



SWAN Legal Services Initiative

June Legal Report

VOLUME 2, ISSUE 12

2016

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LSI Training Team

Division Manager

Rachel Meaker, Esq.

Training Specialists

Alyssa Cowan, Esq.

Ilene Dubin, Esq.

Lauren Peters Esq.

Contact the team:

lsiwarmline@diakon-swan.org

471 JPLwick Drive
P.O. BOX 4560
Harrisburg, PA 17111

www.diakon-swan.org

Pennsylvania Superior Court

In the Interest of A.G.C.

Date of Decision: June 16, 2016

Cite: 2016 Pa Super 128

Facts and Procedural Posture:

A.C.G. (hereinafter “juvenile”) met the 12-year-old victim in November 2013 and initiated a physical relationship. Following a “bad breakup” the victim reported juvenile's actions to a camp counselor, who in turn informed Berks County Children and Youth Services (CYS). Juvenile was charged with indecent assault of a person less than 13 years of age. Following a hearing in which the minor victim testified, juvenile was adjudicated delinquent and placed in a residential facility. Juvenile filed a Post-Dispositional Motion. A hearing was held, and the Motion was denied in its entirety. Juvenile filed a Notice of Appeal and was directed to file a concise statement of errors. Included in this statement was juvenile’s challenge to the denial of a pretrial discovery request, pursuant to Pa.R.J.C.P. 340 (pertaining to informal, mandatory and discretionary pre-adjudicatory discovery), requesting disclosure of the camp counselor’s identity. Juvenile contended that the camp counselor’s identity was material to his defense, in that the counselor could attest to the victim’s inconsistent statements for impeachment purposes.

Rationale:

The superior court found that the trial court improperly relied on case law pertaining to the identity of a confidential informant who was an eyewitness to a crime in denying juvenile’s request. This analysis applies to those individuals who have firsthand knowledge of a crime or interact with suspects under the guidance of law enforcement. However, the superior court found that the trial court correctly denied juvenile’s request for disclosure of the name of the camp counselor. In reaching this decision, the court found that both Pa. R.J.C.P. 340 and 23 Pa.C.S.A. § 6340(c) apply. Section 6340(c) directs law enforcement to treat all individuals who report suspected child abuse as confidential informants, thus protecting reporters by prohibiting the release of identifying information. Furthermore, it was determined that the statements of the counselor were contained in a report of abuse prepared by CYS and entered as evidence. As such, juvenile was able to impeach the victim without release of the counselor’s identity. Juvenile ultimately failed to show that the counselor’s identity and testimony would have been exculpatory and the absence of such testimony would lead to a deprivation of his constitutional rights.

SPOTLIGHT — INDIAN CHILD WELFARE ACT

On June 8, 2016, the Department of the Interior, Bureau of Indian Affairs (BIA), released regulations to improve implementation of the Indian Child Welfare Act. These new regulations are the first enforceable rules since the passage of the original regulations in 1979. They serve to promote compliance with the Act by incorporating standard procedures and requirements for state courts and child welfare agencies in all Indian child custody proceedings. The final rule will become effective on **December 11, 2016**, and the BIA is expected to release revised guidelines before that date. The new regulations in their entirety can be found on the BIA's [website \(PDF\)](#).

Additional Updates

- **Pennsylvania Rules of Juvenile Court Procedure**

On December 9, 2015, the Court amended Juvenile Court Procedural Rule 1608 concerning permanency review hearings for children due to new federal requirements. On June 16, 2016, this Rule was further amended to require:

- A judicial finding of “at least one identified supportive adult with whom the child has significant connections.”
- The court to address the adequacy of the child’s visitation schedule with the child’s guardian at every permanency review hearing.

The full amendments can be found [here](#) and are effective on **August 1, 2016**.

- **Medical Marijuana Update: Safe Harbor Letter for Minors**

The Medical Marijuana Act became effective on May 17, 2016, and the implementation of the program is expected to take 18 to 24 months. On June 25, 2016, the Pennsylvania Department of Health issued temporary guidelines for the Safe Harbor provision of the program. These guidelines carefully outline the specific requirements that must be followed when a parent, legal guardian, or caregiver is applying to lawfully obtain medical marijuana from another state to administer to minors who have a physician-documented serious medical condition. The temporary regulations can be found in the [Pennsylvania Bulletin](#).