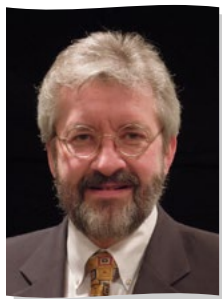


NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

New Executive Director for NACC Arrives in January



On November 9, 2012, Jan Sherwood, President of the Board of the NACC announced that the NACC Board had selected **Kendall Marlowe** to be the new Executive Director of the NACC starting January 2, 2013. Sherwood explained:

"Kendall is not only a proven leader but someone who has also demonstrated his commitment to the welfare of children and families. He will strengthen the multidisciplinary dimensions of our organization whose members include not only attorneys but also social workers, therapists, physicians, and other professionals committed to protecting children and advancing their interests. Mr. Marlowe has a diverse, multidisciplinary background and is well-suited to lead the NACC's continuing national efforts to pursue justice for children and families."

Marlowe's commitment to children is rooted in his childhood. When he was 7 years old, his father began teaching at a residential treatment facility in Illinois for emotionally disturbed children in state custody. That job changed the family's life. The family became very involved in the lives of

those children. Soon thereafter, Marlowe's parents became foster parents to one of those children, followed by five more. Kendall is still friends with his foster siblings. "When I was a child, I didn't think of them as foster children. These kids were part of our family," Marlowe explains. He still refers to his foster siblings as brothers and sisters treating them no differently than the two biological siblings he has. He celebrated Thanksgiving with one of his foster siblings this year.

As Marlowe takes on the leadership of the NACC, he explains, "What my upbringing taught me is that helping children in need is more than a legal obligation, it is our moral responsibility. When a child is brought before a court of law we have a special responsibility to treat that child as if he or she was our own. When we ask how a child should be treated by our legal system we should ask what would we want if this was our child? We should demand no less."

Marlowe started his professional life in the performing arts. He graduated from University of Illinois with a Bachelor of Arts degree and began his career working in theater in Chicago. He eventually be-

See [Marlowe](#), next page »

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NACC Executive Committee 2012–2014

President	Jan Sherwood
Vice President	Gerry Glynn
Treasurer	H.D. Kirkpatrick
Secretary	Erik Pitchal
Past Chair	Bob Fellmeth



Cases

IN RE J.M. V. V.M.

V.M., a mother of two children, challenged the juvenile court's termination of her parental rights on the grounds that the Department of Children and Family Services violated the notice requirements of the Indian Child Welfare Act (ICWA).¹ Under the ICWA, the Department must provide notice to an Indian tribe if the court has any reason to believe that an Indian child with a connection to the tribe is involved in dependency proceedings.² If the Indian tribe determines that the child falls under the protection of the ICWA, the tribe may intervene in the dependency proceedings in order to "promote the best interests of Indian children."³ The ICWA contains strict notice requirements. The statute prohibits foster care placement or termination hearing prior to ten days after the Indian tribe has received notice.⁴ The California Code requires that notice includes "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents."⁵ Similarly, federal statute requires that courts provide information including but not limited to parents, grandparents, and great-grandparents.⁶ The notice in this case included informa-

1. *In re J.M. v. V.M.*, 2012 WL 1877435, 1 (Cal. App. 2012).

2. Indian Child Welfare Act of 1978, § 102(a), 25 U.S.C. § 1912(a).

3. *Id.*

4. *Id.*

5. § 224.2, subd. (a)(5)(c).

6. 25 C.F.R. § 23.11(b).

tion regarding the children's mother, grandparents, and great-grandparents. The Indian tribes notified did not find the connection necessary to activate the intervention permitted under the ICWA.

V.M. contended that the notice sent to the Indian tribes failed to meet the statutory requirements because the notice did not name the children's maternal great-great-grandparents, who might have had a connection to the named tribe.⁷ In addition, the notice omitted information regarding one of the children involved in the proceeding.⁸ The Court of Appeals held that although the federal statute allowed for the inclusion of information regarding great-great grandparents, the Department was not required to include ancestors beyond great-grandparents in the notice.⁹ The Court of Appeals noted that V.M. was unable to cite any cases that required the inclusion of any relative more remote than great-grandparent.¹⁰ Additionally, the Court found that V.M. failed to show how the inclusion of great-great-grandparents would have changed the Indian tribe's response to the notice.¹¹ The Court also considered the tribal requirements and determined that even if the children's great-great-grandparents were full tribal members, the children would not have met the requirements.¹² The Indian tribe was given enough information to determine whether the children were eligible under the ICWA.

The Court of Appeals held that the omission of the second child in the notices was harmless because the inclusion of the child could not have caused different results, since the children shared the same mother and ancestors.¹³

[View case details](#)

7. *In re J.M.*, at 2.

8. *Id.*

9. *Id.* at 3.

10. *Id.* at 4.

11. *Id.*

12. *Id.* at 4-5.

13. *Id.* at 5.

» Marlowe from page 1

came an associate manager of one of Chicago's most successful theaters, the Goodman Theatre.

Marlowe felt a pull to come back to his family's commitment to children. When a teenage girl his family knew lost her mother, he and his wife became her guardian. They later became foster parents to other children. This led him to go back to school to get a Masters in Social Service Administration and eventually a law degree.

Since 2002, Marlowe has been working in the child welfare system. He started as the Director of Development for a child welfare non-profit in Chicago but moved to the Illinois Department of Children and Family Services in 2005. He quickly moved up the ranks at the Department and is leaving as the Chief of Bureau of Operations, responsible for nearly 15,000 children in state care.

"Children deserve respect and support in our country's courts, and I'm thrilled to lead the NACC in that campaign," said Marlowe. "Through the expertise and advocacy of our members, we can make a critical difference in the lives of children and their families. We will reach out to allies and partners across jurisdictions and disciplines to be a powerful force for reform. We will not stop until we've achieved justice for each and every child."

Marlowe believes that the NACC has tremendous potential to make this country a better place for children and families: "Our strength is our members. It is now my job to help our members fight for the rights and interests of children and families in every county and every state."

"My years working in a State system have shown me how advocates can make a tremendous

[See Marlowe, page 4 »](#)

IN THE MATTER OF K.B.

In March, the Court of Appeals of Oregon held that a father who had sexually abused children in the past and had failed to complete sex offender treatment did not endanger the welfare of his own children.¹

In 1994, the father served a prison sentence for physically abusing two preschool-aged children while babysitting.² After his release in 1996, the father admitted to sexually abusing the three-year-old girl in 1994 as well as sexually abusing a four-year-old boy and a one-year-old girl when the father was fifteen. In 1998, the father was kicked out of sex offender treatment after viewing child pornography.³ The father was caught viewing child pornography again five months later while receiving sex offender treatment from another provider.⁴ The father discontinued treatment, created a child with the mother, and all three moved to Ohio, where three more children were born.⁵ While in Ohio, DHS contacted the family, and an Ohio magistrate decided that the father was not required to complete sex offender treatment before being able to live with the mother and the four children.⁶

The family moved back to Oregon in 2010, and DHS promptly filed a petition claiming that the juvenile court had jurisdiction over three of the children because the father's presence in the home endangered their welfare since he had disclosed inappropriate sexual conduct with children in the past and failed to complete the recommended sex

offender treatment.⁷ The juvenile court held that DHS proved both of these allegations.⁸ The Court of Appeals, however, stated that DHS had the burden of proving a *current* risk of harm.⁹ Neither the father's inappropriate sexual conduct with children in 1994 and when he was a teenager, nor his viewing of child pornography when in sexual offender treatment satisfied this burden. The fact that the father had failed to complete the recommended treatment in itself was not enough to create a presumption that the father was a current risk to his children; rather, the Court focused on the fact that there were no allegations against the father to suggest that the children were endangered.¹⁰ Furthermore, the Court of Appeals found that the juvenile court erred in finding evidence that supported the argument that the father was a current risk.¹¹ The father's actual sex offender treatment provider, who had purged the father's files and could not remember the specific details of his case, asserted that an individual who has sexually abused children does not necessarily need to complete sex offender treatment in order to discontinue sex offender behavior.¹²

Additionally, because DHS failed to show that the father created a risk to the children, the Court of Appeals also reversed the juvenile court's finding that the mother of the children exposed them to an "unsafe person."¹³

» [View case details](#)

1. *In the Matter of K.B.*, 248 Or.App. 715 (2012).
2. *Id.* at 719.
3. *Id.* at 702.
4. *Id.*
5. *Id.* at 721.
6. *Id.*

7. *Id.* at 722.
8. *Id.*
9. *Id.*
10. *Id.* at 723-24.
11. *Id.* at 724.
12. *Id.*
13. *Id.* at 729.

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.



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@childrenscolorado.org.



Amicus

Adoptive Couple v. Baby Girl, Birth Father, and the Cherokee Nation (No. 12-399)

Earlier this year, a divided South Carolina Supreme Court, in a controversial and widely-reported decision, applied the Indian Child Welfare Act to uphold the removal of a two-year-old girl from the prospective adoptive parents with whom she had lived since birth. After the adoption petition was filed, an alleged father, who did not qualify as a legal parent under state law, invoked the Indian Child Welfare Act (ICWA) to block the adoption and seek custody of the child. Based on DNA testing showing that the alleged father was the child's biological father, the court held that ICWA prevented the termination of his parental rights and awarded him custody of the child.

The adoptive couple filed a Petition for Certiorari with the U.S. Supreme Court. (*Adoptive Couple v. Baby Girl, Birth Father, and the Cherokee Nation* (No. 12-399).) That petition argues that review is required because there is inconsistent application of ICWA among the states on two issues: (1) Whether a non-custodial parent can invoke ICWA to block an adoption initiated by a non-Indian parent under state law where there is no "existing Indian family"; and (2) Whether ICWA's definition of "parent" in 25 U.S.C. § 1903(9) includes an unwed biological father who has not complied with state law requirements for attaining legal status as a parent. It also argues that the South Carolina court ruled incorrectly on both issues.

The NACC joined an *amicus* brief filed in support of the child by several adoption and children's advocacy groups and U.C. Berkeley Professor Joan Hollinger, the author of the primary treatise on adoption law. Authored by pro bono counsel at Covington & Burling, LLP in Washington, D.C., the *amicus* brief asserts that certiorari should be granted because the court needs to resolve the differences in the conflicting state interpretations across the country and that resolution of these issues is in the best interests of the child and other similarly situated children nationwide. *Amici* took no position on whether the South Carolina Supreme Court resolved the issues correctly and nor did they choose sides in the custody dispute between the adoptive couple and the father.

The NACC Amicus Curiae Program promotes the legal interests of children and families through the filing of *amicus curiae* (friend of the court) briefs in state and federal appellate courts. The NACC files its own briefs and participates as co-*amici* in cases of particular importance to the development of child welfare and juvenile law. In recent years, the NACC has filed briefs in numerous state appellate courts, federal courts of appeal and The Supreme Court of the United States. To view briefs or submit a request for the NACC to participate as *Amicus Curiae* in a case, visit the *Amicus Curiae* page on our web site at www.NACCchildlaw.org.

» Marlow from page 2

difference in outcomes for children. It takes fierce and passionate advocacy to turn around the ship of state but we must persist in our fight on behalf of kids. I have seen how government can be reluctant to reform but also how legal advocacy can make a difference for kids both now and decades into the future. There are roles for attorney advocates both inside and outside government. We can achieve the most when we work together. I am hoping I can help the NACC bring lawyers the tools they need to reform our system to better serve children no matter what party those lawyers represent."

It is also important to address children in multiple systems. As Marlowe explains, "We have to realize that children and youth who come under the state's control may enter through different doors but they all need our help. Whether a youth is under the framework of child welfare system or has been adjudicated delinquent, we need to advocate for their rights and interests. Child welfare and juvenile justice have a lot to learn from each other. I look forward to working with attorneys in both fields."

In addition to improving the quality of advocacy, Marlowe is also concerned about the damage done by racial and ethnic disproportionality in our systems. He wants to make sure that the NACC and its members are advocating for all children regardless of race, ethnicity or class.

Kendall Marlowe is very eager to meet and work with NACC members all across the nation. As he explains, "System reform is a national challenge but successes will be seen jurisdiction by jurisdiction. I am eager to learn what our members are advocating for all across the country.



Policy & News

The Office of Juvenile Justice and Delinquency Prevention Has Released Three Fact Sheets on Delinquency Cases in Juvenile and Criminal Courts

- › [Delinquency Cases in Juvenile Court, 2009](#) presents statistics on delinquency cases that U.S. courts with juvenile jurisdiction processed for public order, person, and property offenses and drug law violations between 1985 and 2009.
- › [Delinquency Cases Waived to Criminal Court, 2009](#) presents statistics on petitioned delinquency cases waived to criminal court between 1985 and 2009.
- › [Juvenile Delinquency Probation Caseload, 2009](#) presents statistics on delinquency cases resulting in probation between 1985 and 2009.

Analyzing State Differences in Child Well-Being

"The Foundation for Child Development (FCD) is a national, private philanthropy dedicated to the principle that all families should have the social and material resources to raise their children to be healthy, educated and productive members of their communities."

The FCD has released their 2012 report which examines the results of a comprehensive composite state-level index of child well-being modeled after the Foundation for Child Development's (FCD) Child Well-Being Index (CWI).

› [Read report](#)

Emory Summer Child Advocacy Program

Each year, the Emory Summer Child Advocacy Program provides 10–15 students with the opportunity to receive a stipend for working in child welfare related organizations in Georgia. If you know any law students or other professional students (MSW, MPH, etc.) who are interested in getting great training and experience in a paid summer internship, please share this opportunity with them.

› [More information](#)

Massachusetts Seeks New Policy on Life Sentences: Youths Must Get Chance of Parole

This article discusses the new federal law outlawing mandatory sentences for children found guilty of committing murder and how lawyers, prosecutors, legislators, and advocates are trying to bring the state into compliance.

› [Read article](#)

TRAINING CALENDAR

January 24, 2013 · Washington, DC

› [Positive Outcomes for At-Risk Children and Youth: Improving Lives Through Practice and System Reform](#)

This symposium will focus on promoting effective solutions to the problems facing vulnerable young people.

February 24–27, 2013 · San Antonio, TX

› [Judicial Institute: Family Law](#)

This conference will provide the most current information and tools to family and domestic relations judges to improve case processing and outcomes for children, youth, families, victims.

April 14–17, 2013 · Washington, DC

› [Making Children and Families a Priority: Raising the Bar](#)

The theme for the conference is based on the CWLA Standards of Excellence National Blueprint.

September 15–18, 2013 · Dublin, Ireland

› [Thirteenth European Regional Conference on Child Abuse & Neglect](#)

The goal of this conference is to support individuals and organizations working to protect children from abuse and neglect worldwide.

Member Feature

Thomas R. Young, J.D., CWLS



Thomas Young is a staff attorney for the Alexander County Department of Social Services in Taylorsville, North Carolina, a city about 65 miles north of Charlotte. After graduation from Drake Law School in 1995, he worked in private practice

for four years as a solo state and federal trial practitioner. Since then he has worked as a county government attorney. For a better part of his legal career in both the private and public sector he has focused on child welfare issues. He was one of the first four individuals in North Carolina to undertake the process of trying to earn the specialization credential and is now a proud Child Welfare Law Specialist (CWLS).

In 2003, he wrote a legal treatise, *North Carolina Juvenile Code: Practice and Procedure*, published by West Publishing. He has published a new edition each year since 2003. In addition, he regularly presents on child welfare issues and issues of trial practice to national, state and local audiences of lawyers, judges and legal professionals.

Thomas first became aware of NACC as a result of conference held at Harvard Law School where a spokesman for the organization presented about the Child Welfare Law Specialist credential. At the time, efforts were just underway to establish such specialization in North Carolina.

In 2009, when specialization arrangements were finalized, he applied, became credentialed and has maintained his qualification since that time.

He believes his relationship with NACC to be especially helpful in several respects. He has been fortunate to participate in the Southwest Airlines MEAP voucher program. More information on the MEAP voucher program can be found here <http://www.naccchildlaw.org/?page=MEAP> This program provides tickets to secure permanency for a child or support familial relationships. It was key in helping a social services client unite a child to his family when his parent was involuntarily deported to Mexico. Likewise, having the CWLS credential has helped him further the idea that Child Welfare Law, like any other specialty, is a legitimate and highly technical area of the law that requires the practitioner to be highly skilled and up to date. He is proud to continue to belong to the NACC and to be able further efforts to legally assist dependent juveniles that are brought into the North Carolina court system. The NACC is proud to have him represent us as a member and glad we can help him represent his clients.

Do you know someone who does an outstanding job and deserves to be recognized?

Send an email with their basic information and why you're nominating them to advocate@childrenscolorado.org.

Child Welfare Law Certification

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

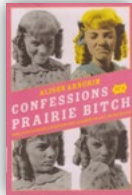
or contact Daniel Trujillo, 303-864-5359, or Daniel.Trujillo@childrenscolorado.org



Professional Resources

PUBLICATIONS

You now have the opportunity to purchase publications from the NACC Official Bookseller: [Bookworks](#). Available publications include:



[Confessions of a Prairie Bitch: How I Survived Nellie Oleson and Learned to Love Being Hated](#)

By Alison Arngrim

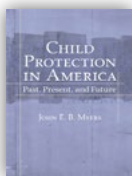
Paperback \$14.99

ISBN-13: 9780061962158

Availability: In Stock at Warehouse; Usually Ships in 1–5 Days

Published: It Books, 06/2011

[Other editions of this title](#)



[Child Protection in America: Past, Present, and Future](#)

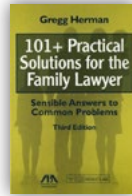
By John E. B. Myers

Google EBook \$39.95

ISBN-13: 9780195169355

Availability: In Stock at Warehouse; Usually Ships in 1–5 Days

Published: Oxford University Press, 07/2006



[101+ Practical Solutions for the Family Lawyer: Sensible Answers to Common Problems](#)

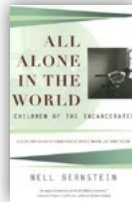
By Gregg Herman

Paperback \$139.95 (includes CD-ROM)

ISBN-13: 9781604425079

Availability: Special Order; Price and Availability May Change

Published: American Bar Association, 05/2011



[All Alone in the World: Children of the Incarcerated](#)

By Nell Bernstein

Paperback \$16.95

ISBN-13: 9781595581853

Availability: In Stock at Warehouse; Usually Ships in 1–5 Days

Published: New Press, 08/2007



[The APSAC Handbook on Child Maltreatment](#)

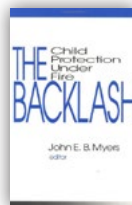
By John E. B. Myers, John E. B. Myers, APSAC (American Professional Society on the Abuse of Children)

Paperback \$120.90

ISBN-13: 9781412966818

Availability: In Stock at Warehouse; Usually Ships in 1–5 Days

Published: Sage Publications (CA), 06/2010



[The Backlash: Child Protection Under Fire](#)

By John E. B. Myers

Paperback \$65.00

ISBN-13: 9780803954045

Availability: In Stock at Warehouse; Usually Ships in 1–5 Days

Published: Sage Publications (CA), 07/1994



[Child Maltreatment: A Collection of Readings](#)

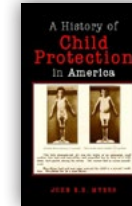
By John E. B. Myers

Paperback \$46.80

ISBN-13: 9781412995061

Availability: Special Order; Price and Availability May Change

Published: Sage Publications (CA), 05/2011



[A History of Child Protection in America](#)

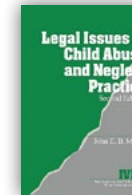
By John E. B. Myers

Paperback \$24.99

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Published: Xlibris Corporation, 05/2004



[Legal Issues in Child Abuse and Neglect Practice](#)

By John E. B. Myers

Paperback \$128.75

ISBN-13: 9780761916666

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Published: Sage Publications (CA), 07/1998

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And, available from Bradford Publishing



[Child Welfare Law and Practice, 2nd Edition](#)

Donald N. Duquette and Ann M. Haralambie, General Editors

Item No: BK1070-2

Price: \$89.00



Thank you to all of our members for your continued support!

As the year draws to a close, the Board and staff of the NACC wish you all a peaceful and happy holiday season.

A big thank you to Southwest, the preferred airline of NACC!

Through the generosity of Southwest Airlines, NACC has been able to develop a Member Emergency Assistance Program (MEAP). A limited number of travel vouchers are available to current NACC members for work-related travel.

› [Learn more about this exciting member benefit](#)



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