**CHINS**
(DCS Liability)

1/23/13

In **In D.L. v. Huck**, 984 N.E.2d 223 (Ind. Ct. App. 2013), on rehearing, the Court clarified its opinion at D.L. v. Huck, 978 N.E.2d 429 (Ind. Ct. App. 2012). Both the Department of Child Services (DCS) and the Family petitioned for rehearing.

**The Court affirmed their opinion as to DCS in all respects.** Id. at 225. The Court said that a petition for rehearing is not a pathway for re-litigating the case and DCS may not supplement the record now. Id.

**The Court granted Family's petition for rehearing to clarify the Court's reading of IC 31-25-2-2.5 and said that a suit against DCS as an entity should be allowed to proceed even if vicarious and even if suit against the employee is barred, but only for those claims that fall within the Indiana Tort Claims Act (ITCA).** Id. at 225-26. The Court first clarified that IC 31-25-2-2.5, which grants immunity, except to the State, for the DCS Director and employees, does not render DCS as an entity immune where DCS was directly liable. Id. at 225. The Court also looked to the Indiana Tort Claims Act (ITCA), which requires an entity to pay a judgment resulting from an employee's employment, even if the employee is not personally liable (IC 34-13-3-5(d)). Id. The Court said, after examining the ITCA, that the Court believes that its interpretation of IC 31-25-2-2.5 is not in conflict. Id. The Court opined that IC 31-25-2-2.5 would by extension grant immunity to DCS where its only liability was vicarious, if the employee were granted immunity; but it would not grant the entity (DCS) immunity where the entity was directly liable. Id. The Court granted the Family's petition to proceed with claims that fall under the ITCA. Id. at 226.

**The Court granted the Family's petition to proceed with their federal civil rights claims.** Id. at 226. The Family pointed to a statute (IC 34-13-4-1) that requires entities to pay for judgments resulting from the violation of civil rights by their employees. Id. The Court, noting that IC 34-13-4-1 applies to employees who are "or could be subject to personal civil liability" for the loss, determined that this statute is not relevant because DCS employees are immune from personal liability. Id. The Court stated that, under the supremacy clause, any state-granted immunity would not provide protection for section 1983 claims. Id.

**The Court declined to revise its opinion with regard to Grandfather's standing.** Id. at 226. The Family argued that Grandfather should have standing to assert a claim for DCS's failure to comply with IC 31-34-15-4, which requires DCS to consider blood relatives for out-of-home placement before placing a child with non-relatives. The Court, noting that IC 31-34-15-4 says that DCS "*shall consider* whether a child in need of services should be placed with the child's *suitable* and willing blood or adoptive caretaker," stated that there is a question of who is suitable, and whether, assuming that DCS did not consider Grandfather, it was because they felt he was not suitable (emphasis in original). Id. The Court said that, despite the "shall" language, the relevant sub-section of the statute reads more as a guideline than a concrete rule under which a relative who had no other standing could bring suit. Id.