges to the treatment plan and their contention that the department failed to provide them sufficient time to complete their treatment plans, noting that while the department filed its motion to terminate 77 days after the adoption of the treatment plans, the department engaged in voluntary services with the parents prior to the filing of the petition, and the termination hearing was not held until over a year after the filing of the termination motion.

Further, the Court of Appeals holds that the record fails to support the prejudice necessary to establish father's claim of ineffective assistance of counsel and the trial court did not abuse its discretion in allowing the department's experts to testify despite discovery violations.

People in Interest of M.R.M., 2018COA10. In this decision, the Court of Appeals holds that an order allocating parental responsibilities for three children between the mother and father was final and appealable, even though it lacked a paternity finding for one child and had an outstanding paternity summons.

The county department sought and received temporary custody of the children based on concerns of drug exposure, violence, and an injurious environment. The department filed a petition in dependency and neglect naming mother and M.M. as respondents; naming M.M. as father of two of the three children; and acknowledging that J.H. was the suspected father of the third child, M.A.M. Although the court ordered genetic testing, no genetic test results appeared in the record, J.H. was never determined to be M.A.M.'s father, and J.H. was never named as a party. The court adopted treatment plans for mother and M.M. M.M. petitioned the court for parental responsibilities of all three children, including M.A.M. The court allocated parental responsibilities of all three children to mother and M.M., citing section 14-10-123(1)(d), which provides that an APR proceeding may be commenced by a non-parent who has been allocated parental responsibilities through a juvenile court order. Approximately two weeks after the court entered the APR order, the trial court entered an order terminating its jurisdiction and closing the case. Mother appealed the latter order. The Court of Appeals requested supplemental briefing addressing the timeliness of mother's appeal.

The Court reasons that section 19-1-104(6) authorizes juvenile courts to enter APR orders in D&N cases requested by a party so long as no custody action concerning the same child

is pending in a district court; requires the court shall file a certified copy of the order in the county where the child will permanently reside; and requires that such orders to be treated the same as any other APR order. Therefore, by entering an APR order pursuant to section 19-1-104(6) and ordering a copy be filed in the district court of the county where the child resides, a juvenile court ends the D&N proceedings and transfers jurisdiction to the district court, and the order is final and appealable. Based on this reasoning, the Court of Appeals dismissed mother's appeal as untimely because mother failed to file a timely appeal within twenty-one days from the entry of the APR order.

The Court of Appeals holds that it lacks jurisdiction to consider the many jurisdictional issues in mother's appeal due to the untimeliness of mother's appeal.

The Court of Appeals also rejects mother's argument that the APR order was not final because it did not resolve J.H.'s rights and liabilities, holding that mother did not have standing to raise these issues.

People in Interest of J.L., 2018COA11. In this decision, the Court of Appeals holds that the county department failed to comply with ICWA's inquiry and notice requirements.

The trial court first inquired about ICWA at a termination hearing, after orally ordering termination. The mother, who was adopted, indicated both she and the father of two of the three children had Native American ancestry and she and her family had been "kicked off the tribe." The mother's attorney stated he had spoken with the mother's adoptive family and determined that "the ICWA relationship that [mother] had brought to the [c]ourt's attention was not viable." The court ordered mother to file a relative affidavit identifying her tribal connections. The court did not ask mother about the ancestry of father or the third child. At a subsequent hearing, mother indicated she had Native American ancestry through her biological family, provided names of potential tribes, stated she did not know about registered tribal affiliations, and asserted that her biological mother would have that information. Her attorney indicated he would provide the department information regarding mother's biological parents as soon as he received it from mother. The department stated its belief that ICWA did not apply but did not describe the efforts it made to determine whether any of the children was an Indian child. Mother did not complete the court-ordered relative affidavit. The department did not send notice. The court determined ICWA did not apply.

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The Court of Appeals remands the case to the trial court for the department to comply with ICWA's notice requirements, holding that mother's statements triggered ICWA's notice requirements and that it is for the tribes to determine whether the children are members or eligible for membership.

The Court of Appeals also rejects the department's argument that the written advisement of rights mother signed shortly after the shelter hearing served as the court's initial inquiry, holding that the form does not satisfy the court's duty to ask parties to the case, including the GAL and the department representative, to certify on the record whether they have discovered or know any information suggesting or indicating a child is an Indian child.

■ 3. Legislation

This legislative session has been very active. OCR is currently monitoring 26 bills, participating in stakeholder groups, and providing education and testimony at the Capitol. Some bills we are actively participating in include:

HB18-1050 Competency to Proceed Juvenile Justice System, sponsored by Senator Fields and Representative Singer, provides a juvenile specific definition of competency. The bill passed through the House and will be heard in the Senate. OCR has worked on this bill for several years and will continue to provide feedback and testimony.

HB18-1104 Family Preservation for Parents with Disabilities, sponsored by Representative Danielson, makes substantial changes to parts of Titles 14 and 19 related to parents with disabilities. OCR is working hard to ensure the final bill encompasses recent case law and strikes an appropriate balance between parents' rights and the best interests of children.

HB18-1156 Limit on Penalties for Juvenile Truancy, sponsored by Representative Lee and Senator Holbert, ensures that truancy is not a "delinquent act" and eliminates juvenile detention as a sanction in truancy cases.

HB18-1021 Task Force for Youth Experiencing Homelessness, sponsored by Senator Kefalas and Representative Hooton, creates a task force addressing youth homelessness. The bill is currently working through the House. OCR will work to ensure that youth voice and GALs are included in the task force.

HB18-1094 Children and Youth Mental Health Treatment Act, sponsored by Senators Martinez-Humenik and Moreno and Representatives Wist and Herod, reauthorizes and makes some changes to the Act. The bill is working through the House.

HB18-1257 Correction to House Bill 16-1316, sponsored by Senator Cooke and Representative Rosenthal, reinserts an important "not" into section 19-3-201(2)(b), the venue statute. The bill was assigned to the House Judicial Committee.

SB18-084 Protection Minor Victims of Human Trafficking, sponsored by Senator Kefalas and Representatives Landgraf and Lundeen, provides enhanced protections for youth victims of human trafficking, including immunity for some crimes committed as a result of their victimization. The bill is currently working through the House. OCR is supporting this legislation and will try to reach consensus with the district attorneys and law enforcement personnel opposed to the bill.

If you have any comments or questions about legislation, please email ashleychase@coloradochildrep.org. ◆



Appellate Issues and Tips



Colorado State Capitol. Photo courtesy of colorado.gov

Mandates and Further Proceedings. Trial court GALs must ensure that appeals are complete, and a mandate has issued before the trial court terminates jurisdiction or issues an adoption decree. Please see the following quick tips regarding the timing of the mandate.

- A mandate must issue 29 days after a Court of Appeals opinion. C.A.R. 3.4(m).
- A petition for rehearing may be filed within 14 days after a Court of Appeals opinion. C.A.R. 3.4(k). Such petition stays the mandate until the Court of Appeals rules on the petition for rehearing. C.A.R. 3.4(m). A mandate must issue 14 days after an order denying a petition for rehearing. *Id.*
- A petition for writ of certiorari may be filed within 14 days after the time for filing a petition for rehearing or the denial of the petition for rehearing. C.A.R. 3.4(l). Such petition stays the Court of Appeals proceedings. *Id.*
- A mandate may also be stayed pursuant to Colorado Appellate Rule 41. *Id.*

ICWA Remand Panel. When briefing is completed, the Court of Appeals ICWA Remand Panel (Panel) reviews D&N appeals for ICWA non-compliance. Such reviews may be based on issues raised in the appellant's brief or by the Panel *sua sponte*. When the Panel discovers ICWA non-compliance, it issues limited remands instructing the department to complete certain tasks (e.g., asking the parents about their heritage and/or sending notices to tribes) and may require the department to file regular status reports addressing the department's efforts to comply with the Panel's remand instructions. When

a limited remand occurs, GALs must ensure compliance with the Panel's remand instructions, and the trial court GAL must update the appellate GAL regarding the department's efforts.

ICWA Compliance Statement. Appellate GALs must research trial court files for ICWA compliance. Opening Briefs must include an ICWA compliance statement complete with citations to the record. Answer Briefs must include a statement of whether the appellee agrees with the appellant's ICWA compliance statement, and if not, why not. C.A.R. 3.4(f)(1)(E), (g)(2).

Options for ICWA Compliance Issues Discovered in an ICWA Compliance Statement. An appellate GAL has at least two options when s/he discovers ICWA compliance issues while reviewing an ICWA compliance statement.

First, the appellate GAL could contact the City/County Attorney to discuss possible remedial measures and the immediate commencement of those measures. For example, if notice should have been sent to a specific tribe and the BIA, the City/County Attorney should send notices immediately to avoid additional delay. Considerations related to remedial measures include the following.

- The new notices are not part of the appellate record until the Court of Appeals authorizes a supplemental record through a motion and order pursuant to C.A.R. 3.4(d)(4) or recertifies the record after a limited remand pursuant to C.A.R. 35.
- The trial court needs the Court of Appeals' authority to make supplemental ICWA findings. The GAL or the City/County Attorney can request such permission through a motion and order for a limited remand pursuant to C.A.R. 35.

Second, the appellee GAL could contact the City/County Attorney to discuss conceding the issue and stipulating to a remand, as a stipulated remand could reduce the time the case is on appeal.

Assistance with Appeals. Appeals can be complicated. Please feel free to seek assistance from the attorneys on the LST or your OCR district liaison. ◆

Contributor Alison Bettenberg is the managing partner at Bettenberg, Sharshel & Maguire, LLC. Alison is also an OCR Attorney working in the 18th Judicial District on delinquency, and dependency and neglect cases.



Immigration Law

With increased immigration enforcement under the current administration, undocumented children and families are more at risk for being detained and deported. Special Immigrant Juvenile Status provides a pathway to citizenship for certain court-involved immigrant children.

To be eligible, a child must first obtain an order from a state court containing factual findings that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis, and that it is in the child's best interest to remain in the United States rather than being re-

turned to their country of origin. GALs regularly seek these orders for children in D&N and delinquency proceedings, helping to provide these children permanency and protection from deportation, see GRID at F122-124 for additional information.

If you are working with an undocumented juvenile who has been subjected to parental abuse, neglect or abandonment, please contact the Rocky Mountain Immigrant Advocacy Network (RMIAN) Children's Program Managing Attorney Ashley Harrington for a free consultation and assistance at AHarrington@RMIAN.org. ◆



Contributor Ashley Harrington is Managing Attorney of the Children's Program at Rocky Mountain Immigrant Advocacy Network (RMIAN).

Family First Prevention Services Act

Congress passed the Families First Prevention Services Act (Act) in February 2018. *The Chronicle of Social Change* (*The Chronicle*) reports that the 103-page Act "includes the biggest change to the structure of federal child welfare finance since the establishment of the Title IV-E entitlement in 1980." In a three-part series, *The Chronicle* explores that the Act:

1. allows states to use IV-E funds for "time-limited" services aimed at preventing foster care (*CliffsNotes on Family First Act, Part One: Services to Prevent Foster Care* (<https://tinyurl.com/yqs3frgz>);
2. forbids IV-E foster care payments beginning in the third week of an agency's placement of a child into a "child care institution" (*CliffsNotes on Family First Act, Part Two: Limiting Support for Congregate Foster Care* (<https://tinyurl.com/y9foqbek>); and
3. impacts many other areas of child welfare (e.g., adoption assistance, adoption and guardianship incentives, ICPC processing, foster home licensing, and Chafee services) (*CliffsNotes on Family First Act Three: Adoption, Foster Home Recruitment, Reunification and More* (<https://tinyurl.com/ya693pr7>)). ◆



Westlaw

OCR has a number of Westlaw contracts available for its attorneys. Please email michellejensen@coloradochildrep.org if you are interested.

Westlaw can be an effective tool for researching Volume 7 of the Code of Colorado Regulations (CCR). One method is to enter, "12 CCR 2509 & [key words, e.g., "maintain family unit"]" in the search field, then review the list of regulations Westlaw generates.

Excess Fees

Please remember to submit your excess fee requests BEFORE you exceed your fee thresholds! Page seven of OCR's Billing Policies and Procedures states, "OCR attorneys must receive OCR approval before exceeding the maximum presumptive excess fee thresholds; the attorney's failure to do so will result in the OCR refusing to approve payments unless the OCR determines that the OCR Attorney's failure to timely seek excess fees was due to extenuating circumstances and grants an exception to the requirement."





Resources

A Guide to Compliance with the Indian Child Welfare Act (<https://tinyurl.com/y8vc5lvb>), was recently updated and reissued by the National Indian Child Welfare Association (NICWA). This ten-page guide presents information through questions, brief answers, and citations to the law.

Voluntary Implementation of Treatment Foster Care Programs for County Departments of Human/Social Services and Child Placement Agencies (<https://tinyurl.com/ybn7t-pow>), is an information memorandum prepared by the Colorado Office of Children, Youth & Families. The memorandum summarizes regulations that went into effect on February 1, 2018, regarding Treatment Foster Care Programs (TFC) pursuant to section 26-6-102(4). (TFCs are alternatives to residential treatment facilities that combine the treatment typically associated with more restrictive settings with nurturing and individualized family environments.)

Age of Consent for Release of Records (<https://tinyurl.com/yc3p6f9h>) and *Consent for Psychiatric and Behavioral Health Treatment* (<https://tinyurl.com/y7omy87z>), are informational memoranda prepared by the Colorado Office of Children, Youth & Families. While the former summarizes CDHS policies regarding the age at which children may consent to release medical records, the latter summarizes CDHS policies regarding verbal and written consent for psychiatric and behavioral health treatment for children.

Office of Colorado's Child Protection Ombudsman Investigation Report Case 2016-2074 (<https://tinyurl.com/y9t-9ou4e>), describes the Ombudsman's investigation of a July 29, 2016, complaint alleging statewide disparities in adoption subsidy payments and inconsistent practices among county departments of human services, the Ombudsman's investigation of the complaint, and the Ombudsman's 14 findings and recommendations.

Preventing, Identifying, and Responding to Human Trafficking (<https://tinyurl.com/y7bzm4yo>), a website sponsored by the Child Welfare Information Gateway, indicates, "Children and youth involved with the child welfare system due to abuse or neglect and then placed in foster care or group homes—as well as youth who are involved with the justice system or have run away or become homeless—are often at a higher risk of being trafficked," then provides links to resources related to trafficking laws and prevention.

Schools as Partners in Education Advocacy for Foster Youth: Tips for Attorneys in Engaging Schools (<https://tinyurl.com/ycb7t5nw>), an article published by the ABA Center on Children and the Law, provides practical advice for engaging with schools and advocating for the educational needs of foster children.

Special Education Advocacy: A Guide for Attorneys (<https://tinyurl.com/yaz64fs6>), an article published by the ABA Center on Children and the Law, provides an overview of special education, common indicators of special education needs, and tips for advocating for special education services.

TRAUMA: What Child Welfare Attorneys Should Know (<https://tinyurl.com/ycn4f9ae>), an article published by the ABA Center on Children and the Law and The National Traumatic Stress Network, indicates, "[t]rauma-informed legal practice can strengthen legal advocacy, improve attorney-client relationships, and ensure appropriate screening, in-depth assessment, and evidence-based treatment. In addition, awareness of secondary traumatic stress can improve prevention, identification, and self-care among legal professionals." The article also provides tips for representing clients in child welfare cases. ♦



Financial Update

On March 1, 2018, the Joint Budget Committee (JBC):

- heard OCR's budget request,
- tabled OCR's request for a contractor rate increase,
- tabled OCR's request for a social services coordinator position, and
- approved all other decision items.

During the JBC's "comeback" process, it approved the request for a contractor rate increase and the request for a social services coordinator position.

Court-appointed counsel expenditures in fiscal year 2018 are tracking slightly higher than the prior fiscal year. While we will continue monitoring these expenditures, our current trend indicates we will finish the fiscal year within our existing budget. ♦

CARES Rollout on April 2, 2018

As everyone is aware, OCR is in the process of developing a replacement to our current case management/billing system (CARES). The new application features improved billing functionality. Contractors will enter activities as they currently do, and those activities will appear on an invoice that contractors will submit monthly. This is a significant change from the current process, as OCR is shifting from weekly to monthly payments supported by the invoices contractors submit through new CARES.

The new CARES system will roll out on April 2, 2018. **Contractors will begin submitting invoices monthly (e.g., in mid-May for activities occurring in April), and OCR will process those invoices over the following 30 days. This means that contractors will be paid monthly, rather than weekly.** Please see <https://tinyurl.com/y8n8g5yq> for more information, including a recording of our webinar about the rollout. ♦



OCR Attorney Applications and Verifications

OCR attorney applications and verifications are open now through April 2, 2018.

- **Prospective contractors** who are interested in becoming an OCR contract attorney: please apply online by 5:00 p.m. on Monday, April 2, 2018. You can find application instructions at <https://tinyurl.com/m6oyaj4>.
- **Current OCR contractors** who are eligible for new OCR cases and/or who have open OCR cases should have received an email from OCR on March 1, 2018, containing instructions and

a link to an Attorney Verification Form or a Renewal Application. If you did not receive this email or you believe you received the wrong link, please email rebeccagarrison@coloradochildrep.org.

Need Assistance?

- Review the applications FAQ, webinar and timeline at <https://tinyurl.com/m6oyaj4/>; and/or
- Email rebeccagarrison@coloradochildrep.org.

OCR and NITA Partner for Attorney Litigation Skills Training

OCR and NITA held a litigation skills training on February 21-23 at the NITA Education Center in Boulder, Colo. Kristin Lightner, left, is a GAL in the 1st Judicial District (JD) who handles delinquency, dependency and neglect, and truancy cases. Mary McWilliams, right, a GAL working in the 17th JD, served as a NITA faculty member.



Farewell to Melanie Janicelli

It is surreal to think back on my time at the OCR, after 12 years. It is amazing how quickly time passes, and how much things change. I started at the OCR in August of 2006, just a few months after graduating college in Texas and moving back to Colorado. At that time, the OCR was housed in a small, historic house on the corner of 16th and Pennsylvania, affectionately known as "Bill's house." Our landlord Bill occupied the main floor back office and often made the journey upstairs to visit us. My "office" was the staircase landing and Linda's office had a balcony overlooking Bill's rose bushes. In those days, Sheree Coates processed all bills in the old CAC system and many via paper. She just had her twins and worked from home, and a Sir Speedy delivery man would bring me bankers' boxes filled with bills to sort and file each week. The yearly application process was done entirely on paper. I remember being surrounded by stacks of applications seeping into the shallow hallway between my office and the office of our Controller Jerrod. Our

agency was smaller then, with only six of us, but we were a force to be reckoned with as Theresa, Linda, and Sarah Ehrlich worked tirelessly to support our contractors and the agency, and consistently increase the quality of attorney services for children in our state.

Over the past twelve years, much has changed at the OCR. Our founding Executive Director left, and Linda became our new fearless leader. We moved twice: once to an office building on 16th and Logan, then to our current home at the Ralph Carr Judicial Center. This building is like my baby – I worked with all the key players from the ground up making the vision of the new OCR office space a reality. It's beautiful. Another big change was the development of the current CARES system, and several shifts in billing practices. I am excited for the agency as we prepare to launch the new CARES system this spring. We have had staff come and go, and with those changes we grew as a team and as a group of people working together for our mission.

I think I will miss the people the most. I really love getting to know people and building relationships, and I have felt honored to be able to do that so much here, both internally, and with all of our contract attorneys. I feel like I have gotten to know a lot of you more than just the monthly billing email or excess fee question, and I really appreciate those relationships. Some of my fondest memories will always be from the OCR conferences. As you can imagine, I love events and event planning. It was always so energizing for me to interact with everyone at the conferences and help with the logistics. Perhaps I will become an occasional OCR conference crasher!

As I prepare to move on to the next chapter in my life and focus on my wedding planning company full time, I want you all to know that I appreciate you so much and have truly loved my time at the OCR. The work you do is so important, and though we may say that a lot, I hope you know how much we mean it. This agency is a very special place, and I will miss everyone dearly. Thank you for an amazing, and truly life-shaping 12 years!

With all my most wonderful wishes, Melanie

Office of the Child's Representative

MISSION

The mission of the Office of the Child's Representative (OCR) is to provide effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted by high conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings. As a state agency, the OCR is accountable to the State of Colorado to achieve this mission in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children. The OCR is committed to ensuring that its attorneys provide these children, Colorado's most vulnerable and marginalized population in the courts, the best legal services available to protect and promote their safety and well-being and to have their voice heard throughout all aspects of a case.

VALUES

- 1. Accountability:** Colorado's children, attorneys, and taxpayers can count on OCR to ensure that each decision we make and action we take advances our mission in a fair and transparent manner.
- 2. Efficiency:** OCR strives to accomplish its mission and conserve resources by streamlining efforts, adhering to deadlines, resolving conflict constructively, and honoring well-defined projects, processes, and roles. We balance our drive to achieve with thoughtful planning and implementation.
- 3. Empowerment:** OCR cultivates an environment of respect and honesty. We value the experience and expertise of the children we serve, our contract attorneys, and our staff. We invest time to connect, focus on strengths, value feedback, and recognize success. We support each other in our mission to empower children.

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