

| | |
|---|---|
| Larimer County, Colorado, District Court 201 LaPorte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500 | <div style="text-align: center;">  COURT USE ONLY  </div> |
| THE PEOPLE OF THE STATE OF COLORADO, IN INTEREST OF: **, Children, AND CONCERNING: **Respondents. | |
| | Case Number: XX X XXX Courtroom |
| MOTION FOR DETERMINATION OF PRIVILEGE AND SCOPE OF WAIVER UNDER L.A.N. AND § 13-90-107(1)(g) - REGARDING <child> AND FOR APPOINTMENT OF INDEPENDENT COUNSEL FOR THE CHILD FOR THE LIMITED PURPOSE OF ADVISEMENT REGARDING THE THERAPIST-PATIENT PRIVILEGE | |

Come now, **, Guardian *ad Litem*, for the child, <child> and states, in the best interests of the child, that:

Rule 121 Section 1-15(8) *Certification: The GAL certifies that she has conferred in good faith with*

1. On <month day, year>, the GAL was appointed to represent the best interests of the minor child, <child> born <month day, year>. The child has been placed outside of the home since <month day, year>.
2. <child> is *** years old. Her cognitive functioning is at an age-expected manner. She has demonstrated ****
3. <current and past therapeutic status>
4. To protect the confidentiality of a child’s communications to his or her therapist, the Colorado Supreme Court has held that psychotherapist-patient privilege applies to children in dependency and neglect proceedings. L.A.N. v. L.M.B., 292 P.3d 942 (Colo. 2013).
5. “The therapist-client privilege shields communications between the therapist and the patient from disclosure and also prevents pre-trial discovery of files or records

derived from or created during the course of ongoing mental health treatment.” *L.A.N.*, 292 P.3d at 497. See also *People v Sisneros*, 55 P.3d 797, 800 (Colo. 2002). “Juvenile patients in particular require the privacy protection provided by the [therapist]-patient privilege due to the sensitive nature of children’s mental health care.” *L.A.N.*, 292 P.3d at 497. See also *Dill v. People*, 927 P.2d 1315, 1321 (Colo. 1996).

6. Colorado recognizes that the patient is the holder of the therapist-patient privilege. *L.A.N.*, 292 P.3d at 498; COLO. REV. STAT. 13-90-107 (1)(g). Should the child be determined to be competent to hold his or her own privilege, the Court shall order the child as her own therapist-patient privilege and no further analysis is required under *L.A.N.*
7. <Child> is <15+> years old and already holds the ability to consent for his/her therapeutic treatment and to sign releases of information not covered by the privilege pursuant to 2 CCR 502-1-21.200.13.
Or evidence of sufficient maturity, understanding
8. It is appropriate at this time for the minor child, <child> to hold her own therapist-patient privilege due to her/his age and cognitive ability to understand the privilege.
9. As a practical matter, it would be appropriate for the therapist or the child to share certain information with the caseworker, caregivers, or GAL including the child’s treatment goals, attendance in therapy, and general statements regarding progress on treatment goals. The undersigned seeks a ruling that sharing such information constituted is a limited waiver of the privilege. See *L.A.N.* at 950.
10. In order to properly advise <child> as to the legal ramifications of further waiver of her therapist-patient privilege, the undersigned GAL requests that independent counsel be appointed for this purpose. The GAL is unable to provide this counsel due to potential conflicts of interest between <child> and her best interests.
11. ***** , Attorney Reg. No. XX has agreed to this appointment.

THEREFORE, the Guardian *ad Litem* requests:

- A. The court find the child, <child> is competent to hold her/his own therapist-patient privilege and that the child is declared holder of her own therapist-patient privilege pursuant to the Colorado Supreme Court’s holding in *L.A.N.*;

- B. The court appoint ***** as independent counsel for the child;
- C. The Court recognizes a limited waiver of the privilege for her psychotherapist(s) to specifically coach the child’s caregivers on effective ways to parent the child, or to share with the child’s caseworker, caregivers, or GAL the child’s treatment goals, the child’s attendance in therapy, and general statements regarding the progress on treatment goals; and
- D. All Parties, including Respondent parents, the caseworker, any employees of the Department of Human Services , GAL, and CASA volunteers are prohibited from: (1) signing releases of information that could extend the limited waiver of the privilege defined by the Court’s order, and, (2) intentionally injecting information into the proceeding that contravenes the Court’s Order regarding the child’s privilege.

Dated this _____ day of _____ 2019. **

 By: **, Guardian *ad Litem*

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2019 a true and correct copy of the foregoing document was served as follows:

Jordan Lewis, Office of the County Attorney
 ***** , Attorney for the Respondent, *****
Via email
 Respondent *****

Courtesy Copy to ***** , proposed Independent Counsel
Via email

| | |
|---|--|
| Larimer County, Colorado, District Court 201 LaPorte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500 | <p style="text-align: center;">↑ COURT USE ONLY ↑</p> |
| THE PEOPLE OF THE STATE OF COLORADO, IN INTEREST OF: ** Children, AND CONCERNING: ** Respondents. | |
| | Case Number: XX X XXX Courtroom |
| ORDER REGARDING PRIVILEGE UNDER L.A.N. AND § 13-90-107(1)(g) – REGARDING <child> AND FOR THE APPOINTMENT OF INDEPENDENT COUNSEL FOR THE CHILD FOR THE LIMITED PURPOSE OF ADVISEMENT REGARDING THE THERAPIST-PATIENT PRIVILEGE. | |

This matter having come before the Court on the Guardian *ad Litem's* Motion for Determination of Privilege and Scope of Waiver under L.A.N. and § 13-90-107(1)(g) regarding the child, <child>. **, representing the People; Respondent ***** being represented by ***** ***** , and the Court having reviewed the matter, finds and orders as follows:

1. On (DATE), the GAL was appointed to represent the best interests of the minor child, <child> born (BIRTHDATE). The child has been placed outside the of the home since (DATE).
2. <child> is currently participating in psychotherapeutic services. This Order shall apply to all psychotherapeutic services.
3. To protect the confidentiality of a child's communications to her/his therapist, the Colorado Supreme Court has held that the psychotherapist-patient privilege applies to children in dependency and neglect proceedings. L.A.N. v L.M.B., 292 P.3d 942, 2013 CO 6 (Colo. 213).
4. Independent counsel should be appointed to advise <child> on the privilege. ***.

NOW THEREFORE THE COURT ORDERS AS FOLLOWS:

- A. At this time the Court finds that <child> is competent to hold her/his own therapist-patient privilege and the child is declared to be the holder of her/his own therapist-patient privilege pursuant to the Colorado Supreme Court's holding in L.A.N.; only <child> may sign any requested release for or to her/his therapeutic service providers. The child's independent counsel will advise her/him of the effects of the releases but may not sign releases on his/her behalf;
- B. The Court recognizes a limited waiver of the privilege so that <child>'s psychotherapist(s) may specifically coach the child's caregivers on effective ways to parent, or to share with the child's caseworker, caregivers, or GAL the child's treatment goals, the child's attendance in therapy, general statements regarding progress on treatment goals, and recommendations for further treatment; no further release shall be required for the disclosure of such information;
- C. All parties, including the Respondent parents, the caseworker, any employees of the Department of Human Services , GAL or CASA volunteers are prohibited from: (1) signing releases of information that could extend the limited waiver of privilege defined by this Court order, and, (2) intentionally injecting information into the proceedings that contravenes the Court's order regarding the child's privilege;
- D. The Court appoints ***** *****, Attorney Reg. Number ** phone number ** as independent counsel for <child> to advise the him/her regarding the privilege;
- E. This appointment shall be paid by the Office of the Child's Representative;
- F. Independent Counsel shall receive service of all court documents so that he/she can properly advise <child> on upcoming issues which may affect his/ her psychotherapist-patient privilege.
- G. Independent Counsel will advise <child> on her/his privilege and assist her/him in the preparation of any necessary court documents, including a Privilege Log, if necessary;
- H. Independent Counsel is excused from appearing at hearings in (CASE #) unless specifically requested by <child>, her Guardian *ad Litem*, or the Court.

IT IS SO ORDERED.

Dated this _____, 2019

BY THE COURT:

District Court Magistrate

Copies to: Mel Jensen, GAL, to serve parties