

# THE GUARDIAN

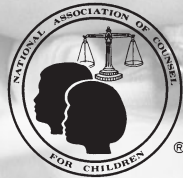
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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September 7–10, 2004

# NACC

National Association of  
Counsel for Children



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To achieve the  
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in children's law, establishing  
the legal interests of children  
and enhancing children's  
legal remedies

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**THE GUARDIAN**  
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## 2003 YEAR-END

*Director's Message*

Marvin Ventrell, Executive Director

The final *Guardian* of the year is my opportunity to give the NACC membership a report of the year's activities and to thank members for supporting the organization. 2003 was the NACC's 26th year, highlighted by our 26th National Children's Law Conference in New Orleans. The conference was another success with over 400 attendees from 45 states. The national conference is the one time each year when the nation's children's court professionals gather together and learn from one another. It is not only an important training experience, it is a wonderfully collegial event that serves to rejuvenate attendees. I encourage all NACC members to make the conference part of your annual professional development. The 2004 conference will be held at the beautiful Mandalay Bay Resort in Las Vegas from September 7-10.

For the first time, this year's conference included a pre-conference meeting of the nation's children's law offices. The NACC expects this will now be an annual event as part of our new National Children's Law Office Project (CLOP). The project, funded by a 3-year \$600,000 grant, is designed to improve the delivery of legal services to children in the dependency courts. It will unite the nation's children's law offices into a single national law office network, develop substantive and procedural law office operation protocols, and deliver training and technical assistance. The end result will be the creation of a collaborative network of high functioning model offices. For more information contact NACC CLOP Program Director, Colene Flynn Robinson.

2003 was also a productive year in the development of the NACC Juvenile Attorney Certification Program. The certification program, funded by the U.S. Dept. of HHS, is a 3-year project to pilot NACC certification of attorneys as specialists in child welfare law. At the end of the first year of the grant, we have built the infrastructure for delivery of the program, developed the certification criteria, drafted the first exam, and submitted our final application to the ABA for designation as a certifying agency. The next step is to test the first set of attorneys in the pilot states of California, Michigan, and New Mexico. We also hope to deliver a certification training at our national conference beginning in 2004



2003 Outstanding Legal Advocacy Award Winners **Theresa Spahn**, Executive Director Colorado Office of the Child's Representative, and **Carolyn Salisbury** of the University of Miami Children and Youth Law Clinic



NACC Staff: **Dennis Lanphier**, Intern; **Colleen Breslin**, Intern; **Marvin Ventrell**, Director; **Daniel Trujillo**, Staff Assistant; **Colene Flynn Robinson**, Staff Attorney; **Lisa Hintze**, Administrator

and allow candidates from outside the pilot states to sit for the exam following the prep course. The goal of all of this is to improve court outcomes for children by improving the quality of practice through the recognition of attorneys as child welfare law specialists. For more information on attorney certification, visit [www.naccchildlaw.org/training/certification.html](http://www.naccchildlaw.org/training/certification.html).

In addition to these new programs, the NACC continues its traditional activities including maintaining the NACC Child Advocacy Resource Center in Denver ([www.naccchildlaw.org/training/resourcecenter.html](http://www.naccchildlaw.org/training/resourcecenter.html)) and conducting the Rocky Mountain Child Advocacy (trial skills) Training Institute which in 2004 will be held May 17-21 in Denver. See the announcement on page 7 of this issue. We are also available to provide customized training to groups. In 2003, we delivered new state specific social worker trial preparation trainings in two jurisdictions.



**Ashley Ratcliffe Beumer** and **Mary Taylor** of St. Louis City CASA at the New Orleans national conference

*These are just a few of the activities underway at the NACC. Thank you again for being one of 2000 NACC members across the country who use the NACC to improve your skills and at the same time support the NACC in our mission to improve the legal system for children. The NACC Board of Directors and Staff wish you a happy holiday season.*



## Cases

### ADMISSIBILITY OF CHILD'S STATEMENTS

*Pennsylvania Supreme Court Orders Independent Competency Hearing To Determine If Children's Statements of Sexual Abuse Were Improperly Tainted. Commonwealth v. Delbridge, 2003 Pa. Lexis 1754 (Pa. 2003).*

Gerard John Delbridge ("Delbridge") appealed his convictions of endangering the welfare of children, corruption of minors, aggravated indecent assault, and indecent assault, based on his alleged sexual assault of his two children. The question before the court was whether or not the trial judge should have allowed evidence of the children's incompetence based on "taint" when the defendant established objective evidence, through affidavits and exhibits, that the children's statements were tainted. The Pennsylvania Supreme Court addressed the reliability of the children's hearsay statements and the appellant's opportunity to challenge their admissibility.

Delbridge was convicted of sexually assaulting his daughter ("A.D."), age seven, and his son ("L.D."), age five, between 1997 and 1998. The children's mother ("Mrs. Delbridge") became initially suspicious that A.D. had been victimized by Delbridge after A.D. reported that Delbridge had touched her inappropriately. Mrs. Delbridge reported the allegations of sexual abuse to the Pennsylvania State Police. After speaking to both A.D. and L.D. in great detail about their interactions with Delbridge, the Pennsylvania State Police filed criminal charges against Delbridge based on his sexual assault of both children.

Prior to his trial, Delbridge filed motions contesting the testimonial capacity of A.D. and L.D. He first claimed that the children's youth prohibited them from perceiving the events at the time they occurred and from accurately recalling them. Secondly, Delbridge alleged that repeated and sug-

gestive interviews by the state troopers had tainted the children's memory of the events. Finally, Delbridge claimed that abnormal influence by their mother, who suffered from paranoia over her own sexual abuse as a child, tainted the children's memory of events.

Delbridge supported his allegations of taint of the children's statements with evidence of a previous incident in which Mrs. Delbridge reported to the county department of children and youth services that A.D. was acting out sexually. The counselor found no evidence of abuse and recommended that Mrs. Delbridge seek counseling to deal with her own history of sexual victimization. Additionally, Delbridge planned to present expert testimony to support his allegations.

Although evidence of taint should be heard at a pre-trial competency hearing, the trial court did not give Delbridge an opportunity to question the children in regards to taint or the reliability of their hearsay statements. The trial court refused Delbridge's expert testimony about the children's statements, limiting the competency hearing to questions examining the children's general capacity to remember and communicate.

The supreme court remanded the matter for a new competency hearing, finding that Delbridge had presented proper evidence to necessitate investigation of the children's capacity to retain an independent recollection of the events. Determination of the children's competency regarding taint requires the court to review the manner in which the child's allegations surfaced and how the allegations were investigated. Accordingly, Delbridge could present expert evidence, at an independent competency hearing about the methods of interrogation by which the information was obtained, and testimony about how the children's memories of events were tainted by their mother's influence upon them. The judge

must decide if expert testimony will advance a resolution of the question of competency on a case-by-case basis.

Additionally, the supreme court stated that parties shall have the opportunity to cross-examine the hearsay declarant when available and necessary to determine the statement's accuracy. Therefore, the court shall permit Delbridge to cross-examine the children to test the accuracy of their hearsay statements if the judge finds the children's statements "tainted" upon remand.

*Thank you to NACC board member John Stuemky from Oklahoma City Children's Hospital for identifying this case.*

### SOCIAL WORKER LIABILITY

*The North Dakota Supreme Court Affirmed Dismissal Of Malpractice Claim Against Facilitator Of Domestic Violence Treatment Program And Social Worker, Because Facilitator Was Protected By Witness Immunity, And Social Worker Was Protected As State Employee Acting Within Scope Of Her Employment. Lawrence v. Roberdeau, 665 N.W.2d 719 (N.D. 2003).*

John Lawrence's ("Lawrence") claim arose out of two prior cases regarding child support and visitation for his minor son. In the child custody case, the district court ordered Lawrence to undergo a domestic violence screening assessment offered by Lutheran Social Services. Dennis Larkin, the lead facilitator of the domestic violence treatment program, completed the assessment. Larkin was subpoenaed to testify in the visitation case regarding his assessment of Lawrence. Larkin testified that Lawrence exhibited signs of abusive behavior. Larkin also testified that in his opinion, Lawrence's visits with his son should be supervised until Lawrence successfully completed treatment.

Roberdeau testified in her capacity as a social worker for the West Central Human Service Center. Roberdeau treated Tina Delkamp, the mother of Lawrence's child. Lawrence participated in Delkamp's counseling with Roberdeau on a few occasions, but Roberdeau did not participate in the assessment of Lawrence. In an earlier visitation proceeding, the district court ordered Lawrence's visitation with his son to be restricted to supervised visits. Lawrence appealed, claiming the district court erred in finding he committed domestic violence. The Supreme Court of North Dakota reversed, concluding that although Lawrence made threats to Delkamp, they did not rise to the level of "imminent physical harm" required under the statutory definition of domestic violence.

Lawrence sued Lutheran Social Services, Roberdeau, and Larkin for malpractice. Lawrence claimed that his patient-social worker relationship was breached when Larkin recommended he seek treatment under a batterer's program even though he had not been found to be a batterer under a legally accepted definition. Lawrence argued that there was no evidence he was abusive, that Larkin wrongfully asserted he was abusive, and that Larkin and Roberdeau were working in concert and individually to limit or prevent visitation with his minor son.

In his malpractice complaint, Lawrence focused on Larkin's testimony. North Dakota recognizes witness immunity. The court held that no professional malpractice claim could be maintained because Larkin was immune from suit on the basis of his testimony as a witness. The court also dismissed Lawrence's malpractice claim against Roberdeau. In North Dakota, a state employee is not personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of employment. Because Roberdeau was acting within the scope of her employment, Lawrence did not have a malpractice claim against Roberdeau.

## EXECUTION OF JUVENILES

*Missouri Supreme Court Finds That The Eighth Amendment And An Emergent National Consensus Prohibits Imposition Of Death Penalty For Individuals Under Eighteen Years Old.* State ex rel. Simmons v. Roper, 112 S.W.3d 397 (Mo. 2003).

The Missouri Supreme Court affirmed

Christopher Simmons' ("Simmons") death sentence for a murder that he committed when he was seventeen years old. Simmons requested reconsideration of his death sentence, arguing that an emergent national consensus against the execution of juveniles overrides a prior United States Supreme Court decision that allowed such execution. The question for the court was whether a national consensus against the execution of juveniles exists and, if so, whether a subsequent United States Supreme Court decision required the state court to reconsider Simmons' death sentence.

Simmons was arrested on September 10, 1993 for the murder of Shirley Crook. He was seventeen years old at the time. The trial court convicted Simmons and sentenced him to death. The state supreme court affirmed Simmons' death sentence based upon the United States Supreme Court's decision in *Stanford v. Kentucky*, which held that the execution of persons who were sixteen or older at the time of their crime did not constitute cruel and unusual punishment.

Simmons successfully argued that the United States Supreme Court's subsequent decision to reconsider the execution of a mentally retarded defendant required the Missouri Supreme Court to reconsider his death sentence. In *Atkins v. Virginia*, the United States Supreme Court found that mentally retarded criminals can not be executed because a national consensus against such execution had developed after the Court's original decision to allow such executions.

In light of this decision, Simmons argued that a national consensus against the execution of juveniles had emerged and petitioned the Missouri Supreme Court to reconsider his death sentence. In determining whether or not a national consensus against the death penalty for juveniles existed, the court adopted the following four factors from United States Supreme Court decisions: (1) the extent of legislative action against or in favor of the juvenile death penalty, (2) the frequency of the imposition of the death penalty on juveniles in modern times, and the frequency with which it is carried out even when imposed, (3) national and international opinion on the juvenile death penalty, and (4) an independent examination of whether the death penalty for juveniles violates evolving standards of decency and so is barred by the Eighth and Fourteenth Amendments.

The court found that a national consensus against the execution of juveniles does exist. In fact, a total of sixteen states, as well as federal civilian and military courts, require a minimum age of eighteen for the imposition of the death penalty. Accordingly, the court set aside Simmons' death sentence and resentenced him to life imprisonment without eligibility for probation, parole, or release except by act of the Governor.

## DUE PROCESS FOR MENTALLY ILL PARENTS IN TERMINATION PROCEEDINGS

*New Mexico Supreme Court Finds Termination Constitutional Even Though Mother Was Not Present At Termination Hearing.* State ex rel. Children, Youth, and Families Department v. Mafin M., 70 P.3d 1266 (N.M. 2003).

The New Mexico Children, Youth, and Family Services Department ("Department") appealed a New Mexico Court of Appeals judgment that reversed the district court's termination of Mafin M.'s ("Mafin") parental rights. The court of appeals reasoned that the district court violated Mafin's due process rights by holding a termination hearing in her absence, without determining if the mother had validly waived her right to appear.

On April 6, 1996, Mafin, a mentally ill chronic substance abuser, tried to kill herself and her two boys, ages three and six. The next day, she voluntarily placed her children in Department custody so that she could complete a treatment program. Subsequently, the Department filed an abuse and neglect petition against her. She did not contest the petition and initially complied with the accompanying treatment plan. After the court denied her request to regain custody in August 1997, however, Mafin's condition dramatically declined; she began using drugs again, became involved in a violent relationship, and became unemployed and homeless.

On June 29, 1998, the Department moved to terminate Mafin's rights, on the grounds of her substance abuse, unemployment, mental and emotional difficulties, her criminal conduct, and several other factors. Mafin's attorney successfully moved for a continuance of the first scheduled termination hearing because Mafin needed more time to prepare for trial. During this time, Mafin completed another in-patient substance abuse

program, but she relapsed into destructive behavior shortly thereafter.

The court continued the hearing until July 28, 1999. Five days before this hearing, Mafin's attorney moved for another continuance because Mafin was suffering from severe depression and had been unable to assist effectively in preparation for the hearing. The district court denied the motion and proceeded as scheduled. Mafin did not appear in court to participate in the July 28 hearing. On the day of the hearing, Mafin's attorney again moved for continuance on grounds that Mafin needed "medical care and medication for her physical and mental conditions" in order that she would understand the nature of the proceedings enough to assist in the preparation of her case.

At this point, a continuance would delay the termination hearing another nine months. Considering that the case was more than three years old and that the children had spent this time in Department custody, the district court denied the motion and proceeded with the termination hearing. The district court terminated Mafin's rights and she appealed the decision on the grounds that the court had violated her due process rights by holding the hearing in her absence. The New Mexico Court of Appeals reversed the district court's decision, stating that the district court had not appropriately determined if Mafin had validly waived her appearance.

The New Mexico Supreme Court disagreed with the appeals court and upheld the termination. First, the supreme court found the court had incorrectly examined whether or not Mafin had waived her right to appear, a non-issue in the case. Mafin's failure to attend the hearing did not prompt a waiver analysis because Mafin's attorney had sufficiently litigated on her behalf at the termination hearing.

Second, the supreme court found that the district court had not violated Mafin's due process rights. Due process requires that termination proceedings be conducted with "scrupulous fairness" to the parent, at a meaningful time, in a meaningful manner. The court reasoned that Mafin had thirteen months to prepare for the termination hearing and had made it clear that she did not want to attend the July 28 hearing. Additionally, her attorney had vigorously represented her at the hearing and was afforded the opportunity to admit Mafin's testimony by stipulation. Thus, the district court made reasonable efforts to allow her to participate meaningfully in the

proceedings. In the best interests of the children, who would otherwise be forced to wait an undeterminable amount of time for stability, the supreme court upheld the termination.

*Thank you to NACC member Daniel Pearlman from the Children, Youth and Families Department in Santa Fe, NM for identifying this case.*

## SAME SEX ADOPTION

*California Supreme Court Finds That Birth Parent, Who Consents To A Second-Parent Adoption Of Her Children, Does Not Have To Relinquish Parental Rights To His Or Her Child. Sharon S. v. Superior Court, 73 P.3d 554 (Cal. 2003).*

Birth mother Sharon S. ("Sharon") and the attorney for the child appealed the trial court's denial of Sharon's motion to dismiss the adoption petition filed by her domestic partner Annette F. ("Annette"). The court of appeals reversed, and permitted Sharon to withdraw her consent and terminate the adoption. Annette sought review. The question before the court was whether an independent adoption, in which the birth parent does not agree to the termination of her parental rights, is legislatively authorized and if so, whether such statutes are constitutional. In this same sex adoption case, the NACC joined many other amici in arguing that California courts have the authority to adjudicate second-parent adoption cases on their merits on a case-by case basis using the same standards as are applicable to other independent adoptions.

Sharon and Annette were in a committed relationship from 1989 through mid-2000. In 1996, after being artificially inseminated, Sharon gave birth to Zachary. Annette petitioned to adopt Zachary in a "second parent adoption." Sharon expressly consented to the adoption, with the understanding that she would retain her own parental rights. The trial court granted the "second parent adoption" and Annette has subsequently been one of Zachary's two parents.

In 1999, after being artificially inseminated again, Sharon gave birth to Joshua. She then signed an Independent Adoption Placement Agreement, giving "permanent and irrevocable consent to the adoption" of Joshua by Annette. The Agreement established that Sharon would give up "all rights of custody, services, and earnings" with respect to Joshua but also clearly preserved Sharon's intent, as birth parent, to retain parental rights and control of Joshua.

Sharon and Annette began having relationship troubles and in August 2000, Annette moved out of the family residence. A family court mediator recommended that Sharon and Annette share custody of the children and that Annette have visitation rights. While the couple agreed that Annette would have temporary visitation rights, they could not reach agreement over permanent custody or visitation.

In October 2000, Annette filed a motion for an order of adoption, arguing that Sharon's consent to the adoption was irrevocable and that the adoption was in Joshua's best interest. Sharon moved to withdraw her consent on the basis that it was obtained by fraud or duress and countered with the argument that withdrawing consent was within Joshua's best interest. The Department reported to the court that Sharon withdrew her consent outside the statute of limitations and that Annette had a strong relationship with Joshua as his second parent.

In November 2000, the court ordered interim visitation, encouraged the parties to agree on a visitation schedule, and appointed counsel for Joshua. Sharon then obtained a domestic violence restraining order against Annette and moved to dismiss the adoption petition. Joshua's court-appointed attorney joined Sharon in moving the court to dismiss the adoption petition. The trial court denied the motion because Sharon had not moved to withdraw within the statute of limitations and the resolution of the adoption petition was likely to be based on Joshua's best interests. Sharon and Joshua's attorneys filed a writ of mandamus to challenge the denial of her motion to withdraw, which was granted by the appellate court. Annette challenged this decision.

The supreme court confirmed that a birth parent may waive the termination of her parental rights when consenting to the second parent adoption of her child, as Sharon had done by signing the Independent Adoption Placement Agreement. While the California Family Code allows birth parents to relinquish parental duties toward the adopted child, relinquishment of parental duties is not a mandatory prerequisite to every valid adoption if the birth parent wishes to share parental responsibilities. The court recognized that because Sharon and Annette had both expressly agreed that Sharon would retain co-parental rights and responsibilities, relinquishing Sharon's parental rights and responsibilities would directly conflict with the intention of the parties.

While the court acknowledged that the California Family Code did not require Sharon to relinquish her parental rights, it established that Annette's petition for adoption was certainly authorized, according to the statute and legislative intent. Neither due process nor separation of powers constituted a bar to the former partner's adoption of the child.

The supreme court reversed the appellate court's decision to grant the writ of mandamus and remanded the case to the appellate court to consider the birth mother's claim that she signed the adoption consent form under fraud, undue influence, or duress. The appellate court, upon remand, could order the second parent adoption if the court concluded that all legal requirements were met. The birth mother retained the right to oppose finalization of the adoption on the ground that it was contrary to the child's best interest.

## DILIGENT EFFORTS APPLIED RETROACTIVELY

*The New York Court of Appeals Affirmed Appellate Division, Holding That Diligent Efforts Can Be Excused Retroactively Following Finding Of Aggravated Circumstances. In re Marino S.*, 2003 WL 21512244 (N.Y.).

Raquel T. and Marino S. appealed from an order terminating their parental rights. Raquel and Marino are the parents of Vivian S. and Marino S., Jr. Raquel is also the mother of Shaina T.

On July 31, 1997, Marino raped eight-year old Shaina, while Shaina's four-year old sister slept in the same bed. Shaina woke up Raquel when she came from the bedroom holding herself tightly and bleeding from her vagina. Shaina took a shower while her mother watched, and then Raquel wrapped Shaina in two towels. Instead of going straight to the hospital, Raquel followed Marino's suggestion that they wait. Shaina complained of stomach cramps and continued to bleed through the towels. Soon she began to vomit. Raquel and Marino finally decided to seek medical treatment. Raquel and Marino fabricated the story that Shaina was injured when she fell over a chair and was struck between the legs while getting out of bed. They also made up a story to conceal Marino's presence in the apartment during the incident. At the time, Raquel knew of a previous accusation that Marino had sodomized Shaina. The accusation resulted in an investigation by the

Administration of Children's Services (ACS). Raquel also knew that Marino had been arrested after her mother accused Marino of sexually abusing Raquel's young sister. Raquel agreed to lie and say that Marino was at her mother's house when Shaina was injured.

Next, Raquel put away the mattress where Marino slept, and then mopped the floor and washed up the blood. Raquel called a taxicab and left with her children approximately two hours after she learned of Shaina's injury. Raquel took them to a clinic 115 blocks away, driving past many other hospitals along the route. Metropolitan Hospital was the closest to the family's home, and was the hospital to which Raquel usually took her children. Shaina was rushed from the clinic to Bellevue Hospital because of severe internal injuries and extensive blood loss. Shaina was listed as likely to die, and underwent surgery to repair lacerations to her vaginal wall. Shaina was hospitalized for nine days. All three children were placed in foster care the day after the rape.

The issue in this case was whether diligent efforts to reunite Raquel and Marino with the children were required. Usually when a child is removed from home because of alleged abuse or neglect, the social services agency responsible for the child must try to reunite the child with the birth parent. This includes efforts to rehabilitate the parent so that he or she is capable of caring for the child. During termination of parental rights proceedings, a foster care agency generally must show that diligent efforts to reunite the parent and child were undertaken.

Before the disposition of the original abuse case concluded, ACS filed petitions for termination of the parents' rights. During the abuse and termination proceedings against Raquel and Marino, New York passed the Adoption and Safe Families Act (ASFA). ASFA says that "the health and safety of children is of paramount importance" when efforts are made to reunite children with their birth families. ASFA allows an agency to request whether it must exercise diligent efforts without having to wait for the outcome of the abuse proceedings. Soon after the adoption of ASFA, ACS moved in the abuse proceedings for a finding of aggravated circumstances and to amend the termination petition to include an action for severe abuse. Under ASFA, a finding of aggravated circumstances makes it unnecessary for an agency to exercise diligent efforts to reunite the parents

with the children. The family court said that Shaina's health and safety would continue to be jeopardized by her parents' abuse, and made a finding of aggravated circumstances in the abuse case and severe abuse in the termination case. The court said that the evidence established that diligent efforts to reunite this family were not required, and that the ASFA section applied retroactively. The court also affirmed derivative findings of severe abuse as to the two children who were not victims of the rape.

The New York Court of Appeals, while noting that most statutes cannot be applied retroactively without a clear legislative mandate, concluded that the remedial nature of ASFA, combined with its purpose of speeding permanency planning for children, allowed its retroactive application. Moreover, ACS is not required to provide diligent efforts to reunite a family pending judicial determination that the suspension of efforts is appropriate. ACS can choose not to provide services when such efforts would be detrimental to the best interests of the child.

The court of appeals also affirmed the family court's derivative findings of severe abuse, because such findings "may be predicated upon the common understanding that a parent whose judgment and impulse control are so defective as to harm one child in his or her care, is likely to harm others as well." Children who do not suffer abuse themselves may be damaged from witnessing the severe abuse of their siblings.

## GRANDPARENT VISITATION RIGHTS

*New Jersey Supreme Court Finds Custodial Parent's Limitation On Grandparent Visitation Rights Unreasonable Because Grandparents Proved That Such Limitation Would Likely Be Harmful To Children. Moriarty v. Bradt*, 827 A.2d 203 (N.J. 2003).

Grandparents challenged an appellate court decision that allowed Patrick Moriarty ("Moriarty"), the sole custodial parent of their grandchildren, to limit their grandparent visitation rights. The question for the court was whether the constitutional presumption that a parent has childbearing autonomy supercedes the grandparents' rights to visit with their grandchildren.

Moriarty married Julia Bradt ("Bradt") in 1987. The couple had two children, a son born in 1987 and a daughter born in

1990. Thereafter, the couple separated and Moriarty filed for divorce. Moriarty assumed custody of the children during the separation because Bradt had been hospitalized for drug abuse. Bradt's parents (Grandparents) intervened in Moriarty's divorce action to secure visitation rights to their grandchildren. The trial court granted Moriarty custody of the children and the grandparents' visitation rights.

The court's final divorce judgment, issued in 1993, granted Moriarty sole custody of the children. Bradt was granted supervised visitation with her children, under the condition that the visitation would take place in the grandparents' presence.

In August 1994, Bradt was granted unsupervised visitation with her children. Thereafter, the grandparents saw the children on most weekends when they visited their mother. As a result of several injuries the children suffered when visiting their grandparents, Moriarty raised concerns about the grandparents' ability to protect the children from harm. Additionally, Moriarty blamed the grandparents for Bradt's drug problem. The relationship between Moriarty and the grandparents grew increasingly strained over this time period.

After Bradt died of a drug overdose in 1999, the grandparents moved the court to allow the children to attend their mother's funeral, against the will of Moriarty. The court granted this motion and secured the grandparents' rights to regular visits with the grandchildren. After the parties had a dispute over holiday visitation, however, the court intervened and ordered evaluations of Moriarty, the grandparents, and the children in order to determine the best interests of the children. The diagnostic reports found that the grandparents offered great support to the children in the loss of their mother and recommended regular unsupervised grandparent visits once a month for two full days, as well as other recommended contact. In June 2000, Moriarty motioned the court to reduce significantly the visitation time for the grandparents.

In November 2000, the trial court ordered that the grandparents be allowed monthly visitation and one extended visitation period during the summer months. Moriarty appealed the decision, challenging the constitutionality of the New Jersey statute which provided for grandparent visitation. Additionally, Moriarty claimed that the trial court abused its discretion in refusing to institute the schedule that he,

as the sole custodial parent, had proposed. The appellate court reversed the trial court's decision and remanded for visitation as proposed by Moriarty, reasoning that a fit parent's right to limit grandparent visitation cannot be subject to attack.

The supreme court applied a two part analysis in denying Moriarty's proposed limitations on visitation. It found that the grandparents had properly proved, beyond a preponderance of the evidence, that Moriarty's proposed order could result in harm to the children. The court then assessed the proposed visitation order. The grandparents' dissatisfaction with the visitation proposal, coupled with the proven potential of harm to the children, trumped Moriarty's constitutional right to make autonomous decisions for his children. Thus, the New Jersey Supreme Court remanded the appellate decision and reinstated the visitation order of the trial court.

## PARENT'S RIGHT TO DIRECT CHILD'S EDUCATION LIMITED

*Second Circuit Court Of Appeals Affirmed District Court Decision And Held There Is No Fundamental Right To Excuse One's Child From Mandatory Public School Classes. Leebaert v. Harrington, 332 F.3d 134 (2ND. Cir. 2003).*

Leebaert and his son Corky are residents of Fairfield, Connecticut. During the 1998–1999 school year, Corky was a seventh-grade student at Roger Ludlowe Middle School. In a letter dated December 14, 1998, Leebaert informed Harrington, a school superintendent, that Corky would not participate in the health education program during the fourth quarter. Harrington responded to Leebaert, advising him that the health curriculum was mandatory and informing him that Corky could opt -out of the six classes relating to family-life instruction or AIDS education. Leebaert, Harrington, and school principal John Boyle continued their correspondence over the next few months. Leebaert repeatedly told the school officials that Corky would not be attending any part of the fourth quarter health curriculum; the school continued to inform him that he was required to attend general health curriculum classes. Corky was absent from the fourth quarter health curriculum classes and failed the course. On October 22, 1999, Leebaert filed suit against Harrington, the Fairfield Board of Education, and the Town of Fairfield, alleging that "the defendants deprived him of

his right to direct the upbringing and education of this minor child and his right to the free exercise of his religion in violation of the First and Fourteenth Amendments to the United States Constitution." The stipulated facts included an affidavit from Leebaert that matters in the health curriculum conflicted with his sincerely held religious beliefs.

The district court granted summary judgment for defendants and upheld the mandatory nature of the health curriculum on the ground that rational basis, rather than strict scrutiny, was the appropriate standard of review. Leebaert did not dispute that the rational basis test, if applicable, was met. Leebaert argued on appeal that the mandatory health curriculum must be subjected to strict scrutiny because a parent's right to direct the education of his or her children is fundamental.

The issue before the Second Circuit was whether the right to excuse one's son from mandatory public school classes is fundamental. Leebaert argued that it is, and claimed that the right is derived from the Supreme Court cases *Meyer v. Nebraska*, and *Pierce v. Society of Sisters*. The court did not believe that such a right could be read into these cases. The court followed an explanation of the cases by the Supreme Court, which stated that *Meyer* protected the subject matter taught at private school and that *Pierce* established a parental right to send children to a particular private school rather than a public school. The court cited cases from other circuits which held that the parental right to direct the upbringing and education of children does not include a right to exempt one's child from public school requirements. The court stated that "Meyer, Pierce, and their progeny do not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught."

Next, the court addressed Leebaert's argument that because his claims were based on a combination of the Free Exercise Clause of the First Amendment and his parental rights under the Due Process Clause, they required strict scrutiny. Leebaert relied on dicta from the Supreme Court opinion *Employment Division, Department of Human Resources of Oregon v. Smith*, and on opinions from several circuits which stated that *Smith* mandates stricter scrutiny for hybrid situations than for a free exercise claim standing alone. The court decided not to adopt



this approach, and stated that “we can think of no good reason for the standard of review to vary simply with the number of constitutional rights that the plaintiff asserts have been violated. Therefore, at least until the Supreme Court holds that legal standards under the Free Exercise Clause vary depending on whether other constitutional rights are implicated, we will not use a stricter standard to evaluate hybrid claims.”

The court was also not persuaded by Leebaert’s argument that his claim was analogous to that of the Amish parents in *Wisconsin v. Yoder*. The court stated that Leebaert’s free exercise claim was qualitatively distinguished from the claim in *Yoder*. In *Yoder*, the threat to the Amish community’s way of life, posed by a compulsory school attendance statute, was central to the holding. The court did not think that *Yoder* governed Leebaert’s claim because

Leebaert did not allege that his community’s entire way of life was threatened by Corky’s participation in the mandatory health curriculum. The court affirmed the judgment of the district court granting summary judgment for defendants.

**Correction:** In the Summer 2003 *Guardian*, the *Care and Protection of Georgette* case was incorrectly labeled as “GAL’s Role Defined”. The case concerns the role of counsel for minors, not GALs.

#### GUARDIAN CASES — NOTICE TO READERS

Decisions reported in *The Guardian* 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.

Cases reported in *The Guardian* 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.

## The Ninth Annual Rocky Mountain Child Advocacy Training Institute 2004

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# The NACC Youth Empowerment Column

## TIPS FOR YOUTH SPEAKING OUT

Our Youth Empowerment article for this newsletter comes from the Youth Leadership Advisory Team, a group of Maine youth in care, ages 14–21, who educate the government, general public, caregivers, and peers regarding the needs of children and young adults in the child welfare system. Similar to the California Youth Connection group, YLAT members work to create positive changes in the child welfare system, focusing on creating safety, comfort and opportunities for all youth in care. To find out more about YLAT, visit <http://www.ylat.org/>.

As the NACC and its members encourage young people involved with the court system to speak out about their experiences, the YLAT has some practical suggestions about public speaking.

### IN THE SPOTLIGHT: TIPS AND STORIES FROM YOUTH WHO KNOW\*

#### *Hints for speaking in public:*

1. Make sure you know who your audience is and tailor your remarks to them.
2. Be prepared. Only the most experienced and knowledgeable people speak effectively “off the top of their heads”.
3. Write out your comments/testimony or use note cards to remember major points.
4. Keep your comments to three points and summarize those major points throughout the presentation.
5. Combine factual information with personal stories.
6. If you are nervous, acknowledge your nervousness when you first start to speak or act confidently and you will begin to feel less anxious.
7. Before you start to speak, take a deep breath, reduce negative self-talk and visualize the speech going well. Hear the applause at the end of your speech.
8. Expect the unexpected. You should always be prepared to answer questions.

#### *Tips for speaking with the media:*

1. Be careful what you say, there's no such thing as “off the record”.
2. Be conscious of your appearance.
3. If you are being interviewed, focus on two or three of your most important points.
4. Always be accurate.
5. Be able to tell a story.

#### *Experienced youth*

*“Being published is a great way to get issues out there for people to notice and talk about. Hopefully you get the chance to spread awareness.” – Crystal C.*

*“I was a little nervous being interviewed. The most helpful advice that was given to me was to think of three points that you want people to hear. Remember that you are the expert of your own experience, and as long as you are speaking from your own experience, you ARE the expert. This might be the hardest skill when dealing with the media. While it is important not to dismiss the shortcomings of the system, it is equally important not to forget the successes of the system.” – Shannon H.*

#### *From Fear to Success: An Interview with Sheena B. by Heidi K.*

On February 19, 2003, at the 6th Annual Youth Summit, Louise Tate facilitated a workshop on public speaking. Youth Summit participants learned many tips on public speaking and then had the opportunity to use these tips while speaking to the panel of guests (Attorney General Steve Rowe, Kevin Concannon, Chris Beerits from DHS and Assistant Attorney General David Hathaway) during the Fireside Chat.

I spoke with Sheena B. about her experience as one of the speakers. She said, “It was pretty scary. These were important people. I was not sure if I would say the right or wrong thing. I wanted to make a good impression.” At the Fireside Chat when it was time for her to present for her group, Sheena decided she would be more comfortable if her fellow group members came with her to the podium. She asked each of them to stand with her because the support of the group helped to calm her nervousness.

When I asked Sheena what tips she found most helpful, she said that practicing definitely helps. Using note cards is also very helpful. She also recommended using a personal story to give the audience a better idea of the point(s) being made. In addition to these valuable tips, Sheena emphasized that every speaker should remember to breathe before taking the podium. Although she was nervous at the start, Sheena said she was more confident after the tips and practice time she received during Louise’s workshop.

*Thank you to NACC member Margaret Semple from Portland, Maine for informing us of the work of the YLAT.*

\*This article originally appeared in the *Quarterly Advocate*, Vol. 2, Issue 1, Spring 2003.  
Reprinted with permission from YLAT, Youth Leadership Advisory Team.



## Federal Policy Update *by Miriam A. Rollin, JD*

### ■ FY 2004 FUNDING

There has been little progress on federal funding decisions since the last *Guardian* update. On September 10, the Senate did complete floor action on the Labor/Health and Human Services/Education Appropriations Bill for FY04, but there were no significant changes made on the Senate floor in children's program funding. That bill has since awaited completion of House/Senate Conference Committee action (to resolve the differences between House-passed and Senate-passed funding levels).

As reported in the last *Guardian*, the House and Senate L/HHS/Ed bills adopted the President's budget proposals to level-fund most child-welfare programs, although the bills failed to include the President's proposed increases in the "Promoting Safe and Stable Families" and the Independent Living vouchers for education and training. Fortunately, both the House and Senate bills rejected the President's proposed 40% cut in after-school program funding, but no new funds were provided to enhance the quality of local after-school activities or to reach more eligible kids.

Since the last *Guardian* update, there has been no further progress on the Commerce/Justice/State Appropriations Bill for FY04; the bill has not yet been considered on the Senate floor (the House had passed its bill in late July).

Also as reported in the last *Guardian*, the House C/J/S bill restored most of the President's proposed cut in Title V (Delinquency Prevention) funding (the House level is \$92 million, compared to previous years' funding at \$95 million), but restored only \$100 million for the Juvenile Accountability Block Grant (JABG) program (previously funded at \$249 million). Even worse, the Senate Committee bill funded the Title V Prevention Program at only \$50 million, and failed to provide any funding for JABG.

In the absence of completed FY04 appropriations bills for most government agencies, there have been a series of "Continuing Resolutions" to keep the government operating since October 1, the beginning of the fiscal year.

### ■ SOCIAL SERVICES BLOCK GRANT

As reported in the last *Guardian* update, the Social Services Block Grant (SSBG) is the largest single source of federal support for child welfare services (bigger than "Child Welfare Services" or "Promoting Safe and Stable Families" or the "Child Abuse Prevention and Treatment Act" programs). Further, child welfare expenditures are the biggest category of SSBG spending (other categories include child care, youth services, etc.).

Restoration of SSBG from the current level of \$1.7 billion to the previous level of \$2.8 billion is included in the federal charitable aid bill ("CARE Act", S. 476) that was approved by the Senate, by a vote of 95-5, in April. In September, the Ways and Means Committee and later the full House passed a charitable aid bill (H.R. 7) that fails to restore SSBG funding. The legislation is awaiting House/Senate Conference to resolve the differences between the House- and Senate-passed bills, including the SSBG funding restoration provision.

### ■ WELFARE/CHILD CARE LEGISLATION

As noted previously in the *Guardian*, the House passed legislation to reauthorize welfare reform (TANF) and child care (CCDBG) programs (H.R. 4) in mid-February. The Senate Committee on Health, Education, Labor and Pensions (HELP) — which has jurisdiction over the discretionary CCDBG funding authorization — reported out reauthorization legislation (S. 880) in April.

Since the last *Guardian*, the Senate Finance Committee reported out their welfare reform bill (including mandatory child care) in September. Both the Senate Committee and House-passed bills include substantial increases in work requirements for welfare recipients, but only minor increases in child care funding (not even adequate to account for inflation). Senate floor action for the Finance Committee bill (which is expected to be combined with the HELP Committee bill) is not expected in the near future. However, when it does come to the Senate floor, there is expected to be an amendment by Senators Snowe (R-ME) and Dodd (D-CT) to provide for a significant increase in mandatory child care funding.

### ■ RUNAWAY AND HOMELESS YOUTH, MISSING CHILDREN REAUTHORIZATION

Legislation to reauthorize the Runaway and Homeless Youth Act and the Missing Children's Act was passed by the Senate at the end of September (it had been passed by the House in mid-May), and was enacted as Public Law No. 108-96 on October 10. The bill makes minor changes in these programs, keeping their overall purpose and structure intact.

### ■ FAMILY OPPORTUNITY ACT

The Family Opportunity Act (S. 622) was approved by the Senate Finance Committee on September 10 and is awaiting Senate floor action. The bill will provide assistance for states to enable adoptive parents of special needs children to purchase (on a sliding-fee scale) Medicaid health coverage. The House has not yet taken action on this legislation (H.R. 1811).

## MENTALLY ILL OFFENDER TREATMENT AND CRIME REDUCTION ACT

In late October, the Senate Judiciary Committee approved — and the full Senate passed soon thereafter — H.R. 1194, Sen. DeWine's Mentally Ill Offender Treatment and Crime Reduction Act. The bill provides a modest new funding authorization to foster local collaborations to ensure that mental health treatment is provided in appropriate settings, thereby avoiding unnecessary and ineffective use of criminal and juvenile justice system resources.

## OTHER LEGISLATION OF INTEREST (NO ACTION SINCE LAST GUARDIAN)

- The Lifespan Respite Care Act, to assist families in accessing affordable respite care (S. 538), had passed the Senate in April. The House has not yet taken action on this bill.
- The President's proposed Foster Care Block Grant — the most potentially damaging proposal in many years — has not yet been introduced as a bill. The proposal would allow states to elect "fewer administrative burdens" and "flexible grants" in exchange for losing the open-ended entitlement and child protection guarantees in IV-E foster care.

- There has been no action, yet, on the Child Protective Services Improvement Act (H.R. 1534, introduced in April by Representatives Miller and Cardin as an alternative to the Administration-proposed foster care block grant).
- Neither the House nor the Senate have taken any action on legislation to amend Title IV-E of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas (H.R. 443, S. 331).
- No Hill action has occurred, yet, on Indian Child Welfare Act amendments legislation (H.R. 2750, introduced in July).
- There has also been no action, yet, on the Adoption Equality Act (S. 862), to promote the adoption of children with special needs by "de-linking" their eligibility from the old AFDC (the predecessor to Welfare Reform).
- Congress has not yet moved forward a bill to provide for the protection of unaccompanied "alien" (non-citizen) children, including ensuring access to counsel (S. 1129, introduced in May by Sen. Feinstein and a bi-partisan group of cosponsors; and H.R. 3361, introduced in October by Rep. Lofgren and a bi-partisan group of cosponsors).
- The Child Protection and Alcohol and Drug Partnership Act (S. 614, introduced in March by Senators Snowe and Rockefeller) has also languished without action in Congress.

Other relevant bills without apparent signs of life include:

- Several bills providing for loan forgiveness for personnel in the child welfare system (for social workers: S. 409 by Senators DeWine and Rockefeller; and House companion bill H.R. 734; for attorneys: S. 407 by Senators DeWine and Rockefeller; and for child welfare workers, certain teachers, nurses, etc.: H.R. 1306 by Rep. Miller).
- A bill (H.R. 2437, the Child Protective Services Workforce Improvement Act sponsored by Rep. Stark, inter alia) to provide grants to state child welfare systems to improve quality standards and outcomes, and to authorize loan forgiveness for certain students who choose to become child welfare workers.
- A bill (H.R. 1378) to amend Title IV-E of the Social Security Act to increase payments to states for expenditures for short-term training of staff of certain child welfare agencies.

**Don't forget:** you can use the web to "surf" bills, committee reports, floor debate and votes, committee assignments, etc. Just go to [thomas.loc.gov](http://thomas.loc.gov) and you'll find what you need! Also, the U.S. Capitol Switchboard (to contact any Senator or Representative) can be reached at (202) 225-3121.

# NACC Practice Tips

## PREPARING CASEWORKERS TO TESTIFY

by Frank Vandervort, JD

Program Manager, Michigan Child Welfare Law Resource Center

Testifying can be a difficult and intimidating experience for caseworkers unfamiliar with the adversarial environment of the courtroom. They often experience the courthouse as a hostile and intimidating environment where every effort undertaken to assist a client may be critically analyzed in the most confrontational manner. This type of professional discipline is unfamiliar to and at odds with most caseworkers' training in cooperative working environments, collaborative problem solving and strength based professional practice.

In this brief article I suggest means by which attorneys may

prepare such witnesses to testify. Putting in the time to become acquainted with the caseworker-witness, to understand her or his anxieties, and to prepare the witness typically pays off when the witness performs in a way that helps you prove your case.

### THE FIRST RULE

When providing testimony, it is critically important that caseworkers understand that the first — and most important — rule is to be prepared. There is no substitute for doing the exacting and sometimes tedious work of preparing a case for the courtroom.

**UNDERSTANDING THE LEGAL PROCESS**

Being an effective witness will be enhanced if the caseworker understands the legal process generally and the specific issues to which the court must respond in a particular hearing. At each stage in the child welfare legal process, the court must answer one or two specific questions. For example, at a preliminary hearing the court typically has to answer two questions, whether to permit the child protection petition to proceed toward trial and whether to remove the children from the parental home.

Many caseworkers, especially those with less than several years experience, may not fully understand this process, the point in the process at which they are asked to testify or the impact their testimony may have on the court's decision-making at a specific hearing. Helping caseworkers understand the legal process and how their testimony fits into the overall process of the case can help them focus on what is important at that particular stage in the proceeding and to organize their case preparation at maximizing their impact upon the court. Thus, when possible, attorneys should meet with the caseworker before a hearing to prepare the worker's testimony. You should outline the nature of the hearing and the decisions the court must make at the conclusion of the hearing. You will want to suggest topics for testifying, which may include things such as what services were offered, how the parent and child responded to those services, the nature and extent of parent-child contact, and specific recommendations for the hearing if recommendations are appropriate.

**THE FACTS**

It is critically important that the caseworker have command of the basic facts of the case and be able to recall them while under the pressure of testifying. The attorney will want to reiterate to the caseworker the need to know these facts—the date on which the agency became involved in the family, the services that were provided to preserve the family, or, if no such services were provided, why, the date the children entered foster care, and so on—and should consider reviewing them with the caseworker before the hearing.

For facts beyond the basics, the worker should be advised to review the agency file and have a general sense of these more detailed facts, and to be able to locate them in the file or to have a sheet of notes to which she or he can refer. For example, if a parent's failure to provide drug screens upon the worker's request will be an issue at the hearing, the worker will need to be able to testify to the specific dates on which screens should have been provided, whether the screen was provided on each of those dates, and, if not, the parent's explanation for the failure as well as the worker's response to the parent's rationale.

**THE RULES OF EVIDENCE**

In many jurisdictions the rules of evidence applicable to child protection proceedings vary depending upon the stage in the proceeding. As part of preparing the witness, you should discuss with the caseworker whether the rules apply and to what extent. You may need to discuss any difficult evidentiary issues—such as the use of tender years hearsay exceptions. Doing so will help you and the caseworker to have a mutual understanding of what evidence can be offered for the court's consideration. It will also allow you to develop plans for how important information will be put before the court. Caseworkers, who often have only a working knowledge of the rules of evidence, may have misconceptions about what they can and cannot say during a particular hearing. The lawyer should guide the worker to a more complete understanding of the evidentiary issues at the particular hearing.

**HELPFUL TOOLS FOR TESTIFYING**

In some cases it may be helpful for the child's attorney to know about a caseworker's background and to communicate some part or parts of that background to the court. For instance, in some jurisdictions a caseworker can be deemed an expert at some or all stages of a child protection proceeding. Reviewing your jurisdiction's rules and practices with the caseworker will help the worker prepare for this possibility. It may be helpful for a worker to prepare a resume outlining education (including continuing education), work experience and related matters for presentation to the court in an effort to convince the court

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that it should accept the worker as an expert in some aspect of the case.

Other tools may include a case timeline which graphically maps out important dates and activities. Working with the caseworker, the child's attorney may be able to develop such tools for testifying into effective courtroom exhibits. In a complicated Munchausen syndrome by proxy case, for instance, it may be helpful to assist the caseworker in putting together a timeline that details each medical visit, the medical professional seen, the presenting complaint, the visit's outcome, and its impact upon the child. This timeline could then be enlarged and used as an exhibit at trial or in review hearings. Similar testimonial aids and demonstrative evidence can be used to show what services were offered to family members, when they were offered, how they were responded to, and what effect they had.

**CONNECTING UP FACTS AND RECOMMENDATIONS**

Caseworkers at times make recommendations that seem disconnected from any facts in the case. For example, while testifying regarding the facts of a case, the worker may make the statement that there is a lack of adequate bonding between parent and child and that the parent is developmentally delayed. Later in the testimony, the worker may recommend an intensive, long-term, hands-on parenting skills class. If the facts-parental developmental delay and an assessed lack of bonding-are disconnected from the recommendation, it may not be understood why this particular service is being suggested. Encourage workers to connect up facts, assessments and recommendations that may otherwise seem disjointed: "Because the mother is mildly developmentally delayed and has not adequately bonded with the child, I am recommending that she attend a long-term, hands-on parenting skills class."

Related to this suggestion is the recognition that caseworkers fulfill an educational role for the trial court-workers and lawyers should not assume that because the judicial officer hears and understands the facts as presented, that the conclusions or recommendations will directly follow.

**FINAL WORDS OF WISDOM**

It is always helpful to remind caseworkers of basic rules regarding testifying:

- Dress and act professionally at all times.
- Be scrupulously honest, do not shade the truth to help your client or your case, doing so will only destroy your credibility.
- Avoid jargon. If you use it, explain it.
- Listen carefully to each question. If you do not understand a question (or are at all unsure) say so.
- If you don't know the answer, say so.
- If the question asks for an opinion outside your ability to answer, say that you are not qualified to answer it.
- Strive to appear rational, thoughtful, and objective. It may be helpful to take a moment to think about each question before answering it. Doing so will enhance your credibility.
- If it would be helpful to expand upon an answer, do so. On the other hand, do not provide a long answer when a short answer will suffice.

**CONCLUSION**

More times than not, child welfare lawyers and caseworkers have common goals in a case. In accepting this responsibility and making a conscious effort to prepare the caseworker, attorneys can best serve their clients.

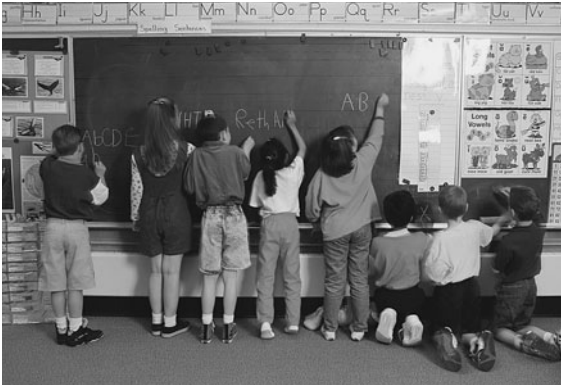
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## Children's Law News

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For more information, go to [NACCchildlaw.org/training/RMCATI.html](http://NACCchildlaw.org/training/RMCATI.html).

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### PUBLICATIONS

**Access to Justice for Children, the 2003 Edition of the NACC Children's Law Manual Series.** The manual is 463 pages and includes 25 articles covering a wide range of children's legal issues including The Development of Children's Law and Practice, Making Sensible Post-ASFA Placement Decisions, Youth Empowerment Programs, Juvenile Competence to Stand Trial, Adoption Subsidies, International Custody, Corporal Punishment, Visitation in Dependency Cases, Preparing Caseworkers for Trial, Expert Testimony in Children's Cases, and more. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC or using the Publications Order Form on the back page of this issue, or online at [www.NACCchildlaw.org/trainings/manuals.html](http://www.NACCchildlaw.org/trainings/manuals.html).

**Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation,** Technical Assistance Brief and Bulletin from the National Council of Juvenile and Family Court Judges, (775) 327-5300, [ppcd@ncjfcj.org](mailto:ppcd@ncjfcj.org).

**Native American Resource Directory for Juvenile and Family Court Judges,** Technical Assistance Brief and Bulletin from the National Council of Juvenile and Family Court Judges, (775) 327-5300, [ppcd@ncjfcj.org](mailto:ppcd@ncjfcj.org).

**Tough Problems, Tough Choices: Guidelines for Needs-Based Service Planning in Child Welfare,** a product of the Casey Outcomes and Decision-Making Project, distributed by the American Humane Association, 1-866-242-1877. Copies can also be downloaded from [www.american-humane.org](http://www.american-humane.org), or [www.aecf.org](http://www.aecf.org).

**Juvenile Justice: Policies, Practices, and Programs,** by Ted Rubin, JD / MSW. 2003 Civic Research Institute. 21 day review then \$125. Call 609-683-4450.

**Child Protective Services: A Guide for Caseworkers,** U.S. Dept. of HHS Children's Bureau Child Abuse and Neglect User Manual Series. Free online at [www.calib.com/nccanch/pubs/usermanual.cfm](http://www.calib.com/nccanch/pubs/usermanual.cfm) or call 800-FYI-3366.

**A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice,** U.S. Dept. of HHS Children's Bureau Child Abuse and Neglect User Manual Series. Free online at [www.calib.com/nccanch/pubs/usermanual.cfm](http://www.calib.com/nccanch/pubs/usermanual.cfm) or call 800-FYI-3366.

**Legal Representation of Children: Recommendations and Standards of Practice for the Legal Representation of Children in Abuse and Neglect Cases,** by NACC. This document provides comprehensive guidance to children's attorneys including descriptions of the attorney's role and duties. The NACC encourages jurisdictions and courts to use this publication to create local guidelines that will improve the quality of legal representation in your jurisdiction. To obtain a copy, contact the NACC or use the publication order form in this issue. The two documents contained in this publication are also available online at: [www.naccchildlaw.org/training/standards.html](http://www.naccchildlaw.org/training/standards.html).

**The Children's Legal Rights**

**Journal (CLRJ)** is a quarterly professional practice journal for child welfare, juvenile justice, and family law professionals.

Now in its 22nd year, CLRJ is published by William S. Hein & Co., Inc., under the editorial direction of the ABA Center on Children and the Law, Loyola University of Chicago School of Law, and the National Association of Counsel for Children. CLRJ is indexed in the *Current Law Index* and *Index to Legal Periodicals* and runs approximately 60 pages per issue. The annual subscription rate is \$67 but is available to NACC members at a 30% discount (\$47 annually). To subscribe, contact Hein toll free at 800-828-7571, ISSN 0278-7210, or contact the NACC for more information.



**NACC's Better Public Policy for Children, Youth and Families — An Advocacy Guide,** by NACC Policy Representative Miriam Rollin. A comprehensive guide to policy advocacy for children and families. Available on line at [www.NACCchildlaw.org/policy/policy\\_guide.html](http://www.NACCchildlaw.org/policy/policy_guide.html), or call the NACC at 888-828-NACC.

## NEWS

**Arthur "Rusty" Simonds**, husband of Massachusetts NACC Board Member Kathe McCaffrey, died on October 20, 2003. Rusty was a wonderful man whom the NACC family loved from the first time we met him. He was a distinguished scholar and adored professor at the University of Massachusetts at Boston for over 30 years. Our thoughts and prayers are with Kathe. The family has designated the NACC as a recipient of memorial gifts in Rusty's name. NACC gifts can be made by contacting the NACC or online at [www.naccchildlaw.org/about/donate.html](http://www.naccchildlaw.org/about/donate.html).

**The NACC Megan Louise Furth Youth Empowerment Fund** was created to honor the life of Megan Furth by promoting the Youth Empowerment Initiative of the National Association of Counsel for Children. Megan was a remarkable young woman who died July 30, 2003 at the age of 31. The NACC Youth Empowerment Initiative was created to develop the concept of children and youth as valuable persons and citizens with inherent legal and human rights. The NACC promotes youth participation in NACC decision-making and in the societal and governmental structures that affect young people. Youth serve on the NACC Board of Directors, teach at NACC trainings, and participate in the operation of local and national child welfare systems. The fund was created on September 1, 2003 by Megan's mother, Donna Wickham Furth, with an initial contribution of \$25,000 and a promise to match, dollar for dollar, contributions made to the fund during its first year; giving donors an opportunity to double the impact of their contributions to the NACC. Funds will be used to support youth participation in empowerment program activity including paying youth travel and lodging expenses for meetings and trainings. All contributions to the Megan Louise Furth Youth Empowerment Fund are tax deductible. Contributions can be made by check or credit card and by phone (888-828-NACC), fax (303-864-5351), email ([advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org)), or online ([www.NACCchildlaw.org/about/donate.html](http://www.NACCchildlaw.org/about/donate.html)). Make checks payable to "NACC MLF Fund."

### NACC 2004 Outstanding Legal

**Advocacy Award.** Nominations for the 2004 award are being accepted now. The award is given annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. Send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 340, Denver, CO 80218. Contact the NACC for more information. The deadline is July 1, 2004.

### NACC 2004 Law Student Essay

**Competition** The NACC is accepting essays for the 2004 Law Student Essay Competition. The winning essay will be published in the 2004 Children's Law Manual, and the winner will be given \$100, a one-year NACC membership and a scholarship to the 2004 conference in Las Vegas. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness and quality of research and writing. Mail essays with contact information to NACC Student Essay Competition, 1825 Marion Street, Suite 340, Denver, CO 80218 by July 1, 2004. Essays should be submitted on disk together with a hard copy.

### 2004 NACC Outstanding Affiliate

**Award** Nominations are being accepted for the NACC 2004 Outstanding Affiliate Award. The award will be presented to the affiliate that best fulfills the mission of the NACC on the local level. The mission of the NACC is to achieve the well being of children by promoting multidisciplinary excellence in children's law, establishing the legal interests of children and enhancing children's legal remedies. Affiliates should submit an application in letter form together with supporting documentation to NACC Affiliate Award, 1825 Marion St., Suite 340, Denver, CO 80218. Submission Deadline is July 1, 2004.

### Join the NACC Children's Law Listserv Information Exchange.

All NACC members are encouraged to become part of the NACC Listserv which provides a question, answer and discussion format for a variety of children's law issues. It is an excellent way to improve your advocacy skills and share your expertise with your NACC colleagues. To join, simply send an e-mail to

[advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org) and say "Please add me to the NACC Listserv."

### NACC Web Site / Member

**Directory Now Open to Public.** Visit the NACC's member services web site at [www.NACCchildlaw.org](http://www.NACCchildlaw.org). The site is comprised of four sections: About the NACC; Technical Assistance and Training; Children and the Law; and Policy Advocacy. The site includes members-only sections that allow you special access to resources. Passwords are mailed to all NACC members with their welcome packets. Contact the NACC if you don't know your password. Additionally, the NACC online membership directory, formerly a member only section, is now open to the public. Please contact the NACC if you do not want your listing made public.

### The NACC National Child Advocacy Resource Center is available for member use.

The Resource Center provides referrals, resource information, and consultation. NACC members may access the resource center online ([www.NACCchildlaw.org](http://www.NACCchildlaw.org)), by phone (toll-free 1-888-828-NACC), fax (303/864-5351), and e-mail ([advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org)).

### NACC Members Get Members

**Program.** Earn "NACC Bucks" by nominating your colleagues for membership. Participate in the NACC "Members Get Members" program and earn valuable NACC Bucks redeemable on your NACC member dues, publications, and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children's Law Conference (a \$300 value). Complete and return the form on page 12 of this issue and start earning now.

## AMICUS CURIAE ACTIVITY

**K.M. v. E.G., Court of Appeals of California, Fifth Appellate District.** The NACC and the Northern California Association of Counsel for Children joined in filing an amicus curiae brief in this case arising from a parentage dispute between former domestic partners over



twin daughters born by *in vitro* fertilization. The amici argued that the trial court erred in failing to protect the interests of the seven-year-old twins by not appointing counsel or guardians *ad litem* for them, nor recognizing them as parties to the action.

## JOBS

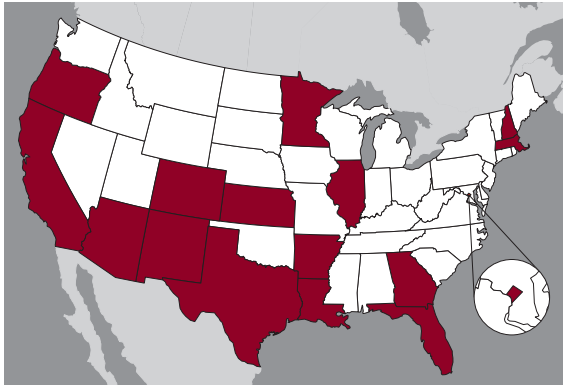
**Division Director, Casey Family Services, White River Junction/Waterbury, VT.** This

position will provide vision, leadership, and direction for the Vermont Division. Will manage the operations including staff and a budget of \$3.9 million. A minimum of 10 years progressive experience in child welfare field. An MSW is required, also knowledge and adherence to NASW Code of Ethics. Contact Rhyan Zweifler; Kittleman & Associates, 300 South Wacker, #1710, Chicago, IL 60606. Ph: 312-986-1166, Email: rzweifler@kittleman.net.

## Visit the NACC Child Law and Advocacy National Job Web Site.

You can access the information online at [www.NACCchildlaw.org/childrenlaw/jobs.html](http://www.NACCchildlaw.org/childrenlaw/jobs.html). If you wish to post a job on the web site, follow the online directions or call the NACC at 1-888-828-NACC. Please Send (mail/email/fax) Children's Law and Advocacy Job Openings to the NACC.

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 340, Denver, CO 80218  
Fax: 303-864-5351 • E-mail: [advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org).



## Affiliate News

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

### ARIZONA

**Arizona Association of Counsel for Children (AACC)\***  
Ann M. Haralambie, President  
3499 N. Campbell, #901  
Tucson, AZ 85719  
Phone: 602/327-6287 Fax: 520/325-1374  
Email: [acacnacc@aol.com](mailto:acacnacc@aol.com)  
Website: [members.aol.com/naccaz](http://members.aol.com/naccaz)

### ARKANSAS

**Arkansas Association of Counsel for Children (AACC)\***  
Janet Bledsoe, President  
121 N. 7th St.  
Rogers, AR 72756-3742  
Phone: 501/631-7136

### CALIFORNIA

**Northern California Association of Counsel for Children (NCACC)\***

*Recipient of the NACC Outstanding Affiliate Award (2001)*  
Christopher Wu, President  
AOC/ Center for Children, Families and the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102  
Phone: 415/865-7721 Fax: 415/865-7217  
Email: [Christopher.Wu@jud.ca.gov](mailto:Christopher.Wu@jud.ca.gov)

**Los Angeles Affiliate of the National Association of Counsel for Children (LANACC)\***  
*Recipient of the NACC Outstanding Affiliate Award (2001)*  
Tamatha Schreinert, President  
201 Centre Plaza Drive, Suite 8  
Monterey Park, CA 91754  
Phone: 323-980-8753 Fax: 323-980-8708  
Email: [schreinertt@dclsinc.org](mailto:schreinertt@dclsinc.org)

### COLORADO

**Colorado Association of Counsel for Children (CACC)\***  
John Ciccolella, President  
405 South Cascade Avenue, Suite 205  
Colorado Springs, CO 80903  
Phone: 719/636-1561 Fax: 719/444-0155  
Email: [John@coloradofamilylaw.net](mailto:John@coloradofamilylaw.net)

### FLORIDA

**Florida Association of Counsel for Children (FACC)\***  
David Bazerman, Interim President  
Legal Aid Service of Broward County, Inc.  
609 SW 1st Ave.  
Fort Lauderdale, FL 33301  
Phone: 954-765-8957  
Email: [dbazerman@legalaid.org](mailto:dbazerman@legalaid.org)

## GEORGIA

### Georgia Association of Counsel for Children (GACC)\*\*

Dee Simms  
Office of the Child Advocate  
3330 Northside Drive, Suite 100  
Macon, GA 31210  
Phone: 478-757-2670 Fax: 478-757-2666  
Email: [dsimms@gachildadvocate.org](mailto:dsimms@gachildadvocate.org)

## ILLINOIS

### Illinois Association of Counsel for Children (IACC)\*

Contact the NACC for information

## KANSAS

### Kansas Association of Counsel for Children (KACC)\*

Larry R. Rute, President  
212 SW 8th Avenue, Suite 102  
Topeka, KA 66603  
Phone: 785/357-1800 Fax: 785/357-0002  
Email: [staff@adrkscoxml.com](mailto:staff@adrkscoxml.com)

## LOUISIANA

### NACC Student Chapter of Tulane Law School\*\*\*\*

David Katner, Faculty Advisor  
Tulane Law School

7031 Freret Street  
New Orleans, LA 70118  
Phone: 504/865-5153 Fax: 504/862-8753  
Email: [Dkatner@clinic.law.tulane.edu](mailto:Dkatner@clinic.law.tulane.edu)

## MASSACHUSETTS

### Central & Western Massachusetts Association of Counsel for Children (CWMACC)\*

Larri Tonelli Parker  
490 Shrewsbury St., Suite C  
Worcester, MA 01604  
Phone: 508/795-0200 Fax: 508/791-0325  
Email: [lamparker@aol.com](mailto:lamparker@aol.com)

## MINNESOTA

### Minnesota Association of Counsel for Children\*

Contact the NACC for information.

## NEW HAMPSHIRE

### New Hampshire Chapter of the National Association of Counsel for Children (NHNACC)\*

Contact the NACC for Information.

## NEW MEXICO

### New Mexico Association of Counsel for Children (NMACC)\*

Contact the NACC for information.

## OREGON

### Oregon Association of Counsel for Children (OACC)\*

Contact the NACC for Information

## TEXAS

### Central Texas Association of Counsel for Children (CTACC)\*

Bree Buchanan, President  
727 East Dean Keeton Street  
Austin, TX 78705  
Phone: 512/232-1293  
Email: [Bbuchanan@mail.law.utexas.edu](mailto:Bbuchanan@mail.law.utexas.edu)

### Houston Association of Counsel for Children / Student Chapter (HACC)\*\*\*\*

Ellen Marrus, Faculty Advisor  
University of Houston Law Center  
100 Law Center  
Houston, TX 77204  
Phone: 713/743-0894  
Email: [Emarrus@uh.edu](mailto:Emarrus@uh.edu)

## WASHINGTON, DC

### Washington DC Metro Chapter of NACC\*

Anne E. Schneiders, President  
2828 Wisconsin Avenue NW, #314  
Washington, DC 20007  
Phone: 202/363-7916 Fax: 202/244-7693  
Email: [aeschild@aol.com](mailto:aeschild@aol.com)

\* Officially Chartered NACC Affiliate

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NACC Affiliates are encouraged to send announcements and news of their activities and meetings to The Guardian.

Deadlines for submission are February 1, May 1, August 1, and November 1.

## NACC – Application for Membership

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Please send additional information on the NACC.

Please send information on establishing an affiliate.

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<input type="checkbox"/> Moving from Sympathy to Empathy (2001)	\$20	\$25
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<input type="checkbox"/> Child Advocacy at a Crossroads (1996)	\$20	\$25
<input type="checkbox"/> Children's Law, Policy & Practice (1995)	\$20	\$25
<input type="checkbox"/> Current Issues in Pediatric Law (1993)	\$20	\$25

### Other Publications:

<input type="checkbox"/> The Child's Attorney, by Haralambie Pub. ABA (1993)	\$39	\$49
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The NACC office receives many requests for legal services. Because the NACC does not provide direct legal services, we need to refer these people to counsel. Please fill out the following form and return it to the NACC so that we can include you in our referral network. Non-attorneys are also asked to participate.

### AREAS OF PRACTICE:

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| <input type="checkbox"/> delinquency, status offenses | <input type="checkbox"/> civil litigation              |
| <input type="checkbox"/> custody, visitation          | <input type="checkbox"/> mental health                 |
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