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NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Vol. 27, No. 4 ▪ Fall 2005

Year-End President's Message

2005 PROGRAMS MOVE JUVENILE LAW FORWARD

by Marvin Ventrell, NACC President / CEO

2005, the NACC's 28th year, saw tremendous progress toward the NACC's mission to serve the legal interests of children. We adopted our third Strategic Plan which will run through 2010. The Strategic Plan focuses much of NACC's program activity on our objective to establish the practice of law for children as a full-time legal specialty.

The NACC was founded to build the practice of law for children in the hope that it could one day become a legitimate professional legal specialty, much in the way pediatric medicine grew to a recognized medical board specialty. The NACC believes that children are served best when well-trained and well-resourced lawyers devote themselves to this work in a practice environment that supports high quality representation. Children deserve access to first rate juvenile law practitioners and clinics that specialize in serving children's legal interests, just as children have access to pediatricians and dedicated children's medical practices and children's hospitals.

So our challenge is to build a professional workforce dedicated to serving children's legal interests and foster law office structures that encourage best practices. This is a tall order in a social, political, and legal environment that does not prioritize children, and the vision has at times seemed out of reach. But the NACC has stayed committed to the vision and a professional workforce of juvenile law specialists supported by sophisticated office structures has begun to emerge.

The NACC Attorney Certification Program is perhaps the best evidence of this progress. At the NACC's urging, the American Bar Association recently recognized Juvenile Law as a formal legal specialty and the NACC will certify the nation's first juvenile law specialists (in child welfare law) in the spring of 2006. NACC Attorney Certification is modeled after physician board certification and is awarded to attorneys who show a high level of proficiency through substantial involvement in the field, education and training, peer evaluation, and testing.[1] The spring 2006 certifications will be awarded in the program pilot sites of California, Michigan and New Mexico. Thereafter, the NACC will prepare to deliver the program throughout the country.

As part of the Certification Program this year, the NACC published *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*[2] (CWLP). CWLP is a 700-page comprehensive guide to child welfare law practice and serves as a study guide for the NACC child welfare law certification exam. It is the first treatise of its kind ever published by the NACC and represents what we believe is model practice for this area of law.

The companion program to Attorney Certification is the Children's Law Office Project (CLOP). The NACC believes that one of the best methods for delivering legal services to children is a law office staffed by full time juvenile law specialists. CLOP is designed to promote best practice methods for children's law office operation. Currently, over 30 dedicated children's law offices, ranging in size from three attorneys to over one hundred, are participating in the project. The CLOP Model Office Guidebook will be published in 2006. Dedicated children's law offices not only give the workforce of juvenile law specialists a structure which maximizes their talents, they offer a viable career path to the best and brightest of our law students to enter this field.

Certification and Children's Law Offices are promising developments in the pursuit of the NACC's goal of specialized professional legal service for children, and we are dedicated to continuing this progress. At the same time, the NACC remains committed to its objective to empower all attorneys and advocates for children, not just specialists working in specialized offices. It takes a village to serve children and families, and the NACC continues to improve our traditional training and technical assistance resources for all NACC members.

I encourage all NACC members to be actively involved in the association and take advantage of the resources we offer. Your participation helps you serve your clients and helps us all reach our goal of developing best practice. Thank you for your service to children and families and for supporting the work of the NACC. ■

Happy Holidays!

1 NACC Child Welfare Law Certification is open to attorneys representing children, agencies, and parents.

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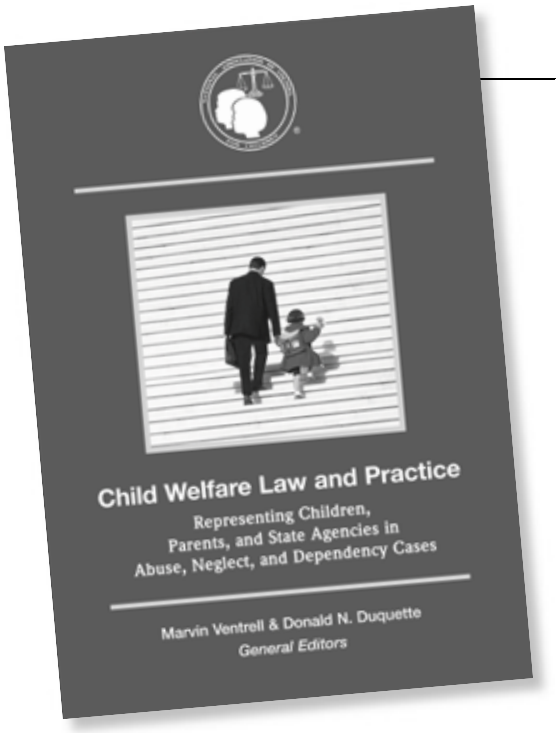

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- *All Advocates for Abused and Neglected Children*

Written and edited by NACC President Marvin Ventrell, NACC Board Member Donald Duquette, with contributions from 23 national experts.

Cases

Dependency

The Kentucky Court Of Appeals Reverses A Termination Of Parental Rights Order Concluding That Admission Of Hearsay Statements Violated the Confrontation Clause Under Crawford v. Washington. A.G.G. v. Commonwealth, 2005 Ky. App. LEXIS 163 (2005).

The Kentucky Court of Appeals determined that the trial court's consideration of hearsay statements during a termination of parental rights proceeding violated the parents' right to confrontation. The appellate court vacated the lower court order and remanded the case.

In *Crawford*, the U.S. Supreme Court determined that testimonial hearsay is inadmissible in criminal proceedings. The Court concluded that even if hearsay was deemed trustworthy, admitting testimonial hearsay without giving the defendant an opportunity to cross-examine the witness violated the 6th Amendment right to confront witnesses. Although the *Crawford* decision has impacted criminal prosecution of child abuse cases, courts have not applied the decision to termination of parental rights proceedings until now.

In this case, two children N.G. and A.G were placed in foster care based on the department's concerns about the unsanitary and dangerous condition of their home. The foster mother reported that she observed sexual behavior from the children. The department investigated the sexual abuse allegations and had a therapist interview N.G. as part of a sexual abuse assessment.

At the termination of parental rights hearing, the therapist testified from reports she had made following her interviews with N.G. According to these reports, N.G. made statements indicating that he was sexually abused by his parents and two paternal uncles. In addition, the court admitted statements that N.G. made to a pediatrician, Dr. Blackerby, during a sexual abuse examination. Dr. Blackerby testified that N.G. told him that he was abused by an uncle on multiple occasions and that although his parents were present when the abuse occurred, they did not see it happen. N.G. did not testify.

The trial court entered orders terminating parental rights based on its finding that N.G. and A.G. were abused and neglected children and that termination would be in their best interest. The court concluded that the parents failed to provide a safe environment and caused or allowed the children to be sexually abused, and that the parents were unable to provide adequate care and protection for their children nor were they capable of meeting the children's physical, medical or educational needs.

The parents filed an appeal from the termination order arguing that the trial court erroneously admitted the hearsay statements of N.G. in violation of the Confrontation Clause. On appeal, the parents relied on the Supreme Court's decision in *Crawford v. Washington* (541 U.S. 36).

The Kentucky Court of Appeals determined that the trial court erroneously considered N.G.'s statements when deciding whether to terminate parental rights. The Court noted that in 1985, the Kentucky Appellate Court held that parents have a right to confrontation in termination of parental rights cases because they have a fundamental liberty interest at stake (*G.E.Y. v. Cabinet, 701 S.W. 2d 713*). The appellate court held, therefore, that admitting the therapist and pediatrician's statements violated the Confrontation Clause because there was no showing that N.G. was unavailable to testify, and counsel for the parents did not have an opportunity to cross-examine the child.

The Kentucky Court of Appeals determined that absent N.G.'s hearsay statements there was insufficient evidence to terminate parental rights based on sexual abuse. Although parental rights could be terminated upon a finding of neglect, the lower court's determination placed great emphasis on the alleged sexual abuse, and the appellate court could not determine whether the court would have terminated on the basis of neglect alone. Ultimately, the Kentucky Court of Appeals vacated the trial court's decision terminating parental rights and remanded the case.

Custody / Grandparents Awarded Visitation Rights

Ohio Supreme Court Holds That Grandparents May Visit Child Over Objections Of Her Father. Harrold v. Collier, 2005 Ohio 5334; 2005 Ohio LEXIS 2241 (2005).

The Supreme Court of Ohio held that Ohio's non-parental visitation statutes were Constitutional as applied to the parties in this case. Consequently, the case was remanded to the trial court to create a visitation schedule for the grandparents.

R. Harrold and B. Collier (appellant), who were not married, had Brittany in July 1997. Brittany was raised by her mother at her maternal grandparent's home, the Harrolds. Collier had supervised visits with Brittany twice a week. In 1999, Brittany's mother died of cancer, and her grandparents were awarded temporary legal custody of Brittany.

In 2002, Collier filed for legal custody of Brittany. The juvenile court awarded custody of Brittany to her father. Collier prevented the grandparents from visiting Brittany. Consequently, they filed a motion in the juvenile court for grandparent visitation. The juvenile court granted the grandparents' motion for visitation, noting that Collier had not acted in his daughter's best interest when he prohibited visits between Brittany and her grandparents.

The case then went through several levels of appellate review. First, Collier appealed and the court agreed with his objections and denied the grandparents' motion for visitation. In making its decision, the court relied on *Troxel v. Granville* (530 U.S. 57) in which the Supreme Court held that when a parent objects to visitation, the party requesting visitation must put forth clear and convincing evidence that such visitation is in the child's best interest. As a result, the court concluded that the Harrolds failed to meet the burden of proving by "overwhelmingly clear circumstances" that visitation with them was in Brittany's best interest.

The grandparents then appealed the decision to the Ohio Court of Appeals arguing that the U.S. Supreme Court's decision in *Troxel* should not be applied to the Ohio statutes because they were more narrowly drawn than the Washington statute at issue in *Troxel*. The challenged Ohio statutes provided that in cases where the parent of an unmarried minor dies, courts may grant grandparents and relatives of the deceased parent visitation rights if judged to be in the child's best interest. The appellate court distinguished the Washington non-parental visitation statute challenged in *Troxel* from the Ohio non-parental visitation statutes, and determined that because the Ohio statutes were not as broad as Washington's statute, *Troxel* did not automatically nullify Ohio's statue. The court reversed the holding of the juvenile court and remanded the case for further proceedings consistent with its decision.

Finally, the case reached the Ohio Supreme Court. Collier argued that Ohio's non-parental visitation statutes unconstitutionally infringed on his fundamental right to make decisions regarding the care, custody, and control of his child, and therefore, violated the Fourteenth Amendment due process clause. The Supreme Court of Ohio noted that because statutes are presumed to be constitutional, the party opposing the statutes carries the burden of proving that they are unconstitutional. In determining whether the statutes violated Collier's fundamental right to rear his child, the court applied strict scrutiny analysis. A statute which impinges on a fundamental right must serve a compelling state interest and be narrowly tailored so as not to be overly burdensome.

Although Collier argued that the challenged statutes were similar to those struck down in *Troxel*, the Supreme Court of Ohio distinguished Ohio's non-parental visitation statutes from the Washington statute. The Ohio court observed that the Washington statute allowed anybody to petition the court for visitation rights at any time. Unlike *Troxel*, the Ohio statutes only permitted the parents and relatives of a deceased mother or father to petition the court for visitation rights. The court also noted that the challenged Washington statute made no reference to a parent's wishes. In contrast, one of the Ohio statutes expressly stated that when determining whether the requested visitation is in the "child's best interest," the court should take a parent's wishes into consideration. Ultimately, the Ohio court held that the statutes were constitutional because the state had a compelling interest, and the statutes were narrowly drawn so as to satisfy that interest.

Next, the Supreme Court of Ohio noted that it is presumed that a fit parent acts in his or her child's best interest. Thus, the appellate court determined that the trial court appropriately assigned the burden of proving that visitation would be in Brittany's best interest to the Harrolds. Furthermore, the Ohio Supreme Court acknowledged that although the trial court took Collier's resistance to the visitation request into consideration, it ultimately held that Brittany's interest would best be served by preserving her relationship with her maternal grandparents. Given that Brittany lived with the Harrolds for the first five years of her life, the Ohio Supreme Court determined that it was appropriate to grant the petition for visitation, and remanded the case to the trial court in order to create a visitation schedule for the Harrolds.

Dependency / GAL Report Admissible

Maine Supreme Court Concludes That Considering Guardian ad litem *Report Does Not Violate Parent's Procedural Due Process Rights.* In re Chelsea C., 2005 ME 105; 2005 Me. LEXIS 114 (2005).

This case came before the Maine Supreme Court on the mother's appeal of the trial court's order awarding custody to father. On appeal, the mother argued that the admission of a guardian *ad litem*'s reports violated the hearsay rule and offended due process, the evidence was insufficient to support the court's decision, and removal was inappropriate because less extreme alternatives were available. The court affirmed the judgment of the trial court awarding custody of the child, Chelsea, to her father based in part on information provided by the guardian *ad litem*'s reports.

Chelsea was taken into custody after testing positive for drugs at birth. She was eventually returned to her parents care. In 2003, a protection order was entered prohibiting Chelsea's father from having contact with her mother. Consequently, the Department of Health and Human Services (DHHS) became involved to help coordinate visits between Chelsea and her father.

DHHS referred the family to Youth Alternatives for evaluation and rehabilitation services. Chelsea's caseworker expressed concerns about her mother's ability to learn new parenting skills and to properly care for Chelsea and ensure her safety. After nine months of voluntary services, her mother showed minimal improvement, and the case was returned to DHHS.

DHHS filed a petition for a child protection order in August 2004. The court appointed a guardian *ad litem* to conduct an investigation and represent the interests of Chelsea. The guardian *ad litem* investigated the case and submitted a report to the court. In her investigation she had contact with Chelsea, her mother, her father, the previous guardian *ad litem* appointed during her parent's divorce action, and a number of other individuals. The guardian *ad litem*'s report suggested that custody be given to Chelsea's father with frequent supervised visits with her mother.

The guardian *ad litem*'s reports were offered into evidence at the jeopardy hearing. Chelsea's mother objected to the court's admission and consideration of the reports. The court found jeopardy as to the mother based on concerns regarding Chelsea's safety and hygiene. Similarly, the court found jeopardy as to the father because of his infrequent contact with Chelsea and his history of abuse against the mother. The court awarded custody to Chelsea's father with continued services from DHHS.

The mother appealed from the trial court's decision arguing that the court erroneously admitted the guardian *ad litem*'s reports. The mother contended that because the reports contained hearsay, the court considered these hearsay statements in violation of her due process rights.

On appeal, the Supreme Court of Maine noted that the rules of evidence provide for some exceptions to the rule that hearsay is generally inadmissible. Additionally, the Maine Legislature amended a statute regulating the role of guardians *ad litem*, to give the court discretion to consider a guardian *ad litem*'s reports in making a judicial determination. The court concluded therefore, that the guardian *ad litem*'s report could be admissible evidence.

Next, the court turned to whether consideration of the information in the report violated the mother's due process rights. The court noted that procedural safeguards exist to minimize the influence of unreliable information on courtroom proceedings. For example, the guardian *ad litem* as a disinterested party and an agent of the court must meet certain requirements as recognized by the court. In addition, prior to the trial, the guardian *ad litem* must provide copies of the reports and the names of sources to all the parties. In this case, the mother was not barred from calling a declarant to testify or presenting witnesses to refute the information contained in the guardian *ad litem*'s reports.

The mother asserted that if the guardian *ad litem*'s reports were admitted into evidence, statements from parties not called to testify should have been excluded. The court noted that eliminating these statements would contradict the role of the guardian *ad litem* since it is the duty of the guardian *ad litem* to conduct a thorough investigation and to make recommendations based on the findings. Therefore, the final report will likely contain important documents and information which support the guardian *ad litem*'s ultimate recommendation. The court recognized that when fundamental rights are at risk, due process requires notice, an opportunity to be heard, the right to introduce evidence and present witnesses, the right to respond to claims and evidence, and an impartial judge. The court determined that the jeopardy hearing satisfied each of these due process requirements and therefore, the lower court's reliance on the guardian *ad litem*'s reports did not violate the mother's due process rights.

Dependency / Visitation

California Court Of Appeals Holds Trial Court Visitation Order Giving Authority To Legal Guardian To Determine Whether Visits Occur Was Improper Delegation of Judicial Function. In re M.R. v. G.V, 132 Cal. App. 4th 269, 2005 Cal. App. LEXIS 1367 (2005).

G.V. appealed from an order by the trial court terminating her parental rights to her two younger daughters, M. and J., and establishing guardianships for her two older children, P. and G. The California Court of Appeals reversed the termination order and remanded the case to the juvenile court for a new hearing and to conduct further proceedings concerning G.V.'s visitation with the children.

On appeal, G.V. argued that the trial court erroneously delegated to the legal guardian the power to determine whether she could visit with her children. The trial court's visitation order stated that G.V.'s visitation with her children would be arranged and supervised by their legal guardians at the guardians' discretion. G.V. further asserted that the order gave the legal guardians too much control because the order did not specify the frequency or duration of the visits.

The Department of Children's Services (DCS) argued that because G.V. did not object to the visitation order in the trial court, she forfeited her right to challenge the order on appeal. Despite G.V.'s failure to object, the California Court of Appeals decided to address her claim in order to clarify the effect of a recent statutory amendment, and to provide guidance to the trial court on remand.

In considering G.V.'s claim that the visitation order was inappropriate, the court noted the evolution of the applicable statute. Previously, the statutory language regarding visitation was placed at the end of a paragraph which dealt with both legal guardianships and long-term foster care as permanent plans. It was unclear whether the visitation language applied only to long-term foster care or to both foster care and legal guardianship. In 2005 the statute was amended. One statutory section addressed legal guardianship and long-term foster care, and a new third paragraph addressed visitation. The court noted that by placing the visitation provision in a separate paragraph, the California Legislature made it clear that juvenile courts were responsible for creating visitation orders in both long-term foster care placement and legal guardianship situations.

In this case, the trial court was required to make a visitation order unless it found that visitation was not in the children's best interest. Although the court may delegate authority to the legal guardian to decide the time, place, and manner in which visitation will take place, the trial court mistakenly left every aspect of visitation, other than supervision, to the discretion of the legal guardian. Thus, the California Court of Appeals concluded that the lower court abused its discretion by delegating its authority to the legal guardian to decide whether visitation would occur. On remand, the trial court was ordered to conduct further proceedings on the issue of G.V.'s visitation with G. and P. The new visitation order created by the trial court must specify not only that G.V. has a right to visit with the children, but also the frequency and duration of those visits.

Adoption / Sibling Rights

Court Concludes That Benefits Of Continued Relationship With Siblings Outweighed Benefits Of Adoption. In re Naomi P., 132 Cal. App. 4th 808, 2005 Cal. App. LEXIS 1432 (2005).

The Los Angeles County Department of Children and Family Services (DCFS) appealed from the juvenile court order implementing a permanent plan of legal guardianship based on its finding that the benefits of a continued sibling relationship outweighed the benefits of adoption. On appeal, DCFS argued that the record did not contain sufficient evidence to support application of the sibling relationship exception. The California Court of Appeals affirmed the decision of the juvenile court that the sibling relationship exception to termination of parental rights was applicable.

Naomi was placed in foster care at her birth due to her mother J.B.'s drug use. DCFS filed a petition alleging that Naomi was a dependent child and that both of her parents had histories of

drug abuse. In addition, J.B. had previously failed to reunify with her three older children who lived with their maternal grandmother, the children's legal guardian.

Naomi went through a series of kinship placements. Initially, she was placed with her mother's cousin, Veronica, who the court appointed as Naomi's legal guardian. Veronica lived near Naomi's grandmother and she was able to visit with her siblings on a regular basis. She was then placed with a family friend, Virginia, and DCFS filed a petition to terminate the guardianship. Virginia indicated her willingness to adopt Naomi. DCFS recommended termination of parental rights and a permanent plan of adoption.

At the contested hearing in October 2004, DCFS reported that because Naomi had never lived with her siblings or grandmother, there did not appear to be a strong bond. In addition, Virginia reported that Naomi never asked to talk to or visit her siblings or grandmother; nonetheless Virginia stated that she was willing to participate in an open adoption if the court found it to be in Naomi's best interest.

The social worker testified that it would be in Naomi's best interest to be adopted, despite her relationship with her siblings. The social worker explained that she did not believe that Naomi had a strong bond with her older siblings because they never lived together. Although she observed the children interacting outside of the courtroom and noted that they seemed to enjoy each other's company, she had never asked three-year-old Naomi how she felt about her siblings.

Virginia testified that when Naomi first came to live with her, her grandmother and siblings would visit every other weekend, and that if she adopted Naomi she would continue to allow visits with her family members. Naomi's mother and grandmother, however, expressed concern about whether Naomi would have continued contact with her siblings if she was adopted by Virginia.

DCFS argued that the sibling relationship exception to termination of parental rights had not been established. In addition, Naomi's counsel's stated that although Naomi had a very good relationship with her siblings, she was not sure whether the relationship was sufficiently substantial, and that she favored the benefit of permanency that adoption provided. Counsel for the siblings and counsel for J.B. argued that the exception had been proven, and stressed the importance of sibling relationships.

The juvenile court found that a substantial sibling relationship existed between Naomi and her siblings, and expressed concern regarding the likelihood of continued sibling visits because Virginia did not seem to appreciate the importance of Naomi's relationship with her siblings. The court feared that terminating parental rights would adversely affect the sibling relationship.

In response, DCFS filed a notice of appeal from the court's findings and orders. On appeal, the court noted several situations when the juvenile court can determine that termination of parental rights would be harmful to a child. Termination would be detrimental if it would substantially interfere with a child's relationship with his or her sibling. The sibling relationship provision permitted the court, in exceptional circumstances, to choose an option other than adoption. The court also noted that when considering the sibling relationship exception, the court should focus on the best interests of the child being considered for adoption, not the interests of the siblings. Therefore, a court may not prevent a child from being adopted based solely on the effect the adoption may have on a sibling.

DCFS argued that Naomi's family did not meet the heavy burden of demonstrating the exceptional circumstances to justify choosing a permanent plan other than adoption. However, the California Court of Appeals determined that the juvenile court had sufficient evidence to conclude that the benefits to Naomi of guaranteeing continued visits with her siblings outweighed the benefits that adoption would provide. Even though the juvenile court found Virginia to be a capable caregiver for Naomi, it determined that guardianship was necessary in order to ensure continuation of the sibling relationship. Consequently, the appellate court affirmed the lower court's orders.

Juvenile Justice / Competency

Appellate Court Reversed Juvenile Adjudication Because Court Did Not Address Juvenile To Determine Whether Admission Was Made Voluntarily And Knowingly. In re Phibbs, 2005 Ohio 4761; 2005 App. LEXIS 4308 (2005).

Phibbs was adjudicated a delinquent based on his admission that he stole drugs from his mother and sold them to a classmate who then died of an overdose. On appeal, Phibbs argued that the juvenile court failed to determine whether his admission was made voluntarily and knowingly. The Court of Appeals of Ohio reversed the juvenile court's decision and remanded the case.

In February 2003, Phibbs took two morphine pills from his mother. He sold one pill and gave one pill to a classmate, Graham, who was found dead the following day. The coroner performed an autopsy on Graham and determined that the death was due to an irregular heartbeat caused by the combination of drugs in his system. The state filed a delinquency complaint against Phibbs. At the probably cause hearing, Phibbs stipulated to the charges of drug trafficking, corrupting another with drugs, and theft. The juvenile court noted that the hearing would also address evidence being introduced on the involuntary manslaughter offense. Phibbs and the prosecuting attorney filed stipulations which included admissions that Phibbs stole morphine pills from his mother and subsequently gave them to Graham.

The court concluded that probable cause existed to believe that Phibbs engaged in an act that would be involuntary manslaughter if committed by an adult. In lieu of a trial, the parties agreed to submit the matter to the court on their briefs arguing the facts of the case. The juvenile court concluded that Phibbs was a delinquent child for drug trafficking, corrupting another with drugs, theft and involuntary manslaughter and sentenced him to the Ohio Department of Youth Services for a minimum of four years. Phibbs appealed from the court's decision.

On appeal, Phibbs argued that the juvenile court violated his right to due process when it adjudicated him delinquent without conducting a discussion on the record as required by Ohio Juvenile Rule 29(D). The Ohio Court of Appeals noted that the Juvenile Rule places an affirmative duty on the trial court to make certain determinations before

accepting an admission from a party. The court cannot accept an admission without addressing the juvenile personally to determine whether he or she is making the admission voluntarily, with an understanding of the nature of the allegations and the consequences of entering the admission. Furthermore, the court must verify that the juvenile understands that by entering an admission he or she is waiving the right to challenge the witnesses and evidence against him or her, the right to remain silent, and the right to introduce evidence at an adjudicatory hearing. The juvenile court's failure to abide by the requirements of the Rule constituted prejudicial error which required reversal of the juvenile court adjudication.

Next, Phibbs argued that the trial court violated his right to due process when the juvenile court adjudicated him delinquent without conducting a trial or obtaining a valid waiver of his right to trial. He claimed that he never entered an admission to involuntary manslaughter and that he never intended to waive his right to a trial on this charge. One of the requirements on Juvenile Rule 29(D) is that the court determines that the juvenile understands that by entering an admission, he waives the rights to challenge the witnesses and evidence against him, to remain silent, and to introduce evidence at an adjudicatory hearing. The Ohio Court of Appeals noted that Phibbs' attorney waived his right to an adjudicatory hearing by agreeing to submit the matter on briefs and that the lower court never personally addressed Phibbs or questioned him to ascertain whether he knowingly and voluntarily wished to waive his right to an adjudicatory hearing. Therefore, the lower court erroneously adjudicated Phibbs delinquent.

The Ohio Court of Appeals reversed the trial court's judgment and remanded the case for further proceedings consistent with its opinion.

Educational Rights

Court Concludes Parents Challenging Individualized Education Program Have Burden of Proof In Administrative Hearing. Weast v. Schaffer, 377 F.3d 449 (4th Circuit, 2005).

The United States Court of Appeals for the Fourth Circuit reversed the judgment of the district court which assigned the burden of proving that a student's individualized education program (IEP) was adequate to Maryland's Montgomery County Public School System (MCPS).

Brian, a child with learning disabilities, attended a private school in Montgomery County from pre-kindergarten through seventh grade. Because Brian's school did not have a special education program, he struggled academically and was placed on academic probation in the fall of 1997. School officials suggested to Brian's parents that he attend a school that could meet his academic needs more effectively.

The Individuals with Disabilities Education Act (IDEA) provides every disabled child the right to a free, customized public education to meet his or her particular academic needs. Under the IDEA, public schools must design and implement an IEP for each disabled child within its district. Parents who consider their child's IEP to be insufficient may request a due process hearing to challenge the adequacy of the IEP.

In November 1997, Brian's mother contacted an MCPS middle school and requested an academic evaluation to determine which special education services he should receive. Brian's parents also applied to have him admitted to a private school for the following school year. In February 1998, the Admission, Review, and Dismissal Committee (ARD), which determines special education eligibility, met with Brian's parents, their lawyer and MCPS school officials to discuss Brian's academic needs. In March, Brian was admitted to the private school for the 1998-99 school year and his parents paid the enrollment fee to reserve his spot. In April, the ARD Committee determined that Brian qualified for special education and offered an IEP for the 1998-99 school year. The proposed IEP provided Brian with 15.3 hours of special education and 45 minutes of speech therapy at his "home" school. His parents expressed concerns about the class size at Brian's school, and MCPS offered to provide Brian services at another nearby middle school with smaller classes.

In May, Brian's parents notified MCPS that the IEP was inadequate and that they planned to send him to a private school. Furthermore, his parents requested a due process hearing arguing that the IEP proposed by MCPS deprived Brian of a free education, therefore MCPS should be required to pay for their son's private school tuition. During the hearing, the administrative law judge (ALJ) required that the parents bear the burden of proving that the IEP was not adequate to meet Brian's needs. The ALJ noted that deference should be given to the expertise of the academic professionals. After the hearing, the ALJ determined that the parents did not meet their burden of proof. Ultimately, the ALJ concluded that the IEP was appropriate and MCPS should not be required to pay Brian's private school tuition.

Following the hearing, Brian's parents brought suit against MCPS in district court (Schaffer I) arguing that the ALJ erroneously placed the burden of proof on them. The court agreed and remanded the cases to the ALJ. In response, MCPS appealed the judgment of the district court. However, the ALJ reconsidered the case before Schaffer I reached the appellate court. On remand, the ALJ determined that MCPS did not meet the burden of proving that Brian's IEP was appropriate, thus MCPS should be responsible for paying part of Brian's private school tuition. In response to the ALJ's determination, MCPS brought suit in district court (Schaffer II) arguing that the ALJ erroneously reallocated the burden of proof to MCPS. The district court reaffirmed that the ALJ had correctly determined that the IEP was not sufficient to meet Brian's educational needs and ordered MCPS to compensate Brian's parents for the full tuition. MCPS appealed this judgment contending that the district court incorrectly placed the burden of proof on the school system.

The Fourth Circuit observed that the IDEA does not indicate which party carries the burden of proof. In addition, the court noted that when a statute is silent, the party bringing suit usually bears the burden of proof. Nevertheless, the court stated that policy considerations and fairness may support a reallocation of the burden of proof.

Brian's parents claimed that MCPS should carry the burden of proving the adequacy of the IEP because the IDEA places a statutory obligation on the public schools to provide a

free suitable education for disabled children. However, the court determined that MCPS should not be required to bear the burden of proof in an IEP due process hearing based solely on a statutory obligation.

Next, Brian's parent argued that the burden of proof should be assigned to MCPS because school systems have greater resources when it comes to IEP challenges. The court noted that Congress set forth procedural safeguards in the IDEA to ensure that school systems did not have an unfair advantage over parents bringing IEP challenges. The Fourth Circuit identified a number of procedural safeguards set forth in the IDEA, and noted that additional safeguards are provided when parents request a due process hearing challenging their child's IEP. The court found no reason to reallocate the burden of proof to school when parents initiate a due process hearing.

Finally, Brian's parents argued that IDEA inherently places the burden of proof on school systems. His parents relied on two cases *Mills v. Board of Education of Washingon, D.C.* (348 F. Supp. 866) and *Pennsylvania Association for Retarded Children v. Commonwealth (PARC)* (343 F. Supp. 279) believed to be at the base of the IDEA. In *Hendrick Hudson Bd. of Educ. v. Rowley* (458 U.S. 176), the Supreme Court identified similarities between the two cases and IDEA. The Court observed that the courts in *Mills* and *PARC* both assigned the burden of proof regarding IEPs with the school systems. Brian's parents argued that the IDEA contains a number of concepts from these two cases; therefore, Congress must have intended for the school system to bear the burden of proof just as the courts concluded in *Mills* and *PARC*. However, the Fourth Circuit stated that Congress explicitly included certain procedural safeguards set forth in *Mills* and *PARC*. Based on this observation, the court concluded that Congress intentionally adopted some principles and ignored others. The court noted that because Congress did not specifically allocate the burden of proof, there is no reason to believe that the court should depart from the general rule that the party who initiates a proceeding should bear the burden of proof.

The Fourth Circuit ultimately determined that although MCPS may have an advantage in a due process hearing brought by Brian's parents, Congress set forth numerous procedural safeguards to protect the parents. The court did not identify any reason to depart from the general rule assigning the burden of proof to the party seeking relief; thus, the court held that parents who challenge an IEP carry the burden of proof in a due process hearing.

On November 14, 2005 the U.S. Supreme Court upheld the 4th Circuit's decision that the burden of persuasion is on the party seeking relief.

Custody / Child's Wishes

Kansas Court Of Appeals Concludes That Although Trial Court Must Consider Child's Wishes Regarding Custody And Parenting Time, Child's Wishes Cannot Be Determining Factor. Bouley v. Kimbrell, No. 93,450, KS Court of Appeals (2005).

At issue in this case is a district court order which stated that parenting time was "contingent on the contact being mutually requested." The Kansas Court of Appeals considered whether parenting time can be conditioned on the child's desires.

The parties divorced in 1996 and reunited for a period before ultimately ending their relationship in 2000. Although the parties have three children together, the parenting time order only applied to their youngest son who is still a minor. Since 2002, the family struggled with the issue of parenting time. This conflict was based primarily on the father's belief that his ex-wife was alienating the child from him.

In 2001–02, the family members were first evaluated for parental alienation at the father's request. The psychologist determined that the children were alienated from their father based on his own behavior. However, the psychologist noted that their relationship could be improved if the father worked on accepting his children for who they are. In January 2002, the trial court appointed a case manager to work with the family. Based on the family therapist's recommendations, the case manager's report stated that the father's alienation was caused by his own conduct.

In November 2002, upon the father's motion, the trial court appointed another parental alienation syndrome evaluation of the family. Similarly, the doctor determined that the primary source of the children's alienation from their father was his psychological problems; he had previously been diagnosed with obsessive-compulsive disorder and had paranoid trends. The doctor recommended that the mother continue to have primary custody and that the court should rescind its order requiring the children to participate in therapy. In addition, the doctor suggested that family therapy occur on a voluntary basis.

Following the father's motion for the appointment of a new case manager, the court appointed a special master to prepare a report concerning the parties and their children. In February 2004, the trial court adopted the findings and conclusions set forth in the special master's report. From this report, the court concluded that it would not require any of the parties to participate in therapy. It entered a parenting time order that the child, who was sixteen-years old, should have contact with his father at the mutual request of both parties.

The father appealed this judgment arguing that the decision violated due process because it infringed upon his parental rights. The Kansas Court of Appeals noted that although the Fourteenth Amendment protects parents' rights to direct the control and custody of their children, it is unclear whether parents have a constitutional right to parenting time and visitation. The court stated, however, that Kansas law provides non-custodial parents the right to parenting time and visitation unless the court finds extenuating circumstances which justify a denial of this right. Next, the court considered the intent of the legislature in drafting this law and determined that its purpose was to establish a presumption that a parent is entitled to reasonable parenting time and visitation, absent a finding that parenting time would place the child at risk of danger. Here, the court noted that there was no finding by the trial court that the father would pose a risk to the child's health should he exercise his parenting time.

In addition, the father asserted that the trial court erred in giving the child complete discretion concerning par-

enting time and visitation. The father looked to other jurisdictions to support his argument, which suggested that a trial court's orders concerning parent time and visitation should not be conditioned on the desires of the child. Thus, because there was no indication that the visitation with the father would seriously endanger his son, the appellate court concluded that the trial court erred by not establishing a certain and reasonable parenting schedule.

Although the Kansas court acknowledged that a trial court is required by statute to take the child's wishes into consideration when determining parenting time and custody, the court concluded that the child's wishes cannot be a determinative factor. The court observed that courts may give an older child's desires greater preference, however, the child's desires are not determinative.

The appellate court concluded that the trial court abused its discretion by making parenting time conditional on the desires of the child. The Kansas Court of Appeals reversed the trial court's order and remanded the case with directions to establish a clear parenting time schedule unless the court determines that the father's exercise of parenting time would endanger the child's health.

The dissent observed that Kansas law provides multiple factors for the district court to consider when making custody determinations, including: the desires of the child, the relationship of the child with parents and siblings, and the willingness of each parent to respect and support the bond between the child and the other parent. In this case, the trial court's parenting time order was not based solely on the wishes of the child, but on a combination of these statutory factors in addition to other relevant facts cited by the court including multiple experts' evaluations and testimony. The dissent concluded therefore that the trial court's order was not arbitrary or unreasonable given the facts of this case.

Dependency / Right To Counsel

Nevada Supreme Court Concludes That Parents Have No Absolute Right To Counsel In Termination Of Parental Rights Proceedings. Counsel Must Be Appointed On Case-By-Case Basis. In the Matter of N.D.O., T.L.O., and T.O., 115 P.3d 223; 2005 LEXIS 39, (Nev. 2005).

The mother in this case, Letesheia, was appointed counsel at the onset of her termination proceedings. Her parental rights to her three children were terminated. On appeal, Letesheia challenged the court's termination order and argued that she received ineffective assistance of counsel. The Nevada Supreme Court, therefore, considered whether Letesheia had a right to counsel. It concluded that there is no absolute right to counsel in termination proceedings. Thus, because Letesheia did not have a right to counsel, she could not have an ineffective assistance of counsel claim.

In determining whether Letesheia had a right to counsel, the court first examined the facts of the case. Letesheia had three children who lived with her sporadically. She had on-going substance abuse problems and a lengthy criminal record. Eventually, the State removed all three children from her care because of physical abuse and neglect. Leteshia repeatedly failed to comply with the court-ordered treatment plan and the court subsequently placed all three children in the custody of their maternal grandmother. After eighteen months, the court terminated Letesheia's parental rights.

Next, the court turned to state law. Nevada law provides the district court with the discretion to appoint counsel for indigent parents in termination of parental rights proceedings. The court noted that although recent precedent may have confused the issue regarding whether a right to counsel exists, the statute establishes a case-by-case determination of whether due process demands the appointment of counsel.

In addition, the Nevada Supreme Court observed that in *Lassiter v. Department of Social Services* (452 U.S. 18), the Supreme Court held that courts are not required to appoint counsel in all termination proceedings in order to satisfy the due process clause. In *Lassiter*, the Court stated that appointment of counsel is not *per se* required in all termination proceedings because the standards of proof and evidentiary issues in a termination proceeding are usually not so complicated as to require mandatory appointment of counsel.

In considering whether Letesheia had a due process right to counsel, the court reviewed the termination proceeding. Letesheia's ineffective assistance of counsel claims were based on her attorney's failure to make objections to hearsay statements during the termination proceeding. However, the court determined that these objections would have been overruled and the statements would have been admitted anyway. Letesheia also argued that her attorney failed to challenge the admission of evidence concerning her prior convictions. The court stated that information regarding a parent's prior convictions is essential during a termination proceeding and that Letesheia's attorney could not bar this information from being considered by the trial court. Finally, the Nevada Supreme Court observed that the case did not indicate a high risk of an erroneous decision.

The court determined that although the trial court appointed counsel, Leteshia did not have a constitutional right to counsel. Given that Leteshia was not constitutionally entitled to counsel, the Nevada Supreme Court concluded that the evidence presented during the hearing supported the findings of parental fault and termination of parental rights served the children's best interests. ■

Federal Policy Update

by Miriam A. Rollin, Esq.
NACC Policy Representative, Washington, DC

Budget Reconciliation Now Before Congress

Congress has begun moving forward two "budget reconciliation" bills.

I. Mandatory spending cuts:

On November 3, the Senate passed S. 1932, their "budget reconciliation" bill, which includes net cuts of approximately $35 billion from 2006-2010 mandatory spending, including from Medicaid and Medicare. Fortunately, the vast majority of these cuts are achieved without negatively impacting low-income and otherwise vulnerable children and families. The Senate bill does not affect TANF/welfare reform or child care, and does not cut foster care for abused and neglected children or food stamps for low-income families. The Senate bill even includes a modest amount of Katrina relief, as well as the long-awaited "Family Opportunity Act" provision allowing parents of disabled children to buy into Medicaid health coverage.

Meanwhile, also on November 3, the House Budget Committee approved a bill that would cut $53.9 billion from 2006-2010 mandatory spending. This bill, unlike its Senate counterpart, would slash deeply into several critical supports for vulnerable families, potentially causing severe harm to court-involved children and their families:

- The bill would allow states to limit Medicaid for 6 million children who are current beneficiaries (about half of the children now receiving Medicaid), through elimination of the guarantee of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefits for those children, as well as—for the first time—allowing cost sharing for these children, such as copays, etc.
- The bill would cut nearly $600 million from federal foster care assistance over the next five years, the majority of that "savings" coming from the elimination of foster care payments for certain relative care-givers provided through the *Rosales* (9th Circuit) decision.
- The bill would cut $4.9 billion from child support enforcement, which would mean an even

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NACC member dues cover only a fraction of operating expenses and we must continually seek support to bring you the high quality programs and services you currently enjoy. Your generous contributions support not only our publications and infrastructure, but also provide training scholarships to new children's law attorneys, and staff our resource center to respond to crisis calls from children and families.

Enclosed is my 100% tax-deductible charitable contribution to the NACC in the amount of: ☐ $50 ☐ $75 ☐ $100 ☐ Other: $ _____

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greater loss of funds collected to support vulnerable children.

- The bill would cut nearly $850 million from Food Stamps.
- The bill would cut over $400 million from SSI support for persons with disabilities.
- The bill would impose more stringent work requirements on TANF recipients, while providing child care funding levels (a $500 million increase over five years) that are inadequate to even compensate for inflation erosion, no less to compensate for additional work hour requirements, to improve child care quality or to meet the vast unmet child care need.

The House bill is expected to be considered on the House floor in November.

II. Tax Cuts:

A separate bill providing for tax cuts that total up to $70 billion over five years is expected to be reported by Finance/Ways & Means Committees in the coming weeks.

Federal Appropriations for FY 2006

On June 16, the House passed the FY 2006 appropriations bill that funds the Department of Justice, including the Office of Juvenile Justice and Delinquency Prevention. A similar DOJ funding bill was approved by the Senate on September 15. Meanwhile, on June 24, the House passed the FY 2006 appropriations bill that funds the Departments of Education and Health/Human Services. A similar Ed/HHS funding bill was approved by the Senate on October 27. Relevant provisions of the bills include the following:

- In the Ed/HHS funding bill, there is generally a nominal funding freeze (not even increased funding to account for inflation) on most programs, such as after-school, child care, and the Child Abuse Prevention and Treatment Act programs, with some small nominal increases in Head Start and in the House level for Independent Living Education/Training Vouchers, and some actual cuts from last year's levels, such as in the Senate level for Promoting Safe and Stable Families (which is reduced from $404 million to $395 million).
- The DOJ funding bill, which includes juvenile justice and delinquency prevention funding, largely rejects

2006 Outstanding Legal Advocacy Award

NOMINATION APPLICATION

PURPOSE: The NACC is looking for people who have tipped the scales in favor of children. Many children cannot rise above their circumstances without the help of real-life heroes. Our nation's courts, clinics, schools, homes, law enforcement agencies and social service organizations are filled with people who have made a difference. The NACC created the Outstanding Legal Advocacy Award to honor excellence in the field of children's law, advocacy, and protection. The NACC presents its Outstanding Legal Advocacy Award annually to individuals and organizations making significant contributions to the well being of children through legal representation and other advocacy efforts. Nominees' accomplishments may include work in child welfare, juvenile justice, private custody and adoption and policy advocacy. All child advocates are eligible.

The Nomination Letter should highlight:

- The nominee's activities on behalf of children that have significantly promoted the protection and welfare of children.
- The history of the nominee's involvement in child advocacy work.
- The nominee's affiliation with children and youth service organizations.
- Any other relevant personal background information.

Nominations Must Include:

- The nomination letter
- A completed application form
- Nominee's Curriculum Vitae / Resume
- A list of nominee's affiliations with other children and youth service organizations

Nominations May Also Include:

- Supporting materials such as: Letters of Support, Photographs, Newspaper clippings, narratives, or other items describing the candidate's efforts.

NOMINEE:

NAME _____

DEGREE _____

TITLE / POSITION _____

FIRM / ORGANIZATION _____

ADDRESS _____

CITY / STATE / ZIP _____

PHONE _____ FAX _____

E-MAIL _____

NACC MEMBER? ☐ YES ☐ NO NUMBER OF YEARS INVOLVED IN CHILD ADVOCACY _____

NOMINATOR:

NAME _____

TITLE / POSITION _____

FIRM / ORGANIZATION _____

ADDRESS _____

CITY / STATE / ZIP _____

PHONE _____ FAX _____

E-MAIL _____

Nominations Must Be Received By August 01, 2006.

Send Nominations to: Awards Committee
National Association of Counsel for Children
1825 Marion Street, Suite 242, Denver, Colorado 80218

the President's proposed levels (which included about a 50% cut in federal JJDP funding, with elimination of the Juvenile Accountability Block Grant). Instead, funding levels are much closer to current nominal levels, except for the Senate level for the Juvenile Accountability Block Grant, which is reduced from $55 million to $49 million.

Both bills await final House/Senate Conference agreements being filed and adopted by both the House and Senate.

Welfare Reform (TANF) and Child Care (CCDBG) Reauthorization

Congress has, again, begun to move forward reauthorization legislation for welfare reform (Temporary Assistance for Needy Families, or TANF) and child care (Child Care and Development Block Grant, or CCDBG). In the last Congress, such legislation passed the House and had begun Senate floor consideration, but was never finalized.

On March 15, 2005, the House Ways and Means Subcommittee on Human Resources approved H.R. 240, a TANF/CCDBG reauthorization that substantially increases work hour requirements for TANF recipients, and only increases CCDBG funding by $1 billion over the next five years, which is not even enough to cover inflation costs. (Currently, only one in seven eligible low-income children is a beneficiary of CCDBG.) On October 20, the House Education and Workforce Committee adopted their portion of H.R. 240. On March 17, the Senate Finance Committee adopted S. 667, a TANF/CCDBG reauthorization that also increases work hour requirements for TANF recipients (though not as much as the House bill), and increases CCDBG mandatory funding by $6 billion over the next five years. No further action (either in the House Ways and Means Committee or on the Senate floor) has been scheduled yet, though a temporary extension of TANF/CCDBG, through December 31, has been enacted. TANF/CCDBG reauthorization legislation is also included in House "budget reconciliation" legislation, with the House bill's work increases, but only $500 million in child care funding increases over the next five years.

Gangs Legislation

On May 11, the House adopted H.R. 1279, the "gangs bill". This bill includes mandatory minimums and other enhanced penalties, increased federalization of gang crime, and (in Section 115) an expanded provision regarding prosecuting juveniles as adults in federal court - despite the evidence indicating higher recidivism rates for juveniles tried as adults. Similar legislation in the Senate (S. 155, introduced by Senators Feinstein, Hatch, et al.) has not yet been considered by the Senate Judiciary Committee in this session of Congress, and no markup is scheduled at this time.

Juvenile Accountability Block Grant Reauthorization

On July 27, the House Judiciary Committee approved H.R. 3402, the Department of Justice authorization bill, which includes a four-year reauthorization of the Juvenile Accountability Block Grant program, including some modest language improvements to the JABG program. The bill also reauthorizes the Violence Against Women Act. (S. 1197, which passed the Senate on October 4, is the Senate bill to reauthorize the Violence Against Women Act.) H.R. 3402 passed in the House on September 28, by a vote of 415-4. The Senate may take action on DOJ authorization legislation in the near future.

Unaccompanied Alien Children Protection Legislation

On April 14, the Senate Judiciary Committee adopted S. 119, Senator Feinstein's Unaccompanied Alien Child Protection Act. The bill specifies a number of procedural protections for unaccompanied alien children, including court-appointed guardians *ad litem*. No Senate floor action has been scheduled yet, nor has the House bill (H.R. 1172) moved forward in the House Judiciary Committee.

Head Start Reauthorization

In May, the House Education and Workforce Committee marked up H.R. 2123, and a week later, the Senate Committee on Health, Education, Labor and Pensions marked up S. 1107, both of which are bills to reauthorize the Head Start early education program for disadvantaged kids. The legislation includes some language to improve Head Start access for foster children. Thankfully, neither bill includes state block grants that had been in the House-passed bill in the last Congress (that bill never got enacted). On September 22, the House passed H.R. 2123; however, S. 1107 is still awaiting Senate floor action.

Other Relevant Bills Introduced, But No Further Action Yet

- ✔ H.R. 1704, introduced by Rep. Portman et al. on April 19, would provide modest funding for efforts to successfully reintegrate adult and juvenile offenders into their communities, and to reduce their recidivism rates through reentry planning and services including educational, mental health, substance abuse, family reunification, etc. Rep. Portman has since left Congress (to be U.S. Trade Representative), so Rep. Cannon has taken over as the lead House sponsor. A Senate companion bill, S. 1934, was introduced on October 27 by Senators Brownback, Biden, Specter, DeWine, et al. Actions in the Senate and House Judiciary Committees are expected soon.
- ✔ On February 15, H.R. 823 (Rep. Ramstad) and S. 380 (Sen. Collins) were introduced as the Keeping Families Together Act—legislation to provide modest funding to support efforts to end the practice of parents giving legal custody of their seriously emotionally disturbed children to state agencies (child welfare or juvenile justice), for the purposes of obtaining mental health services for those children.
- ✔ On May 10, Sen. Clinton and Sen. Snowe introduced the Kinship Caregiver Support Act (S. 985), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of children entering foster care. No Finance Committee action has yet been scheduled.
- ✔ On July 20, Sen. DeWine introduced S. 1429 (with Sen. Murray), as well

as S. 1430, S. 1431 and S. 1432; these bills provide for improved post-secondary education opportunities for homeless and foster youth, as well as post-secondary education loan forgiveness for: child protection social workers; attorneys who represent low-income clients in family/domestic relations courts; and child care providers and preschool teachers. No action on this legislation has been scheduled in the Senate Health, Education, Labor and Pensions Committee.

✔ On July 29, Rep. Platts, Rep. Davis (IL) and Rep. Osborne introduced H.R. 3628, the Education Begins at Home Act, which would authorize $500 million in new federal funding for early childhood home visiting (some models of such parent coaching have demonstrated significant impact on the prevention of child abuse and neglect, and later delinquency). This legislation is the House companion to Sen. Bond's S. 503, a bill of the same name introduced in early March. No action on this legislation has been scheduled.

✔ S. 1679, introduced on September 12 by Senators DeWine and Rockefeller, is the "Working to Enhance Courts for At-Risk and Endangered Kids Act". The bill would provide for, inter alia, collaboration between child welfare agencies and courts, practice standards for child welfare state agency attorneys, loan forgiveness for child welfare attorneys and social workers, permission for states to allow public access to child welfare court proceedings (as long as state policies ensure the safety and well-being of the child, parents, and family), and improvements in the safe and timely interstate placement of foster children. No action has yet been scheduled in the Senate Finance Committee.

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit Thomas.loc.gov. ■

Children's Law News

News

NACC Launches New Lifetime Membership. The NACC Board approved a new category of NACC membership at the 2005 Annual Meeting. NACC members may now become Lifetime Members for a one-time fee of $2,500. Please contact the NACC if you are interested. A special Lifetime Member listing will appear in *The Guardian*.

NACC 2006 Outstanding Legal Advocacy Award. Nominations for the 2006 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 August 1, 2006.

NACC 2006 Law Student Essay Competition. The NACC is accepting essays for the 2006 Law Student Essay Competition. The winning essay will be published in the 2006 Children's Law Manual, and the winner will be given $1,000, a one-year NACC membership, and a scholarship to the 2006 conference in Louisville, KY. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and quality of research and writing. Essays should be submitted electronically to *advocate@NACCchildlaw.org* by August 1, 2006.

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."

Conferences & Training

The NACC's premier training each year is the National Children's Law Conference. The 2005 National Children's Law Conference was held in Los Angeles this fall with over 500 NACC members from 45 states in attendance. The 2005 Children's Law Manual from the conference is available for purchase in the publications section below and audio tapes and CDs are still available for purchase at *http://naccchildlaw.org/training/conference.html* or 800-642-2287. NACC members are encouraged to make plans to attend the 2006 national conference in Louisville, Kentucky, October 12-15.

December 14–16, 2005
***Beyond the Bench XVI: Strengthening Youth and Families*,** Judicial Council of California, Center for Children, Families, and the Courts, San Diego, CA.

February 27–March 1, 2006
Children 2006: Securing Brighter Futures, National CWLA Conference, Washington D.C., *www.clwa.org*.

March 10–11, 2006
Child Welfare & Adoption Law Moot Court Competition, Columbus, OH. Capital University Law School is pleased to announce the first ever national moot court competition in

child welfare and adoption law. The NACC is a proud partner of this program along with the National Center for Adoption Law & Policy, National Council of Juvenile and Family Court Judges, the ABA Center on Children and the Law, the American Academy of Adoption Attorneys. Early Team Registration: Friday, December 9, 2005. Final Team Registration: Friday, January 6, 2006. For additional information, please visit: *www.law.capital.edu/adoption/moot_court_competition.html*.

May 17–20, 2006
The U.N. Convention on the Rights of the Child: Mobilizing Communities for Ratification. The Summit will be held on the campus of American University, Washington D.C. For more information visit: *http://childrightscampaign.org*.

May 22–26, 2006
NACC 11th Annual Rocky Mountain Child Advocacy Training Institute, ***Presenting Evidence in Children's Cases,*** Denver, CO. 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 2006. For more information, go to *NACCchildlaw.org/training/RMCATI.html*.

October 12–15, 2006
NACC 29th National Children's Law Conference, Louisville, KY. Now accepting presentation abstracts. For more information, contact the NACC or visit *NACCchildlaw.org/training/conference.html*. Conference Brochures will be available in Spring 2006.

Publications

Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases. This new NACC publication is a comprehensive practice guide for all attorneys working in abuse, neglect, and dependency cases. Please see the full page ad in this issue or contact Bradford Publishing at 800-446-2831; *www.bradfordpublishing.com*. NACC members receive a 20% discount.

State of the Art Advocacy for Children, Youth, and Families, **the 2005 Edition of the NACC Children's Law Manual Series** is now available for purchase. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form in this issue, or online at *www.naccchildlaw.org/trainings/manuals.html*.

Foster Children May be Paying a Price for Attorneys' Overwhelming Student Loan Debt. A new survey from the Children's Law Center of Los Angeles, conducted with assistance from the ABA Center on Children and the Law and the NACC, illustrates the financial difficulties attorneys face in entering and remaining in the child welfare field. Whitepaper and additional information available at: *http://fostercarehomeatlast.org/*.

Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases, National Council of Juvenile and Family Court Judges. This publication can be downloaded free of charge at *www.ncjfcj.org* or to order a copy please call 775/784-6012. The NACC has endorsed the Guidelines.

Status Report 2004: A Snapshot of the Child Victims Act Model Court's Project, National Council of Juvenile and Family Court Judges, Technical Assistance Bulletin, Vol. IX, Number 2, May 2005. To obtain a copy please contact *caninfo@ncjfcj.org* or via telephone 775/327-5300.

Ensuring the Healthy Development of Infants in Foster Care: A Guide for Judges, Advocates and Child Welfare Professionals, Permanent Judicial Commission on Justice for Children and the Zero to Three Policy Center. To obtain a copy please contact *caninfo@ncjfcj.org* or via telephone 775/327-5300.

What's Happening? A Guide for Kids Entering Foster Care, by Laura Green, Child Welfare League of America. To order email *books@cwla.org* or call 202-942-0274.

All Alone in the World: Children of the Incarcerated, by Nell Bernstein. The New Press, ISBN: 1-56584-952-3. 800/233-4830.

Child Trauma Handbook: A Guide for Helping Trauma-Exposed Children and Adolescents, by Ricky Greenwald. Haworth Press 800-429-6784.

At the 2005 National Children's Law Conference

Senator George McGovern's keynote address.

Judges FitzGerald and Nash.

NACC President and Board Chair bowling for justice.

Conference attendees in session.

Jobs

Managing Attorney and Staff Attorney, Sacramento Child Advocates, Sacramento, CA. Sacramento Child Advocates, Inc. (SCA), a 501(c)3 non-profit provides legal services for abused and neglected children in Sacramento County. The attorney will be part of a child advocate team consisting of attorneys and social workers, representing the child's best interest in W & I section 300 dependency proceedings before the juvenile court. Position offers immediate courtroom experience. Recent J.D. with bar admission and 1-3 years experience. Requires excellent oral advocacy and writing skills, and experience working with multi-ethnic children. Section 300 experience preferred. Bilingual skills would be preferred. Send a cover letter and resume, attn: Robert Wilson, Executive Director to *rwilson@sacchildadv.com*.

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 242, Denver, CO 80218
Fax: 303-864-5351 • E-mail: *advocate@NACCchildlaw.org*

NACC – Publications

Children's Law Manuals	Price	Quantity	Total
☐ State of the Art Advocacy for Children, Youth, and Families (2005)	$35.00	x ____	= $ ____
☐ Representing Children, Families, & Agencies (2004)	$25.00	x ____	= $ ____
☐ Access to Justice for Children (2003)	$25.00	x ____	= $ ____
☐ 25 Years of Child Advocacy (2002)	$20.00	x ____	= $ ____
☐ Moving From Sympathy to Empathy (2001)	$10.00	x ____	= $ ____
☐ Kids, Court and Commmunity (1999)	$10.00	x ____	= $ ____
☐ Serving the Needs of the Child Client (1998)	$10.00	x ____	= $ ____
☐ Children's Law, Policy & Practice (1995)	$10.00	x ____	= $ ____
☐ Law Manual Package (2004, 2003, & 2002)	$50.00	x ____	= $ ____
Books			
☐ The Child's Attorney *Ann Haralambie Pub ABA (1993)*	$49.00	x ____	= $ ____
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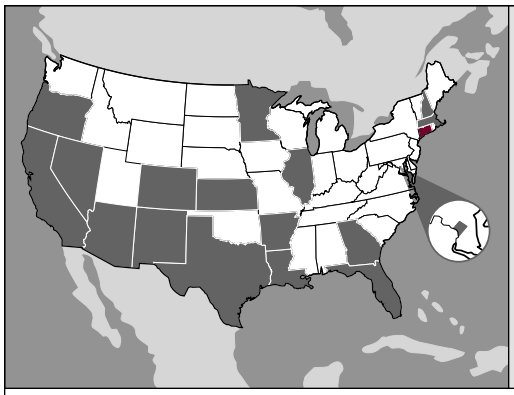

Affiliate News

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 NACC and we will put you in touch with an affiliate in your area or work with you to form one. Affiliate development materials and a current list of affiliates with contact information are available on our website at *www.NACCchildlaw.org/about/affiliates.html*.

Connecticut

NACC President Marvin Ventrell spoke on the state of the practice of juvenile law to the Juvenile Matters Trial Lawyers Association (JMTLA) on Wednesday, November 16, 2005 at the Graduate Club in New Haven. The occasion was also used to discuss development of a new NACC Affiliate in Connecticut. For more information, contact Doug Monaghan at 860-445-8550. ■

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