

THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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NACC 28th National Children's Law Conference
Hollywood Renaissance Hotel, Los Angeles, CA
August 25–28, 2005

NACC
DENVER COLORADO

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**Mission**

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.

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THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



Year-End Director's Message

THE NACC 2005–2010 STRATEGIC PLAN

by Marvin Ventrell, NACC Executive Director

2004, the NACC's 27th year, was a busy and productive one culminating in the approval of the NACC's next strategic plan which will carry the organization to 2010. Every five years, the NACC Board and Staff evaluate the NACC's position and develop a new operating plan which defines the association's mission and objectives. The 2005–2010 plan provides that the NACC's mission is to:

- **Strengthen the Delivery of Legal Services for Children**
The NACC works to ensure that children are provided with well resourced, high quality legal counsel when their welfare is at stake
- **Enhance the Quality of Legal Services Affecting Children**
The NACC establishes standards of practice and provides training, education, and technical assistance to promote specialized high quality legal services
- **Improve Courts and Agencies Serving Children, and**
The NACC promotes systemic improvement in our child serving agencies and court systems
- **Advance the Rights and Interests of Children**
The NACC promotes law and policy that advance the welfare of children

The plan then sets forth eight strategic goals designed to achieve the mission:

1. **Enhance NACC effectiveness through a large, stable, and diverse membership.**
2. **Establish and maintain the practice of law for children as a full-time legal specialty.**
3. **Improve and support the practice of law affecting children through education, training, technical assistance and the creation of comprehensive law offices.**
4. **Achieve the NACC's mission through federal, state, local, and court policy advocacy.**
5. **Promote the welfare of children through youth empowerment.**
6. **Promote an effective, high quality juvenile court judiciary.**
7. **Enhance association effectiveness through collaboration with related child advocacy programs.**
8. **Enhance the welfare of children through litigation programs.**

In turn, these goals give rise to objectives and implementation actions in the form of programs including the NACC Resource Center, Attorney Certification, the Children's Law Office Project, Training and Technical Assistance, Membership Services, Amicus Curiae, and Policy Advocacy. A chart detailing NACC objectives and corresponding programs, and detailed information on the programs is available at www.NACCchildlaw.org.

We are pleased with the new plan. It should guide us well and help us produce the membership services you value while building the practice of law for children and families. On behalf of the NACC Board and Staff, I want to thank each of our 2,000 members across the country for your participation in and support of the organization this year. We look forward to serving as your professional membership association again next year. We encourage our members to be active in the association and we hope to see you at our 28th National Children's Law Conference in Los Angeles. ■

Happy Holidays!



NACC Officer and Board of Director Elections

The NACC is governed by a 23-member Board of Directors, each member serving a six-year term. The Board Officers (President, Vice President, Secretary, and Treasurer), each serving a two-year term, are chosen from the existing Board of Directors. NACC Directors and Officers are elected by the NACC membership following approval of a slate of candidates by the existing Board. A slate of candidates is first recommended to the Board of Directors by the Development / Nominations Committee, which has the duty to select the best available candidates using criteria including expertise in children's law

and advocacy, commitment to the NACC, association development skills (membership, visibility, fundraising), and diversity (racial, gender, disciplinary, and geographic).

The following individuals have been approved by the Board of Directors to serve as NACC Directors and Officers.

All NACC members are asked to indicate their votes by checking the "for" or "against" box next to each candidate's name and returning the ballot to the NACC by fax or mail by close of business January 7, 2005.

Candidates for Officers of the NACC Board of Directors

Christopher Wu, JD

President 2005-2006 and Board of Directors 2005-2010

Christopher Wu is a supervising attorney with the California Administrative Office of the Courts, Center for Families, Children & the Courts. Before joining that office, Mr. Wu was the Managing Attorney at Legal Services for Children in San Francisco, a nonprofit law office for kids providing direct services using teams of attorneys and social workers. He is a member of the Boards of Directors for the National Center for Youth Law and Legal Services for Children. Mr. Wu is a graduate of the University of Michigan Law School where his interest in children's law began in the school's Child Advocacy Law Clinic. He is running for reelection to the Board of Directors and for Board President, having just completed his term as Board Vice President. He serves on the NACC Juvenile Attorney Certification National Advisory Board and is Chair of the NACC Program Committee and the 2005 National Conference Committee.

John Stuemky, MD

Vice President 2005-2006

Dr. John H. Stuemky, Associate Professor of Pediatrics, University of Oklahoma, College of Medicine, and Chief of the Section of General Pediatrics and Pediatric Emergency Medicine at Children's Hospital at OU Medical Center, has been involved in the diagnosis and care of abused and neglected children since 1975. He was one of the founders of the Child Protection Team at Children's Hospital, and, today, this team evaluates approximately 1,000 children a year for abuse and neglect. He has testified in many cases of abuse and neglect, in both federal and state courts and has served on the Oklahoma Child Death Review Board since its inception in 1992. He is active and has served on many regional and statewide task forces and committees relating to child abuse and neglect. He has been one of the two co-directors of the statewide Child Abuse Medical Examiner Program that started in 1990. As Medical Director of the Emergency Department at Children's Hospital and principal investigator of the Emergency Medical Services for Children (EMS-C) Program for the State of Oklahoma, he has been instrumental in developing the death scene investigation for child deaths incorporated into the State EMT Training Program. Dr. Stuemky has been a board member of the National Association of Counsel for Children (NACC) since 1996 and has been a member of the NACC since 1979.

Donald Duquette, JD

Treasurer 2005-2006 and Board of Directors 2005-2010

Don Duquette is Clinical Professor of Law and Director of the Child Advocacy Law Clinic at the University of Michigan Law School where he has taught since 1976. In 1997-98, Professor Duquette spent a sabbatical year in Washington, DC, at the U.S. Children's Bureau where he drafted *Permanency for Children: Guidelines for Public Policy and State Legislation*, as part of President Clinton's Adoption 2002 Initiative on Adoption and Foster Care. He has written and taught extensively on interdisciplinary approaches to child welfare law and has published over 40 articles and book chapters on the subjects of child protection, foster care and child advocacy. Professor Duquette has received many awards, including the NACC Outstanding Legal Advocacy Award, the North American Council on Adoptable Children Adoption Activist Award, and the Gerald G. Hicks Child Welfare Leadership Award from the Michigan Federation of Private Child and Family Agencies. Don is co-director of the NACC's Attorney Certification Program and is running for reelection to the NACC Board of Directors and for Board Treasurer, having just completed a term as Board Secretary.

Robert Fellmeth, JD

Secretary 2005-2006

Robert Fellmeth is the Executive Director of Children's Advocacy Institute in California, an academic center and statewide law firm which advocates for children in the courts, legislature and agencies. Professor Fellmeth holds the Price Chair in Public Interest Law at the University of San Diego School of Law, teaches Child Rights and Remedies, directs a dependency court clinic representing abused children, and writes the annual California Children's Budget. His organization also publishes a Children's Regulatory Law Reporter monitoring agencies, a legislative report card, and impact litigation projects. An original "Nader Raider," Professor Fellmeth has served as a state and federal prosecutor and has devoted his career to public interest and child advocacy. He has written 14 books and treatises and numerous academic articles and popular opinion pieces in the major press. He serves on the Board of Directors of several organizations, including the NACC, chairs the board of Public Citizen Foundation in Washington D.C., and is counsel to the Board of the National Association of Child Advocates.

Candidates for NACC Board of Directors

Candace Barr, JD

Board of Directors 2005-2010

Candace Barr is a partner in the Minneapolis, MN law firm Niemi, Barr & Jerabek. Her practice is limited to juvenile and family law with an emphasis on guardian *ad litem* work. She is actively involved with children, acting as their counsel in juvenile court and as a court-appointed guardian *ad litem* in family court. Ms. Barr has served as Juvenile Law Committee Co-Chair for the Hennepin County Bar Association and the ABA. She has served as faculty for numerous local and national GAL training programs. Ms. Barr just completed her term as NACC Board President. She is also Chair of the NACC Development Committee.

John B. Ciccolella, JD

Board of Directors 2005-2010

John Ciccolella is the senior member of the firm of Ciccolella & Weston, P.C., in Colorado Springs, CO, and has thirty years of experience in family law. In addition to his law practice, he sits as the Municipal Judge for the towns of Palmer Lake and Monument near Colorado Springs. He graduated with his Bachelor of Science in 1969 from the University of Southern Colorado and obtained his law degree from the University of Colorado in 1972. As an active lawyer, he lectures to professional groups in all areas of family law including such law groups as the El Paso County Bar Association, Colorado Bar Association, Colorado Trial Lawyers Association, Pikes Peak Children's Advocates (Founder and President 1978), the National Association of Attorneys General, and the National Association of Counsel for Children (Member of Board of Directors, 1979-80). Currently, he is President of the Colorado affiliate of the NACC. He co-authored along with Elaine G. Edinberg, *A Study of Colorado Law and Procedures in Dependency and Neglect Proceedings*, 1979, National Center for Child Advocacy, Children's Bureau, Office of Child Development, Department of Health, Education and Welfare, through the Regional Research Institute for Human Services, Portland State University. Mr. Ciccolella edited *Legal Representation of the Maltreated Child*, 1977, National Association of Counsel for Children. In 1981 he was awarded The Special Recognition Award for Outstanding Contribution in the Field of Child Advocacy, Pikes Peak Children's Advocates and in 1987 he received the Seraph Award from that same organization for his long term commitment to child advocacy. In 2002 he was awarded the Stephen M. Cahn Award from the National Association of Counsel for Children for career achievement in juvenile law.

Donna Wickham Furth, JD

Board of Directors 2005-2010

Donna Furth represents child clients in dependency appeals and teaches Juvenile Law at the University of San Francisco School of Law. She serves as a director of the NACC's northern California affiliate (NCACC), is a member of the National Juvenile Attorney Certification Advisory Board, the NACC Program and Amicus Committees, and the NCACC Amicus Committee. She became interested in child welfare law while working as a clerk at the California Supreme Court. Thereafter she worked as a staff attorney at both Legal Services for Children and Children's Law Offices before starting her own practice in 1992. Ms. Furth has her A.B. and M.A. from the University of Michigan and her J.D. from the University of San Francisco School of Law.

H.D. Kirkpatrick, Ph.D., ABPP

Board of Directors 2005-2010

H.D. "De" Kirkpatrick is a Forensic Psychologist with Kirkpatrick & Hadler, Forensic Evaluation Services, Charlotte & Chapel Hill, NC. He holds a doctorate from the Saybrook Graduate School, San Francisco, CA and received post-graduate training in forensic psychology from the California School of Professional Psychology, Berkeley, CA. He is licensed as a psychologist in North Carolina and California, and is a Diplomate in forensic psychology, granted by the American Board of Forensic Psychology. Dr. Kirkpatrick has been an active NACC member for years and has written and presented extensively for the NACC.

John E.B. Myers, JD

Board of Directors 2005-2010

John Myers is a law professor at the University of the Pacific, McGeorge School of Law, Sacramento, CA. He is nationally recognized as an expert on investigation and litigation of child abuse and neglect. Professor Myers is the author of numerous books and articles discussing evidentiary and constitutional issues in child abuse litigation. His writing has been cited by more than 140 courts, including the United States Supreme Court and numerous federal and state courts. In addition to his writing, he is a regular speaker at conferences for judges, attorneys, and mental health professionals. Professor Myers has made more than 200 presentations in the U.S., Canada, and Scotland.

James W. Payne, JD

Board of Directors 2005-2010

The Hon. James Payne is one of the nation's leading juvenile court judges. He currently presides over the Marion Superior Court Juvenile Division in Indianapolis, IN. Judge Payne has been a member of the National Council for Juvenile and Family Court Judges (NCJFCJ) Board of Trustees since 1992. He is the 2005-2006 President Elect of the NCJFCJ. Throughout his term in office as the presiding judge of the Marion Superior Court Juvenile Division he has created and implemented new facilities, administrative policies, and numerous programs, which have been integrated into the Marion County Juvenile Justice System. Judge Payne is a nationally recognized speaker and educator in the fields of child abuse and neglect and court improvement. Additionally, Judge Payne has served as a faculty trainer at the Rocky Mountain Child Advocacy Training Institute. He has received many awards, including the 2002 Roberta West Nicholson Award from the Children's Bureau of Indianapolis, Inc., 2001 Pauline K. Selby Award from Big Sisters of Indiana, multiple CASPER Awards from the United Way / Community Service Council for Community Appreciation for Service in Public Enlightenment and Relations, and the 1989 Robert J. Kinsey Award for Juvenile Court Judge of the Year for the State of Indiana. He serves on the NACC Juvenile Attorney Certification National Advisory Board. ■

BALLOT

Please copy or cut out, complete and return via fax (303-864-5351) or mail to NACC Elections, 1825 Marion Street, Suite 242, Denver, CO 80218. Ballot must be received by 5:00 p.m. MST, January 7, 2005.

Candidates for Officers of the NACC Board of Directors

	FOR	AGAINST
Christopher Wu, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>		
<i>President 2005-2006 & Board of Directors 2005-2010</i>		
John Stuemky, MD ----- <input type="checkbox"/> ----- <input type="checkbox"/>		
<i>Vice President 2005-2006</i>		
Donald Duquette, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>		
<i>Treasurer 2005-2006 & Board of Directors 2005-2010</i>		
Robert Fellmeth, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>		
<i>Secretary 2005-2006</i>		

Candidates for NACC Board of Directors

Candace Barr, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	
John B. Ciccolella, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	
Donna Wickham Furth, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	
H.D. Kirkpatrick, Ph.D., ABPP ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	
John E.B. Myers, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	
James W. Payne, JD ----- <input type="checkbox"/> ----- <input type="checkbox"/>	
<i>Board of Directors 2005-2010</i>	



Cases

Dependency / ICWA

California Court Of Appeals Affirmed Juvenile Court's Decision That Good Cause Exception To ICWA Permitted Placement Outside of Tribe. Fresno County Department of Children and Family Services v. The Superior Court of Fresno County, 122 Cal. App. 4th 626; 2004 Cal. App. LEXIS 1582 (September 21, 2004).

Fresno County Superior Court, sitting as juvenile court, terminated the parental rights to half-sisters, one-year old Rhiannon and three-year old Lily. Under the Indian Child Welfare Act (ICWA), Rhiannon was an Indian child eligible for membership in a federally recognized tribe, her half-sister Lily was not. The termination of parental rights was undisputed, but the placement of the children was contested. The tribe, the department, and the children's mother petitioned the juvenile court to place the children with an Indian family in accordance with ICWA. ICWA requires that in any adoptive placement of an Indian child preference be given to the child's extended family; members of the child's tribe; or other Indian families, absent a showing of good cause to the contrary. The children's attorney objected to placing the children with an Indian family because the children were doing well in their current foster home. She argued that there was a good cause exception not to place the children with an Indian family. The juvenile court agreed with the children's attorney. The department appealed stating that the court erroneously found good cause to overcome ICWA's placement preference.

In January 2003, Rhiannon sustained injuries consistent with Shaken Baby Syndrome. She was hospitalized for approximately one month. The department filed a dependency petition. Lily was placed in foster care after a mater-

nal relative placement tested positive for drugs. After Rhiannon was released from the hospital she was placed in the foster home with her sister. Two months later Rhiannon was declared an Indian child under ICWA. Lily, however, was not an Indian child for ICWA purposes because the tribe she was eligible for was not federally recognized. The foster family was not of Native American heritage.

The department investigated Rhiannon's paternal grandparents, whom the tribe supported, as a prospective placement for both children. The Court Appointed Special Advocate recommended that the girls remain in their foster care placement because of Rhiannon's fragile medical state and their sibling attachment. Furthermore, Rhiannon's medical condition prevented any quick change in placement. The department did not approve of the paternal grandparents for placement because Rhiannon's paternal grandmother refused to recognize that her son had physically abused Rhiannon. The tribe asked that the department consider one of Rhiannon's father's distant relatives as a placement. At that time the children had been with their foster family for seven months and the foster family was committed to adopting the girls.

Meanwhile, Lily showed signs of stress such as oppositional behaviors, night terrors, and masturbation which required mental health treatment. The treatment seemed to help Lily, but after a visit with Rhiannon's paternal grandparents her symptoms resumed. She went to weekly therapy because her behaviors were consistent with a child that had been sexually abused. Lily improved with therapy. The tribe recommended that at least Rhiannon be placed with her paternal relatives. The court was reluctant because the children had been in the same foster home for almost a year. The court also was concerned about the risk

of attachment disorders. The children's attorney asked that the children not be moved without a court order and the court granted this request. Additionally, at this time the court ordered that the children remain together at the request of their mother.

The department approved Rhiannon's paternal relatives as a placement and began to plan a transition. The children's counsel moved to prohibit introductory visits and the tribe intervened. The children's therapists wrote letters noting the children's progress in their current foster home and the therapists' opinions that it would be detrimental to the children to move them. The court ordered that visits begin and at the request of the mother that the girls be adopted as a sibling group. Shortly after the visits began Lily's behaviors returned and Rhiannon began to experience night terrors.

The court then ordered an attachment evaluation because of its concerns about the girls' behaviors. The doctor stated that the girls had a healthy attachment to their foster parents and shared a positive relationship with them. He stated that if this relationship was terminated the girls would be greatly harmed. The court found that both girls' extraordinary emotional needs and Lily's risk of an attachment disorder amounted to good cause and constituted an exception to the ICWA placement preference. Additionally, the court found that the state's interest in keeping the children together outweighed the ICWA placement preference.

As to the good cause argument, the court found that ICWA established minimum standards and that the court may consider more criteria than what is enumerated. The court also found that Congress intended to provide states flexibility in determining the placement of a child. The court applied the substantial evidence

standard and found that there was evidentiary proof that the factual conclusions of the court were rationally supported by the record of evidence. Therefore the court affirmed the juvenile court's decision that good cause was not limited to the terms enumerated in the federal guidelines and that good cause could overcome ICWA's placement requirement.

Dependency / Title IV-E Funding

U.S. District Court For The District Of Columbia Affirms Nebraska's Practice Of Using Title IV-E Funds To Train Their Protection And Safety Workers. Nebraska Health & Human Servs. V. U.S. Health & Human Servs., 2004 U.S. Dist. LEXIS 19694 (Sept. 30, 2004).

The U.S. Department of Health and Human Services (HHS) rejected the Nebraska Health and Human Services (Nebraska) proposal to allocate costs of training safety and protection workers to the Federal Foster Care and Adoption Assistance Program under Title IV-E of the Social Security Act. Nebraska argued that the costs were for training required specifically by Title IV-E. According to HHS, the Title IV-E funds could only be used for administrative expenditures that the Secretary of the Department of Health and Human Services found to be necessary for child placement services and administration of a state's plan. Nebraska asked the U.S. District Court to review HHS's decision.

Each state that receives funds under the Social Security Act is required to submit to HHS Division of Cost Allocation (DCA) a cost allocation plan that details how the funds will be spent. When determining whether Nebraska's cost allocation plan was appropriate DCA consulted with the Administration for Children and Families (ACF). ACF provided guidance on allocation of Title IV-E funds in three previous memorandums. The memorandums stated in part that all training costs must be allocated to each program that benefits and that they could not be charged directly to Title IV-E unless that was the only benefiting program. Nebraska required all new caseworkers to attend training specifically designed to comply with

Title IV-E requirements. In this case Nebraska's cost allocation plan charged all direct and indirect costs of its foster care training program to Title IV-E. The DCA rejected Nebraska's plan because Nebraska acknowledged that other programs benefited from the training yet they refused to allocate the costs to other state and federal funds. Nebraska appealed the matter to the HHS Departmental Appeals Board (DAB).

The Departmental Appeals Board affirmed the prior administrative decision. Its decision was based on multiple findings: 1) The ACF memorandums did not have to be published pursuant to notice and comment rulemaking, 2) The DCA needed to only demonstrate that its decision was reasonable, not that it was persuasive, 3) Nebraska did not show that the policy stated in the ACF memorandums was inconsistent with Congressional intents, 4) Even if Nebraska was previously permitted to allocate all training costs to Title IV-E that does not mean the state is entitled to continue to allocate all costs to Title IV-E. The appeals board found that Nebraska's other arguments had no merit. Nebraska had also argued that the HHS requirements for caseload statistics or time studies were not equitable ways to measure how costs must be allocated. The state failed, however, to show these practices were inequitable. The Departmental Appeals Board concluded that Nebraska was required to allocate the costs of its foster care training program amongst all benefiting programs. Both parties filed cross motions for summary judgment.

On review, the U.S. District Court considered whether the HHS administrative decision was arbitrary and capricious. The court noted that in order for an administrative decision to be considered arbitrary and capricious the agency must have relied on factors which Congress did not intend to be considerations. The court also noted that whether the ACF memorandums constituted a legislative rule, an interpretative rule, or a general statement of policy are conclusions of law that are subject to de novo review.

The court concluded that HHS's decisions were not arbitrary and capricious. It first considered whether the ACF

memorandums frustrated the Congressional objective of Title IV-E. Next, it considered Nebraska's contention that the departmental advisory board improperly gave deference to the ACF memorandums. Additionally, the court concluded that HHS did not act arbitrarily and capriciously when it considered Nebraska's fairness arguments and found them unpersuasive. Last, the court stated that even if HHS previously accepted Nebraska's cost allocation plan in 1993, the state had since received notice that the practice of allocation costs to one primary program was inadmissible. The court determined, however, that the departmental advisory board erred when it decided that the ACF memorandums were neither substantive nor interpretative rules. The court found that the ACF memorandums changed HHS's interpretation of a regulation without notice and comment, in violation of the Administrative Procedure Act. Therefore, the court granted Nebraska's motion for summary judgment and vacated the substantive and interpretative rules announced in the ACF memorandums. The court reinstated Nebraska's previous practice of allocating costs to the program that primarily benefits from the training.

Competency

Rhode Island Supreme Court Affirmed Lower Court's Determination That Developmentally Disabled Sixteen-Year-Old Was Competent To Testify About Abuse, Despite Cognitive And Communicative Delays. Rhode Island v. Lynch, 854 A.2d 1022; 2004 R.I. LEXIS 166 (2004). The names of the juveniles and all children involved are fictitious.

The defendant was convicted of sexually assaulting his sixteen-year-old daughter, Mary. On appeal to the Rhode Island Supreme Court, the defendant argued that the lower court committed multiple errors that warranted reversal of his convictions, including admitting the testimony of Mary, and denying his request for a new trial based on the inconsistencies in her testimony. The defendant alleged that the court abused its discretion by finding Mary competent to testify despite her cognitive and communicative delays. The Rhode Island Supreme Court upheld the lower court's decision that Mary

was a credible witness, and affirmed the lower court's decision denying the defendant's request for a new trial.

In 1996 Mary invited a friend to spend the night at her house. During the night Mary's friend woke up to find the defendant making sexual advances toward her. She ran home and reported the incident to her parents, the police, and her school. She was concerned that the defendant might be abusing Mary. The school psychologist then met with Mary, who initially stated that she was not supposed to tell about what her father did to her, then stated that he had sex with her "all the time." (at 1029). The school psychologist immediately called the police and the department of social services. The defendant was arrested that day and charged with multiple counts of sexual assault. He was convicted by the jury and sentenced to prison.

On appeal the defendant alleged that the trial court abused its discretion by finding Mary competent to testify, despite inconsistencies in her testimony, her impaired intellectual capacity, and her cognitive and communication limitations. The Rhode Island Rules of Evidence require that a witness be competent to testify. To qualify a witness as competent, the trial court must determine that he or she is able to "observe, recollect, communicate, and appreciate the necessity of telling the truth." In this case, the trial judge conducted a voir dire of Mary and concluded that she understood the importance of telling the truth and that she had the ability to observe, recollect, and communicate.

The trial court recognized that Mary did have cognitive limitations, but determined that her limitations did not interfere with her ability to remember and testify about the assaults. The court noted that abuse is a traumatic event and although Mary may not be able to remember whether she had books in her room or what day her favorite shows are on television, she could testify to what she remembered about the abuse. Furthermore, the court found that she demonstrated an ability to communicate, pointing at certain body parts and identifying the defendant in the courtroom, at a level sufficient to meet competency requirements.

The Rhode Island Supreme Court affirmed the trial court's decision that Mary was competent to testify. The court also noted that any doubt concerning the credibility of a witness should be resolved in favor of allowing the testimony and permitting the jury and judge to evaluate the credibility themselves. The court also affirmed the trial court's decision to deny the defendant's motion for a new trial. The court found that the trial judge sufficiently considered the inconsistencies of Mary's testimony and her developmental impairments, but accepted her testimony as credible and concluded that everything she said was truthful. The court concluded that the defendant's other allegations on appeal either did not have merit or were harmless errors and affirmed the convictions and sentence.

Delinquency / Ineffective Assistance of Counsel

New Mexico Supreme Court Affirmed Appellate Court Decision Finding There Was No Conflict Of Interest When Child's GAL Acted As Defense Counsel Because There Was No Evidence Of Conflict In The Record. State of New Mexico v. Joanna V., 2004 NMSC 24; 94 P.3d 783; 2004 N.M. LEXIS 325 (June 8, 2004).

J.V., 14, challenged a plea based on ineffective assistance of counsel. J.V. had been appointed a guardian *ad litem* during a dependency and neglect proceeding initiated in 2000. In 2001 she was charged with disorderly conduct. J.V. pled not guilty. The State amended the charges to public affray, to which J.V. pled guilty. She was given two years probation and instructed to complete the court's "Grade Court" program administered by the juvenile court. At each of the delinquency proceedings J.V. was represented by the same attorney who was her GAL in her abuse and neglect case.

While on probation J.V. was detained for violations of probation and infractions of "Grade Court" rules. The State filed a motion to revoke probation and she was appointed new counsel, a public defender. J.V.'s public defender filed a motion to withdraw her previous plea agreement based on ineffective assistance of counsel. J.V. argued that there was an irreconcilable conflict of interest when

her attorney served both as her GAL and defense counsel. The court denied her motion. J.V. appealed the decision to the New Mexico Supreme Court.

In order to constitute a conflict of interest where prejudice is presumed, there must be an actual, active conflict that adversely affects counsel's trial performance. The mere possibility of a conflict is not sufficient. J.V. did not rely on any statute that prohibited a guardian *ad litem* from acting as the same child's defense counsel. Furthermore, neither J.V. nor her GAL testified. Therefore J.V. failed to demonstrate on the record an actual conflict of interest.

In the present case, J.V. had the burden to present evidence for the court to make an assessment of the relationship, determine the degree of conflict, and determine if there was resulting prejudice. J.V. offered no evidence. There was nothing in the record to show the presence of a conflict. Since there was nothing in the record to support J.V.'s contention, the court concluded that the plea was properly entered. The court stated that there was no basis to reverse the lower court's decision.

The court addressed the potential for conflict when a guardian *ad litem* acts as defense counsel. It discussed the distinct roles of a GAL and defense counsel and the potential for those roles to conflict. The GAL represents the child's best interest, which may reflect the child's wishes, but easily may not. As defense counsel, the attorney's role is to advocate zealously for the client's position. Given the nature of these positions there is heightened potential that an attorney may become compromised by attempting to serve as both GAL and defense counsel. In this case, however, the court concluded that there was no conflict of interest and affirmed the lower court's decision.

Delinquency / Due Process

The Supreme Court Of Arkansas Grants Juvenile's Writ Of Habeas Corpus Because He Was Denied His Right To Counsel. Arkansas Dep't of Human Servs. v. Allen M., 2004 Ark. LEXIS 421 (June 24, 2004).

In this case the Arkansas Supreme Court considered whether the trial court prop-

erly denied a juvenile's emergency petition for writ of habeas corpus. The writ of habeas corpus was based on the facts that the juvenile, A.M., had no notice of a contempt hearing and was denied the opportunity to defend himself against the charges. A.M. appealed and the Department of Human Services (DHS) filed a petition for writ of certiorari asserting that A.M.'s due process rights had been violated. The Supreme Court of Arkansas reversed the circuit court and granted the writ of habeas corpus based on the denial of A.M.'s right to counsel.

A dependency case was opened involving A.M.'s family. A.M. was appointed an attorney guardian *ad litem*. Eventually, his parent's parental rights were terminated. He was placed in the custody of DHS and moved to therapeutic foster care. Subsequently, A.M. participated in criminal mischief. He was adjudicated delinquent and committed to the Division of Youth Services (DYS). A.M. was not appointed defense counsel. When A.M. was discharged from the DHS he was given a number of rules to follow. Soon

after his release A.M.'s GAL requested an emergency review of his case because he was continually running away. The judge ordered A.M. to be placed in detention. The hearing was reset so the DHS person responsible for aftercare could attend and A.M. was ordered not to runaway from his placement. DHS filed a petition for an order of contempt because A.M. allegedly had disobeyed rules of his placement and school and ran away from the placement. The judge found that A.M. was in criminal contempt and issued an order of commitment.

DHS challenged the judge's commitment order. DHS alleged that no juvenile could be committed unless they had been found guilty of a criminal act and adjudicated delinquent. They moved to set aside the commitment order because the judge lacked authority to order the commitment. The court denied DHS's motion. A.M. filed an emergency petition for a writ of habeas corpus in circuit court alleging that he received no notice or opportunity to defend himself. The circuit court denied his motion. He appealed and

DHS petitioned for writ of certiorari in the Supreme Court of Arkansas. The Arkansas Supreme Court found that A.M. had not been afforded his due process rights and was detained without lawful authority. The Court emphasized that the right of counsel extends to juveniles. There was no indication that A.M. was represented by defense counsel during the contempt proceedings. Although he had a GAL, the GAL did not qualify because the GAL only represented A.M.'s best interest. Therefore, A.M.'s due process rights were violated because he was deprived of his right to counsel. The court concluded that the trial court's order was invalid and granted A.M.'s petition for writ of habeas corpus.

Dependency / Education

Hawaii Supreme Court Reverses Family Court Order Finding Family Court Does Not Have Authority To Decide IDEA Cases And GALs Do Not Have Standing To Bring IDEA Claims. In re Doe, 93 P.3d 1145; 2004 Haw. LEXIS 405 (HI 2004).

NACC – Application for Membership

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ETHNICITY (OPTIONAL)

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This case came before the Hawaii Supreme Court on appeal from the Department of Education (DOE). The DOE alleged that the family court made multiple errors including: finding it had the authority to enter orders that violated the Individuals with Disabilities Act (IDEA); finding it had subject matter jurisdiction to decide educational placement; and assuming it had the authority to review a child's grade placement. The Hawaii Supreme Court agreed with the DOE and reversed the family court's orders.

John Doe, a foster child and special education student, received educational services pursuant to IDEA. In 2001 John had earned enough credits to move from 8th grade to 9th grade. That summer, however, he was moved to a new foster family who wanted him to repeat 8th grade. John, his new foster parents, his social workers, his guardian *ad litem*, his school counselor, and his treatment providers all agreed it would be best for him to repeat 8th grade. The school personnel, administrative personnel, and John's surrogate parents, however, believed John should advance to 9th grade. John's GAL and foster father wrote letters opposing placing John in 9th grade and hoped to receive an administrative hearing on the issue.

The school's principal told John's GAL that she had the authority to decide whether John should repeat the 8th grade. The principal also informed the GAL that only John's surrogate parent, who had only met him two times, could request an administrative hearing. The principal stated that the GAL and John's foster parents had no role in creating his Individual Education Plan (IEP). Since John's surrogate parent favored advancing him to 9th grade, his GAL filed a motion in family court to afford the DOE independent legal counsel. The GAL stated that there was no administrative review available for those who knew John and that it would be in his best interest for the family court to consider his educational placement.

The family court conducted a hearing on the GAL's motion. The department and the DOE were both represented by a deputy attorney general. The department asserted that although John's social worker might personally oppose him moving to 9th grade, they would

support whatever decision the IEP team made. Even though John's IEP was not complete all parties affirmed that it would recommend promoting him to 9th grade. The family court considered whether it had the authority to order the DOE to place a child in a certain grade. The GAL responded that because the surrogate parent was the only person with authority to request administrative review, there was no administrative avenue open to John. Therefore, the GAL contended that the decision fell on the family court to determine what was in his best interests.

The family court issued an order finding that it had authority to order the DOE to place John in 8th grade and additionally that placing John in the 8th grade was in his best interests. The DOE and department filed a motion for reconsideration and requested a hearing. Ultimately, the DOE conceded and placed John in the 8th grade. The family court, therefore, concluded that the request for reconsideration was moot. The DOE filed an appeal.

On appeal, the Hawaii Supreme Court considered whether the family court's decision was a manifest abuse of discretion. Whether the family court had subject matter jurisdiction and the family court's statutory interpretation were both questions of law reviewed *de novo*. The court determined that the issue of what grade John should be placed in was moot because the DOE agreed to place him in 8th grade. However, the question of the family court's subject matter jurisdiction was not moot. It affected the public interest and had the capability of repetition. Ultimately, the court concluded that district courts could not exercise judicial review pursuant to IDEA because GALs do not have standing to request an administrative hearing. IDEA's standing requirements do not permit a GAL to request administrative hearings or judicial review of the administrative process. Since John was eligible for services under IDEA, he was entitled to a surrogate parent. The surrogate parent was appointed to help ensure that John received a fair and appropriate education, and was the only person in John's life who had the authority to request an administrative appeal.

Additionally, the GAL could not claim that the administrative process is futile. For a process to be considered futile it must be unable to provide appropriate relief. In this case the administrative process provided relief, it was just not the relief many of the parties considered to be in John's best interest. Furthermore, the court held that district family courts may not exercise judicial review of administrative proceedings conducted pursuant to IDEA, and that family courts lack subject matter jurisdiction to order the DOE to alter a child's grade placement. The family court's orders were reversed.

Custody / Best Interests

Wyoming Supreme Court Holds Best Interests Of Child Are Relevant In Paternity Cases Involving Competing Fathers Or Broader Policy Concerns. G.D.K. v. Wyoming, 2004 WY 78; 2004 Wyo. LEXIS 101 (WY 2004).

This case involved a paternity dispute between the children's biological father J.M.W. and their mother's husband G.D.K. G.D.K. appealed the district court's decision that J.M.W. was the children's legal father. The Wyoming Supreme Court considered two issues on appeal: 1) whether the district court properly chose between competing statutory presumptions, and 2) whether the court correctly applied the genetic testing presumption. The Wyoming Supreme Court affirmed the lower court's decision that J.M.W. was the children's legal father.

T.A.K., the mother of D.K. and M.K., was married to G.D.K. from 1998 to 2002. The couple divorced and remarried each other in 2002. From 1999 until 2002 T.A.K. had a relationship with J.M.W., who she lived with in an on-again off-again manner. T.A.K. and J.M.W. had two children together, D.K. born in July 2001 and M.K. born in May 2002. Shortly after M.K.'s birth, T.A.K. and J.M.W. had a disagreement and T.A.K. moved out of the home. In 2002 the state filed a petition to establish support for D.K. and M.K. G.D.K. and J.M.W. responded and each sought a declaration that he was the father. T.A.K. also responded and asked the court for a declaration of paternity and for custody of the children.

The court applied a separate analysis to determine each child's legal father. Regarding D.K.'s paternity the court had to make a determination between two conflicting statutory presumptions. G.D.K. claimed paternity under the state statute which provided that a man was the presumed father of any child born during his marriage to the child's mother. (Wyo. Stat. Ann. section 14-2-102(a)(i)). J.M.W. rested his claim on a subsection of the same statute, which provided that a man was the presumed father of any child he received in his home and held out as his natural child. (Wyo. Stat. Ann. 14-2-102(a)(iv)). The court held an evidentiary hearing and determined that J.M.W. had openly acknowledged D.K. as his child and received him in his home. The parties agreed that T.A.K. and G.D.K. were married at the time D.K. was born. Thus the court acknowledged that each man could assert a statutory presumption as to D.K. State statute provided that when statutory presumptions conflict, the court must determine which presumption is based on weightier policy and logic considerations.

The court first considered the legislature's intent in creating the marital presumption statute. The court looked to the historical purposes of the presumption, to prevent "bastardization" of children and create families for children.

The court noted that given the changes in society: the increase in divorce rates, decrease in remarriage, and increase in children being raised by single parents, the stigma once attached to single parent homes no longer impacts children the same way it may have in the past. The court concluded that the marital presumption no longer carried the weight that it had historically.

Wyoming statute had a time limit of six months for a man to bring an action to establish paternity, however J.M.W.'s request for paternity for D.K. was made almost a year after his birth. The court held that the six month limitation on establishing paternity did not apply to D.K. because J.M.W. held him out as his natural child he could assert paternity at any time. Regarding M.K., J.M.W.'s request to establish paternity was made within six months of M.K.'s birth. G.D.K. asserted his claim to paternity for M.K. under the marital presumption statute. J.M.W. not only requested paternity in a timely manner, he also accepted the child in his home and held him out to be his natural child. Furthermore, the test showed a 99.9% probability that he was M.K.'s biological father.

The court discussed the impact scientific advancements have had on determining paternity. It noted that because of DNA testing, courts are more frequently required to determine whether the

child's biological father or the child's mother's husband should be declared the legal father. It looked to other states' consideration of this issue, and found that the best interest of the child is a paramount consideration in many jurisdictions. Without explicitly applying the best interests test, the court found that J.M.W. would be the best father to the children. It concluded that J.M.W. was both D.K.'s and M.K.'s legal father. Paternity tests established he was their biological father, he held them out as his natural children, and he was willing to support the children financially and emotionally.

On appeal G.D.K. argued that the court improperly considered the best interest of the children when considering the weight given the marital presumption statute. The Wyoming Supreme Court rejected this argument, holding that in cases involving conflicting statutory presumptions the best interests of the child must be a consideration in determining paternity. Furthermore, the court noted that the children have an important right to know and spend time with their father. The Court, therefore, affirmed the lower court's decision, and stated that they would not substitute the marital presumption, a "legal fiction," for the scientific fact that J.M.W. was the children's father. ■

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.

NACC – Referral Network

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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Federal Policy Update

by *Miriam A. Rollin, JD*
NACC Policy Representative, Washington, DC

FY2005 Funding

No action on Capitol Hill since the last *Guardian* column.

Federal Child Welfare Reform Legislation

There has been no action on Capitol Hill since the last Federal Policy Update column on:

- The “Education Begins at Home Act” (S. 2412), which would authorize \$500 million in new federal funding for early childhood home visiting (some models of such parent coaching efforts have demonstrated significant impact in the prevention of child abuse and neglect);
- H.R. 4856, the “Child SAFE Act,” proposing some rather far-reaching changes in federal child welfare financing - some of which, though well-intentioned, could be quite harmful to abused or neglected children [the bill was introduced by Rep. Herger (R, CA), Chair of the House Ways and Means Subcommittee with jurisdiction over federal child welfare funding]; and

- S. 2706, the “Kinship Caregiver Support Act” introduced by Senators Clinton (D, NY), Daschle (D, SD) and Snowe (R, ME) [the bill would authorize federal financial assistance to states to develop “kinship navigator programs” (to help connect kinship caregivers to services they need to raise the children in their care), and also would establish a subsidized guardianship option for Title IV-E].

H.R. 4504, the “Orderly and Timely Interstate Placement of Foster Children Act,” introduced by Representative DeLay (R, TX) would: require each state to have procedures for the timely placement of foster and adoptive children across state lines and to complete home studies for such purpose within 60 days of another state’s request; authorize incentive grants to states that complete timely interstate home studies; revise requirements for checking of child abuse registries to eliminate an opt-out provision; and allow access to the federal parent locator service to courts in foster care or adoptive placement cases, among other provisions. A similar Senate companion bill (S. 2779) was introduced on September 8 by Senators

Domenici (R, NM) and Lincoln (D, AR). H.R. 4504 passed the House on October 5, by voice vote. Senate action/timing is unclear.

Offender Reentry Legislation

As previously reported, a bi-partisan group of Representatives, led by Rep. Portman (R, OH) and Rep. Davis (D, IL) introduced legislation (H.R. 4676, the “Second Chance Act”) to reduce recidivism among offenders reentering society, by strengthening services (including education, employment, mental health and substance abuse treatment, and family reunification services) and reducing barriers to their successful reintegration. While early drafts of the bill were solely focused on adult offenders, the sponsoring Representatives agreed to incorporate improvements to the bill that addressed juvenile offender post-incarceration services, as well. Although no mark-up has occurred yet, bill introduction in the Senate—by Sen. Brownback (R, KS), S. 2789—occurred on September 10, and a hearing was held in the House Judiciary Subcommittee on October 7.

NACC – Federal Policy Network

Become a part of the NACC Federal Policy Network (FPN). You will receive periodic updates and information with which to contact your representatives / senators when action is needed to protect children.

YES, I would like to be part of the NACC Federal Policy Network.

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Return to: NACC, 1825 Marion Street, Suite 242, Denver, CO 80218 or Fax to: 303-864-5351

Reintroduction and further action is expected in the next Congress.

Unaccompanied Alien Children

A bill to provide for the protection of unaccompanied "alien" (non-citizen) children, including ensuring access to counsel (S. 1129) was reported out of the Senate Judiciary Committee in early June and passed the Senate on October 11. (The House companion bill, H.R. 3361, has not yet moved forward.)

No Further Action on Most Relevant Legislation Since Last Guardian, except:

- Welfare Reform (TANF)/Child Care Funding legislation (the Senate has begun consideration of H.R. 4, but there has been no final Senate passage vote, and further Senate action is unlikely). Meanwhile, Congress keeps passing temporary extensions of TANF - the latest (H.R. 5149) is set to expire on March 31, 2005.
- Sen. DeWine (R-OH)'s "Mentally Ill Offender Treatment and Crime Reduction Act" (S. 1194), passed by the Senate (by unanimous consent) in October 2003. (The House Judiciary Committee—on September 30—marked-up this bill; it was passed

by voice vote in the House on October 6, passed the Senate in the same form on October 11, and was signed into law on October 30.)

- Sen. Smith (R-OR)'s youth suicide prevention bill (S. 2634, the Garrett Lee Smith Memorial Act, named in honor of the Senator's son) passed the Senate on July 8 and passed the House on September 9. It was signed into law on October 21.

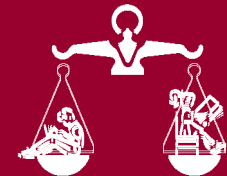
***Don't forget:** you can download copies of any Congressional bill, Committee Report, House or Senate floor statement, and up-to-date bill status information through: Thomas.loc.gov.* ■

The Tenth Annual Rocky Mountain Child Advocacy Training Institute 2004

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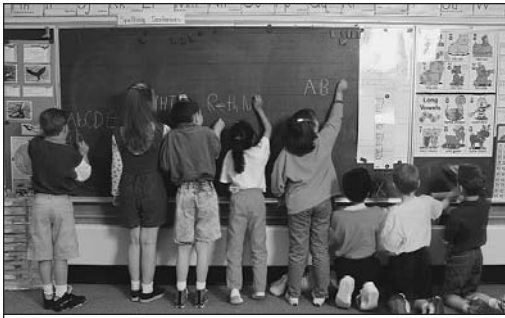
- Questioning techniques for direct and cross examination
- Case analysis and organization
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NACC MEMBERS RECEIVE A 20% REGISTRATION DISCOUNT. DEADLINE FOR REGISTRATION IS APRIL 22, 2005.



Children's Law News

News

Las Vegas Conference Gamble

Pays Off. Amid some controversy over holding a child welfare conference in Las Vegas, the 2004 National Children's Law Conference proved to be one of our best. Approximately 500 advocates from 46 states converged on the Mandalay Bay Resort for 4 days of training, networking, and fun. 100% of the attendees evaluating the conference found it a useful training which they would attend again and recommend to colleagues. 94% reported that the training would improve their advocacy skills. The overall conference rating was a 4.2 on a scale of 1-5 (the rating includes, location, administration, substantive issues, and quality of faculty). For those who missed the conference, the materials are available in the 2004 Children's Law Manual, (see publications order form in this issue). The NACC 28th National Conference will be held August 25-28, 2005 at the Renaissance Hollywood Hotel in Los Angeles.



Pew Commission Panelists (l to r): Judge FitzGerald, Miriam Krinsky, Judge Salyers, Judge Macias.

Conference attendees between sessions.



Attendees gather around youth presenters from *Voices of Youth*.



Thanks to Outgoing NACC Board

Members. The NACC owes a special debt of gratitude to two outgoing members of the Board of Directors who complete their board service this year. **Marjorie E. Cahn, LICSW, Ed.D.**, a psychotherapist and evaluation specialist from Concord, MA and **Jack D. Hogan, MSW**, President of the Jack Hogan Charitable Foundation in Denver, CO have served the association well and will be missed.

Judge Leonard Edwards to Receive

Rehnquist Award. NACC member and Santa Clara County Superior Court Judge Leonard Perry Edwards II has been named recipient of the 2004 William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts. One of the most prestigious judicial honors in the country, the

Rehnquist Award is presented annually to a state court judge who exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics. Chief Justice of the United States William H. Rehnquist will present the award to Judge Edwards at a ceremony Nov. 18 in the Great Hall of the U.S. Supreme Court in Washington, D.C.

NACC 2005 Outstanding Legal

Advocacy Award. Nominations for the 2005 Outstanding Legal Advocacy Award are now being accepted. 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 242, Denver, CO 80218. Contact the

NACC for more information. The deadline is July 1, 2005.

NACC 2005 Law Student Essay

Competition. The NACC is accepting essays for the 2005 Law Student Essay Competition. The winning essay will be published in the 2005 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and a scholarship to the 2005 conference in Los Angeles. 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 242, Denver, CO 80218 by July 1, 2005. Essays should be submitted on disk together with a hard copy.

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 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. The site is comprised of four sections: About the NACC; Training & Technical Assistance; 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), by phone (toll-free 1-888-828-NACC), fax (303-864-5351), and e-mail (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 14 of this issue and start earning now.

Conferences & Training

May 16–20, 2005 NACC 10th Annual Rocky Mountain Child Advocacy Training Institute, *Presenting Evidence in Children's Cases*. A hands-on trial skills training for juvenile law attorneys produced in conjunction with NITA, University of Denver College of Law, and the Rocky Mountain Children's Law Center. Brochures will be mailed to all NACC members in early 2005. For more information, go to NACCchildlaw.org/training/RMCATI.html.

August 25–28, 2005 NACC 28th National Children's Law Conference, Hollywood Renaissance Hotel, Los Angeles, CA. Now accepting presentation abstracts. For more information, contact the NACC or visit NACCchildlaw.org/training/conference.html. Conference brochures will be available in Spring 2005.

Publications

Legal Ethics in Child Welfare Cases, by Jennifer Renne. ABA Center on Children and the Law, 2004, ISBN 1-59031-407-7. 202/662-1720. <http://www.abanet.org/child/home.html>

Helping in Child Protective Services, A Competency-Based Caseworker Handbook, 2nd Edition 2004. American Humane. \$28. 1-800-451-7556; www.oup.com/us. Promotion code 24251.

NACC Publications:

Representing Children, Families, and Agencies in Child Welfare, Juvenile Justice, Custody, and Adoption Proceedings, the 2004 Edition of the NACC Children's Law Manual Series. The manual is 422 pages and includes 26 articles covering a wide range of children's legal issues including: Interviewing Children with Disabilities; Youth with Sexual Behavioral Problems; Educational Advocacy; The Child as a Witness; Maintaining Sibling Bonds; Creating Youth Peer Courts; Confidentiality of Juvenile Mental Health Records; Psychotropic Medication; and more. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form on the back page of this issue, or online at www.naccchildlaw.org/trainings/manuals.html.

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.

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 \$72 but is available to NACC members at a 25% discount (\$55 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 online at www.NACCchildlaw.org/policy/policy_guide.html, or call the NACC at 888-828-NACC.

Amicus Curiae Activity

Nebraska v. Anaya, Case No. 03-1446 (2004) Nebraska Supreme Court.

The NACC joined Children's Health Care Is A Legal Duty, Inc. (CHILD) in an *amicus curiae* brief to the Nebraska Supreme Court in support of the state's practice of screening infants for metabol-



ic disorders. The screening test consists of a "heel prick" usually done within 48 hours of a child's birth, and detects Phenylketonuria (PKU) and other metabolic diseases. The parents' religion forbids removing blood from one's body. The district court found that the test was minimally invasive and the state's interest in preventing death and disability in children trumped the parents' religious beliefs. It ordered the parents to comply with the test. The parents appealed the district court's order. The *amicus curiae* brief argued that the state had an important interest in metabolic screening and that parents do not have a constitutional right to an exemption of state laws that would benefit their children. The brief

also discussed the child's right not to be denied this state-conferred health benefit. The Nebraska Supreme Court is expected to review this case in Winter 2005.

Jobs

Staff Attorney, Legal Services for Children, San Francisco, CA. Legal Services for Children (LSC) seeks a staff attorney to represent children and youth in various administrative and judicial proceedings. Duties include client interviews, investigation, legal research and writing, case preparation and oral advocacy as necessary for hearings and case follow-up. LSC's legal services include representation in guardianship, depend-

ency, emancipation, school discipline, and immigration proceedings. The staff attorney will also provide community education and "know your rights" trainings to youth and service providers, and will participate in policy advocacy on behalf of children. Send resume and cover letter to: Abigail Trillin, Managing Attorney, Legal Services for Children, 1254 Market Street, Third Floor, San Francisco, CA 94102

Visit the NACC Child Law and Advocacy National Job Website. You can access additional information online at www.NACCchildlaw.org/childrenlaw/jobs.asp. If you wish to post a job on the website, follow the online instructions or call the NACC at 1-888-828-NACC. ■

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 242, Denver, CO 80218
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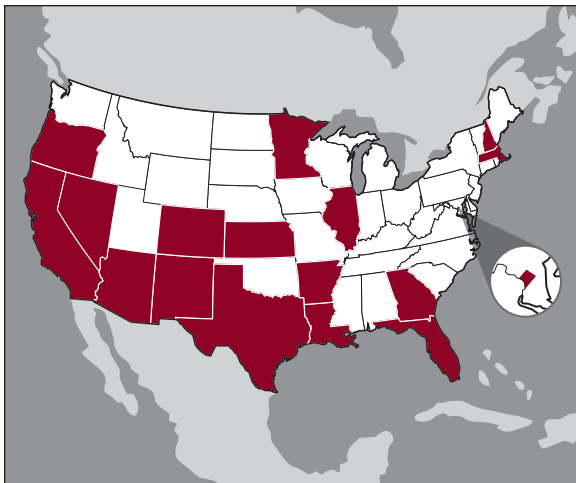
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Affiliate News

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.

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
Website: 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

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: schreinert@ccla.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

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@legalaids.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

Georgia is making great progress forming a new affiliate and has now submitted a proposed charter to the NACC for approval. Approximately 50 participants are already part of the forming affiliate. The NACC will rule on the proposed charter by the end of 2004.

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, KS 66603

Phone: 785-357-1800

FAX: 785-357-0002

Email: staff@adr.kscoxmail.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

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

Minnesota

Minnesota Association of Counsel for Children*

Contact the NACC for information.

Nevada

Nevada Affiliate of the NACC (NVNACC)***

Stephanie Charter
Clark County Legal Services,
Children's Attorney Project
800 South Eighth Street
Las Vegas, NV 89101-7051

Phone: 702-386-1070

Fax: 702-366-0569

Email: scharter@clarkcountylegal.com

NVNACC held an organizational meeting in Las Vegas following the NACC 2004 National Conference. If you are interested in being part of the newly forming Nevada affiliate, please contact Stephanie Charter.

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

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

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

* Officially Chartered NACC Affiliate ** Petition for Charter Pending *** Affiliate Forming **** Student Chapter
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.

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