

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.

A Note from the Executive Director



Mark your calendars (or, more likely, open up that Outlook calendar and click on "New Appointment".) This August 26 through 28, you will want to be at the Hyatt Regency Atlanta in downtown Atlanta, Georgia — because **what you will hear, see and learn**

there can change your career and forever alter how you advocate for children.

While I'm not allowed to spill the beans about our speakers and presenters (that news will be announced in next month's *e-Guardian*), my perch on NACC's Conference Committee has given me an inside view of the incredible scope and depth of child advocacy in the United States. We received 130 abstract submissions — more than four times what we could possibly accommodate — for our 36th National Child Welfare, Juvenile, and Family Law Conference. Attorneys, judges, social workers and social science researchers wrote us with urgency and conviction, chomping at the bit to tell their story and show us all how our country's legal systems can truly serve and protect vulnerable children. Topics range from the school-to-prison-

pipeline to practical trial skills to advocating for children with severe disabilities.

Running through all the proposals is a fierce commitment to create courtrooms that show children the same respect, attention and caring that we give children in our everyday roles as parents, relatives, neighbors and community members.

Our speakers will include those you've heard much of but perhaps never heard, at least in person — attorneys and other professionals who have made key contributions to national cases and causes (but again, you'll need to wait until next month's *e-Guardian* to read those names!) There's plenty of competition for your time and your dollars in the coming months. Take the time now to clear those dates — **August 26, 27 and 28** (with our pre-conference training on **August 25**.) I'll see you there in Atlanta, for a learning and networking experience we won't soon forget.

Thanks,

Kendall Marlowe

Executive Director

National Association of Counsel for Children

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NACC Executive Committee 2012–2014

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



Cases

A.M. v. A.C.

FOSTER PARENTS CAN PARTICIPATE IN TERMINATION HEARINGS

The Colorado Supreme Court ruled that foster parents who meet statutory criteria to intervene may participate fully in a termination hearing, without limitation.¹ The Court further held that the full participation of foster parents in a termination hearing does not impact parents' due process rights.²

The Court reviewed a court of appeals decision affirming the trial court's termination of the father's parental rights and reversing the trial court's termination of the mother's parental rights.³ The court of appeals had construed state law to hold that foster parent intervenors have only a limited right of participation at a termination hearing, and that the parents' due process rights were violated by the foster parents' full participation.⁴ A.M. had been in the care of the foster parents for approximately fifteen months when they moved to intervene, claiming to have "specific knowledge about [A.M.]

1. *A.M. v. A.C.*, 2013 CO 16 (Feb. 25, 2013), at p. 3, available at http://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2011/11SC53.pdf

2. *Id.*

3. *Id.*

4. *Id.*

and what was in his best interest."⁵ The mother objected, arguing that the foster parents' intention to adopt the child created a conflict of interest, and asking that the child be immediately removed from the foster parents' care.⁶ The trial court rejected both arguments, and allowed the foster parents to intervene, with their counsel giving opening and closing statements, cross-examining witnesses and making evidentiary objections.⁷ The trial court then terminated the parental rights of both parents.⁸

The Colorado Supreme Court reviewed statutory procedures surrounding dependency and neglect actions, construed the plain language of the State's Children's Code, and clarified existing case law, while also considering the parents' due process rights.⁹ The Court found no explicit limits to the rights of intervenors or to the substance of their participation, and concluded that foster parents who meet the statutory requirements may participate fully in the termination hearing, "without limitation."¹⁰ The Court further found that Colorado law already provided significant protections to parents faced with termination of their parental rights, and applied the *Eldridge* factors to conclude that full participation by the intervening foster parents does not impact the parents' due process rights.¹¹

Left unanswered by the Court's ruling is whether the child must be in the foster parents' custody at the time of the motion to intervene.¹²

> [View case](#)

5. *Id.* at 5.

6. *Id.*

7. *Id.*

8. *Id.* at 6.

9. *Id.* at 8-9.

10. *Id.* at 16.

11. *Id.* at 26.

12. *Id.* at 18.

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](#)



SOUTHWESTSM

L.A.N. et al. v. L.M.B.

GALS ARE IN THE BEST POSITION TO WAIVE THE CHILD'S PSYCHOTHERAPIST-PATIENT PRIVILEGE UNDER CERTAIN CIRCUMSTANCES

The Colorado Supreme Court ruled that in a parental rights termination case as part of a dependency and neglect proceeding, the guardian ad litem ("GAL") is in the best position to waive the child's psychotherapist-patient privilege when (1) the child is too young or otherwise incompetent to hold the privilege, (2) the child's interests are adverse to those of his/her parents, and (3) the relevant state statute does not abrogate the privilege.¹ The Court further held that in this case the GAL held the psychotherapist-patient privilege, and that the GAL partially waived the privilege when she disseminated a letter from the child's therapist to the court and to the parties in the case.² Additionally, the Court adopted procedures for determining the scope of any such waiver, and remanded the case to lower courts with instructions to use those procedures in its determination of the waiver's scope.³

In the context of ongoing dependency and neglect proceedings in juvenile court, the GAL in this case distributed the therapist's letter to the court and all parties without mentioning or explicitly waiving the psychotherapist-patient privilege.⁴ Following a motion to terminate parental rights, the mother's counsel subpoenaed the therapist to appear for a deposition and to produce the therapist's entire case file.⁵ The therapist's counsel then moved to squash the subpoena, arguing that the case file was

protected by psychotherapist-patient privilege.⁶ The juvenile court found that neither the child nor the mother could waive that privilege, and instead found that the juvenile court itself could authorize a limited waiver, as the court had allowed and encouraged the therapist to report to the court regarding the child's therapy.⁷ Following a court of appeals determination that the juvenile court's refusal to allow the Mother access to the therapist's case file deprived the mother of a fair opportunity to protect her parental rights, the Colorado Supreme Court granted certiorari to determine whether a GAL can waive the child's psychotherapist-patient privilege, and whether the privilege was waived by the GAL in this case.⁸

The Court reviewed state statutory and common law, finding that while a very young or otherwise incompetent child yields the privilege to the parent(s), the parent(s) cannot hold the privilege when the parents' interests "might give the parent incentive to strategically assert or waive the child's privilege in a way that could contravene the child's interest in maintaining the confidentiality of the patient-therapist relationship."⁹ The Court further determined that neither the county department of human services nor the juvenile court were appropriate holders of the privilege, but that the GAL, deemed by statute to have the "best interests of the child" as their client, should hold the child's privilege when neither the child nor the parents have that authority.¹⁰

The Court also held that the privilege was waived in this case, but that the scope of that waiver was at

issue.¹¹ The procedures for determining that scope were undefined in state law, and the Court therefore adopted the following procedures for waivers by the GAL in the context of dependency and neglect cases: (1) if the scope is readily apparent, the juvenile court may exercise discretion and order disclosure subject to the waiver, (2) if the scope is not readily apparent, the juvenile court must instruct the GAL to compile a privilege log, examine that log *in camera*, and then balance the competing interests around disclosure, all in service of the court's "overarching duty to further the best interests of the child."¹²

> [View case](#)

11. *Id.*

12. *Id.* at 10.

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.

1. *L.A.N. v. L.M.B.*, 2013 CO 6, at p. 4 (January 22, 2013).
2. *Id.*
3. *Id.*
4. *Id.* at 5.
5. *Id.*

6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 7.
10. *Id.* at 8.



Amicus

The Child's Right to Independent Legal Representation:

In re Dependency of M.C.D.P.,

Amici Curiae Brief in Support of Appellant

"To ensure fair and effective dependency proceedings for children, children should be provided counsel who can zealously advocate on their behalf, with undivided loyalty and the assurance of confidentiality in their interactions... the legal rights of dependent children are only fully protected when their voices are heard in the very matters that affect their most basic rights and interests: those of health, safety and family."¹

The defense of children's rights and interests is at the heart of the National Association of Counsel for Children. It's why we do what we do. Yet that defense is only possible when independent, well-trained and well-resourced lawyers can bring a child's right to counsel to life through zealous and effective advocacy. This January, NACC joined with advocates and advocacy organizations from across the country to sign on to an amici curiae brief accepted by the State of Washington Court of Appeals in the case of *In re Dependency of M.C.D.P.*

Under Washington state statute, children in dependency proceedings have no affirmative right to independent counsel.² The statutory scheme instead leaves a court's appointment of counsel to the discretion of the court, to be determined based on the age of the child, the opinion of the non-attorney guardian ad litem, and the opinion of

the court itself.³ Even when a child age 12 or older requests counsel, and even when the guardian ad litem supports the request, the court is free to deny that request for representation.⁴ Washington state courts are not even required to ask a youth about their preference for a lawyer until after the youth turns fifteen years of age.⁵

This qualified, conditional access to legal representation flies in the face of national trends. Through statute, regulation or rule, twenty-seven states and the District of Columbia now provide an automatic right to representation for children in dependency cases, and the majority of states require that appointed counsel advocate for the wishes and preferences of the child.⁶ The American Bar Association promulgated a Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings, as well as Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, all in support of independent, client-directed legal representation.⁷ A substantial body of research and expert opinion also support the benefits to children of legal representation in child welfare cases, as counsel help children better understand the system that is ruling their lives, and are therefore more likely to accept and support that system's decisions.⁸

This important brief calls for the recognition of a state and Federal Constitutional right to client-directed counsel for children in dependency cases, and NACC is proud to add our voice to that call.

3. *Id.*
4. *Id.* at 3-4.
5. *Id.* at 4.
6. *Id.* at 5-6.
7. *Id.* at 10-11.
8. *Id.* at 14-15.

1. *Amici Curiae Brief, In re Dependency of M.C.D.P.*, No. 68401-9-1, Court of Appeals, Division 1 of the State of Washington, January 25, 2013.
2. *Id.* at 3.

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

Washington State Program Offers Peer Support for Justice-Involved Families

A program has been developed by the University of Washington, Seattle. "Juvenile Justice 101" is a *Models for Change* program that helps parents and guardians of justice system-involved youth understand the juvenile court process.

› [Download PDF Guidebook](#)

Resolution Challenges Proposal to Merger Juvenile Justice with Kansas Corrections Department

A member of the Kansas State House says he wants the state's juvenile justice system to remain separate from the adult prison system.

› [Read news article](#)

A Call for Drastic Changes in Educating New Lawyers

An article from *The New York Times* which discusses changes to the current law school system.

› [Read news article](#)

Wyoming Abolishes Life Without Parole for Children

On February 14, Wyoming Governor Matt Mead signed House Bill 23 into law, which abolishes sentences of life in prison without parole for children in that state.

› [Read the bill](#)

Experts Gather to Improve Outcomes for Youth in Child Welfare and Juvenile Justice

In February, more than 140 leaders from higher education, government, business and nonprofits joined Fedcap to be part of a panel discussion "Changing the Story: Building Pathways to Self-sufficiency for Youth Transitioning from Child Welfare and Juvenile Justice".

› [Read news article](#)

SPARC has Published a Policy Brief: Child Welfare Financing in the United States

This publication summarizes key facts and trends regarding national, state, and local child welfare financing.

› [View brief](#)

TRAINING CALENDAR

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.

May 29–June 1, 2013 · Los Angeles, CA

› [AFCC 50th Anniversary Conference: Riding the Wave of the Future: Global Voices, Expanding Choices](#)

This conference will include information on international court reform initiatives, innovations in addressing the budget crises in family courts, the latest ethical quandaries, the ever changing and challenging role of technology, and new research.

August 25–28 · Atlanta, GA

› [36th National Child Welfare, Juvenile, and Family Law Conference](#)

This conference is the NACC's premier training, and is the product of 36 years of experience. It is designed primarily for attorneys who practice child welfare, juvenile, and family law. Registration will open in April.

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.

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

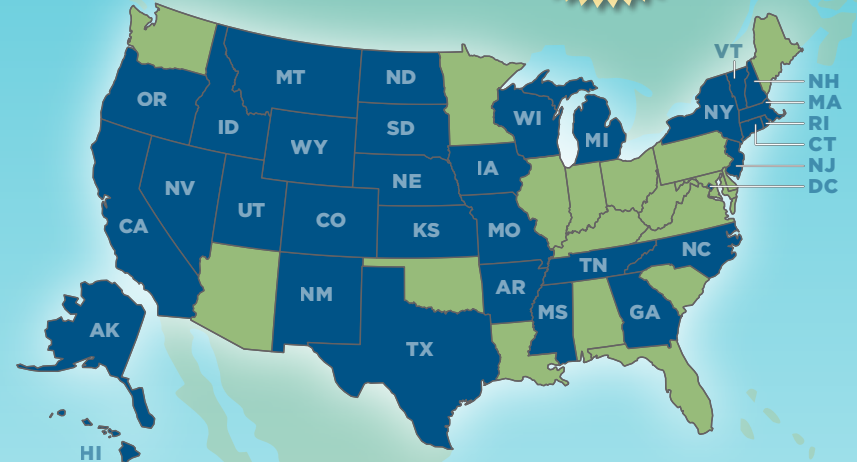
Your legal education, practice experience, and continuing legal education in child welfare, delinquency, family law, and related areas all help prepare you for the certification exam. Upon submitting a Certification Application, you will also receive a copy of the *Child Welfare Law and Practice* (Red 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 34 jurisdictions and have more than 500 Child Welfare Law Specialists (CWLS). The waivers are available on a first-come, first-serve basis through September 30, 2013. 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

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:



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

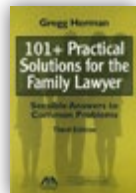
By John E. B. Myers

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](#)

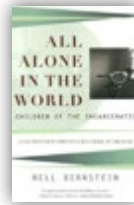
By Gregg Herman

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

ISBN-13: 9781413423013

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

Published: Xlibris Corporation, 05/2004



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

By John E. B. Myers

Paperback \$128.75

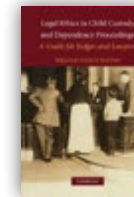
ISBN-13: 9780761916666

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

Published: Sage Publications (CA), 07/1998

[Other Editions of this title](#)

And, available from Amazon:



[Legal Ethics in Child Custody and Dependency Proceedings: A Guide for Judges and Lawyers](#)

By William Wesley Patton

Hardback \$83.35

ISBN-13: 9780521-853170

Paperback \$46.00

ISBN-13: 9781107407510

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

Published: Cambridge Univ. Press, 06/2006

And 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

Member Feature

William Wesley Patton, M.A., J.D.



While at UCLA Law School Bill Patton served as the student director of the Prisoner Assistance Project, a post-conviction clinic. After graduation he worked as a State Public

Defender in Los Angeles where he specialized in criminal, juvenile delinquency and termination of parental rights appeals. In 1980 he joined the faculty at UCLA Law School, and together with Professor Paul Boland, he supervised law students in the representation of parties in child dependency court. In 1984 he joined the faculty at Whittier Law School where he became the founding director of the Center for Children's Rights, a three-year children's rights legal specialty which has now trained hundreds of child fellows.

Bill has been an NACC member for decades, and he credits his attendance at NACC conferences with developing his interest in child and adolescent psychiatry. Since 2006 Bill has been teaching forensic child and adolescent psychiatry, medical ethics and medical policy advocacy at the UCLA David Geffen School of Medicine, Department of Psychiatry. He has published a series of law review articles in

which he uses child and adolescent psychiatric empirical evidence to investigate how the legal system exacerbates child victims' psychopathology by forcing them to litigate cases before strangers and the media, by unnecessarily separating or severing sibling bonds, and by promulgating rules of professional responsibility that force children's attorneys to represent their child clients in ways that betray their trust and loyalty.

Bill believes that the quality of child welfare is determined by a system's weakest link. Therefore, he provides in-service training for attorneys representing the Department of Child and Family Services, children's counsel, parents' counsel, and judges, and the chapters in his book, *Legal Ethics in Child Custody and Dependency Proceedings: A Guide for Judges and Lawyers*, are structured around an ethical discussion of the roles of each of those players in the child welfare system.

He thinks that the landscape of child welfare law has changed in large part because of organizations like the NACC which offer specialized advocacy training, continuing interdisciplinary instruction at conferences, and a community dedicated to perfecting the rights of children and families.

e-Guardian Member Feature

NACC is looking for nominations of outstanding advocates, so we can highlight them in *eGuardian*.

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 Taylor Stockdell at taylor.stockdell@childrenscolorado.org.

