

NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

## Denver in August, and Why You Want to be There

Part of the joy of life at NACC is the annual ritual of assembling the best possible conference for you, the advocate for children and families. We've just received over a hundred proposals to get you the best information and education on everything from the latest mental health diagnoses to the sexual trafficking of foster youth. Experts across a wide range of topics are competing to show us how they can make you a better, more effective attorney.

Put the dates of August 17–20 on your calendar now. While registration for our conference doesn't begin until April 1, you can make plans now to join us at the Hyatt Regency in downtown Denver; a Red Book training is scheduled for that Sunday, August 17, followed by the full conference Monday the 18th through Wednesday the 20th. You won't want to miss a single session, and the reasonable registration and hotel rates will help you make this trip possible.

Yes, the weather is gorgeous in Denver that time of year, and yes, we're staying in a very nice hotel

where you'll be very well cared for. (And yes, more than a few of you will add a day to the trip to enjoy the mountains and decompress from your challenging work.) Most important, though, is that you'll join the community of child and family advocates who work together to make this country a better place for kids and parents. Leaders in child welfare, juvenile justice and family law are coming to Denver to make a difference. Take the first step to joining us by booking those dates on your calendar, and talking to your colleagues about making it a group excursion. Call us at the office if you have any questions, at **1-888-828-NACC**.

At the close of last year's conference, one NACC member walked up to me to say, "I needed that. I didn't realize it until I got here, but boy, I needed that." I'm confident you'll feel the same way about the 37th National Child Welfare, Juvenile and Family Law Conference, this August in Denver. Looking forward to seeing you there.

### In This Issue

Denver in August, and Why You Want to be There .....	1
Case : In Re A.R.L. ....	2
Amicus : In Re the dependency of J.A., Minor Child .....	3
Policy & News .....	4
Child Welfare Law Certification .....	5

### NACC Executive Committee 2014–2015

President .....	Gerry Glynn
Vice President .....	H.D. Kirkpatrick
Treasurer .....	Leslie Heimov
Secretary .....	Linda Weinerman
Past Chair .....	Jan Sherwood





# Case

## IN RE A.R.L.

The Colorado Court of Appeals ruled that in the context of same-sex relationships, a child may have two legal mothers under the UPA.<sup>1</sup> Under the UPA, parentage determinations are not based on the sexual orientation of the parents.<sup>2</sup>

The court of appeals reviewed a trial court decision denying a petition for maternity.<sup>3</sup> The trial court denied the petition for maternity because the case was not a surrogacy or sperm donor situation and because A.R.L. already had two biological parents.<sup>4</sup> Havens and Limberis, a same-sex couple, tried to conceive a child through artificial insemination, but it failed.<sup>5</sup> Havens then engaged in sexual intercourse with Marc Bolt, and shortly after conceived.<sup>6</sup> In 2008, A.R.L. was born and was given Limberis' last name while Havens was listed as the mother on the birth certificate, no father was listed.<sup>7</sup> In 2010, Limberis petitioned for a second-parent adoption of A.R.L. which the court dismissed and Limberis

did not appeal this decision.<sup>8</sup> In 2011, when Havens and Limberis separated, Limberis filed for parental responsibilities and petitioned for maternity under UPA and Bolt relinquished his parental rights.<sup>9</sup> Havens moved to dismiss the maternity petition for failure to state a claim.<sup>10</sup> The trial court dismissed Limberis' petition, and Limberis moved for reconsideration arguing she had the capacity to bring the claim under the UPA, and she could present evidence that she is A.R.L.'s presumptive parent under UPA's holding out provision.<sup>11</sup> The trial court denied Limberis' petition for maternity and designated all parental responsibilities to Havens.<sup>12</sup>

The court of appeals reviewed what constitutes a parent-child relationship under the UPA, whether granting the maternity petition would have left A.R.L. with three legal parents, and if a child can have two legal mothers under the UPA.<sup>13</sup> The Court found that parentage is not limited to genetics and a person may be a presumed parent without being a biological or adoptive parent.<sup>14</sup> The Court found that Bolt was never entitled to statutory presumption of biological paternity, and three people were never claiming to be A.R.L.'s legal parents.<sup>15</sup> The Court further found that the language of the UPA is gender-neutral and the terms father and mother may be used interchangeably, so there can be a biological mother and a presumed mother.<sup>16</sup>

Left unanswered by the Court's ruling is whether Limberis is A.R.L.'s presumptive mother under UPA's holding out provision.<sup>17</sup>

**NOTICE TO READERS :** Decisions reported herein may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice. Featured cases are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

<sup>17</sup> *Id.*

Do you know of an important case which you feel NACC members should be made aware of?



If so, please let us know. Email: [advocate@naccchildlaw.org](mailto:advocate@naccchildlaw.org).

1. *In re A.R.L.*, 2013 COA 170, (Dec. 5, 2013).  
2. *Id.*  
3. *Id.*  
4. *Id.*  
5. *Id.*  
6. *Id.*  
7. *Id.*

8. *Id.*  
9. *Id.*  
10. *Id.*  
11. *Id.*  
12. *Id.*  
13. *Id.*  
14. *Id.*  
15. *Id.*  
16. *Id.*



# Amicus

## In Re the dependency of J.A., Minor Child

A reply brief has been filed by Columbia Legal Services in *In Re the dependency of J.A., Minor Child* before the Court of Appeals, Division Two, of the State of Washington.<sup>1</sup> The National Association of Counsel for Children has agreed to sign on to a forthcoming amicus brief for this appeal, as the case implicates fundamental issues of the right to counsel for children in dependency cases.

The reply brief argues that J.A., “if not all dependent children,”<sup>2</sup> should be provided counsel in dependency proceedings. J.A., the subject of a dependency case and a child with developmental disabilities and mental health issues, was unrepresented in the lower court.<sup>3</sup> The inadequacy of a case-by-case approach to determining a child’s need for counsel is well illustrated by this case; only when pro se appellate counsel was in place did the court learn of several significant intrusions on J.A.’s liberty — including time in detention, orders to take psychotropic drugs and a three-week stay in a psychiatric hospital — each of which should have triggered a due process right to counsel.<sup>4</sup> Instead, the *Mathews* standard<sup>5</sup> should be applied as an issue-by-issue test, and appellate courts using the *Mathews* anal-

ysis have consistently found a constitutional right to counsel for children in dependency cases.<sup>6</sup>

Even if a case-by-case analysis were applied to the facts of *J.A.*, applying the *Mathews* test would result in a right to counsel for J.A. under the federal constitution.<sup>7</sup> The State conceded that J.A.’s private interest under *Mathews* was “significant”, citing *M.S.R.*’s holding that children in foster care have a right to reasonable safety and a right to nurturing, including a safe, stable, permanent home.<sup>8</sup>

Washington state constitutional jurisprudence also supports the right to counsel for children in dependency cases, as physical and fundamental liberty interests are at stake, and “in no other legal proceeding would an individual, including a child, face such infringements on his physical liberty without the assistance of an attorney.”<sup>9</sup>

Right to counsel for children in child welfare systems is a core issue for NACC, as we can only defend a child’s rights when that child has a true advocate in the courtroom. Our amicus program strives to advance children’s right to counsel in all cases where children’s rights and interests are at stake. Please reach out to NACC if this issue is in play in your jurisdiction.

1. *In Re the Dependency of J.A., Minor Child*, Corrected Reply Brief of J.A., No. 45134-4, Court of Appeals, Division Two, State of Washington, February 4, 2014.

2. *Id.* at p. 25.

3. *Id.* at p. 8.

4. *Id.*

5. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

6. *In Re the Dependency of J.A., Minor Child*, Corrected Reply Brief of J.A., No. 45134-4, Court of Appeals, Division Two, State of Washington, at p. 2.

7. *Id.* at p. 11.

8. *Id.* at pp. 11–12.

9. *Id.* at pp. 13–14.

## NACC Mission

**As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:**

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families



## Policy & News

### Article: Native American Groups Seek Child Welfare Probe

Following the recent custody battle over the Cherokee girl known as Baby Veronica, “four Native American organizations have asked the U.S. Department of Justice to launch an investigation into the treatment of American Indian and Alaska Native children in the private adoption and public child welfare systems, saying civil rights violations there are rampant”.

> [Read article](#)

### Expunge.io Website Helps Teens Move Past Their Juvenile Arrests

Although this is a website specifically for kids living in Illinois, it opens up an opportunity for other states to provide similar information easily.

> [Learn more](#)

The NPR radio show “On Point with Tom Ashbrook” Hosted a Conversation on Wednesday about the *Miller v. Alabama* U.S. Supreme Court ruling.

> [Listen to the story](#)

### Are states are trying to reform based on the Supreme Court Decision?

This article argues that many of them are “skirting the ban on life without parole in nonhomicide cases”.

> [Read article](#)

### Arizona Governor Jan Brewer Will Now Have Direct Oversight of Child Protective Services

> [Read article](#)

### Simulations Help L.A. County Social Workers get it Right

“A revamped training process aimed at inexperienced social workers provides hands-on training that includes role-playing, ride-alongs and mentoring.” A similar program could work for inexperienced attorneys as well.

> [Read article](#)

## JOIN US IN THE MILE HIGH CITY

37TH NATIONAL CHILD WELFARE, JUVENILE & FAMILY LAW CONFERENCE  
**SAVE THE DATE  
AUG 17-20, 2014**

**REGISTRATION  
OPENS APRIL 1, 2014**



Find additional News, Policy and Training Updates on [Facebook](#) and [LinkedIn](#).

# Child Welfare Law Certification



If you represent children, parents, or the state child welfare agency you may be eligible to become certified in child welfare law. The NACC certification program is accredited by the ABA and has been endorsed by the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators.

Certification gives you the recognition as an expert and will help you negotiate better pay for your services.

NACC Child Welfare Law Certification is available to attorneys who serve in the role of Child's Attorney (including Guardian ad Litem, Law Guardian, Attorney ad Litem), Parent's Attorney, and Agency / Department / Government Attorney. The specialization area as approved by the ABA is defined as "the practice of law representing children, parents or the government in all custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child Welfare Law does not include representation in private child custody and adoption disputes where the state is not a party."

## Certification Preparation

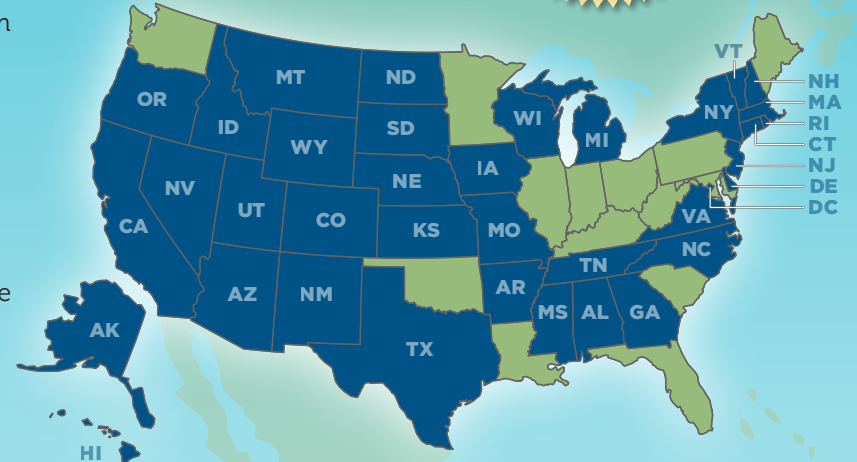
Your legal education, practice experience, and continuing legal education in child welfare, delinquency, family law, and related areas all help prepare you for the certification exam. Upon submitting a Certification Application, you will also receive a copy of the *Child Welfare Law and Practice* (Red Book).

## Apply to be certified for free!

NACC has received funding from the U.S. Department of Health and Human Services to pay the application fee for up to 200 applicants for certification. This funding comes through HHS' Children's Bureau. We are now open in 37 jurisdictions and have more than 500 Child Welfare Law Specialists (CWLS). The waivers are available on a first-come, first-serve basis, so don't delay! Applying takes about 20 minutes and applicants then have two years to complete all components including the exam.

## Eligibility at a Glance

- 3+ years practicing law
- 30% or more of the last 3 years involved in child welfare law
- 36 hours CLE/3 years (45 hours/3 years CA only) in courses relevant to child welfare law
- A writing sample demonstrating legal analysis in the field of child welfare law drafted in the last 3 years (court memo, motion, brief, article, etc.)
- Substantial Involvement Waivers are available for judicial officers, professors, and policy/supervising attorneys



**If you meet these basic requirements, we would love to have you apply while we have funding from Children's Bureau to pay for your \$300 application fee!**

To apply or for more information, please visit our Certification page at

[www.naccchildlaw.org](http://www.naccchildlaw.org)

or contact Daniel Trujillo, 303-864-5359, or [Daniel.Trujillo@childrenscolorado.org](mailto:Daniel.Trujillo@childrenscolorado.org)