

DISTRICT COURT, ADAMS COUNTY STATE OF COLORADO Court Address: 1100 Judicial Center Dr. Brighton, Co 80601	<p style="text-align: center;">▲ Court Use Only ▲</p>
The People of the State of Colorado in the Interest of  <b>Children:</b> [REDACTED]  <b>Petitioner:</b> The Adams County Dept. of Human Services  <b>Respondents:</b> [REDACTED]  <b>Special Respondent:</b> [REDACTED]	Case No. [REDACTED]  Division: D
Attorney or Party Without Attorney: Carl F. Blair, Jr. P.O. Box 621148 Littleton CO 80162  Phone Number: 720-339-6972 Fax Number: N.A.      Atty. Reg.#: 17729	
<p style="text-align: center;"><b>RESPONDENT MOTHER'S MOTION AND ORDER REGARDING RELEASE OF CHILD'S THERAPEUTIC INFORMATION</b></p>	

Comes now the Respondent Mother [REDACTED], by and through her counsel of record Carl F. Blair Jr. Reg. No 17729, and requests the Court to enter the attached Order directing the Guardian ad Litem to release the child's therapeutic information so that the Respondent Mother will have relevant information to successfully complete her treatment plan and as grounds therefore, states as follows:

**Conference with counsels.** On July 22, 2018 Movant advised his intention of filing the present motion to re-set to the Guardian, County Attorney and Respondent Father's Counsel. On July 22, 2018, Counsel for the Respondent Father indicated that he would take no position. On July 25, 2018, the County indicated that they objected to the release of any information unless there is a waiver. The Guardian ad Litem has never responded. It is assumed she objects.

### **Procedural Background**

1. On February 14, 2017, [REDACTED] lived together with the children [REDACTED] born [REDACTED], and [REDACTED].
2. On or about March 17, 2017, the Department of Social Services filed a Petition in Dependency and Neglect, alleging that [REDACTED] was exhibiting high levels of aggression and sociopathic tendencies” as well as medical and educational neglect. by the parents. The child also had 2-3 seizures a month. The Guardian ad Litem supported adjudication of both children.
3. A jury trial was held in this matter starting on April 24, 2017. At the end of the proceeding, the jury found that new-born [REDACTED] was not dependent and neglected. The jury found that [REDACTED] was dependent and neglected.
4. [REDACTED] was dismissed from the Petition. Upon the request of the Guardian ad Litem and the Department, the child [REDACTED] was removed from the care of her mother and placed in Shiloh.
5. On that date, the Judge ordered the parents to have “substantial” visits. In the notes of the Movant, the Court directed that these visits were not to be limited to only one or two visits per week. The Court ordered that the Respondent Mother and Guardian ad Litem were to have shared decision making regarding education.
6. On April 28, 2017, the child [REDACTED] was removed from Shiloh and placed in Mount St. Vincent’s due to her behavior.
7. On or about May 12, 2017, the Court adopted a treatment plan for Ms. [REDACTED]. That treatment plan required that the Respondent cooperate with all professionals, maintain and enhance her bond with [REDACTED] and stabilize her mental health . [REDACTED] was required to participate in a psychological evaluation and engage in treatment services. Treatment notes will reflect that her needs are being met and making progress with regard to physically attacking others around her as well as utilizing skills to help her verbalize her feelings and emotions.
8. On May 12, 2017, the Court ordered supervised parenting time, allowing discretion for the Department and the Guardian to expand and modify visits. Since that time, the Guardian ad Litem has repeatedly balked at exercising that discretion.
9. On July 10, 2017 the Court adopted a permanent plan of return home. Since that date, the Guardian ad Litem has consistently worked against returning the child to Ms [REDACTED].
10. While the Child was placed at Mount St. Vincent’s, [REDACTED] had constant contact with the child’s therapists. There was no detrimental effect reported from this contact.

11. September 25, 2017, the Guardian ad Litem requested that the L.A.N. privilege be awarded to herself. The Respondent Mother objected. The Court ordered the L.A.N. privilege be held by the Guardian. Once the child was released from Mount St. Vincent's, no information regarding the child's therapy has been given to Ms. [REDACTED].

12. A family team meeting was held on October 12, 2017, **at that time the Griffith Center and the Department indicated that they did not have any safety concerns regarding mother's visits going into the community.** The Guardian ad Litem would not agree. The Guardian ad Litem at that time had received [REDACTED]'s Psychological evaluation, but refused to share it with either the parties or the Department. The evaluation was subsequently given to the parties.

13. On November 22, 2017, the Court added Child Protection Therapy to the Respondent Mother's Treatment PLAN. The Court again authorized visitation allowing discretion for the Department and the Guardian to expand and modify visits.

14. Finally, at a family team meeting held on December 13, 2017, two months after the Department and Griffith Center indicated they approved visits in the community, the Guardian announced she was okay with community visits.

15. Visits continued to go well. On January 31, 2018 Ms. [REDACTED] again requested unsupervised parenting time. The Guardian again opposed the motion. The Court denied the Motion of the Respondent mother and ordered that the Department and Guardian had discretion to expand visitation.

16. On April 13, 2018, the Department and Ms. [REDACTED] requested that Ms. [REDACTED] have one unsupervised and one supervised visit per week. The Guardian ad Litem objected. The Court denied the request and ordered that the Department and Guardian had discretion to expand visitation.

17. On May 22, 2018, Ms. [REDACTED] requested E.M.D.R. therapy be ordered as requested by her therapist. The Court granted that motion. Ms. [REDACTED]'s first E.M.D.R. session is scheduled for July 24, 2018.

18. On May 22, 2018 Ms. [REDACTED] requested that her therapist could speak to the Child's therapist. The Court granted that motion. The Movant believes that Ms. [REDACTED]'s therapist has not been able to speak to the child's therapist. It has been reported that Ms. [REDACTED] therapist spoke to the Guardian ad Litem who indicated she was afraid of what Ms. [REDACTED] would do if told the information. No actual information has been given to Ms. [REDACTED]'s therapist.



19. On May 22, 2018, Ms. [REDACTED] requested that the L.A.N. privilege be modified to allow information be sent to the parties. The Guardian ad Litem and the Department objected to modifying the L.A.N. privilege. The Court did not modify the L.A.N. privilege.

20. On May 22, 2018, the Guardian ad Litem filed her motion to terminate parental rights. At the same hearing, a termination hearing was set for September 13, 2018 before any experts could have been contacted for Ms. [REDACTED]

21 Upon contacting and endorsing an expert, Respondent Mother filed a motion to continue the termination as the expert would be unavailable at that time. The Guardian objected to the motion. That motion will be heard on August 2, 2018. Not allowing Ms. [REDACTED] to have an expert witness clearly violates Colorado Statute. Due process requires that the expert be allowed to testify.

22. This matter is currently set for a contested visitation hearing on August 2, 2018. and a termination hearing on September 13-14, 2018. That hearing is set for a day and a half.

### **Factual Background**

23. To date, Ms. [REDACTED] has only received [REDACTED]'s psychological evaluation.

24. While the child was at Mount St. Vincent's, Ms. [REDACTED] had continual contact with the child's therapists. Since the release of the child from Mount Saint Vincent's, neither Ms. [REDACTED] nor her counsel has received ANY reports from any therapist.

25. The Guardian ad Litem has endorsed a therapist for the child to testify at the visitation hearing. This endorsement was the first time Ms. [REDACTED] counsel heard the name of the therapist for the child.

26. Upon information and belief, neither the Department nor Father's Counsel has had any contact with this therapist

27. Upon information and belief, the Court has received no written reports from any therapist for the child.

### **Legal Argument**

#### **The Right to Maintain a Familial Relationship Is Constitutionally Protected**

28. The United States Supreme Court has recognized on numerous occasions that the relationship between parent and child is constitutionally protected. Quilloin v. Walcott, 434 U.S. 246, 255, 98S.Ct. 549, 554-555, 54 L.ed2d 511 (1978).



29 As a general matter, a parent has a fundamental liberty interest in maintaining a familial relationship with a child. United States v. Edgin, 92 F.3d 1044, 1049 (10<sup>th</sup> Cir. 1996).

30. Given the importance of this liberty interest, special conditions that interfere with the right of familial association can do so only in compelling circumstances. United States v. Smith, 606 F.3d 1270 (10<sup>th</sup> Cir. 2010).

31 In this matter, Ms. [REDACTED] has a fundamental liberty interest in maintaining her relationship with her daughter.

32. In the present matter, the Guardian ad Litem has released no information from the child's therapist to either side or to the Court.

33. Due Process requires full disclosure, if that information is going to be used against any party.

**The Treatment Plan Is Required To Reasonably  
Preserve the Parent-Child Relationship**

34. Under Colorado Law, the Treatment Plan represents an affirmative attempt by the state to preserve the parent-child relationship whenever possible. People in the Interest of C.A.K., 652 P.2d 603 (Colo. 1982)

35. The requirement that the Court order an appropriate treatment plan. implicitly authorizes the Court to issue such orders that are reasonably necessary to implement that mandate. People v. District Court, 731 P.2d 652 (Colo. 1987)

36. Under 19-3-604 (2) (h) the Court shall consider reasonable efforts by the child caring agencies which have been unable to rehabilitate the parent or parents.

37. The Treatment Plan is intrinsically flawed if the parent is not provided information to improve her parenting of the child based upon the recommendations of the child's therapist

38. The lack of information emasculates the purpose of the treatment plan. The lack of information stops the Department from providing reasonable efforts to reunite the parent and child.

39. Under the present circumstances, the Department, being ignorant of the child's mental condition and therapy, is unable to provide adequate treatment for Ms. [REDACTED]

**It is Improper When The Permanency Plan Is Return Home  
For the Department or Guardian Ignore that Plan**

40. At a permanency Hearing, the court must make determinations as to whether(1) procedural safeguards to preserve the parental rights have been applied and (2) whether reasonable efforts have been made. C.R.S. 19-3-702 (3.5)

41. In the present matter Court had adopted a permanent plan of Return Home in July of 2017.

42 In the present case, although the Court has adopted a goal of return home, the Guardian ad Litem has consistently stopped any forward motion to that goal by refusing to expand parenting time and refusing to release any information regarding the child's therapy.

**Due To the Liberty Interest in Maintaining a Familial Relationship  
A Higher Burden of Proof Is Required for Termination**

43. In a termination proceeding, the United States Supreme Court held in 1982 that before a parent-child relationship may be terminated due process of law requires that the motion to terminate must be supported by a standard of proof no less demanding than clear and convincing evidence. Santosky v. Kramer, 455 U.S. 745, 755, 102 S.Ct. 1388, 1403, 71 L.Ed.2d 599, 617 (1982). The Colorado Courts have adopted this standard of proof in actions for termination of parental rights. People in the Interest of A.M.D., 648 P.2d 625, 641 (Colo. 1982)

**In Determining the Best Interest of a Child,  
The Court Must Consider the Mental  
Needs of the Child**

44 In making its determination regarding termination of parental responsibilities, the Court shall give primary consideration to the physical, **mental**, and emotional needs. C.R.S. 19-3-604 (3) .

45. The Guardian ad Litem's decision not to waive the therapeutic information is contrary to the child's best interests. Ms. [REDACTED] is expected to address the therapeutic needs of the child without being told what those needs are by the child's therapist.

46. The Court can not make a decision regarding the mental needs of the child if those needs are hidden by the guardian ad litem..

47. When a Permanent Plan of Reunification is adopted by the Court, the parties must work to effectuate that plan.

48. It is impossible for the Court to make an accurate appraisal of the child's mental functioning if **NO** information is released by the child's ongoing therapist.

L.A.N. v. L.N.B.  
292 P.3d 942 (Colo. 2013)

49. On January 22, 2013, the Colorado Supreme Court issued an Order which determined that the Guardian ad litem would be the proper individual to hold the therapeutic privilege for a minor child in a Dependency and Neglect action when there is a conflict with the parent and the child or when the child is either too young unable to hold the privilege. This case involved a termination hearing . L.A.N. v. L.N.B., 292 P.3d 942, 945 (Colo. 2013).

50. The Court found that aside from C.R.S. 19-3-311, the Dependency and neglect provisions are silent regarding the psychotherapist-patient privilege. As such if communications between a child-patient and her psychotherapist do not form the basis of a report of child abuse or neglect as described in section 19-3-304, then the psychotherapist-patient privilege applies to those communications in dependency and neglect proceeding. L.A.N. v. L.N.B., 292 P.3d 942, 947 (Colo. 2013) citing People v. Dist. Court, 743 P.2d 432, 434, (Colo. 1987).

51.. The Court found that when the notes and documents are not part of the basis for the filing, then the communication is privileged and not discoverable or could not be disclosed in testimony without proper waiver of the privilege. L.A.N. v. L.N.B., 292 P.3d 942, 948 (Colo. 2013).

52. The Supreme Court affirmed in L.A.N. that it's decision is to provide a legal shield for the protection of privileged communication between the child and the parent. L.A.N. v. L.N.B., 292 P.3d 942, 947 (Colo. 2013).

53. The Guardian ad Litem must refrain from revealing this privileged information **if doing so would be contrary to the child's best interests.** L.A.N. v. L.N.B., 292 P.3d 942, 950 (Colo. 2013).

**54. The provisions of the L.A.N. decision are designed for the LITIGATION PROCESS of a Dependency Action. The provisions of the L.A.N. decision do not apply to the THERAPEUTIC goals of a Dependency Action.**

55. The L.A.N. Decision does not eliminate the Court's duty to order therapy for a parent.



56 The L.A.N. Decision does not eliminate the Department's duty to provide reasonable services for reunification.

57 The L.A.N. Decision does not supercede the Parent's Liberty interest in obtaining proper services for reunification

58 In the present matter, the Guardian ad litem's improper refusal to reveal any information is contrary to the child's best interests as required under the L.A.N. decision cited above.

59 Releases of Information may be made to limit the scope of the use of the information to **therapy**. The same release may require that the Recipient is under a Protective Order not to release the information for the purposes of any litigation.

### **Summary**

60. A dichotomy exists in Dependency and Neglect Actions. Dependency actions require both therapy and litigation. Normally these constituent parts do not come in conflict. When the legal process is used to thwart the therapeutic goals of an action, the Court must act.

61. The improper use of the L.A.N. Privilege in this matter poisons the intent of Laws of the State of Colorado and the Constitution of the United States.

62. By hoarding all information regarding the child's therapy, a party may subvert, manipulate and delay the proper reunification of a family.

63. By refusing to release relevant and important therapeutic information, the Court and all other parties are forced to rely on censored, and therefore inaccurate information. Can not reasonably address the the concerns that brought this family under the jurisdiction of the Court.

64. The refusal to release any therapeutic information allows the Guardian ad Litem to supercede the Court in controlling what is in the Best Interest of the Child.

65. The Court repeatedly gave discretion to the Department and the Guardian to expand parenting time. The Guardian even when confronted by the Department and Griffith Center refused to allow expansion of those visits.

66. The refusal by the Guardian to expand visits has caused immeasurable damage to the child and the process. It has needlessly extended the duration of this case.

67.. If allowed to ignore the therapeutic purpose of the law, even when the Court has adopted a goal of return home, a Guardian ad Litem improperly using the L.A.N. privilege may subvert and destroy the chances for reunification.

68. The withholding of the therapeutic information by the Guardian has improperly deprived Ms. [REDACTED] of any meaningful opportunity to meet the Court's goals and reunite with her daughter.

69. When the Permanent Plan is return home, it is improper to conceal all information regarding the child's therapy from the Department and the parent.

70. The use of the L.A.N. privilege as a sword to cut off parental rights and stop effective reunification is an abuse of that privilege and contrary to the Supreme Court's intent in the L.A.N. Decision and is contrary to the permanent plan in this matter.

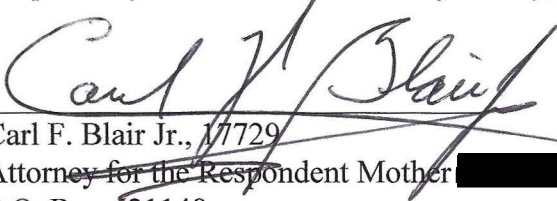
71. Allowing an adverse party sole access to information regarding the child's mental health and functioning denies the equality of the parties before the court and ignores due process of law.

72. Under the present circumstances, the parent, the Department and the Court have no access to the child's therapy and ongoing needs. It is factually impossible for the Court to make a determination what the child's mental needs are without this information.

73. In this case, Ms. [REDACTED] is not asking for Discovery. She asking for Therapy.

Wherefore Ms. [REDACTED] requests the Court to enter the attached Order directing the Guardian ad Litem to sign a limited waiver of privilege allowing the Department and all therapists to have access to the child's therapeutic information and that such released information is for the sole purpose of implementing treatment. Ms. [REDACTED] requests the Court to direct that the treating professionals will exercise independent and professional discretion on what they release to any party. Ms. [REDACTED] requests the Court to order that the purposes of the treatment plan and permanent plan be followed by all parties and for such further relief as the Court deems proper and in the best interest of the child in this action.

Respectfully submitted this 30th day of July, 2018.

  
Carl F. Blair Jr., 1/7729  
Attorney for the Respondent Mother [REDACTED]  
P.O. Box 621148  
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(720) 339-6972

CERTIFICATE OF HAND DELIVERY/MAILING

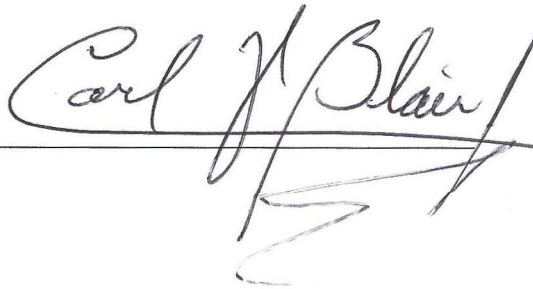
I hereby certify that on this 30 th day of July, 2018, I have either hand delivered or deposited a true and correct copy of the foregoing Pleading and Order in the United States mail, first class, postage prepaid, and properly addressed to the following:

Clerk of the Adams County District Court  
Division D  
1100 Judicial Center Dr.  
Brighton CO 80601

Adams County Attorney  
Adams County Department of Social Services  
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Henderson CO 80640  
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A handwritten signature in cursive script, reading "Carl J. Blair", is written over a horizontal line. The signature is written in dark ink and includes a large, stylized flourish at the end.



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<p style="text-align: center;"><b>ORDER REGARDING MOTHER'S MOTION REGARDING RELEASE OF CHILD'S THERAPEUTIC INFORMATION</b></p>	

This Matter comes before the Court upon the Motion of the Respondent Mother, and the Court, having reviewed all necessary pleadings, statutes, case law and rules, hereby determines that a hearing is not necessary to determine this Motion,

AND HEREBY

\_\_\_\_\_ Grants the Motion.

\_\_\_\_\_ Denies the Motion.

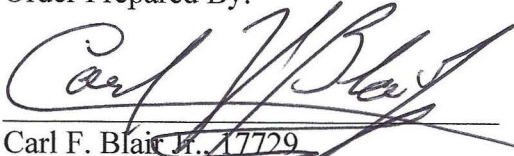
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\_\_\_\_\_

DONE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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The Hon. Priscilla Loew  
District Court Judge

Order Prepared By:



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