July 16: “Caselaw and Legislative Update,” Polk County Model Court Training Academy; Room 209A, Polk County Courthouse, Des Moines, Noon – 1 p.m. Free CLEs and CEUs.

W. Va. Addresses Same-Sex Adoption/Foster Care: The West Virginia Supreme Court has sided with a same-sex couple who sought to prevent a judge from removing one of their foster children because they were not a “traditional” family. The court granted a writ of prohibition against a Fayette County Circuit Judge’s 2008 order that a 19-month-old girl (whom the same-sex petitioners began caring for soon after her birth) be placed in a foster home with a mother and father until she was officially adopted. The lower court agreed with the guardian ad litem, who had argued that it could be detrimental to the girl’s mental well-being to be raised, either short term or long term, in a household consisting of a same-sex couple and granted the G.A.L. motion to remove the girl over objections from both the petitioners and the West Virginia Department of Health and Human Resources.

While West Virginia law allows a single person to adopt, the G.A.L. has argued that the statute leans towards married couples. The West Virginia Supreme Court disagreed. “Although Respondent recognized that each Petitioner may individually petition to adopt under the statute, he asserts in his brief that the ‘statutes indicate a preference for
adoption by married couples.’ No statutory citation was supplied to support this position and our research reveals no such stated preference. Nor were we able to locate any legislatively assigned preference for adoption into a traditional home or any statutory definition of a traditional home for adoption purposes . . . In the present case, all indications thus far are that B.G.C. has formed a close emotional bond and nurturing relationship with her foster parents, which cannot be trivialized or ignored.”

**Florida’s Ban on Same-Sex Adoption is Challenged:** According to a recent article in “PrideSource”, a Florida appellate court has rejected a conservative Christian legal group's request to exclude the Florida Bar's friend-of-the-court brief in an appeal asking the court to find the state's ban on gay adoption unconstitutional. The Amicus brief in question, was filed by the Florida Bar Association’s Family Law Section and supports a trial judge’s ruling, which the appellate court is reviewing, that the adoption ban is unconstitutional. In a 5-2 opinion, the high court majority said the opposing group failed to show the brief violated its constitutional rights or that the bar had broken its own rules.

According to PrideSource, Liberty Counsel founder and president Mathew Staver said his Orlando-based organization is giving strong consideration to appealing the decision to the U.S. Supreme Court and suing the bar in a federal court. Liberty Counsel argued the Family Law Section’s brief violated the group’s First Amendment rights of free speech. Staver cited a 1990 U.S. Supreme Court ruling against the California Bar’s use of compulsory dues to pay for political and ideological activities opposed by some of its member lawyers. Florida Justice Barbara Pariente wrote for the majority that Liberty Counsel's rights were not violated because the Family Law Section is voluntary and its activities are not paid for through compulsory dues.

**Proposed Federal Legislation Keeps Families Intact As Parents Enter Substance Abuse Treatment:** Senator Jay Rockefeller recently introduced the *Keeping Families Safe Act of 2009* which allows families to stay together in residential family treatment programs when one parent or both enter substance abuse treatment. Rockefeller’s legislation offers financial support to promising residential family treatment programs by allowing children who are already in foster care to be placed with their parent in a safe treatment center environment, and bring their foster care payment with them as their placement is transferred. Currently, only 5 percent of all substance abuse treatment facilities are able to accommodate children.

**Proposal to Change the Federal Definition of Poverty:** Representative Jim McDermott, chairman of the Income Security and Family Support Subcommittee, introduced legislation that would update the way poverty is measured in the United States for the first time in half a century. The Measuring American Poverty (MAP) Act of
2009 (H.R. 2909) would largely implement recommendations developed by the National Academy of Sciences after it independently studied the way poverty is measured over ten years ago. In brief, the current measure of poverty relies largely on using the cost of food for a minimal diet to calculate assistance, but food as a percentage of living expenses has plummeted in the last 50 years while expenses for housing, health care and child care have risen significantly. The proposed legislation would establish a modern poverty measure to reflect a more accurate picture of what it takes to meet basic needs in America today, including food, clothing and shelter. The legislation would take into account the differences in the cost of living across the country, which the current poverty measure ignores.

June Statistical Summary: During the month of June, the Iowa Supreme Court rendered no opinions in juvenile cases, and the Iowa Court of Appeals rendered 14 opinions in juvenile cases. Of those 14 cases, 13 were Termination of Parental Rights (TPR) cases, and 1 was a Child in Need of Assistance (CINA) case. Here are the results in those cases.

**TPR Cases (14):** In 13 of the TPR cases, the parent(s) appealed the trial court’s order terminating parental rights under Chapter 232, and the Court of Appeals affirmed the termination of parental rights. One of the TPR cases involved private actions for TPR under Chapter 600A, and in that case, the Court of Appeals reversed the trials courts’ dismissals of the TPR petition, and ordered termination of the father’s parental rights.

**CINA Cases (1):** In the CINA case, the Court of Appeals affirmed the trial court’s dispositional order.

Iowa’s Children: The Children’s Defense Fund provides the following description of how children/youth fare in Iowa.
In Iowa:
   A child is abused or neglected every 36 minutes.
   A child is born into poverty every 1 hour.
   A child dies before his or her first birthday every 2 days.
   A child or teen is killed by gunfire every 3 weeks.

Iowa Ranks:
   7th among states in its infant mortality rate.
   17th among states in percent of babies born at low birthweight.
   28th among states in per pupil expenditures.

“The question is not what you look at, but what you see.” – Henry David Thoreau