NACC 24th National Children’s Law Conference
Advocacy for Children and Families: Moving from Sympathy to Empathy
Loews Coronado Bay Resort, San Diego / Coronado, California
September 29 – October 2, 2001

NACC MEMBERS RECEIVE A 25% REGISTRATION DISCOUNT!
ADVOCACY FOR CHILDREN AND FAMILIES: Moving from Sympathy to Empathy

THE CONFERENCE

Advocacy for Children and Families: Moving from Sympathy to Empathy is the 24th National Children’s Law Conference of the NACC. The conference is designed for professionals from the fields of law, medicine, mental health, social work, and education. The program focus is the practice of law for children and families through interdisciplinary training and education.

The conference is open to anyone interested in child welfare, juvenile justice, and family law.

The conference is comprised of General Sessions and Workshops. Workshops are organized along 4 tracks:

1 - Abuse & Neglect
2 - Juvenile Justice
3 - Custody & Visitation
4 - Policy Advocacy

You are free to sign up for and attend sessions in different tracks. The multidisciplinary nature of the conference includes attorney, judicial, law enforcement, social work, physician, and mental health training. NACC conferences are rated highly by participants for content, administration, networking opportunity, and enjoyment.

The conference is the product of 23 years of experience in the field of children’s law.

CONTINUING EDUCATION CREDITS

The following jurisdictions have pre-approved the conference for the following continuing education credits:

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Uniform Certificates of Attendance will be provided to allow for credit in other states and disciplines. NACC conferences are typically approved by the continuing education agencies in most jurisdictions and disciplines.

SAN DIEGO / CORONADO, CALIFORNIA

www.sandiego.org

This year the NACC conference comes to San Diego and Coronado, California. The conference will be held on Coronado Island, connected to San Diego by the San Diego Coronado Bay Bridge. Coronado is easily accessible and is less than a 10-minute drive from downtown San Diego. The conference will be held at the Loews Coronado Bay Resort and attendees will have the opportunity to enjoy an island resort, Coronado Island, and all that San Diego has to offer. Blessed with great weather, natural beauty, and a rich cultural heritage, San Diego offers a wide variety of things to do and see. From Mexico to the charming inland and coastal communities in the north, to the glorious mountains and desert in the east, to a vibrant and bustling downtown, San Diego and Coronado form a perfect conference location. For more information on San Diego and Coronado, contact:

San Diego Convention and Visitors Bureau
www.sandiego.org
619-236-1212

Coronado Visitors Bureau
www.coronado.ca.us
619-437-8788
ACCOMMODATIONS

Loews Coronado Bay Resort

www.loewshotels.com/coronadohome.html

The conference will take place at the beautiful and luxurious Loews Coronado Bay Resort. Located on a private peninsula in San Diego Bay, 10 miles southwest of downtown San Diego and about 15 minutes from San Diego International Airport, Loews Coronado is a first class vacation and conference resort across the bay from San Diego on the edge of the Pacific. In addition to the state of the art conference facilities and luxurious rooms, the resort offers activities including boat rentals, sailing lessons, pools and jacuzzis, gondola rides, bikes and rollerblades, arts and crafts, health club, tennis, kids activities and more.

A special conference room rate of $135 (about half the usual rate) single or double is available for NACC conference attendees. A room block has been reserved for the NACC from September 28 through October 3. The hotel will honor the reduced room rate 3 days before and 3 days after the block if rooms are available. We anticipate that the room block will sell out early so please send in your conference registration and then make your hotel reservations right away. To receive the discounted rate, hotel reservations must be made by August 29, although there is a possibility the room block will have sold out by then as well. To make your hotel reservations, contact Loews Coronado Bay Resort, 800-81- LOEWS or 619-424-4000; 4000 Coronado Bay Road, Coronado, CA 92118. Refer to NACC Children’s Law Conference.

If the room block is sold out, contact the NACC for a list of alternate hotels, 1-888-828-NACC.

DISCOUNTED TRAVEL AND AIRPORT TRANSPORTATION

Special discounted travel for conference attendees is available through United Airlines and Delta Airlines. Both United and Delta are offering discounted fares to conference attendees for travel between September 26 – October 5, 2001. For reservations or more information, call John Coxhead with TravelCorp at 1-800-222-9229 and refer to the NACC conference. You can also contact the airlines directly: Delta at 1-800-241-6760, meeting code 177331A; United at 1-800-521-4041, meeting code 551BW.

Taxi and shuttle service is available to Loews Coronado Bay Resort from the airport. Cloud 9 Shuttle offers discounted rates to Loews (approximately $13 each way). Use the courtesy phone in the airport baggage claim area to locate shuttle boarding.

LUNCHEONS

The following optional luncheons are scheduled:

Luncheon 1 (Sunday) You Can’t Believe Her, She’s Just a Kid, a presentation by John E.B. Myers, Professor of Law, University of the Pacific, McGeorge School of Law and author of the treatise “Evidence in Child Abuse and Neglect Cases.” The cost of this luncheon is $30 per person in addition to the registration fee and space is limited. Please sign up on the registration form.

Luncheon 2 (Tuesday) A luncheon featuring child advocacy table discussions. Various children’s topics will be assigned for table discussion facilitated by members of the NACC National Board of Directors. This is an excellent opportunity to network. The cost of this luncheon is $30 per person in addition to the registration fee and space is limited. Please sign up on the registration form.

FAMILY VACATION

San Diego and the Loews Coronado Bay Resort are wonderful family vacation destinations. Consider planning a family vacation around the NACC conference. Loews offers a variety of family and children’s activities, as well as childcare services. For more information, contact the Loews concierge at 619-424-4000 extension 6300.

EXHIBITS

Exhibit space will be provided to sponsors, vendors, children’s law programs, and NACC affiliates. Space is limited and will be sold on a first-come, first-served basis. Please contact the NACC office for details and reservation of space.

CONFERENCE LUNCH BANQUET

The NACC has arranged a special conference luncheon banquet for all conference attendees on Monday, October 1. There is no additional charge for registered conference attendees but you must check the banquet box on the registration form. The 2001 Outstanding Legal Advocacy, Student Essay, and Outstanding Affiliate awards will be presented and the banquet will conclude with guest speaker, award winning humorist, and former juvenile probation officer Michael Pritchard. Limited space is available for guests of conference attendees at $40 per person. Please complete the Conference Banquet section of the registration form.

NEW MEMBER ORIENTATION

A special new member / first time attendee orientation is scheduled for Sunday morning. Continental breakfast will be provided. Newcomers and interested veterans are invited to come and learn more about the NACC.

REGISTRATION

NACC members receive a registration discount of over 25%. Space at the conference is limited so please register early.

Cancellation Policy

Cancellations postmarked on or before August 29, 2001 will receive a refund minus a $50 processing fee. Cancellations postmarked after August 29, 2001 will not receive a refund.

Registration

Early Registration (postmarked by Aug 29) Regular Registration (postmarked after Aug 29)
NACC Member: $270 NACC Member: $295
Non-Member: $365 Non-Member: $395

Non-member registration includes a one-year membership in the NACC. All participants will receive the 2001 NACC Children’s Law Manual.

You may register by mail, fax or phone. The NACC accepts checks, purchase orders, and credit cards (Visa or MasterCard). Payment or Purchase Order must accompany registration. Purchase Orders must be paid within 30 days.

DISABILITIES

Please advise the NACC of any meeting access accommodations you may require. If you will need accommodation, please contact the NACC as soon as possible.
SATURDAY, SEPTEMBER 29, 2001
2:00 – 5:00 Conference Registration
5:00 – 6:00 Cocktail / Hors d’oeuvre Reception
6:00 – 6:15 Welcome
Katherine Holliday, NACC Board President
Marvin Ventrell, NACC Executive Director
6:15 – 6:30 Opening Remarks
Hon. Leonard P. Edwards, Supervising Judge of the Juvenile Dependency Court – Santa Clara County California Superior Court / Vice President – National Council of Juvenile and Family Court Judges
6:30 – 7:30 KEYNOTE PRESENTATION
Advocacy for Children and Families: Moving From Sympathy to Empathy
Voices:
Multiple Transitions: A Young Child's Point of View About Foster Care and Adoption
The NACC 2001 conference opens with the voices of youth. This year's theme, moving from sympathy to empathy, is a concept which comes out of the NACC's Youth Empowerment Initiative. It is based on the belief that the most effective advocacy comes not just from adult concerns for children's welfare, but from an understanding of circumstances from the child's perspective. Such an empathetic, rather than merely sympathetic response, empowers children and youth and gives them a greater voice in the process. Voices is a dramatic presentation of experiences from within the child welfare system from the perspective of the youth in the system. The evening will conclude with a powerful video on abuse, removal and multiple placements from the voice of a young child.
7:30 Dinner On Your Own

SUNDAY, SEPTEMBER 30, 2001
7:30 Conference Registration Open
8:00 – 9:00 New Member / First Time Attendee Orientation / Continental Breakfast
8:30 – 9:00 Continental Breakfast
9:00 – 10:00 GENERAL SESSION 1
Zero Tolerance: Resisting the Drive for Punishment
Bernardine Dohrn, JD
William Ayers, Ed.D.
10:00 – 10:30 Coffee Break
10:30 – 12:00 GENERAL SESSION 2
Attachment, Bonding and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court
David Arredondo, MD
Hon. Leonard P. Edwards
SPONSORED BY THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
12:00 – 1:30 LUNCHEON 1
You Can't Believe Her, She's Just a Kid
John E.B. Myers, JD
(Separate registration and fee required.)
or LUNCH ON YOUR OWN
1:30 – 3:00 CONCURRENT SESSION A
Track 1 – Abuse & Neglect
The Adoption and Safe Families Act: 2001 Case Law Review
Cecilia Fiernmonte, JD/MA
Track 2 – Juvenile Justice
Transcending Boundaries Between Juvenile Justice and Child Welfare: What Lawyers Need to Know
Robert Schwartz, JD
Track 3 – Custody, Visitation & Adoption
Conducting Scientifically Crafted Child Custody Evaluations
Jonathan Gould, Ph.D.
H.D. “De” Kirkpatrick, Ph.D.
Track 4 – Policy Advocacy
Impact Litigation as a Tool for Policy Advocacy
Marcia Lowry, JD
Laoise King, JD
Moderator: Ellen Jones, JD
SPONSORED BY CASEY FAMILY PROGRAMS
3:00 – 3:30 Catered Break
3:30 – 5:00 CONCURRENT SESSION B
Track 1 – Abuse & Neglect
Family to Family: Four Core Strategies for Improving Your System
Marsha Rose Wickliffe, JD
Track 2 – Juvenile Justice
Representing Youth in Adult Criminal Proceedings: Practice Implications of the ABA White Paper
Robert Shepherd, LLB
Track 3 – Custody, Visitation & Adoption
Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice (The NCJFCJ Greenbook)
Hon. Katherine Lucero
Carol Barnett, JD
Track 4* – All Tracks
Legal and Ethical Dilemmas for Attorneys in Children's Court
Angela Adams, JD
David Katner, JD
Henry Plum, JD
Marvin Ventrell, JD
*APPROVED FOR ETHICS CREDIT

MONDAY, OCTOBER 1, 2001
8:00 Hospitality / Networking Lounge Open
8:30 – 9:00 Continental Breakfast
9:00 – 11:00 CONCURRENT SESSION C
Track 1 – Abuse & Neglect
Fostering Independence: The Chaffee Independence Program and Other Supports for Youth Transitioning to Adulthood
Robin Nixon, MA
Adam Cornelli, JD
Judith Mayer, MSW
Moderator: Ellen Jones, JD
SPONSORED BY CASEY FAMILY PROGRAMS
Track 2 – Juvenile Justice
Humanizing Demonized Kids in the Courtroom
Paul Mones, JD
Robert Shepherd, LLB
Track 3 – Custody, Visitation & Adoption
Assuring a More Child Centered Approach to Custody Disputes: Improving Child Representation and Judicial Decision-Making
Ann Haralambie, JD
Track 4 – Policy Advocacy
Policy Advocacy for Children and Youth: A Practical Skills Training
Miriam Rollin, JD
Laoise King, JD
11:00 – 11:30 Exhibits / Coffee Break
11:30 – 1:30
**CONFERENCE BANQUET**
(Included in registration fee – please indicate attendance on registration form.)

Presentation of NACC 2001 Outstanding Legal Advocacy Award, Law Student Essay Award and Outstanding Affiliate Award

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**Guest Speaker:**
**MICHAEL PRITCHARD**

Michael Pritchard is a nationally acclaimed entertainer and child advocate. Drawing on his background as a probation officer, educator and comedian, Michael Pritchard has inspired audiences across the country. Featured in *Time Magazine* and on CNN as “Somebody Who’s Making a Difference,” he has won both the California Probation Officer of the Year Award and the San Francisco International Comedy Competition. Although his resume includes numerous film and television appearances including *The Tonight Show*, he has dedicated the majority of his career to working with youth. He recently received an Emmy nomination for his 5th highly acclaimed PBS series, *Saving Our Schools*.

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1:30 – 3:00
**CONCURRENT SESSION D**

**Track 1 – Abuse & Neglect**

*The Lost Children of Wilder: The Epic Struggle to Change Foster Care*

Nina Bernstein
Marcia Lowry, JD


**Track 2 – Juvenile Justice**

*School Discipline / School Violence*

Paul Mones, JD
Robert Schwartz, JD

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**Track 3 – Custody, Visitation & Adoption**

*Helping Divorcing Parents to Remain Child Focused*

Eugene White, Ph.D.
Ellen White, RN/MSW

**Track 4 – Policy Advocacy**

*Youth Involvement in Child Welfare Advocacy: Empowering Youth and Improving Outcomes*

Robin Nixon, MA
Adam Cornell, JD

**SPONSORED BY CASEY FAMILY PROGRAMS**

3:00 – 3:30
**Catered Break**

3:30 – 5:00
**CONCURRENT SESSION E**

**Track 1 – Abuse & Neglect**

*Attorney and Expert Witness Demonstration: The Direct and Cross Examination of the Expert Witness in an Abuse and Neglect Case*

Karen Steinhauser, JD
John Stuemky, MD

**SPONSORED BY SAN DIEGO CHILDREN’S HOSPITAL**

**Track 2 – Juvenile Justice**

*Special Education Rights for Children in the Juvenile Justice System*

Patricia Cromer, JD
Margaret Dalton, JD
Hon. Sherri Sobel

Moderator:
Sharon Kalemkiarian, JD

**Track 3 – Custody, Visitation & Adoption**

*The GAL Team: Working Constructively Toward a Parenting Plan*

Cindy Morris, JD
Ronal Smith, Ph.D.

**Track 4 – Policy Advocacy**

*Implementing a Child Advocate Interdisciplinary Team Model of Child Representation*

Ann Collentine, MPPA
Michael Hansell, JD
Janice Montgomery, BSW

5:15 – 6:00
**FEDERAL POLICY UPDATE**

Miriam Rollin, JD
NACC Policy Representative

6:30 – 11:00
Complimentary Buses To and From Downtown San Diego

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**TUESDAY, OCTOBER 2, 2001**

8:00
Hospitality Lounge Opens

8:00 – 8:30
Continental Breakfast

8:30 – 10:00
**CONCURRENT SESSION F**

**Track 1 (A) – Abuse & Neglect**

*Child Maltreatment: The Medicine of Non-Accidental Trauma (Basic)*

Marilyn Kaufhold, MD

Moderator:
Kendall Sprott, MD

**SPONSORED BY SAN DIEGO CHILDREN’S HOSPITAL**

**Track 1 (B) – Abuse & Neglect**

*Balancing Sibling Relationships and Permanency Through Adoption*

William Patton, JD
Leslie Starr Heimov, JD
Diana Elliott, Ph.D.

Moderator:
Miriam Rollin, JD

10:00 – 10:30
Coffee Break

10:30 – 12:00
**CONCURRENT SESSION G**

**Track 1 (A) – Abuse & Neglect**

*Child Maltreatment: The Medicine of Non-Accidental Trauma (Advanced)*

Cynthia L. Kuelbs, MD

Moderator:
Kendall Sprott, MD

**SPONSORED BY SAN DIEGO CHILDREN’S HOSPITAL**

**Track 1 (B) – Abuse & Neglect**

*Advocating for State and Local Funding*

Margaret Brodkin, MSW
Robert Fellmeth, JD

Moderator:
Miriam Rollin, JD
Track 2 – Juvenile Justice
Principles of Restorative Juvenile Justice
Dennis Maloney

Track 3 – Custody, Visitation & Adoption
Developmentally Appropriate Forensic Interview Techniques
Michael Lamb, Ph.D.

Track 4 – Policy Advocacy
Prenatal Drug Exposure: Policy Implications of Recent Studies and Cases
Steven Ondersma, Ph.D.
Melissa Tatum, JD

12:00 - 1:30 LUNCHEON 2
Networking / Table Topics
Discussion Luncheon
Facilitated by NACC Board of Directors (Separate registration and fee required.) or LUNCH ON YOUR OWN

1:30 – 3:00 GENERAL SESSION 3
How Old is Old Enough? A Panel Discussion on Child Competency Issues
Thomas Lyon, JD / Ph.D.
Constance Dalenberg, Ph.D.
Moderator: John E.B. Myers, JD

3:00 – 3:30 Catered Break

3:30 – 5:00 CLOSING SESSION
Creating Empathetic Systems: Using Our Experiences to Create a Child Centered Child Welfare System
Hon. Richard FitzGerald, NACC National Advisory Board / Senior Judge, Commonwealth of Kentucky

5:00 ADJOURN

5:10 – 6:00 CALIFORNIA NACC AFFILIATES MEETING
LA Affiliate of the NACC and Northern California Association of Counsel for Children
(All Interested Advocates Are Welcome)
ASFA / CHILD’S RIGHT TO ADOPTION

Landmark ASFA Decision Establishes Enforceable Federal Statutory Right to Adoption Opportunities for Foster Children.


By James Marsh, Director of Legal and Policy Analysis at The Center for Social Work Management

On June 19, 2001, federal district Judge Rudolph T. Randa entered a decision in the long-running Jeanine B. litigation challenging the operation of the foster care system in Milwaukee. In an unprecedented decision, reported at 2001 WL 748062, Judge Randa held that the Adoption and Safe Families Act of 1997 creates a federal statutory right to have the state:

1. Initiate a proceeding to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months;
2. At the same time, begin to identify, recruit, process, and approve a qualified family for adoption; and

The decision was issued on a motion by the plaintiffs, represented by Children’s Rights, Inc. of New York City, to file an amended supplemental complaint adding a new cause of action based on ASFA. The state of Wisconsin, who is defending the suit, argued that the motion should be denied because the plaintiffs failed to state a claim upon which relief can be granted. Specifically, the defendants argued that the provisions of ASFA relied upon by the plaintiffs are too vague and amorphous to be judicially enforceable.

Judge Randa, in a careful analysis of the case law concerning the plaintiffs’ 42 U.S.C. § 1983 claim, held that ASFA creates substantial new federal statutory rights for foster children. Specifically, as part of the case review system established at 42 U.S.C. § 675(5)(E), ASFA requires the state to file a termination of parental rights petition for children who have been in foster care for 15 of the most recent 22 months, unless, at the option of the state, the child is being cared for by a relative; the state agency has documented in the case plan a compelling reason that filing a petition is not in the child’s best interest; or the state has not provided to the family such services as the state deems necessary for the safe return of the child to the child’s home.

Three-Part Blessing Test Satisfied

The court’s analysis of ASFA utilized the Supreme Court’s requirement set forth in Blessing v. Freestone, 520 U.S. 329, 340 (1997) that there are “three factors when determining whether a particular statutory provision gives rise to a federal right. First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the provision has been applied to him. Third, the statute must unambiguously impose a binding obligation on the state.” The court held that “the clear intent of ASFA is to benefit children in foster care by ensuring prompt action with respect to termination of parental rights and preparation for adoption. Likewise, the provisions of subsection (5)(E) are mandatory, as evidenced by the use of the word ‘shall.’” p. 7.

The court gave more considered analysis to the second Blessing requirement that the rights arising under ASFA be within the competence of the judiciary to enforce. The court held that “the core requirement of subsection (5)(E) — timely initiation of proceedings to terminate parental rights — is not so ‘vague and amorphous’ that its enforcement would strain judicial competence. The statute is triggered when a child has been in foster care custody for fifteen of the most recent twenty-two months. Thus, in contrast with CAPTA’s ‘vague and amorphous’ call for a ‘prompt investigation’ of reported child abuse or neglect, the provision at issue here provides an objective yardstick for determining timeliness.” p. 8.

The defendants challenged the court’s ability to decipher the meaning of the terms “compelling reasons” and “reasonable efforts” in 42 U.S.C. 675(5)(E)(ii)-(iii). The use of the vague and amorphous term “reasonable efforts” is what lead the Supreme Court in Suter v. Artist M., 503 U.S. 347 (1992) to hold that another section of Title IV-E did not unambiguously give foster children an enforceable right to prevent removal from their homes and reunification services. The Jeanine B. court agreed with Suter and held that when ASFA uses “ill defined phrases” such as “compelling reasons” and “reasonable efforts,” the “rights created… become harder to define, much less manage.” p. 9.

The plaintiffs, mindful of the limitations established by Suter, did not ask the court to evaluate the state’s discretionary function of documenting “compelling reasons” or making “reasonable efforts.” Instead, they asked the court to determine only whether the state has timely filed a petition to terminate parental rights and begun the required search for an adoptive family or elected not to file and documented one of the clearly defined exceptions. Thus, with respect to the exception in subparagraph (ii) — that the state document in the case plan a compelling reason for determining that
filing a TPR petition is not in the child’s best interest — the plaintiffs only sought to enforce their right to have this exception documented in the case plan.

Similarly, concerning the exception in subparagraph (iii), the plaintiffs did not ask the court to determine what efforts to reunify a family are reasonable. Rather, they merely sought the right to documentation that the exception does, in fact, apply. Based on these limited requests, the court held that the rights conferred under ASFA are not “judicially unmanageable.” pp. 10-11.

New Enforceable Federal Rights Under ASFA

Judge Randa held that the Adoption and Safe Families Act of 1997 created the following enforceable federal statutory rights:

1. The right to have the state initiate a proceeding to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months;

2. The right to have the state, after initiating a proceeding to terminate parental rights, begin to identify, recruit, process and approve a qualified family for adoption; and

3. The right to have the state document any exceptions that apply under 42 U.S.C. § 675(5)(E)(i)-(iii).

Practice Tips

Foster children and their advocates have secured a significant new right to adoption services under ASFA which will require heightened response by states and public and private child welfare agencies. At minimum, the following best practices should be implemented immediately:

Every child who has been in foster care for 15 of the most recent 22 months must be evaluated immediately for adoption or termination of parental rights. In some jurisdictions, a permanency hearing must be held to evaluate the suitability of a change in goal to adoption/TPR. In others, the state agency can change the goal without court involvement. Unless one of the ASFA exceptions exists, and is well-documented in the case plan, the state must file a TPR by the end of the child’s 15th month in foster care.

In calculating the 15-month period, the ASFA regulations allow some flexibility. In summary, the state:

(A) Must calculate the 15 out of the most recent 22 month period

from the date the child entered foster care as defined at 45 USC 475(S)(F);

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22-month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care.

The ASFA regulations require that states “apply the exceptions to filing a petition for TPR judiciously and on a case-by-case basis...[T]he intent of the requirement to file a petition for TPR for certain children was to encourage State agencies to make timely decisions about permanency for children in foster care. The exceptions were developed to allow State agencies to exercise individual case planning and seek an alternative permanent placement when adoption may not be appropriate or available for a child.” The agency is required to apply the exceptions “on a case by case basis that is in the best interests of an individual child.” A state is not permitted to have “laws that carve out groups of the foster care population to be exempted from the requirement to file a petition for TPR.” The determination of what constitutes a “compelling reason” must be based on the individual circumstances of the child and the family. The requirement to file a petition for TPR or to document an exception to the requirement is the state agency’s responsibility. The statutory language is clear that for a compelling reason, or any other exception to the requirement to file a petition for TPR, there is no requirement for a judicial determination. Any exception to filing a petition for TPR must be re-evaluated at the six-month periodic review and the permanency hearing.

AGENCY LIABILITY

Tenth Circuit Court Of Appeals Holds That Social Worker And Supervisor Are Not Entitled To Qualified Immunity Under DeShaney Where Social Worker Created The Danger Faced By The Children By Recommending Placement With Their Abusive Father And Failing To Investigate Several Allegations Of Abuse. Social Worker’s Supervisor Was Not Entitled To Qualified Immunity Because Her Failure To Train The Social Worker Properly Amounted To Deliberate Indifference To The Rights Of The Children WIth Whom Her Subordinate Came Into Contact. Additionally, The Court Found That The Law In This Area Was Well Established At The Time Of The Events And Thus A Reasonable Official Would Have Known That His Or Her Actions Were Unconstitutional. Currier v. Doran, 242 F.3d 905, 2001 U.S. App. Lexis 2983 (10th Cir. 2001).

In April of 1993, Shirely Medina (Medina) a social worker for the Children, Youth and Families Department of the State of New Mexico (CYF), visited the home of Devonne Juarez (Mother) to investigate a report of child neglect. The social worker found Latasha and Anthony Juarez, who were both under the age of four years old, in the care of their five-year-old cousin. When the social worker discovered that Mother had left the state she removed Latasha and Anthony from the home and delivered the children into the physical custody of CYF.

In May of 1993, CYF petitioned the New Mexico Children’s Court for an order formally granting legal custody of the children to CYF. Medina stated in an affidavit supporting the petition that Christopher Vargas (Father), had not supported the children and had allowed them to live in “alarming conditions.” Another social worker, Tom Doran (Doran) learned that Father had a history of financial irresponsibility, which included having made only eight child-support payments in the preceding three years. On May 10, 1993, the Children’s Court held a custody hearing. Doran attended but said nothing about Vargas' history of child-support payments. The Children’s Court stated that “no parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the children.” Nevertheless, based on the recommendation of Medina, the court granted physical custody of the children to Father while keeping legal custody with CYF.

At some point during the following months, Father was also awarded legal custody. On July 22, 1993, Doran visited Latasha and Anthony at Father’s home where he noticed a small bruise on Anthony’s cheek. Father’s girlfriend claimed the bruise was the result of a fall on the playground. On August 3, 1993, Anthony had another bruise when he arrived at the CYF office for a visit. This bruise was also attributed to a fall. Doran did not further investigate either bruise.

Mother returned to New Mexico in August 1993. On August 25 and September 16, 1993, Mother asserted to the children’s guardian ad litem (GAL) that Father and his fiancée were physically
abusing the children, Doran was told about at least one of these allegations, but failed to investigate. On August 31, 1993, during the course of a comprehensive psychological evaluation conducted at CYF’s request, Mother alleged that Father’s fiancée punished Latasha and Anthony by dunking them in a bathtub full of water; Doran learned of these accusations but failed to investigate.

On October 15, 1993, during a visit between Mother and the children at the CYF office, two bruises were noticed on Latasha’s back. When Latasha was asked who gave her the bruises, she replied “Da, Da.” On October 20, 1993, the GAL for Latasha and Anthony sent letters to Doran and Doran’s Supervisor Melba Gonzales urging a thorough investigation of the recent observations of bruises. Doran did interview Father and his fiancée about the bruises, but they explained that the bruises had been caused by a bunk bed ladder which they had thrown away.

On November 17, 1993, bruises were noticed on Anthony’s face while he was in the CYF office. Father’s fiancée claimed the bruises were the result of Anthony’s fall from a bunk bed. CYF then removed Latasha and Anthony from Father’s home and placed them with relatives. When questioned about the bruises on Anthony’s cheek, Father explained to Doran that he had bitten Anthony on the cheek while wrestling on the floor; but that he did not think he had bitten Anthony “that hard.” Latasha made some remarks indicating that “Ta Ta” had bitten Anthony to punish him. There were also bite marks on Latasha that Father could not explain. Doran prepared an affidavit for a meeting with his supervisor, Gonzales, in which he indicated that the children would be subject to further abuse if permitted to stay with Father. In the meeting, however, Doran failed to advocate strongly against return of the children to Father; Gonzales concluded the children had to be returned to Father.

On January 10, 1994, a request for an investigation was made to another social worker; Regina Sentell (Sentell). Sentell discovered bruises on Anthony’s buttocks but concluded the bruises were the result of a fall. During the visit, Latasha told Sentell that she was spanked with a belt. Six days later, the children’s GAL filed a report indicating that “Anthony and Latasha will be subject to further injury in their current home situation” and recommended monitoring the situation. Despite this recommendation, Medina and Doran instructed Mother to stop making allegations of abuse because it was traumatizing the children. On March 16, Doran received another allegation of abuse, Doran referred the allegation to Sentell. Upon investigation, Sentell discovered bruises on both Latasha and Anthony, but concluded the injuries were not the result of abuse.

On April 16, 1994, Father poured boiling water on Anthony, causing Anthony severe burns over most of his body. When Doran learned of this incident, he went to the home and removed Latasha, who was covered with bruises and took her to the emergency room. Doctors at the emergency room indicated that Anthony was bruised everywhere he was not burned. Anthony died in an intensive care unit on May 3, 1994.

Plaintiffs, representatives of Latasha and Anthony, brought suit under 42 U.S.C. § 1983 against social workers Doran, Medina, and Sentell and Supervisor Gonzales. The suit alleged that CYF social workers violated Latasha and Anthony’s fundamental rights under the Fourteenth Amendment of the United States Constitution. Defendants moved for summary judgment claiming they were entitled to qualified immunity under DeShaney v. Winnebago County Dep’t of Social Servs., 489 U.S. 189 (1989). Additionally, Gonzales argued that even if DeShaney did not foreclose Plaintiff’s claims, the law was not clearly established at the time of the underlying events and thus she was entitled to qualified immunity.

The district court held that DeShaney did not preclude Plaintiff’s claims. The court also concluded that at the time of the events underlying the suit it was clearly established that Defendants’ alleged conduct could be the source of a constitutional violation. Thus, the court denied Defendants’ motions for summary judgment. Defendants appealed.

The United States District Court of Appeals for the Tenth Circuit affirmed in part and reversed in part. In reaching its decision, the court reviewed the U.S. Supreme Court’s DeShaney decision. In DeShaney, the Supreme Court held governmental agencies have no constitutional duty to protect a citizen from acts of violence committed by private individuals. However, the court also found that an exception to the general rule exists if the state has created a situation that puts a child at risk of danger by a private individual. The DeShaney court laid out six elements which must be met for a situation to fall under the creation of risk exception. The factors are:

1) the charged state entity and the charged individual actors created the danger or increased plaintiff’s vulnerability to the danger in some way; 2) plaintiff was a member of a limited and specifically definable group; 3) defendant’s conduct put plaintiff at substantial risk of serious, immediate, and proximate harm; 4) the risk was obvious or known; 5) defendants acted recklessly in conscious disregard of that risk; and 6) such conduct, when viewed in total, is conscience shocking.

The Tenth Circuit applied this test to each defendant in the case. As to Doran, the court held he could be liable under the danger creation exception to qualified immunity. The court found that Doran created a danger by failing to investigate numerous allegations of abuse; he was directly responsible for the court order granting Father legal custody; his actions placed the children at obvious risk of serious, immediate, and proximate harm; he consciously disregarded this risk; and that these actions could be considered “conscious shocking” when viewed in total. The court then noted that the children’s rights were sufficiently clear and established in 1993 and 1994 that a reasonable official would have understood that his conduct violated that right. The court held that Doran should have known that reckless, conscious shocking conduct that alters the status quo and places a child at substantial risk of serious immediate and proximate harm was unconstitutional.

As to Medina, the court found that she too created the danger faced by the children, and thus was exempt from qualified immunity under DeShaney. However, the court held that the particular theory of danger creation on which Plaintiffs stated their claim against Medina is substantially less established in the case law than the more straightforward application of the doctrine to Doran. The court therefore held that a reasonable official in Medina’s position would not have understood that her conduct created a claim under the danger creation theory, and thus, she was entitled to qualified immunity.

The court found that Sentell was entitled to qualified immunity because she was not responsible for the creation of the danger to the children.

Finally, the court found that Gonzales could be liable under §1983 for failing
to adequately train the social workers. The court held that the failure to adequately train the workers constituted a deliberate indifference to the rights of the children and deprived them of their constitutional rights and that this area of law was clearly established at the time of the events.

Therefore, the court affirmed the district court’s denial of Doran's and Gonzales’ motions for summary judgment and reversed the district court’s denial of Medina's and Sentell’s motion for summary judgment.

PRIVATE CUSTODY / APPOINTMENT OF GAL


Mother and Father were married in 1991 and subsequently had two children, D.T.C. born in February of 1994 and A.L.C. born in November 1995. The parties separated in April 1999 and divorced in early 2000. In their petitions for dissolution of marriage, both parties stated that the children were in the custody of the Division of Family Services (DFS), however, neither party set forth in their pleadings the reasons for their children’s residential placement. In the final judgment of dissolution, the judge designated Mother and Father to be joint legal custodians with Father having primary physical custody. Mother appealed contending, among other things, that the trial court erred by failing to appoint a guardian ad litem (GAL).

Mother argued on appeal that the trial court was mandated to appoint a GAL to represent the children’s interests in the proceedings. The relevant statute reads in part:

“In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged.”

Mother claimed that although neither she nor Father requested the appointment of a GAL, and even though neither party specifically alleged abuse or neglect in their pleadings, the judge should have appointed, suo sponte, a GAL based on the fact that the pleadings disclosed that the children were in the custody of DFS.

The court held that the mandatory appointment of a GAL is triggered only by an allegation of child abuse expressly stated in a pleading and not by the mere introduction of evidence at trial or in the pleadings. The court stated that abuse or neglect are not the only bases upon which a juvenile officer assumes jurisdiction over a child, and the fact that the children were under the jurisdiction of the juvenile court does not necessarily “raise a red flag” of abuse or neglect. Therefore, the court held that because there were no express allegations of abuse or neglect by either party in their pleadings, and the evidence at trial was insufficient to warrant suo sponte appointment of a GAL, the trial court did not err in not appointing a GAL.

EMOTIONAL ABUSE


A public school teacher was charged with violating a Florida child abuse statute by causing “mental injury” to children by allegedly force-feeding children, slapping and screaming at children, telling a child she was “bad”, and screaming at a child to go to the bathroom. Although there was no evidence of physical injuries, the state argued that the teacher could be convicted of felony child abuse for humiliating a child.

The Florida statute under which the teacher was charged makes it a felony to commit an intentional act which could reasonably be expected to result in “mental injury” to a child. After she was charged, the teacher moved to dismiss, arguing that the statute was unconstitutionally vague because “mental injury” was not defined.

The trial court held the statute unconstitutional as being both overbroad and vague based on the same reasoning. The State appealed. The Court of Appeals began by noting that the doctrines of overbreadth and vagueness are separate and distinct. The court first examined the claim that the statute is overbroad.

Citing the Florida Supreme Court, the appeals court stated that the overbreadth doctrine applies only if the legislation is “susceptible of application to conduct protected by the First Amendment.” The court stated that in this case some of the counts were based solely on oral statements which are protected by the First Amendment. However, the court noted that this does not automatically mean that the statute is facially invalid. The court stated that a statute is facially invalid as overbroad only if it “reaches a substantial amount of constitutionally protected conduct.” Therefore, the court reasoned that the state’s interest in protecting children from physical abuse, which is the primary purpose behind the statute involved in this case, is compelling. The court stated that any constitutionally protected conduct which could be prosecuted under the statute is insubstantial, compared to the other types of conduct to which the statute is directed. The court concluded, therefore, that the statute is not substantially overbroad and can be upheld against an overbreadth argument by narrowly construing it as not applicable to speech.

The court next examined whether the fact that the statute does not define the term “mental injury” renders the statute unconstitutionally vague. The court stated that a statute is vague if it "fails to give adequate notice of what conduct is prohibited." The trial court found the statute to be vague because it would leave an ordinary person unable to determine whether their words or actions would result in “mental injury” to a child. The appellate court agreed that the term “mental injury” was vague, however, the court cited a recent Florida Supreme Court decision which stated that the lack of definition of a vague term does not make the statute unconstitutionally vague if a definition of the term can be found in other statutes. The court found that “mental injury” is defined in other sections of the Florida code as being “an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in his ability to function within his normal range of performance and behavior; with due regard to his culture.” Therefore, the court reversed the decision of the trial court, and certified the question of whether the term “mental injury” in the child abuse statute is unconstitutionally vague.

On July 13, 2001 the Florida Supreme Court accepted jurisdiction to hear the case.
ROLE OF CHILD’S ATTORNEY / TRIAL AND APPELLATE COUNSEL

California Court Of Appeals Discusses Role Of Children’s Counsel And How The Appellate Court Should Respond If Minor’s Trial And Appellate Counsel Disagree. In re Zeth S., 2001 Cal.App. LEXIS 492 (Cal. App. 2001), 12 Pages.

In May of 2000, a termination of parental rights hearing was held involving 27-month-old Zeth. At the hearing, minor’s trial counsel was adamantly in favor of termination of parental rights. The trial court terminated Mother’s parental rights. Mother appealed.

On appeal, a different attorney represented Zeth. On appeal Zeth’s independent appellate counsel supported Mother. In her letter brief, the minor’s appellate counsel urged reversal of the order terminating parental rights.

The appeals court held that in light of the new information brought to the attention of the court by the minor’s appellate counsel, the court would reverse the lower court holding and send the case back for an updated review hearing. The court noted that the new information called into question the position taken by minor’s counsel at the trial level, and raised the possibility of a miscarriage of justice.

The court stated that the case brought to light the unique role of minor’s counsel and the difficulties which arise when minor’s trial counsel and minor’s appellate counsel disagree. The court’s opinion outlined these issues.

Role of minor’s counsel:

The court stated that “the statute is remarkable in that it requires minor’s counsel to be proactive in investigating the minor’s best interest. The statute specifically requires minor’s counsel to conduct an independent factual investigation into what position accords best with the minor’s welfare and then report the results of that factual investigation to the court.” The court stated that these statutory duties to conduct a factual investigation and report to the court necessarily confer on minor’s counsel in dependency cases “a special role in American jurisprudence.” The court noted that “even more unusual is a statutory prohibition against a lawyer arguing a certain position. Under section 317, the lawyer is forbidden to argue for the return of a child to his or her parent under certain circumstances.” The court continued that “on top of those anomalies, there is the further requirement that minor’s counsel must use his or her independent judgment in arriving at the position to ‘advocate,’ despite the stated preferences of the ‘client.’ ”

The court stated that “minor’s counsel is special also because the minor’s counsel necessarily acts a ‘neutral’ litigant in the sense of being only concerned about the child.” The court noted that the minor’s counsel’s role is reminiscent of the court’s own role in a so-called inquisitorial justice system, where judges rely on experts and investigators who are not chosen by the parties.

Additionally, the court stated that “given human nature, the minor’s counsel’s special role tends to confer on minor’s counsel a special credibility with the court qua trier of fact. A juvenile court judge could reasonably assume that the minor’s counsel had performed his statutory duty to investigate and would therefore enjoy a certain confidence that any ruling consistent with the position of the minor’s counsel would be one which, at least in minor’s counsel’s opinion, would not result in physical harm to the minor.”

How the court should proceed when minor’s trial counsel and appellate counsel disagree:

The court noted that it had proceeded on the assumption that minor’s appellate counsel’s statement in her letter brief concerning the caretaker’s real preference was accurate, even though it had not been made under oath. The court noted that this raised the issue of how appellate courts should treat information which “is not going to be in the appellate record, given that it arrives without the usual safeguards of the law of evidence.”

The court stated that although appellate courts do not generally determine facts, there is an exception in the area of juvenile dependency appeals, where “at least some courts will routinely accept additional evidence.” The court stated “...there can be no doubt about the need to take into account post-judgment developments in juvenile dependency cases, where the subject matter of the litigation is, after all, a child’s life. The static model of appellate evaluation of a judgment based on settled and discrete facts that works well in almost all other areas of law does not always work well when the object of the litigation is the ongoing well-being of a child. The consequences to the child are too grave if an adoptive placement is not ‘working out,’ yet a judgment affirming the termination of the relationship between the child and his or her natural parents is routinely affirmed. If an adoptive placement doesn’t work out, the result can be catastrophic to the child. Legal orphanage is the worst of all possible outcomes: No parents and no adoptive home.”

Thus, the court held that in light of the dangers of erroneous termination or erroneous nontermination, something more than just a letter brief is necessary before an appellate court should reverse the termination of parental rights in the wake of a change of position by the minor’s counsel which casts doubt on the result of the .26 hearing. Therefore, the court concluded that information concerning new developments submitted by appellate counsel on appeal in juvenile dependency cases should be made pursuant to traditional rules of evidence.

The court held that “if the appellate court concludes that the new developments (which will usually concern some aspect of the minor’s placement in a prospective adoptive home), if found true on remand by a trial court, would otherwise warrant a reversal of the order terminating parental rights, the case should be remanded to the trial court for an updated review hearing in order to assess the child’s current status.”

The court stated that the updated review would, in effect, be a retrial of the .26 hearing, with updated information. The court stated that by sending the matter back for an evidentiary hearing, the problem of the minor’s appellate counsel “becoming, in effect, the star witness, is avoided as well. On remand, however, the attorney’s affidavit or declaration becomes the functional equivalent of an offer of proof, and the real witnesses become the caretaker; social workers, and parents or other third parties.”

The court held that “in fairness to minor’s counsel who may have already submitted appellate briefs without the requisite declaration required by rules 23 and 41 of the California Rules of Court, the court’s opinion in regard to that requirement should be taken as prospective only.” The court therefore reversed the termination of parental rights because of the doubts raised about the outcome of the .26 hearing by the minor’s appellate counsel’s brief. The court remanded the case to the juvenile court for an updated
review hearing in the form of a retrial of the .26 hearing.

The NACC thanks NACC Members Jay Sherwood and Christopher Wu for bringing this case to our attention.

DELINQUENCY / SCHOOL VIOLENCE

Supreme Court Of Wisconsin Holds That Creative Writing Piece Written By Juvenile, Which His Teacher Perceived As A Death Threat, Could Not Form The Basis Of A Delinquency Petition Because The Piece Did Not Amount To A True-Threat And Thus Was Protected By The First Amendment. In the Interest of Douglas D. 626 N.W.2d 725, 2001 Wisc. Lexis 380 (Wisc. 2001). 26 Pages.

In October of 1998, Douglas D. was an eighth-grade student in Mrs. C's English class. Mrs. C gave Douglas a creative writing assignment to complete during class. Mrs. C instructed Douglas to begin writing a story, which later would be passed on to a series of three other students, each adding to Douglas's work. Mrs. C entitled the assignment "Top Secret" but provided no limit regarding the topic. Rather than beginning his assignment, Douglas visited with some friends and disrupted the class. Mrs. C sent Douglas into the hall to complete his assignment.

At the end of the period, Douglas returned to class and handed his work to Mrs. C. Douglas had written:

"There one lived an old ugly woman her name was Mrs. C that stood for crab. She was a mean old woman that would beat children senseless. I guess that's why she became a teacher. Well one day she kick a student out of her class & he didn't like it. That student was named Dick. The next morning Dick came to class & in his coat he conselled a machedy. When the teacher told him to shut up he whipped it out & cut her head off. When the sub came 2 days later she needed a paperclip so she opened the door. Ahh she screamed as she found Mrs. C's head in the door:"

Mrs. C believed this story to be a threat that if she disciplined Douglas again, Douglas intended to harm her. Douglas was sent to the assistant principal. Douglas apologized for the story and said that he did not intend the story to be a threat. Douglas received an in-school suspension.

In November, police filed a delinquency petition against Douglas alleging that by submitting a "death threat" to Mrs. C, Douglas had engaged in "abusive conduct under circumstances in which the conduct tends to cause a disturbance," thus violating the disorderly conduct statute.

The trial court found that Douglas had communicated a "direct threat" to Mrs. C and that this threat constituted abusive conduct unprotected by the First Amendment. Additionally, the court found that Douglas's conduct provoked a disturbance in that it caused Mrs. C to become upset.

Douglas appealed arguing, among other things, that the delinquency adjudication based on the content of his student writing assignment violated his First Amendment rights to free speech. The Court of Appeals rejected Douglas's arguments and affirmed the lower court's ruling.

Douglas appealed to the Wisconsin Supreme Court. The Supreme Court began by examining the word threat. The court stated that "threat" is an imprecise term that can describe anything from "an expression of an intention to inflict pain, injury, evil, or punishment" to any generalized "menace." The court stated that under such a broad definition, "threats" include protected and unprotected speech. Thus states cannot enact general laws prohibiting all "threats" without infringing on some speech protected by the First Amendment. The court contrasted this definition with the definition of "true threat" which is a constitutional term of art used to describe a specific category of unprotected speech.

The court defined "true threat" as a statement that, in light of the surrounding circumstances "a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech." The court noted that a "true threat" may often include speech or acts that fall within the broader definition of "threat"; however, it does not include protected speech. Thus, the court determined that it needed to find whether Douglas's creative writing piece constituted a "true threat."

The court stated that while it believed Douglas's story was crude and repugnant, it did not rise to the level of a direct threat. The court reasoned that the story did not contain any language directly addressed from Douglas to Mrs. C, rather it was written in the third person, with no mention of Douglas. Second, the story contained hyperbole and attempt at jest. It joked that the "c" in Mrs. C is short for crab. In addition it suggested that Mrs. C is so mean that she beats children and speculates that for this reason she became a teacher. Third, Mrs. C explained to Douglas that in this particular assignment, he merely was to begin writing a story that other children would complete; thus Douglas could have expected another student to end his grisly tale as a dream or otherwise imagined event. The court found that under these circumstances, Douglas's story is protected by the First Amendment.

The court concluded by emphasizing that it shares the public's concern regarding threats of school violence, and that society need not tolerate threats. The court stated that such speech, even if purely written, can and should be prosecuted under the disorderly conduct statutes, however; under the facts of this case, the speech at issue failed to rise to the level of a true threat. The court noted, however, that while some student conduct may warrant punishment by both law enforcement officials and school authorities, school discipline generally should remain the prerogative of our schools, not our juvenile justice system.

The Wisconsin Supreme Court reversed the decision of the lower courts.
FY2002 Appropriations

There has been no action, yet, in the House or Senate on the FY2002 Labor, HHS, Education appropriations bill (which includes child welfare and family support programs in Title IV of the Social Security Act, as well as the Child Abuse Prevention and Treatment Act programs). These mark-ups are expected to occur in September, after Labor Day.

Juvenile Justice and Delinquency Prevention Act programs are included in the Commerce, Justice, State appropriations bill, different versions of which have now passed the House (7/18/01) and been marked-up by the Appropriations Committee in the Senate (7/19/01 — that version is awaiting Senate floor action in September). The House-passed version unfortunately continues the current funding levels for most JJDPA programs, including current funding — at $95 million — for the Title V Local Delinquency Prevention Grant program as recommended by President Bush in his budget. Unfortunately, the House-passed bill also increases the earmarks for other purposes within Title V funding to nearly $65 million, or over 2/3 of the appropriated amount. The Senate Committee-reported version — thanks to the persistent efforts of Sen. Kohl — includes a modest (but, for this program, significant) increase to a funding level of $130.8 million, with $52.5 million earmarked for other purposes (still too high, but better than the House). We hope that the House will agree to the higher Senate numbers when the bill goes to House/Senate Conference (after Senate passage in September).

NOTE: All FY2002 appropriations bills are supposed to be enacted by October 1, 2001, but Congress may need to pass a “continuing resolution” to keep the programs operating while final negotiations on funding are concluded.

Juvenile Justice and Delinquency Prevention

House

H.R. 1900, the bill to reauthorize and modify the federal Juvenile Justice and Delinquency Prevention Act, was marked-up in the full House Education and Workforce Committee on August 1, 2001. The bill is an improved version of the JJDPA reauthorization legislation that was reported out of that committee two years ago. The only significant risk to the legislation during mark-up was an amendment by Rep. Schaffer to “sunset” the bill when the reauthorization expires. Many thought it did not make sense to prevent future juvenile justice and delinquency prevention funding from going to communities just because Congress hadn’t been able to complete reauthorization on time — as they haven’t been able to do for this reauthorization. The sunset amendment was defeated on a bi-partisan vote.

As stated in the previous Guardian, H.R. 863, to authorize (officially, for the first time) the Juvenile Accountability Block Grant, with improvements, was reported out of the House Judiciary Committee in April. The bill is still awaiting floor action.

Both H.R. 863 and H.R. 1900 are considered non-controversial bills, and are expected to be brought to the House floor (together or separately) under suspension of the rules in September — a “suspension” vote means there’s limited debate, and the bill needs a 2/3 vote to pass, but MOST importantly, it means NO floor amendments (which is good, since most of the floor amendments to previous juvenile justice bills have not promoted the most effective policy approaches).

Senate

A number of bills have been introduced recently that relate to juvenile justice and delinquency prevention.

Two of the bills would reauthorize the JJDPA, but are quite different in their approaches:

• S. 1174, which was introduced on
CHILD WELFARE LEGISLATION

As indicated in the previous Guardian, while both the “Promoting Safe and Stable Families” and “Child Abuse Prevention and Treatment” programs are due to be reauthorized this year, there have been no bills introduced, yet, or mark-ups held; there have only been a couple of hearings on these programs.

Please see the previous Guardian for specifics on legislation introduced to: (1) restore funding for the Title XX Social Services Block Grant; (2) promote partnerships between child welfare agencies and drug and alcohol abuse prevention and treatment agencies; and (3) to amend the Immigration and Nationality Act to provide temporary protected status to certain unaccompanied alien children. There has been no Committee mark-up or floor action on any of these bills, yet.

Other relevant legislation introduced so far (but not moved further) includes:

- The Unaccompanied Alien Child Protection Act of 2001, introduced by Representatives Lofgren and Cannon in the House on May 17 as H.R. 1904, and by Senators Feinstein and Graham in the Senate in January as S. 121 (this bill would provide funding as well as rights and protections to unaccompanied minors, including rights to an attorney and guardian ad litem).
- The Indian and Alaska Native Foster Care and Adoption Services Amendments of 2001, introduced by Representatives Camp, Hayworth, Kildee and Bonior on June 27 as H.R. 2335, and by Senators Daschle, McCain, Inouye, Baucus, Cochran and Feinstein in March as S. 550 (this bill would promote equitable access to foster care and adoption services for Indian children in tribal areas).

- The Indian Child Welfare Act Amendments of 2001, introduced on July 25, 2001 as H.R. 2644 (as was the case in previous sessions of Congress, this bill would modify a variety of provisions in ICWA, including those relating to jurisdiction, intervention, termination of parental rights, withdrawal of consent to termination, notice, and visitation).

ADMINISTRATION DEVELOPMENTS

On July 6, the federal Department of Health and Human Services issued guidance to implement recent regulations regarding patient privacy protections. The guidance, which includes further clarifications re: privacy in the case of parents and minors, is available on the website of the Administration on Children and Families.

Don’t Forget: You can access all bills (including the text of legislation and public laws), committee reports, and budget/appropriations funding charts via the Internet at thomas.loc.gov.

* Miriam Rollin serves as NACC Policy Representative in Washington D.C.
PUBLICATIONS

The Children’s Legal Rights Journal Is Published In Association With The NACC And Available To NACC Members At A Discount. Children’s Legal Rights Journal (CLRJ) is a quarterly professional practice journal for child welfare, juvenile justice, and family law professionals. Now in its 20th year, CLRJ is published by William S. Hein & Co., Inc., under the editorial direction of the ABA Center on Children and the Law, the CIVITAS Child Law Center at Loyola University of Chicago School of Law and now, the National Association of Counsel for Children. CLRJ is indexed in the Current Law Index and Index to Legal Periodicals and runs approximately 60 pages per issue. The annual subscription rate is $62 but is available to NACC members at a 30% discount of $42 annually. To subscribe, contact Hein toll free at 800-828-7571, ISSN 0278-7210 or contact the NACC for more information.


Improving Court Performance for Abused and Neglected Children. Produced by the ABA Center for Children and the Law with a Freddie Mac Foundation grant for use by courts in public education and outreach efforts. klaire@staff.abanet.org.

Unified Family Courts, Justice Delivered. ABA Office of Justice Initiatives, June 2001, Box 10892, Chicago, IL 60610, 1-800-285-2221, abasvctr@abanet.org $5.


NEWS
Rita Swan Selected as NACC 2001 Outstanding Legal Advocate. Rita Swan, Founder and President Children’s Health Care is a Legal Duty (CHILD) of Sioux City, Iowa, has been named the recipient of the NACC 2001 Outstanding Legal Advocacy Award for her policy advocacy and amicus curiae work to protect children from religious based medical neglect. The award will be presented at the NACC 24th National Children’s Law Conference at the Loews Coronado Bay Resort on October 1, 2001.

NACC 2001 Law Student Essay Competition Winners Announced. The NACC is pleased to announce the winners of its 2001 Competition. Essays were evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and the quality of research and writing. The winning essays will be published in the NACC 2001 Children’s Law Manual and the awards will be presented at the NACC National Children’s Law Conference at the Loews Coronado Bay Resort, October 1, 2001. The student writing competition serves to enhance law student interest in the practice of law for children and families as well as to reward students for their scholarly accomplishments. The winners of the 2001 competition are:

- Toward Creating a Policy of Permanence for America’s Disposable Children: A Survey of the Evolution of Federal Funding Statutes for Foster Care from 1961 to Present By Deborah Sanders of Rutgers University School of Law
- The Plight of the Abused Delinquent: The Crossover Child in the American Legal System By Katherine Warwick Schriner of the University of Wisconsin School of Law

NACC On Line Directory. You can now access the NACC Membership Directory and Referral Network on line through the NACC web site: NACCchildlaw.org. Go to the NACC Members Only section and enter your NACC user name and password.

The NACC National Child Advocacy Resource Center is available for member use. The Resource Center provides referrals, resource information, and consultation. You may access the resource center by calling toll-free 1-888-828-NACC; Fax 303/864-5351; E-mail: advocate@NACCchildlaw.org.

NACC Members Get Members Program. Earn “NACC Bucks” by nominating your colleagues for membership. Participate in the NACC “Members Get Members” program and earn valuable NACC Bucks redeemable on your NACC member dues, publications, and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children’s Law Conference (a $300 value).


Tennessee Class Action Settlement Approved. A federal court released its decision on July 30, 2001 approving the settlement reached in Brian A. v. Sundquist the Tennessee child welfare reform class action lawsuit. The settlement sets in motion the reform of Tennessee’s Department of Children’s Services.

Chicago Jury Returns $3 Million Verdict Against Caseworker. On May 24, 2001, a federal court jury awarded 3 children who were abused in their state placement over $3 million dollars. The case, Alexander v. Woodward, was brought by Patrick Murphy, Cook County Public Guardian against Clifton Woodward, a DCFS worker. The state defended Mr. Woodward and may be liable to pay the verdict under an indemnification theory.

AMICUS CURIAE ACTIVITY
Manduley v. Superior Court, California Supreme Court (S095992). The issue is California’s Proposition 21, a ballot
Proposition 21 achieves the following goals: places more youth in the adult court system rather than in juvenile court; limits pre-trial release of youth pending adjudication; houses more youth in the adult correctional facilities; narrows probation eligibility and makes it easier to revoke a minor’s probation; removes many confidentiality provisions regarding minors’ names, proceedings, and court records; imposes a vast set of new and longer penalties and police registration requirements on minors and adults for so-called gang-related conduct; expands the “three strikes” laws to increase sentences for adults; expands the death penalty for adults; makes petty vandalism a felony; and facilitates wiretapping of homes by the government. Amici argue that Proposition 21 is unconstitutional in that it violates the single subject rule of the California Constitution by including too many subjects within a single measure. Amici also argue that Section 26 of Proposition 21 violates separation of powers and other constitutional principles by removing judicial discretion over which cases go to adult court and giving sole discretion to prosecutors.

Parties interested in NACC Amicus Curiae participation in a case should contact the NACC Executive Director.

**JOBS**

Zubrow Fellowship in Children’s Law

Juvenile Law Center announces the Solicitation for the Sole, Helen Zubrow Fellowship, open to new law school graduates and lawyers completing their judicial clerkships. Fellows will work at the Juvenile Law Center in Philadelphia for up to two years. Applications for the first year must be received by October 1, 2001. Contact the JLC at 215-625-0551 or www.jlc.org.

Executive Director, National Council of Juvenile and Family Court Judges. NCJFCJ in Reno, Nevada is seeking an Executive Director. A full job description is available at ncjfcj.unr.edu. Contact Ellen Bodow, Senior Consultant, DRG, 212-983-1600, jlichtman@drgny.com.

Associate Director, The Support Center for Child Advocates. Child Advocates is seeking a full-time Associate Director to begin work in Fall 2001. Compensation: Salary: $45,000 plus benefits. Apply to: Support Center for Child Advocates, 112 North Broad Street, 12th floor, Philadelphia, PA 19102.

Program Manager, Santa Clara County California Dependency Court. Grant funded position to assist the court to develop the evaluative tools and strategic plan necessary for a streamlining of the court process for permanent placement. Contact Human Resources, 408-299-3232 x223.

Staff Attorney, Center for Children’s Advocacy. University of Connecticut School of Law program in Hartford, CT seeks a staff attorney. Send cover letter and resume to Martha Stone, Center for Children’s Advocacy, Inc., University of Connecticut School of Law, 65 Elizabeth St., Hartford, CT 06105. For more information, visit www.kidscounsel.org.

Staff Attorney, Children’s Law Project Legal Assistance Foundation of Chicago. Send resume, two references and legal writing sample to Richard Cozzola, Supervisory Attorney, Legal Assistance Foundation of Metropolitan Chicago, 111 West Jackson Suite 300, Chicago, Illinois 60604, 312-341-1070.

Legal Director, Legal Aid For Children, Pittsburgh. Coordinate litigation, training, supervision and activities of the legal staff. Send letter of interest with resume and salary requirements to Scott Hollander, Executive Director, Legal Aid For Children, 900 Sarah Street, Suite 205, Pittsburgh, PA 15203, fax (412) 431-5037.

Visit the University of Michigan / NACC Child Law and Advocacy National Job Web Site. You can access the information at 141.211.44.51/centersandprograms/childlaw/index.html or through the NACC website at NACCchildlaw.org. Along with the listing of specific job openings, a general directory of child welfare law organizations will be posted in the database. If you wish to post a job on the web site or have your office listed in the general directory, fax the information to 734-998-9190 or call 734-998-9190.

Please Send (mail/email/fax) Children’s Law and Advocacy Job Openings to the NACC.

If you have “Children’s Law News,” please send it to: The Guardian, 1825 Marion Street, Suite 340, Denver, CO 80218

You can e-mail information to advocate@NACCchildlaw.org or fax to 303-864-5351.

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NACC affiliates help fulfill the mission of the national association while providing members the opportunity to be more directly and effectively involved on the local level. If you are interested in participating in NACC activities on the local level, or simply want contact with other child advocates, please contact the organization in your area. If there is no affiliate in your area and you would be interested in forming one, please let us know. The formation of an NACC affiliate is simple, and we can provide you with an affiliate development packet to get you started. Affiliate development materials are available on our website at www.NACCchildlaw.org.
California Affiliates to Share Inaugural NACC Outstanding Affiliate Award

The NACC is pleased to present its inaugural Outstanding Affiliate Award to the Los Angeles Affiliate of the NACC and the Northern California Association of Counsel for Children. The awards will be presented at the NACC 24th National Conference in San Diego, October 1, 2001. The award will be presented annually to the affiliate that best fulfills the mission of the NACC on the local level. The winners achievements are given below. Because of these two affiliates, not only are children better represented, but also the court system is more responsive to children’s needs.

CALIFORNIA

Los Angeles Affiliate of the National Association of Counsel for Children (LA-NACC)
Shahrzad Talieh, President
LA CASA Program
201 Centre Plaza Dr.
Monterey Park, CA 91754
Phone: 323-526-6666   FAX: 323-264-5020
E-mail: stlieh@asc.co.la.ca.us

Founded in 1998, LA-NACC has become one of the NACC’s most active and effective affiliates. LA-NACC programs reflect the NACC’s belief that the most effective advocacy involves both case and policy work. In addition to the affiliate members’ active representation of children in the LA juvenile court system, LA-NACC proposed two children’s court bills, created a pamphlet series to educate older child clients on their rights in the system, conducted several attorney trainings, submitted an amicus brief in a grandparent visitation case, and participated in a task force to end youth homophobia.

Northern California Association of Counsel for Children (NCACC)
Christopher Wu, President
Center for Children, Families and the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
Phone: 415/865-7721   FAX 415/865-7217
E-mail: Christopher.Wu@jud.ca.gov

NCACC has been the NACC’s flagship affiliate since its founding in 1993 and is currently the NACC’s largest affiliate with over 60 Bay Area participants. Like the NACC, the Northern California affiliate is active in both case and policy advocacy. NCACC’s historical influence in California is significant, including the drafting of a model court rule on appointment of counsel which was adopted by over 30 California jurisdictions. The affiliate is now working on amendments to the rule in light of new legislation. This year alone, NCACC supported seven bills and vigorously opposed one. NCACC publishes the NACC’s only affiliate newsletter, Dependency Court News, providing members with case and policy updates as well as technical assistance and news. NCACC conducts quarterly attorney training and has filed eight amicus curiae briefs. NCACC has been guided since its first years by a statewide survey of California advocates which indicated an NACC affiliate could be useful in three areas: information, legislation, and networking. More recently, NCACC held a daylong retreat to think strategically about the continuing focus of the affiliate.

NACC Affiliates are encouraged to send announcements and news of their activities and meetings to The Guardian. Deadlines for submission are February 1, May 1, August 1, and November 1.

NACC – Application for Membership

I wish to become a member. Enclosed is my check for $ _________________

☐ INDIVIDUAL MEMBERSHIPS:
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Student $35  Sustaining $150*
*Includes special thank you listing in The Guardian
☐ I would like $10 of my membership dues to support my local NACC affiliate.

☐ GROUP MEMBERSHIPS:
Agency 1 $375 = 10 individual memberships (50% savings)
Agency 2 $750 = 20 individual memberships (50% savings)

☐ Please send additional information on the NACC.

☐ Please send information on establishing an affiliate.

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Denver, CO 80218
Fax: 303-864-5351

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- Kids, Courts and Community (1999) $25, $30
- Serving the Needs of the Child Client (1998) $20, $25
- Advocating for Children in Crisis (1997) $20, $25
- Child Advocacy at a Crossroads (1996) $20, $25
- Current Issues in Pediatric Law (1993) $20, $25

Other Publications:
- The Child’s Attorney, by Haralambie, Pub. ABA (1993) $39, $49
- Children’s Legal Rights Journal (Contact William S. Hein & Co. at 1-800-828-7571)

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AREAS OF PRACTICE:
- abuse, neglect, dependency
- delinquency, status offenses
- custody, visitation
- child support
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