

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.

# Foster Children and Financial Independence: What's the Next Step?

By Selina Baschiera, Fellow, NACC

A recent study by the Casey Institute at the University of New Hampshire focuses its efforts on understanding and improving the treatment given to children in the foster care system for extended periods of time. Approximately 424,000 children in the U.S. are removed from their regular home and placed in child protective services every year.<sup>1</sup> The rate of emotional and behavioral problems among these children is significantly higher than the average child population, 30% as compared to 4%.<sup>2</sup> Children in the foster care system are also 16 times more likely to receive psychiatric diagnoses, and eight times more likely to be prescribed psychotropic medication.<sup>3</sup>

The Carsey Institute's analysis examined where children were living four years after removal from their original homes, the characteristics of these children, and their placements through their foster care system. Focus rested on understanding whether children's individual characteristics, such as age and emotional or behavioral problems, were

associated with a longer stay in out-of-home care. If indicators can be isolated and positively recognized, they may help identify the children who are least likely to find permanent placement. Programs can then be developed to help these children benefit from specialized services.

Analysts' compiled data from a national sample of children placed in out-of-home care between July 1998 and February 1999.<sup>4</sup> After one year, 78% of the children studied were still in some form of out-of-home care, while only 15% were reunified with parents.<sup>5</sup> An even smaller percentage, 7%, were adopted.<sup>6</sup> After four years the numbers shifted, with 43% of these children in out-of-home care, 28% reunified with their parents and 29% adopted.<sup>7</sup>

› [Read the full article](#)

1 Wendy A. Walsh & Marybeth J. Mattingly, *Long-Term Foster Care—Different Needs, Different Outcomes*, 31 Univ. of N.H. Carsey Inst. 1 (Spring 2011)  
2 *Id.*  
3 *Id.*  
4 *Id.*  
5 *Id.*  
6 *Id.*  
7 *Id.*

## In This Issue

Foster Children and Financial Independence: What's the Next Step? .....	1
Cases .....	2
Policy & News .....	4
Certification Update .....	4
Professional Resources .....	5
Training Calendar .....	5
Save the Date: 35th National Child Welfare, Juvenile, and Family Law Conference .....	5
Spring Reminder .....	6
Thank You to our Fellows and Supporting Members! .....	7
NACC Mission .....	7

### NACC Executive Committee 2012–2014

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



## Cases

### **Schwartz v. Booker (Chandler Grafner), Qualified Immunity**

*The United States District Court for the District of Colorado considers a motion to dismiss based on the qualified immunity of two social workers employed by the Denver County Department of Human Services.*

The parents and estate of CG bring claims under Section 1983 against Margaret Booker and Mary Peagler in their individual capacities arising out of CG's death while in foster care. CG was removed from his Mother's home when CG came to school with several visible injuries. When questioned about the injuries, CG stated that his Father hit him repeatedly in the shower. Jefferson County Department of Human Services (JCDHS) removed CG from his Mother's custody against her wishes, and placed CG in foster care with two adults with whom he had no biological relationship. The two foster parents were living in Denver County, so Denver County Department of Human Services (DCDHS) assumed custody of CG. Between January, 2007 April, 2007 DCDHS officials received at least four written complaints about potential abuse of CG but did not follow up with the foster

parents. CG was found on May 6, 2007 locked in a closet without food or water and infester with his own urine and feces. He was taken to the hospital and died shortly thereafter from dehydration and starvation leading to cardiac arrest.

Booker and Peagler assert the defense of qualified immunity and moved to dismiss. To support a motion based on qualified immunity the court must consider a two-pronged inquiry. First, a court must decide whether a constitutional right has been violated. *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) at 232. Next, the court must decide whether the right at issue was "clearly established" at the time of the defendant's alleged conduct. *Id.* The question the court must ask is "whether it would be clear to a reasonable officer that his conduct was unlawful under the circumstances presented." *Fogarty v. Gallegos*, 523 F.3d 1147, 1155 (10th Cir. 2008) Generally, state actors are not liable under the Due Process Clause for actions of private citizens. *Uhrig v. Harder*, 64 F.3d 567, 572 (10th Cir. 1995). Plaintiffs asserted the exception where if the state has a "special relationship" with the individual who is harmed by the third party, their actors are liable. *Id.*

Booker and Peagler argued that because JCDHS was the entity that removed CG from his Mother's care, only JCDHS had a special relationship with CG. Furthermore, they argue that even if DCDHS had a special relationship with CG, it did not extend to Booker and Peagler in their individual capacities because they had no involvement in CG's placement.

The Court determined that the responsibility for CG's case was transferred from JCDHS to DCDHS when CG had moved to Denver County with his foster parents. The Court went on to note that because

DCDHS had a special relationship with CG, all of the employees of the department shared in this relationship and the child's initial placement decision was irrelevant. *Johnson v. Holmes*, 455 F.3d 1133, 1135 (10th Cir. 2006). It found that Booker and Peagler failed to exercise their professional judgment to prevent a known danger to a child, showing more than mere negligence in not investigating multiple complaints of abuse. The Court went on to note that this neglectful behavior was sufficient to shock the conscience and therefore, violated CG's substantive due process rights. The Plaintiffs sufficiently showed an affirmative link between the failure to investigate the April 17, 2007 referral, and CG's death from injuries occurring over a period of time.

In order for the Plaintiffs to proceed, the constitutional violation must have been clearly established at the time of the relevant events through sufficient weight of authority. Citing the decision in *Johnson*, the Court determined that a reasonable person in Booker and Peagler's positions would have known that the failure to investigate the April 17, 2007 referral was a violation of CG's constitutional rights and were not entitled to qualified immunity. *Pearson*, 555 U.S. at 232.

[› Read full opinion](#)

### **Julie Q. v. The Department of Children and Family Services, Case No. 2-10- 0643 (IL Dist. 2 App., Dec. 22, 2011)**

*The Appellate Court for the 2nd District Court of Illinois considered whether mother neglected her minor child, MQ.*

The Department of Children and Family Services (DCFS) received a complaint on January 29, 2009 that mother locked MQ in her bedroom. DCFS

investigated whether this constituted neglect based on allegation No. 10/60 in title 89, appendix B of the Illinois Administrative Code entailing placement of a child “at substantial risk” or “in an environment that is injurious to the child’s health and welfare.” MQ acknowledged that she had not been locked in her room but further reported that she believed mother had been drinking. Investigators found MQ to be credible and initiated substance abuse counseling for mother. Mother attended classes from March 24, 2009 to April 28, 2009 at the Northern Illinois Council on Alcohol and Substance Abuse (NICASA) and repeatedly tested negative for drugs and alcohol. Despite these tests, DCFS entered a finding of neglect against mother grounded in her history of alcohol abuse creating a substantial risk of injury in her home environment, though there was substantial dispute as to whether the mother was drinking on the night initially reported.

At an administrative hearing on June 23, 2009, numerous past incidences involving alcohol abuse were admitted against mother to refute her claims that she had been sober for 3 years prior to the January 2009 incident. The hearing continued on July 20, 2009 with conflicting testimony regarding mother’s status as an alcoholic and her progress in recovery. In both hearings testimony was given that indicated MQ’s propensity for untruthfulness. On September 1, 2009, the DCFS decision to adopt the ALJ’s findings was finalized. The ALJ found mother to not be a credible witness, rejected her contentions of continuous sobriety for the preceding 3 years, and recommended that the appeal be denied because DCFS met their burden of proof with regards to the allegations of creating an environment injurious to health and welfare.

Mother filed a complaint in the trial court on October

2, 2009 seeking administrative review and the trial court affirmed. Mother appealed and both parties filed joint motions to cite additional authorities as well as address the newly amended version of allegation No. 10/60, which the Appellate Court granted. The Appellate Court reviewed the administrative agency’s decision, which an interpretation of law; therefore, it is not binding and reviewed *de novo*.

The Appellate Court agreed with mother in arguing that the DCFS rule (allegation No. 10/60), upon which the administrative agency’s finding was based, exceeds the authority granted to the DCFS by its enabling statute. In reviewing the question of the validity of allegation No. 10/60, giving substantial weight and deference to the agency’s construction of a statute that it administers and enforces. Under the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5/1 *et seq.* (West 2008)) DCFS is obligated to maintain a registry of all persons found to have abused or neglected a child, and then investigate and determine whether a report of child abuse or neglect is “indicated,” “unfounded,” or “undetermined.” 325 ILCS 5/7.12, 7.14, 3 (West 2008). DCFS will indicate a report if there is “credible evidence” of abuse or neglect, adhering to the reasonable person standard viewed in the light of the surrounding circumstances. 89 Ill. Adm. Code 300.110(i)(3)(A) (2011); 89 Ill. Adm. Code 300.20 (2011). Section 3 of the Act defines a “neglected child” in four circumstances: 1) children who are not receiving care necessary for their well-being, such as medical treatment, food, clothing or shelter; 2) children who have been abandoned; 3) children who have received crisis intervention services and cannot return home; and 4) infants born with controlled substances in their system. 325 ILCS 5/3 (West 2008). The statute’s original language

included defining “neglect,” in part, as “subjecting a child to an environment injurious to the child’s welfare.” Pub. Act 79-65, § 2 (eff. July 1, 1975) This phrase was deleted in 1980 due to concerns as to its interpretation. Under the allegation at issue, No. 10/60, DCFS identifies several actions that fall within its definition of neglect, including exposure of the child to the use of alcohol in the home. 89 Ill. Adm. Code 300, app B. Factors to be considered include the alleged perpetrator’s history indicating abuse or neglect. *Id.* Mother asserts that allegation No. 10/60 is invalid because DCFS cannot expand, alter or extend the legislature’s definition of a neglected child. *Department of Revenue v. Civil Service Comm’n*, 357 Ill. App. 3d 352, 363 (2005). The Appellate Court determined that, though DCFS has the authority to adopt regulations that are reasonably necessary to carry out the duties of the statute, these regulations are limited by the enabling statute and must conform to its boundaries. *Id.* Since the legislature specifically and purposely removed the “environmentally injurious” language from the statute, DCFS could not have adopted it. *Id.* at 364. The Appellate Court went on to contrast the Act with the Juvenile Court Act of 1987, a statute providing that a child can be found to be neglected based on an injurious environment. However, a proceeding under the Juvenile Court Act is a civil, non-adversarial act requiring a broad definition of neglect to allow courts to take action to help juveniles, without imposing the mandatory reporting requirements as in the Act. *In re J.J.*, 142 Ill. 2d 1, 8 (1991). The Appellate Court noted that the legislature’s difference in language between the two acts indicates different results in these different contexts.

[See Cases, page 6 »](#)



# Policy & News

## Expert Consultation on the Prevention of and Responses to Violence Against Children Within the Juvenile Justice System

The International Juvenile Justice Observatory joined UN partners based in Vienna, New York and Geneva during an Expert Consultation on the prevention of and responses to violence against children within the juvenile justice system, held in Vienna on the 23rd of January. The goal of the consultation was to examine how juvenile justice can be an integrated part of the development of strong child protection systems; to identify the risks and systemic factors that lead to both children's involvement with the criminal justice system, and to violence against children within the system, as well as approaches that help address the risks how to strengthen legislation and the enforcement process, and how to best to shift from a punitive approach to a child sensitive juvenile justice system.

[> More](#)

## Article: NH Court Considers Counsel for Indigent Parents

The New Hampshire State Supreme Court will decide whether indigent parents have a constitutional

right to a lawyer when the state charges that parent with abuse or neglect of their child.

[> Learn more](#)

## Article: New York Courts Revisit Juvenile Justice

For over 50 years, New York State has treated 16- and 17-year-old offenders as adult criminals. An experiment begun this year seeks to change the rules, amid mounting evidence that the old way hasn't worked.

[> Learn more](#)

## Article: Court Upholds Law On Kids' Attorneys

The Washington Supreme Court upheld a state law that authorizes trial judges – but doesn't require them – to appoint lawyers to foster children in cases where a court is considering removal from families.

[> Learn more](#)

# Certification Update

## Become a Child Welfare Law Specialist

The NACC is pleased to announce several new changes to make the Certification Application and Exam process more convenient for you.

- The Certification Application is now available in electronic form. [Request an application via our web site.](#)
- NACC has launched a computer-based Certification Exam offered at ACT Centers nationwide. With locations in every state the ACT Center network delivers computer-based testing at hundreds of sites across the country. Approximately 85% of the U.S. population lives less than an hour from an ACT Center.

These changes will permit the NACC to accept applications year-round. Once your application is approved, you will be able to schedule your own exam at a local ACT testing center.

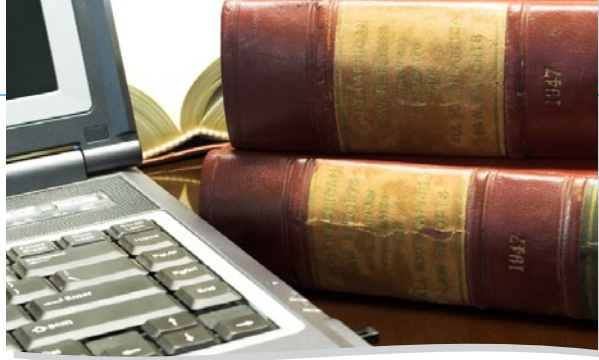
## QIC Application Fee Waivers – 2012

We are pleased to announce that the QIC Child-Rep from Children's Bureau is funding an additional 200 certification applications in 2012. [Applications are being accepted now.](#)



## 2013 Target States

The NACC is applying to open certification in Alabama, Arizona, and Minnesota. We anticipate accepting applications as early as January 2013.



# Professional Resources

**Erik S. Pitchal, *Engagement IS the Reform: The Role of Youth, Foster Parents, and Biological Parents in Child Welfare Litigation*, in FOR THE WELFARE OF CHILDREN: LESSONS LEARNED FROM CLASS ACTION LITIGATION, p. 56, Judith Meltzer, Rachel Molly Joseph, and Andy Shookhof, eds. (Center for the Study of Social Policy 2012).**

The defining professional norm among lawyers is service to clients. But probably for as long as there have been lawyers, there have been attorneys who are as committed to causes and to social reform as to solving the problems of individuals who knock on their door seeking assistance. Undoubtedly, the lawyers who initiate class action child welfare litigation are dedicated, zealous advocates who wish to improve the lot of one of the most marginalized, powerless, voiceless groups in society. They take the individual stories they hear about and move quickly to systemic analysis and attack, using the stories as powerful anecdotes to illustrate broader points. They move up the ladder of complexity, aggregating data, distilling common themes, and identifying sys-

tematic causes that underlie the individual tragedies that sparked the investigation and litigation.

The question explored in this paper is whether anything gets lost as plaintiffs' counsel move up this ladder away from individual stories towards the class-based approach. More specifically, it describes the extent to which those stakeholders who are typically most involved in the initial outcry for reform retain a voice once the class action gets underway and the lawyers get down to business. From there, it analyzes whether the level of involvement of youth, foster parents, and families of origin has an impact (whatever its valence) on the outcome of the litigation – as well as the prospects for abiding reform in the system. The paper concludes that the most lasting form of change is one that fundamentally reshapes the agency from the inside, changing its very culture and approach to its work. Engagement of youth, foster parents, and biological parents in the agency's daily work in a meaningful way holds significant promise for ensuring enduring reform.

[› Full article](#)

## What Difference Can a Quality Lawyer Make for a Child?

The American Bar Association has published an article in their Litigation Journal titled "What Difference Can a Quality Lawyer Make for a Child?"

[› More](#)

## RMCATI May 14, 2012 thru May 18, 2012

A joint project of NITA, the National Association of Counsel for Children, and the Rocky Mountain Children's Law Center, this intensive program is designed to meet the specialized needs of lawyers representing the interests of children, with a focus

## TRAINING CALENDAR

**Mon, April 16 – Fri, April 20, 2012**

[› Children's Bureau – 18th National Conference on Child Abuse and Neglect](#)

Washington, DC

**Mon, May 14 – Fri, May 18, 2012**

[› Rocky Mountain Child Advocacy Training Institute – RMCATI](#)

Boulder, CO

**Tues, May 22 – Fri, May 25, 2012**

[› Doing What Works: The Third Colorado Summit on Children, Youth, and Families](#)

Keystone, Colorado

**Wed, June 27 – Sat, June 30, 2012**

[› American Professional Society on the Abuse of Children's 20th Annual Colloquium](#)

Chicago, IL

## NACC REGISTRATION NOW OPEN

**Tuesday, August 14 through**

**Thursday, August 16, 2012**

Pre-Conference August 13

[› NACC 35th National Child Welfare, Juvenile, and Family Law Conference](#)

Historic Palmer House Hilton

Downtown Chicago, IL

Therefore, the Appellate Court decided that allegation No. 10/60 is void *ab initio* for exceeding the scope of the authority granted by the Act. See *Department of Revenue*, 357 Ill. App. 3d at 367. It went on to state that the removal of allegation No. 10/60 would not prevent DCFS caseworkers from investigating reports, rather, DCFS would draw from specific allegations and not a “subjective phrase.”

Addressing mother’s argument that the indicated finding was against the manifest weight of the evidence, the Appellate Court agreed that the ALJ admitted into evidence and then considered statements by a former DCFS investigator which were inadmissible hearsay. It ruled these statements inadmissible. The Appellate Court went on to note that though the evidence regarding events involving mother’s alcohol use in July 2008 and May 2009 were admissible to impeach her testimony of continuous sobriety, the ALJ’s reliance on this evidence to find mother indicated for neglect based on the incident of January 29, 2009 was in error. *People v. Hendricks*, 137 Ill. 2d 31, 52 (1990). In summation, the Appellate Court determined that the indicated finding of mother’s neglect was against the manifest weight of the evidence pertaining to the events on January 29, 2009 and vacated the judgment.

» [Read full case](#)

**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.

on developing their trial skills. Participants will hone specific skills—and practice new ones—in a simulated trial environment alongside experienced faculty members who will provide constructive feedback and suggestions following every performance.

Each day the program will focus on a new set of trial skills such as mastering case analysis, foundations for testimony, and examining expert witnesses. By the end of the program, participants will dramatically improve their techniques to become more effective advocates and have more confidence in the courtroom. A diverse mix of instructors, including nationally recognized lawyers and judges, creates an environment where participants are challenged to perform to the best of their ability. The program’s five days are equivalent to the experience of taking several cases to trial.

» [NACC members receive a \\$100 tuition discount. Enter code NACC at registration](#)

#### **April is Child Abuse Prevention Month**

In 1989, the Blue Ribbon Campaign to Prevent Child Abuse began as a Virginia grandmother’s tribute to her grandson who died as a result of abuse. She tied a blue ribbon to the antenna of her car as a way to remember him and to alert her community to the tragedy of child abuse. The Blue Ribbon Campaign has since expanded across the country, and many wear blue ribbons each April in memory of those who have died as a result of child abuse. In other communities, special fundraisers are held to support prevention activities and treatment facilities for victims, and candlelight vigils are held as a

remembrance. Most recently, the focus has shifted to a more positive message of celebrating “blue ribbon” individuals, organizations, and communities that have done much to prevent child abuse and neglect. Once again, the NACC is acknowledging this campaign and encourage you to do the same.

» [More information](#)

## **Spring Reminder**

**Be sure to tell your colleagues about the six-month NACC membership that’s included when they register for our 35th National Child Welfare, Juvenile and Family Law Conference on August 14-16, 2012 at the Palmer House Hilton in Chicago.**

*They’ll appreciate it!*



## Thank You to our Fellows!

Sara Brennan

Selina Baschiera

## And to our Supporting Members!

Rita Anderson  
Patricia Block  
Jo Carson  
Edith Croxen  
Michael Dale  
Carol Dane  
Troy Dierking  
Donald Duquette  
John Elliott  
Rachel Elovitz  
Debra Finch  
Robbin Gonzalez  
Karlin Gould

Karen Grane  
Kathi Grasso  
Frederick Gruber  
Ann Haralambie  
Cathryn Hicks  
Katherine Holliday  
Jeffrey Kauffman  
Julie Ketterman  
Jewell Dean Lewis Lohman  
Amina Merritt  
Thomas Miller  
Michael Nash  
Angela Orkin

William Owsley  
Lucia Pineiro  
Louis Reidenberg  
Michael Rich  
Robin Robb  
Kimberly Schulte  
Leslie Shear  
Shari Shink  
Sara Silverman  
Neal Snyder  
Kelly Waterfall  
Deanna Weiss

## And 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