Recent Court Decisions and Legislation Impacting Juveniles

FEDERAL

🕮 *Cheolas v. City of Harper Woods*
No. 09-2418, 2012 WL 89173 (6th Cir. Jan. 10, 2012)

In *Cheolas v. City of Harper Woods*, the Sixth Circuit Court of Appeals evaluated a claim of malicious prosecution asserted by Mr. and Mrs. Cheolas. This claim stemmed from an incident involving a party held at the couple's home where underage teenagers consumed alcoholic beverages. Based on the widespread consumption of alcohol by underage party attendees, the Court determined that there was sufficient probable cause for charging Mr. and Mrs. Cheolas with knowingly allowing minors to consume alcohol in their home and contributing to the delinquency of a minor. Thus, the couple had no valid claim of malicious prosecution.

On the night in question, Mr. and Mrs. Cheolas hosted a surprise party in the basement of their Harper Woods home to celebrate their daughter's fifteenth birthday. The party guests were all freshmen in high school. At some point in the evening, the party attendees began consuming alcoholic beverages. The parents of Phelicia VanOverbeke, an attendee at the party, eventually called the police after arriving at the Cheolas residence to find Phelicia in an intoxicated state.

Upon entering the residence, the police discovered Phelicia semi-conscious and registered her blood alcohol level at 0.18%. The police administered breathalyzer tests to the thirty-one party attendees. Of the thirty-one teenagers, nineteen had consumed alcohol. Subsequent interviews did not reveal that Mr. and Mrs. Cheolas had purchased the alcohol for the teenagers. However, an investigating police officer later testified that it was his belief that because the

couples were in control of the premises and Mrs. Cheolas was present in the home for the duration of the party, the Cheolas' knew or should have known that the underage attendees were consuming alcohol.

Mr. and Mrs. Cheolas were jointly charged with two misdemeanor charges. The first charge was knowingly allowing minors to consume alcohol in their home. The second charge was contributing to the delinquency of a minor. However, on the date the bench trial was scheduled to begin, the trial court granted Mrs. Cheolas' motion to dismiss all charges. The state circuit court reversed the dismissal of misdemeanor charges four months later. In January 2006, following a two day bench trial on Mrs. Cheolas' criminal charges, the trial court granted Mrs. Cheolas' motion for a directed verdict finding that the City had failed to prove its' case beyond a reasonable doubt. Following the conclusion of the bench trial, Mr. and Mrs. Cheolas filed a civil rights suit in the United States District Court for the Eastern District of Michigan.

The district court granted summary judgment against the Cheolas', concluding that there was a sufficient basis for a probable cause finding that Mrs. Cheolas was in violation of MICH. COMP. LAWS § 750.141a(2)(a), which prohibits a homeowner or someone with control over property from knowingly allowing a minor to consume or possess alcohol. The Cheolas' appealed the district court's decision, maintaining that the district court erred in finding that probable cause existed as a matter of law. The couple also claimed that this error had foreclosed their cause of action for malicious prosecution, which requires showing an absence of probable cause.

The Sixth Circuit upheld the district court's finding, agreeing that probable cause existed in this case. In assessing the couple's probable cause argument, the Court cited *United States v. McClain*, 444 F.3d 556, 562 (6th Cir. 2005), stating that probable cause is "reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion". In applying this definition to the Cheolas' case,

the Court emphasized that there were nineteen minors present at the couple's party who tested positive for alcohol consumption. This fact served as "undeniable probable cause" that Mrs. Cheolas contributed to the intoxication of underage party attendees in her own home.

Despite the fact that the Cheolas' case is a civil rights action which discussed the possibility of malicious prosecution, the court's discussion of probable cause and parental liability for underage drinking are instructive for juveniles and parents alike. The court's focus on Mrs. Cheolas' presence in the home served as a significant, contributing factor in finding sufficient probable cause to warrant Mrs. Cheolas' prosecution.

🕮 *Garcia v. Holder*
659 F.3d 1261 (9th Cir. 2011)

Garcia v. Holder encompasses important aspects of immigration law, juvenile law, and administrative law. The issue presented in *Garcia* was whether appellant Jorge Raul Garcia's status as a "Special Immigrant Juvenile" worked in his favor to establish the seven years of physical presence required for cancellation of removal. Cancellation of removal is a form of immigration relief through which immigrants can challenge the power of the Department of Homeland Security to remove them from the United States. The Ninth Circuit Court of Appeals ultimately held that Garcia was entitled to special protections based on his special immigrant juvenile status (SIJS), and though Garcia did not technically meet the legal residence time requirement to seek cancellation of removal, his SIJS provided an alternative avenue to meet the requirement.

Garcia's legal issues stem from a challenging upbringing. Born in México, Garcia suffered an early-childhood traumatic brain injury that left him with permanent brain damage. Years later Garcia was diagnosed with bi-polar disorder. His mental health issues were further compounded by family tragedy. Garcia's father was incarcerated for

murdering his mother. Garcia then travelled to the United States, where he entered without inspection by customs authorities. At the age of nine, he entered California's foster care system and became the subject of allegations of severe abuse at the hands of those in his foster home. This abuse spurred a petition by the Los Angeles County Department of Children and Family Services' Special Immigrant Status Unit. A petition was filed with the juvenile dependency court for SIJS for Garcia in 1993 - 1994. One may only qualify for SIJS if she or he has "(i) been declared dependent on a juvenile court and has been deemed eligible for long-term foster care due to abuse, neglect, or abandonment; (ii) it has been determined in administrative or judicial proceedings that it would not be in the child's best interest to be returned to his country of nationality or residence; and (iii) the Secretary of Homeland Security expressly consents to the dependency order serving as a precondition to the grant of special immigrant status." The Court found it was in Garcia's best interest to not be returned to México. Due to his Special Immigrant Juvenile Status, Garcia was able to adjust his immigration status to lawful permanent resident in 2000.

Garcia v. Holder arose because Garcia became removable in 2006 after he was convicted of the second of two thefts. Relying on the two theft convictions, the Department of Homeland Security ordered Garcia removable, refusing to credit any of his time with SIJS toward the seven years physical presence requirement for cancellation of removal. Without his SIJS time credited, Garcia technically only had six years of continuous residence, as the clock started to run only when he adjusted to LPR status in 2000. The adjudicative process utilized by the immigration system consists of two administrative courts: immigration judges (IJ) and the Board of Immigration Appeals (BIA). The IJ in Garcia's case upheld the government's argument that Garcia was narrowly shy of the physical presence requirement for cancellation of removal. The BIA affirmed in a single member, unpublished opinion, holding that SIJS constituted a "parole" and not an "admission". An admission is necessary to start the clock leading up to seven years presence in the

United States. Garcia was removed and filed an appeal in the Ninth Circuit.

The Ninth Circuit reversed the decision of the BIA to deny Garcia's petition for cancellation of removal on the grounds that Congress intended special immigration eligibility benefits to be bestowed on survivors of child abuse. The Court noted "special eligibility requirements and benefits show a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for [lawful permanent resident] status." The Court found these special benefits to include classifying SIJS as an "admission", not a "parole". Therefore, Garcia was eligible for cancellation of removal due to his time as an SIJS youth. While this is a favorable outcome for Garcia, it only holds that he is still eligible for cancellation of removal. Garcia must still prove his case before the immigration system in order to avoid removal from the United States.

🕮 *Loggins v. Thomas*
654 F.3d 1204 (11th Cir. 2011)

On September 7, 2011 the Eleventh Circuit Court of Appeals found it constitutional to impose a life sentence without parole on a person who committed the crime as a juvenile. Kenneth Loggins was sentenced to death in 1995 for the murder in the course of a kidnapping of Vickie Deblieux. At the time of the crime he was only seventeen. In 2005 the Alabama state courts overturned his death sentence based on *Roper v. Simmons*. *Roper v. Simmons*, 543 U.S. 551 (2005). *Roper* held that it was unconstitutional to sentence to death anyone who was under eighteen at the time of the crime.

Loggins was resentenced to life without parole, the next-most-severe penalty under Alabama law. Loggins appealed in state court, arguing, *inter alia*, that the *Roper* court found that juvenile offenders were incapable of forming the intent for capital crimes. By extension, Loggins argued that a punishment for a capital crime (life without parole) was

unconstitutional since he was incapable of forming capital intent. The state court denied his appeal, finding no such implications in *Roper*.

In his appeal to the Eleventh Circuit, the court found that Loggin's claims were adjudicated on the merits in state courts and that the Anti Terrorism and Effective Death Penalty Act (EDPA) provides that any writ of habeas corpus that was adjudicated in the state courts cannot be overturned unless the state court findings that are clearly contrary to Federal Law as established by the United States Supreme Court. The standard is that of a fair-minded jurist: if such a jurist could agree with the state court's view, habeas relief must be denied.

There were no issues of material fact. Loggins argued several issues of law were either not adjudicated by lower courts or clearly established by federal law under the EDPA. First, Loggins argued that the state courts did not expressly address the issue of constitutionality of life without parole for juvenile offenders. The court rejected that argument, holding that unless a decision explicitly cites procedural issues, an opinion shall be considered on the merits, even if no explicit reasoning is provided.

Additionally, Loggins argued that, under *Graham v. Florida* as well as *Roper*, the Supreme Court has clearly established that a life sentence without parole for a juvenile offender violates the Eighth Amendment. In contrast, the circuit court held that the sole holding of *Roper* is only that "the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed." Additionally, the court found that the decision in Graham is simply that "the Constitution prohibits the imposition of a life without parole sentence on juvenile offender who did not commit homicide." *Graham,* 130 S.Ct. at 2034.

Finally, the court rejected Loggins' broader public policy arguments that cited a growing national and international consensus against sentencing juveniles to life without parole. Legally, the court rejected arguments along

those lines because only Supreme Court holdings are binding over habeas claims. However, the court also denied the arguments on the merits, citing the vast majority of U.S. states that allow for such sentences. Additionally, the U.S. has failed to sign any of the International Treaties cited by Loggins.

🕮 *United States v. Coleman*
656 F.3d 1089 (10th Cir. 2011)

Marcus Deon Coleman, a minor, was convicted of selling crack cocaine and marijuana on three separate occasions, in violation of Oklahoma's Trafficking in Illegal Drugs Act (TIDA), OKLA. STAT. tit. 63, § 2-414-20 (2002). Due to his age, the state court adjudicated Coleman under Oklahoma's Youthful Offender Act (YOA), OKLA. STAT. tit. 10 §§ 7306-2.1-2.13 (2002) (current version at OKLA. STAT. tit. 10A, §2-5-201 (2009)). In 2002, Coleman was sentenced to ten years of confinement. The court later converted Coleman's convictions to adult criminal convictions following Coleman's escape from the Oklahoma Department of Juvenile Affairs in 2003. Following Coleman's rearrest, the state judge transferred Coleman to the Oklahoma Department of Corrections in order to serve the remaining nine years of his sentence. Coleman was paroled in 2007.

Two years later, Coleman was arrested for felony possession of a firearm and ammunition, to which he pled guilty. Due to the fact that Coleman's previous convictions were converted to adult criminal convictions and reclassified as serious drug offenses under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e) (2012), Coleman's minimum term of imprisonment was fifteen years. Taking this information into account, the district court judge sentenced Coleman to twenty years in prison.

On appeal, Coleman argued that the drug trafficking crimes he committed as a juvenile and which were adjudicated under YOA do not qualify as serious drug offenses under ACCA. The Tenth Circuit evaluated

Coleman's claim and ultimately concluded that these convictions do qualify as serious drug offenses under ACCA, 18 U.S.C. § 924(e)(2)(A)(ii)(2012). The Court of Appeals then affirmed Coleman's twenty year sentence.

To determine whether a conviction is for a serious drug offense, the United States Supreme Court in *United States v. Rodriguez,* 553 U.S. 377, 388 (2008), instructed lower courts to examine the maximum term prescribed by the applicable criminal statute, not the sentencing limitations imposed on the state. In light of this precedent, the Court of Appeals determined that the relevant criminal statute at issue in the case was TIDA rather than YOA. The Court asserted that YOA only affects the sentence term that the state can impose on the youthful defendant, when the proper inquiry in the case is whether drug trafficking in Oklahoma qualifies as a serious drug offense. Based on the language of the statutes at issue, the held that this determination should be made based on the provisions of TIDA.

Under TIDA, the maximum punishment for any defendant is life imprisonment. Additionally, under ACCA, three previous convictions for violent felonies or serious drug offenses results in a mandatory, fifteen year sentence. The ACCA provision related to "serious drug offenses" contain no exceptions for juveniles. Thus, the Court of Appeals determined that the Legislature must have made a conscious choice to include juveniles in this sentencing provision.

Although the Court of Appeals determined that TIDA is the applicable law at issue in this case, the Court also noted that Coleman could still have received an adult sentence exceeding ten years in prison under the YOA. Regardless of this fact and based on the reasoning above, the Court of Appeals maintained that TIDA was the appropriate statute to apply in this case. In light of Coleman's criminal history, which included three serious drug offenses, the Court of Appeals affirmed Coleman's twenty year sentence. This holding has serious sentencing implications for juveniles who have committed several "serious drug offenses" while under the age of eighteen.

CALIFORNIA

🕮 *People v. Nelson*
No. S181611, 2012 WL 88552 (Cal. S. Ct. Jan. 12, 2012)

In *People v. Nelson* the California Supreme Court unanimously held that juveniles claiming a post-waiver invocation of their *Miranda* rights are subject to the same standard as their adult counterparts under *Davis v. United States*, 512 U.S. 452 (1994). Thus, once a juvenile waives his or her *Miranda* rights, "any subsequent assertion of the right to counsel or right to silence during questioning must be articulated sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be an invocation of such rights."

Just two months after his fifteenth birthday, Samuel Moses Nelson burglarized three separate residences, one of which resulted in the death of his seventy-two-year-old neighbor. The cause of death was "massive blunt-force head trauma, with multiple skull fractures and brain hemorrhaging." Prosecutors tried Nelson as an adult, and after Nelson waived his right to a jury trial, the court found him guilty of five first-degree burglaries and one murder. Early in the investigation, Nelson consented to an interview at the sheriff's office. After the investigators advised Nelson of his right to counsel and right to remain silent under *Miranda*, Nelson confirmed that he understood his rights and "expressed a willingness to speak with the investigators."

Three and a half hours into the interview, Nelson asked to call his mother so he could inform her of what was happening and ask for her advice. At Nelson's request, the investigators allowed Nelson to call his mother. Though unsuccessful in contacting his mother, Nelson talked to both his grandmother and brother. Nelson informed the investigators that his relatives had advised him to speak with

his mother or a lawyer before taking a polygraph test. Nelson also indicated that he wanted the investigators to leave him alone and, later in the interview, asked for "a few minutes to myself." The investigators complied with these requests, left Nelson with materials to write down his feelings, and advised him to "[d]o the right thing."

When the investigators returned and saw that Nelson had not written anything, Nelson asked "Do you think I could be alone until my family gets here?" The investigators complied, and again advised Nelson to write out his feelings. Nelson then wrote out a statement and later explained that he entered the victim's house in the middle of the night, and that he repeatedly struck her in the head when she suddenly stirred from her sleep.

The trial court denied Nelson's motion to exclude his custodial confessions from trial. The California Supreme Court, applying federal constitutional standards, held that Nelson's confessional statements were properly admitted at trial.

The court first reasoned that juveniles are subject to the standard of post-waiver invocation of *Miranda* rights articulated in *Davis v. United States*, which requires "an unambiguous and unequivocal assertion." Justice Baxter argued that there is "no persuasive basis for exempting juveniles from" the *Davis* standard; not only are there are sufficient safeguards to protect juveniles subjected to custodial interrogations, but the need for effective law enforcement is the same in the adult and juvenile contexts.

Applying the *Davis* standard, the court found: "a reasonable officer would not have understood [the] defendant to be clearly and unequivocally asserting his *Miranda* rights when he asked to speak to his mother, or when he indicated his relatives did not want him to take a polygraph test without first speaking to his mother or a lawyer, or when he made references to being left alone." Thus, because Nelson did not invoke his *Miranda* rights with sufficient clarity, the incriminating statements were admissible at trial.

Thus, under *People v. Nelson*, juveniles in California

are now held to the same standard as adults when invoking their *Miranda* rights after an initial waiver. This standard requires that juveniles make an "unambiguous and unequivocal assertion" of their *Miranda* rights should they waive such rights earlier in a custodial interrogation. While one might reasonably question whether most juveniles could even define "unambiguous and unequivocal," the California Supreme Court nonetheless determined it was an appropriate standard.

🕮 California AB 9

On October 9, 2011, Governor Brown signed Assembly Bill 9 (AB 9) into law. AB 9, or Seth's Law, calls for the implementation of anti-bullying policies in public schools. The law was promulgated in reaction to the death of thirteen year-old Seth Walsh, who took his life after being repeatedly bullied at school for his sexual orientation. Seth's Law amends the existing framework of the Safe Place to Learn Act found in Education Code Sections 234, 234.1, 234.2, and 234.3, and adds Section 234.5 to the Code.

Seth's Law makes several distinct changes to the Safe Place to Learn Act. First, Code Section 234 now protects student victims from not only discrimination and harassment, but also "intimidation and bullying based on actual or perceived characteristics," including the student's disability, gender, nationality, race or ethnicity, religion, or sexual orientation. Seth's Law calls for the California Department of Education to develop a model handout with school policies for receiving complaints, which can be modified and displayed on school campuses and websites.

In Section 234.1, Seth's Law states that the school must also "set up a timeline to investigate and resolve" complaints, as well as implement an appeal process. Furthermore, any school personnel who witnesses acts of discrimination, harassment, intimidation or bullying "must take immediate steps to intervene when safe to do so."

Seth's Law leaves Sections 234.2 and 234.3 largely unchanged, though Section 234.3 now explicitly states that schools must periodically update their handouts and websites related to discrimination, harassment, intimidation, and bullying.

The newly added Section 234.5 orders the Superintendent of Public Instruction to post and annually update his or her website with "a list of statewide resources, including community-based organizations, that provide support to youth [and their families] who have been subjected to school-based discrimination, harassment, intimidation, or bullying . . . ." Finally, Section 234.5 states that in accordance with the California Constitution, the state will reimburse school districts and local agencies for certain state-mandated costs associated with Seth's Law. Seth's Law will go into effect July 1, 2012.

🕮 California AB 1122

AB 1122 is a California bill requiring the allocation of federal funds for tattoo removal procedures for at-risk youth, ex-offenders, or former and current gang members. It was introduced by Assembly Members John A. Pérez and Tom Ammiano on February 18, 2011 and approved by Governor Jerry Brown for passage into law on October 9, 2011. Specifically, AB 1122 establishes a pilot program known as the California Voluntary Tattoo Removal Program (CVTRP). CVTRP mandates the purchase of two tattoo removal devices by the Division of Juvenile Facilities, a sub-division of the Department of Corrections and Rehabilitation. This program serves youth between the ages of fourteen and twenty-four who are in custody, on parole or probation, or involved in a community-based organizations serving at-risk youth. AB 1122 amends the California Welfare and Institutions Code by adding Section 1916, which provides for the California Voluntary Tattoo Removal Program. AB 1122 also sets a sunset date for Section 1916 for January 1, 2017.

California's previous efforts to provide tattoo removal services to its at risk youth are encompassed in Section 1915 of the Welfare and Institutions Code. This earlier section offers a unique glimpse into the history of tattoo removal, as it details specific gender-based qualifications for tattoo removal candidates. For example, a male seeking to remove his tattoo must have had a tattoo on his "arm, hand, neck or head", while a female had to have a tattoo that was "visible in a professional work environment." Cal. Welf. & Inst. Code § 1915 (West 2012). For both males and females, the tattoo had to present either "a threat to the personal safety of, or an obstacle to the employability of, a candidate." Id. AB 1122, through CVTRP, removes the sex-based qualification standards, allowing for men and women to be eligible provided the applicants have "gang-related tattoos that may be considered unprofessional and are visible in a professional work environment." Cal. Welf. & Inst. Code § 1916 (West 2012). Youth seeking to participate in CVTRP must meet other criteria as well, and must apply through a competitive application process.

The competitive application process has its own qualifications as well. To qualify, juveniles must be: actively seeking to continue their secondary or post-secondary education, or are "seeking employment or participating in workforce training programs", or have upcoming job interviews, or are participating in a community or public service activity. Cal. Welf. & Inst. Code § 1916 (West 2012). In addition, AB 1122 authorizes applicants to seek additional federal or private grants to defray the costs of tattoo removal.

AB 1122 presents interesting societal questions about the effects of tattoos on the career prospects of juveniles with criminal records. A central assumption of AB 1122 is that gang-related tattoos, if removed, would not block some juveniles and young adults from seeking gainful employment. While this may seem like a rational assumption, one might question whether it is the tattoos that decrease employability, or classism in the hiring process. The views of AB 1122 authors find support in the work of community organizations

like the Los-Angeles based CleanSlate Clinic and the East Harlem based "Strive" program, the former providing tattoo removals services and the latter offering make-up techniques for hiding tattoos before interviews. Bigger societal questions aside, AB 1122 ultimately increases California's ability to offer tattoo removal services by expanding opportunities for young men and women to participate in the program.

🕮 California SB 578

Senate Bill 578, which added § 51225.2 to the California Education Code, addresses and ameliorates the problems faced by pupils in foster care when transferring school districts. After receiving Governor Brown's approval on October 4, 2011, S.B. 578 went into effect on January 1, 2012.

Firstly, § 51225.2(b) requires school districts and county offices of education to accept coursework "satisfactorily completed by a pupil in foster care while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency." If the pupil did not complete the entire course, the school district and county office must issue full or partial credit for the coursework completed. Moreover, credits accepted pursuant to subdivision (b) are to be applied to the same or equivalent course completed at the prior school, if applicable. § 51225.2(c).

Additionally, a school district or county office of education shall not require a pupil in foster care to retake a course if the pupil has satisfactorily completed the entire course in a public school, a juvenile court school, or a non-public, non-sectarian school or agency. In the event that the pupil did not complete the entire course, the school district or county office of education may not require the pupil to retake the portion of the course that the pupil previously completed unless the pupil is "reasonably able to complete the requirements in time to graduate from high school." This

"reasonably able" determination is to be made by the school district or county office of education, "in consultation with the holder of educational rights for the pupil."

Lastly, § 51225.2(e) provides that a pupil in foster care "shall not be prevented from retaking or taking a course to meet the eligibility requirements for admission to the California State University or the University of California."

Education Code § 51225.2 promotes juvenile education by focusing on a specific problem affecting a particular class of juveniles. The law encourages pupils in foster care to focus on and excel in their academic studies, as the credits and partial credits they earn will transfer in the event that a pupil enrolls in a different school district.

🕮 California SB 746

On January 1, 2012, Senate Bill 746 went into effect. The bill removed a provision that allowed minors to use tanning devices if they had parental consent. Under SB 746, minors are prohibited from using tanning beds.

The California Department of Consumer Affairs has regulated tanning facilities since the 1988 passage of the Filante Tanning Facility Act. Prior to SB 746, the tanning facility regulations found in § 22706 of the California Business and Professions Code prohibited any person under fourteen years of age from using an ultraviolet tanning device, but allowed minors between fourteen and eighteen years of age to use tanning beds with the consent of a parent or legal guardian. SB 746 eliminates the parental consent option, effectively banning the use of tanning devices for all persons under the age of eighteen. The only listed exception is for physician authorized phototherapy. The bill emphasizes the need for stringent enforcement of the age restrictions, making facilities found to be in violation of the new tanning prohibition subject to a fine of $2,500 per day.

This bill will impact a sizable portion of California's tanning public: nearly twenty-five perecent of tanners are

between the ages of thirteen and nineteen, and studies suggest that thirty-five percent of teenage girls use indoor tanning facilities. The Indoor Tanning Association (ITA) provides statistics which claim that up to ten percent of the tanning population is under the age of eighteen.

The bill's author, Senator Ted Lieu of Torrance, enjoyed the support of several prominent health organizations including the American Cancer Society, the California Medical Association, and the American Academy of Pediatrics. Senator Lieu, in tandem with these organizations, framed this bill as a necessary step toward stemming the rising rates of skin cancer among young people. Senator Lieu cited research drawing a connection between ultraviolet tanning and skin cancer, pointing to evidence that children who use indoor tanning methods are up to seventy-four percent more likely to develop melanoma. Susan Swetter et al., *Increases in Melanoma Among Adolescent Girls and Young Women in California*, 147 ARCHIVES OF DERMATOLOGY, Jul. 2007, 783-789. Melanoma is a deadly skin cancer that is the leading cause of cancer death in women ages twenty-five to thirty, according to evidence the California Nurses Association presented in favor of the bill. In support of this measure, Senator Lieu pointed to several states — including Illinois, New York, New Jersey, and Texas — where bills prohibiting all minors from using tanning facilities are pending.

The bill was not broadly opposed, but industry interests did register disapproval. The ITA cited concerns that the health risks of tanning were being overstated and that this prohibition would present a harsh — even fatal — burden to many tanning businesses. Thus, SB 746 could shrink the industry's target demographic by ten percent overnight.

ILLINOIS

🕮 *Vlastelica v. Brend*
954 N.E.2d 874 (Ill. App. Ct. 2011)

In *Vlastelica v. Brend et al*, an Illinois Appellate Court held that child representatives are entitled to absolute common law immunity from liability when working within the scope of their court-appointed duties. The question at issue was whether immunity from civil suits arose from statutory language (which is silent on the issue) or implied in the scope of duties.

Plaintiff Milijana Vlastelica and Manheir Chehaiber's divorce proceedings began in 2000. The circuit court awarded custody of their minor son, Kristian N. Chehaiber to Vlastelica, but the initial judgment for dissolution of marriage reserved the issues of visitation and child support. The court appointed the defendant, Jeffrey W. Brend, as Kristian's child representative from 2003 to 2008, when those visitation and child support issues were resolve.

The divorce proceedings were highly adversarial. During the proceedings Vlastelica filed two separate motions to discharge Brend. Those motions alleged Brend repeatedly acted with bias against her, including yelling at her and advocating on behalf of her ex husband. The circuit court denied the motions.

Vlastelica and Manheir's dissolution of marriage became final in 2008, and in 2010 Vlastelica initiated the case discussed herein. The suit was for legal malpractice, intentional breach of fiduciary duty and intentional interference with Vlastelica's custody rights. The circuit court granted Blend's subsequent motion to dismiss, finding that Brend and his law firm (also a defendant) were absolutely immune from civil liability because he was acting as a court-appointed child representative.

On appeal, Vlastelica argued that court-appointed child representatives are not absolutely immune from civil

liability. She claimed that the Illinois statute that created child representatives is silent on the issue of immunity from civil liability and does not confer such immunity. Vlastelica further claimed the only other possible source of immunity could be the common law and that no such authority exists in the common law.

The court disagreed. They found that the Seventh Circuit Court of Appeals has held that child representatives are entitled to the same absolute immunity as judges because they are "arms of the court." *Cooney v. Rossiter,* 583 F. 3d 967, 970 (7th Cir. 2009). Plaintiffs responded that the Seventh Circuit is not binding and that the logic is not persuasive. Specifically, Plaintiffs responded that a child representative acts more like an attorney for the child than a neutral arm of the court under Illinois statute.

In contrast, the court found that the single most important function of a child advocate is to act neutrally in the best interest of the child. The court cited *Cooney* and differentiated between that role and the role of an attorney, who acts in deference to the *wishes* of the client. *Cooney,* 583 F. 3d. at 970. Essentially, the court found that child representatives must be free to fulfill his obligations "without worry of harassment and intimidation from dissatisfied parents."