

THE GUARDIAN

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Guest Column

SERVING CHILDREN OF INCARCERATED PARENTS

Shay Bilchik, President/CEO, Child Welfare League of America*

As a young prosecutor for the 11th Judicial Circuit in Florida, I thought of the defendants who sat across from me in the courtroom in terms of the crimes with which they were charged. They were arsonists, murderers, felons. I have to admit I didn't often think about the other titles they might have carried, especially titles like mom and dad. A 2000 report from the U.S.



Bureau of Justice Statistics (BJS) indicates, however, that many of the men and women who make up our nation's growing prison population are, in fact, parents. And during my time with the Office of Juvenile Justice and Delinquency Prevention, and now with the Child Welfare League of America (CWLA), I have become increasingly aware of the special needs of their children. I am, therefore, delighted that CWLA and NACC have decided to join together to create more awareness and action around the needs of children of prisoners. This article is part of an exchange of columns between the directors of NACC and CWLA and is one aspect of that deepening partnership and commitment to greater public education and advocacy around the well being of these vulnerable children.

According to BJS, almost 1.5 million children nationwide have at least one parent incarcerated in a state or federal prison, and 600,000 more children have parents who are being held in local jails. These figures tell us more than one child in 50 has an incarcerated parent; millions more will face the same crisis at some point in their young lives. Most children have incarcerated fathers, but a growing number (8%) have mothers behind bars. Since many incarcerated mothers were caring for their children just prior to arrest, the rising incarceration rates for women are even more alarming.

As children's counsel, many of you have likely served a child with a parent in prison. Perhaps it was a child who lost his or her primary caregiver to a prison sentence. More than two-thirds of incarcerated mothers and half of incarcerated fathers lived with their children before incarceration. The concerns about adequate caregiving and loss of financial support that result from a parent's imprisonment, however, are not the only traumas a child must face.

Children with incarcerated parents often live in homes plagued by poverty, substance abuse, or violence before the arrest occurs, but a parent in prison adds a number of complicating factors to a child's world. In addition to the trauma of witnessing or hearing about the arrest and being separated from a parent, children who have experienced parental incarceration are more likely than other children to develop emotional and behavioral difficulties, including withdrawal, aggression, anxiety, and depression. They are also at greater risk for poor academic performance, alcohol and drug abuse, and low self-esteem. Many children believe they are somehow to blame for their parent's imprisonment and carry a huge burden as a result.

You may have also encountered children with incarcerated parents when they enter the criminal justice system themselves. Research is beginning to show that the children of offenders are more likely to also become criminally involved or incarcerated.

Although children of prisoners historically have received little attention from policy makers and service providers, a growing number of programs and organizations are working to address their special needs by facilitating prison visits and providing counseling and outreach to children and families.

CWLA has been focusing much attention on this issue – publishing articles, research briefs, and a handbook for professionals and child welfare agencies that serve children with incarcerated parents. Now, with an award from the National Institute of Corrections and support from the American Correctional Association and the National Center for Crime and Delinquency, CWLA has developed a federal Resource Center for Children of Prisoners to identify, develop, and disseminate information and tools to help practitioners serve affected children. The center will also provide technical assistance, training, and materials to ten pilot sites across the country that are addressing the needs of these families.

As attorneys and child advocates, we should be particularly concerned about the children who are left behind when their parents are incarcerated. That's not to say that parents shouldn't be held accountable for the crimes they commit, but we do have both a responsibility and an opportunity to help create a system that better supports their children and families – and recognizes that the period of incarceration can lead to positive change. By becoming more aware of the children in your caseload with this need, educating yourselves about the services that are currently available, and advocating for more supportive programs and community-based alternatives, you can help strengthen family relationships, reduce the chance a child will follow his or her parent into the criminal justice system, and improve outcomes for these vulnerable families. The Resource Center also needs your support. You can learn more about it on our website at www.cwla.org/programs/incarcerated, or by contacting the Resource Center at childrenofprisoners@cwla.org.

I so admire the work you do everyday on behalf of children and applaud your dedication to serving our nation's youth and giving a strong voice to a population that is too often ignored. I look forward to your support on this initiative. By working together, we are stronger and more vocal advocates for change and a brighter future for all of our children.

* Shay Bilchik, President and CEO of CWLA, also serves on the National Advisory Board of the NACC. CWLA is the nation's oldest and largest association of agencies that directly help abused, neglected, abandoned and otherwise vulnerable children and their families. CWLA has nearly 1,200 member agencies nationwide. The Washington, DC-based organization has offices in Baltimore, Boston, Chicago, Denver, Los Angeles, and Reston, VA. For more information, visit www.cwla.org.



Cases

ATTORNEY FEES / IMPACT ON REPRESENTATION

United States District Court For The Eastern District Of New York Holds That Inadequate Pay For Respondent Parents' Attorneys Results In Inadequate Representation. Court Orders Fees Increased From \$40.00 Per Hour To \$90.00 Per Hour. In re Nicholson, 2002 U.S. Dist. Lexis 4820 (E.D.N.Y. 2002). 66 Pages.

In April of 2000, Sharwline Nicholson filed a complaint on behalf of herself and her two children against officers and employees of the Administration for Children Services (ACS) and the City of New York. Nicholson alleged that she had been separated from her children because of the fact that she was a victim of domestic violence. Several other women and children filed similar complaints over the course of the next few months. In January of 2001, these women and children moved for class certification. The class action was certified, however, the court believed there was a potential conflict between the interests of the battered mothers and their children, and thus organized the mothers into one subclass and their children into another.

The plaintiffs, a class of battered mothers, claimed among other things, that their court appointed attorneys were ineffective, largely due to inadequate compensation. In reviewing the case, the court conducted a lengthy review of New York's historical and current child protection system. The court was extremely critical of ACS policies and procedures. The court also spent considerable time discussing the representation framework in child protection cases.

The court stated that during family court proceedings regarding removals, there are at least three parties requiring representation before the court: ACS, the children,

and the parents. In domestic violence cases, conflicts of interest normally dictate that the parents be represented separately.

The court next reviewed the representation systems for these parties. The court first looked to ACS. The court stated that ACS is represented by staff lawyers from the City Law Department's Division of Legal Services (DLS). The court noted that the annual budget for DLS is approximately \$17 million. For the 250 DLS attorneys, there are 325 staff members, and DLS attorneys have access to a wide array of investigative and social services resources.

The court stated that children subject to removal petitions are appointed law guardians at no charge. These law guardians are employed by the Legal Aid Society Juvenile Rights Division (JRD) or Lawyers for Children (LFC) under the terms of their contracts with the New York State Office of Court Administration. The annual budget of the JRD is approximately \$20 million (which the court noted was "arguably quite insufficient.") The court noted that JRD and LFC are fully staffed offices with attorneys, receptionists, paralegals, and social workers to work with the law guardians. The court was careful to point out that there had been no suggestion that JRD or LFC lawyers provide anything less than excellent representation to their child clients.

The court next turned to the representation of parents in child removal hearings. In reviewing the system, the court noted that "parents are represented by private counsel if they can afford the fees. If the parent is indigent, Article 18-B of the New York County Law requires that a lawyer be appointed for the parent. The large majority of parents appearing before the Family Court are indigent. Their counsel are selected from a panel of lawyers established in accordance with

Article 18-B. The annual payment of fees to 18-B attorneys for family court work is approximately \$8 to \$10 million. Unlike the City Division of Legal Services or the JRD, the 18-B panels are not institutional. They do not provide any office or other support services for the private practitioners who are members."

The court next reviewed the history of the parental representation system in New York. The court stated that the roots of the system could be traced back to 1963 when the United States Supreme Court handed down its landmark decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), holding that the sixth and fourteenth amendments required states to provide counsel to indigent criminal defendants charged with felony offenses. In response, the New York Legislature enacted a law requiring each county to devise a plan for provision of counsel to indigent criminal defendants. In 1975, the legislature extended 18-B representation to include indigent persons in family court, including respondents to removal petitions or the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of the child.

The court noted that "although counties bear the costs of this system, State law sets compensation rates. Originally set at \$15 per hour for in-court work and \$10 for out-of-court work, the rates were last amended by the legislature more than 15 years ago, in 1986, to the current levels of \$40 per hour for in-court and \$25 per hour for out-of-court. There has been no provision for inflation of 58% since that time, leading to a substantial erosion in value." Additionally, the court noted that total compensation in any case for attorneys assigned to represent an indigent in family court proceedings is statutorily capped at \$800 per case.

The court noted that although the original notion behind the 18-B panel system was that assigned work would be done on a part-time, quasi pro bono basis, it has evolved in to a full-time commitment. The court stated that two former 18-B attorneys testified that they stopped doing 18-B work because it is no longer possible to conduct a private practice while doing 18-B work. The court noted that an 18-B lawyer who has even one matter before the family court must be prepared to be in court from 9:00 a.m. until 5:00 p.m. because the system is so overburdened that it cannot schedule realistic times for appearances. The court stated that as a result lawyers who take 18-B cases must remain in court for six and a half hours, five days a week, earning \$40 an hour. The court further noted that due to the growing shortage of 18-B attorneys, the panels now require each lawyer to take on more cases than the lawyer can handle responsibly.

The court found that most lawyers cannot afford to take 18-B cases as a full-time commitment, citing the fact that 18-B practitioners are not supported by an institutional framework, and must pay their own overhead. The court stated that one attorney testified that he stopped taking 18-B appointments because his overhead expenses were higher than the statutory compensation. The court stated "one report estimates that a single attorney in a New York law office of five attorneys or less, which is the most common arrangement for assigned counsel, pays an hourly overhead of \$34.75; rates in New York City are higher. With 18-B compensation, such a lawyer will lose \$9.75 for every hour he works out of court and will profit only \$5.75 for every hour worked in court. Based on another report on overhead costs submitted by plaintiffs, the average practitioner in a firm of two lawyers profits slightly from in-court work and loses money for out-of-court work. The average practitioner in a firm of three or more lawyers loses money for both types of work."

The court also noted that:

"although the 18-B impacts are felt across the State, the problem is most acute in New York City where overhead costs are the highest. In the five boroughs, the number of attorneys actively taking assignments on the family court panel has

decreased approximately 15% since 1989, and the most qualified attorneys have departed. Over the same period, the number of filings has increased more than 32%. Assigned counsel in Manhattan and the Bronx family courts regularly carry an active caseload of 80 to 100 cases. As increasingly fewer attorneys are available to handle more numerous filings, representation is more and more unavailable to parents when they first arrive at court. During 2000, there was no 18-B attorney available to accept cases in the family courts of Manhattan on 40% of court days. As a result, approximately ten to twenty cases are adjourned without being called each week in each county. Sometimes mothers must return to family court two or three times before counsel is available. Sometimes mothers who are entitled to counsel receive none. Even when assigned counsel can be found, they are so overburdened that they often do not prepare for, or even attend, many scheduled court dates. Because of the greatly increased volume of cases, assigned counsel are increasingly absent, late or unprepared for routine court appearances and hearings. The result has been excessive adjournments, repeated rescheduling, and excessive delays in countless Family court proceedings. These adjournments and delays directly adversely affect others and children. On average, the family is tied up in the family court for six to seven months before a full 'fact-finding' hearing can be completed. More importantly when family court judges adjourn cases because counsel is not available, they often remand the children to foster care during the adjournment. When ACS has removed a child prior to receiving judicial authorization, these adjournments extend the length of time before a mother can even begin to seek the return of her child. Perhaps more significant than the delays is the lack of attorney preparation and promptness signal that many indigents are receiving inferior representation."

The court held that the significant discrepancy between rates paid for in-court and out-of-court work, in conjunction with the statutory cap on total fees, discourages attorneys from spending sufficient time on case preparation such as interviewing, research, trial preparations, motions and negotiation.

The court also stated that "for the mother and her children the situation is devastat-

ing. Even Kafka would be hard pressed to address her Catch-22 situation: 'You have a right to your child, abused mother; but the child will be taken.' 'You have a right to due process before your child is taken, but we will take your child first.' 'You have a right to counsel to defend your rights in court, but we will assign counsel in a way that prevents her from protecting you.' 'The judge will protect you, but she cannot do so until effective counsel is available to you and such counsel is not available.'"

The court concluded that domestic violence cases involve special problems that make the lack of effective representation particularly dangerous. The court noted that the physical safety of the victim is often at risk, and decisions a mother makes in legal matters may have life or death consequences for herself and her children. Separation of mother and child may place the child in dangerous conditions – or at least give justifiable rise to such a fear in a mother. The court held that "largely because of New York's 18-B fiasco, the state's ability to assemble its case... dwarfs the parent's ability to mount a defense."

Finding the representation problems directly related to the low pay parents' attorneys received, the court ordered an increase in the pay rate to \$90 per hour for both in-court and out-of-court work. It also ordered that family courts could increase the rate in individual cases and encouraged them to do so.

CASEWORKER DUTIES

California Court Of Appeal Holds That Caseworkers May Obtain Court Approved Waiver From Obligation To Visit Children On Their Caseloads Once Per Month. Alliance for Children's Rights v. Los Angeles County Department of Children and Family Services, 95 Cal.App.4th 1129, 2002 Cal.App. LEXIS 1069 (2002). 7 Pages.

California Department of Children and Family Services (DCFS) social workers visit dependent children in placement while the children are wards of the court. DCFS regulations require social workers to visit each child monthly. The regulations, however, permit DCFS supervisors to approve less frequent social worker visits under specified circumstances, such as when the child's placement is positive and of long duration. The regulations permit DCFS to determine when waivers

from the visitation requirement are appropriate.

The Alliance for Children's Rights (Alliance), a California based child advocacy organization, believed DCFS routinely approved waivers for budgetary rather than case-appropriate reasons, particularly to accommodate high social worker case-loads. Alliance petitioned the juvenile court for a "special order" prohibiting the use of children's social worker visitation waivers by DCFS for children placed in foster care.

The trial court refused to issue such a broad order. However, over DCFS's objection, the trial court issued a ruling requiring DCFS to submit each waiver to the dependency court judge supervising that particular child for approval at a noticed hearing.

DCFS appealed the trial court's order, arguing that the order violated the separation of powers doctrine by improperly imposing judicial review of decisions properly made exclusively by DCFS and by compelling the expenditure of DCFS funds. DCFS also argued that the order was based on legal and factual errors and omissions, including the trial court's reliance on its own experience, which was not part of the record. Finally, DCFS argued that Alliance failed to show the existing practice harmed dependent children, or that the challenged order would better protect them.

The appeals court rejected DCFS's arguments, finding that the trial court properly relied on evidence presented to the court and that Alliance did show that the existing procedure harmed dependent children. The court then turned to DCFS's separation of powers argument.

The court held that California law states that the juvenile court is empowered and obligated to review the frequency and adequacy of visitation, among other things, as part of its ongoing supervision of the child's progress. The court stated that the juvenile court is empowered to order more or less frequent visitation depending on the child's particular circumstances. Therefore, the court found that the fact that DCFS internal regulations require social workers to seek supervisory approval for a waiver does not remove the court's power to supervise, and ultimately control, the frequency of visitation to comply with its statutory oversight

responsibilities. The court therefore affirmed the holding of the lower court.

The NACC thanks Hon. Leonard Edwards for bringing this case to our attention.

DEPENDENCY COURT AUTHORITY

Supreme Court Of Louisiana Holds That Juvenile Court Lacks Authority To Order Removal Of A Child Where Department Of Social Services Case Plan Did Not Recommend Removal Of The Child. In the Interest of L.C.B., 805 So.2d 159, 2002 La. LEXIS 16 (2002). 5 Pages.

L.C.B. was placed in the legal custody of the State of Louisiana, Department of Social Services, Office of Community Services (OCS) in August of 1999 after the court found that he was in need of care. L.C.B. has remained in the legal custody of OCS since that time.

In September of 1999, OCS formulated and the court approved a series of case plans in which the permanent goal for L.C.B. was reunification with his mother. During that time, L.C.B. was placed in a foster home with Mr. and Mrs. D.

At a review hearing in August of 2000, the court found that L.C.B.'s mother had failed to comply with her treatment plan and that reunification was impossible. Therefore, the court changed L.C.B.'s permanent plan from reunification to adoption.

In January of 2001, OCS submitted a case plan which stated for the first time that Mr. C was L.C.B.'s father and that Mr. C was interested in taking custody of L.C.B. Additionally, the plan stated that OCS began exploring relative placement with transfer to custody to a relative. The plan stated that Mr. C had been visiting with L.C.B. for two months and that a home study confirmed that Mr. C lived with Ms. W (Mr. C's mother and L.C.B.'s paternal grandmother) and that the home was suitable for L.C.B. Finally, the case plan reported that L.C.B. would begin a thirty-day trial placement with his father and paternal grandmother.

At a review hearing in May of 2001, the court refused to approve the January 2001 case plan. The court found the plan did not take into account the permanent plan of adoption that had previously been ordered for L.C.B. The court reiterated that adoption was in L.C.B.'s best interest.

In August of 2001, the court held a status conference at the request of L.C.B.'s CASA volunteer. At the time of the status conference, L.C.B. was still placed with Mr. C. The court stated that it called the status conference because no proceedings for the certification for adoption of L.C.B. had taken place in three months. The court was particularly concerned that school was about to start and wanted L.C.B. established in his placement prior to the beginning of the school year. The court asked OCS to explain why, three months after it had set a permanent plan of adoption, L.C.B. was still placed in a home that was not certified as a foster or adoptive placement. OCS responded that it was working towards achieving the adoption of L.C.B. by attempting to determine whether Mr. C could qualify as an adoptive parent in light of his desire to adopt L.C.B. and that it had decided that L.C.B. would remain with Mr. C until the agency could determine whether Mr. C might qualify as an adoptive parent for L.C.B. After hearing arguments, the juvenile court found that OCS had failed to make reasonable efforts to achieve the permanent plan of adoption and ordered that L.C.B. be moved within five days to a certified foster home.

OCS filed a notice of intent to seek supervisory writs to the First Circuit and the juvenile court signed an order setting a return date for the filing of the writ application. The juvenile court also denied the State's request that it stay its judgment pending final resolution of the application. The court of appeal denied OCS's request for an emergency stay and denied supervisory writs. In denying the writs, the court of appeal noted OCS had made no showing that the juvenile court clearly abused its discretion in ordering that L.C.B. be moved from a non-certified home to a certified foster home "when it did not order OCS to move the child to a particular placement setting."

The Louisiana Supreme Court granted certiorari to consider the legal issue of whether the juvenile court went beyond its statutory authority when it ordered that L.C.B. be placed in a certified foster home.

On appeal, OCS argued that state law gives it the sole authority to make placement determinations for children in its custody. Therefore, OCS contended, the juvenile court erred in ordering it to move L.C.B. from a permanent setting it arranged and approved to a certified foster home.

The court first noted that Article 672(A) of the Louisiana Children's Code states:

"When custody of a child adjudicated in need of care is assigned to the Department of Social Services, the child shall be assigned to the custody of the department rather than to a particular placement setting. The department shall have sole authority over the placements within its resources and sole authority over the allocation of other available resources within the department for children judicially committed to the department's custody."

The court held that the plain language of the statute clearly provided that when the court assigns custody of a child adjudicated in need of care to OCS, the Department has "sole authority" over the placement of that child. The court of appeals held that if the juvenile court believed that the child is not being properly cared for by the Department, it could have removed custody from the Department and placed it elsewhere. However, the court also noted that Article 672(A) should not be analyzed in isolation, but must be read in context of the entire children's code. The court noted that the juvenile court has a responsibility to supervise the progression of the child's case. Therefore, the court held that the juvenile court has a duty to review case plans drafted by OCS and either approve the plan or reject it and order the Department to revise the plan accordingly. The court held that the juvenile court cannot, however, revise the plan itself or order any particular placements of children adjudicated in need of care and placed in the department's custody.

The court found that the juvenile court retains the ultimate authority over a child's placement and may approve or reject a case plan submitted by the Department, but it may not revise the plan or make any particular placements itself. In the instant case, the court held that the juvenile court's order that L.C.B. be moved to a certified foster home was in violation of Article 672(A) as it made a particular placement choice OCS alone was entitled to make. The court reversed the lower court decision and remanded the case to juvenile court.

MODIFICATION OF CUSTODY

Mississippi Court Of Appeals Holds That Lower Court Did Not Err By Granting Modification Of Custody Based On Fifteen Year Old Child's Stated Preference, Where

Totality Of The Circumstances Indicates That Modification Is Appropriate. Cooper v. Ingram, 2002 Miss. App. LEXIS 47 (2002). 3 Pages.

Marlene Cooper and Martin Ingram were divorced in 1994. Marlene was awarded primary physical custody of the couple's two sons, nine year old James and four year old Tyler. In August 2000, Martin filed a motion for modification of custody, requesting that primary physical custody of the boys be transferred to him. After holding a hearing on the matter, a family court chancellor modified the custody decree and granted primary physical custody of both boys to their father. The chancellor cited James's statement that he would rather live with his father as the primary grounds for the modification. In his decision, the chancellor also noted that Tyler had been experiencing academic problems while living with his mother and that these problems could possibly be remedied with the modification.

Marlene appealed, claiming that the chancellor erred in modifying custody of the children to their father based on the preferences of a fifteen year old child.

The court of appeals rejected Marlene's argument. In reaching its decision, the court first reviewed the standard for modification of child custody in Mississippi. The court stated that in order to prevail on a motion for modification of custody, the moving party must prove by a preponderance of the evidence that there has been a material change in circumstances which adversely affects the welfare of the child since entry of the judgment or decree sought to be modified. Additionally, the court stated that if such an adverse change has been evidenced, the moving party must show that the best interests of the child require the change of custody.

The court next reviewed the facts of the case. The court began by examining the modification as to Tyler. The court stated that Tyler Ingram was ten years old at the time of the modification. At the hearing, evidence was presented that Tyler had a learning disability that had hindered his progress in school since he began kindergarten. The court stated that Marlene and Martin had both been very active in working with Tyler to overcome his disability. Unfortunately, the court noted, by the time Tyler reached fourth grade, Marlene and Martin disagreed as to how

to address Tyler's ongoing educational needs. The court stated that the lower court had found that "Tyler has experienced long and continuous academic problems and has remained under [his mother's] supervision as to his academic course with [his father] having little input in school decisions despite a joint custodial arrangement. Though [his mother's] intentions have been well intended, her course of help has not helped Tyler to show significant improvement in his academics. The long uninterrupted academic struggles of Tyler without timely intervention by the primary custodial parent is a material change in circumstances adverse to Tyler's best interests."

Based on this finding, the court of appeals found that the chancellor did not abuse his discretion in determining that a modification of custody as to Tyler was appropriate.

The court next turned to the chancellor's findings regarding James. The court noted that James testified that he wanted to live with his father because he would have his own room, and that he and his father enjoyed the same type of music and enjoyed spending time together. The court stated that although the chancellor is prohibited from using a child's preference alone as a basis for modification, the chancellor did not do so in this case. The court noted that the chancellor had determined that it was in the best interest of Tyler for the custody arrangement to be modified, and that it was in the best interest of the children to remain together.

The court, therefore, concluded that a child's preference alone is not sufficient to warrant modification, but in this case, the totality of the circumstances justified the chancellor's decision in modifying custody of James to his father.

DEPENDENCY / NOMADIC LIFESTYLE

Florida Court Of Appeals Reverses Termination Of Parental Rights Where Termination Was Based Primarily On Testimony Regarding The Parents' Unusual And Nomadic Lifestyle. In the interest of F.M.B., 803 So. 2d 833, 2001 Fla. App. LEXIS 18510 (2001). 2 Pages.

Three children were removed from their parents' custody after people living with the family were arrested on felony charges. Based on the unusual nomadic lifestyle of

the group with whom the children and their parents lived and traveled, the Department of Children and Family Services (DCFS) immediately filed a petition for termination of parental rights. DCFS based its petition on a state statute which provides for termination when a parent engages in conduct towards a child that demonstrates that the continuing involvement of the parent in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services.

Because DCFS determined not to seek reunification of the parents and children, the petition for termination of parental rights was filed without either a separate petition for dependency or a case plan with a goal of reunification. The trial court entered an order terminating the parental rights of both parents.

Mother appealed. The court reviewed the transcripts of the termination hearing to determine whether the lower court abused its discretion in granting the petition for termination. The court stated that because no case plan or performance agreement was ever offered to parents, the issues at the termination hearing were abuse, prospective abuse, and the manifest best interests of the children. The court noted that the evidence offered at the termination hearing consisted primarily of testimony about the unusual and nomadic lifestyle of the parents and the group with whom they lived and traveled. The court reviewed the evidence which included information that the mother was the spiritual leader of the group and called the "Queen," the father described himself as a "street preacher," the group lived on "offerings" and "takings," and that shortly before the children were removed from the parents' custody the "takings" resulted in criminal charges. The court also noted that there was evidence that the oldest child was having great difficulty adjusting to foster care and school after separation from his parents.

The court held that the evidence presented could not form a basis for termination of parental rights. The court also held that there was little or no evidence, let alone clear and convincing evidence, that the mother or father abused any of the children, either physically, mentally, or emotionally. The court, therefore, reversed the order terminating the

mother's parental rights and remanded the case for further proceedings.

ADOPTION / CONSENT

Supreme Court Of Alabama Holds That Biological Father's Conduct Prior To A Child's Birth May Be Considered In Determining That Father's Suitability To Parent The Child. However, A Father's Pre-Birth Actions Cannot Constitute Abandonment. In re F.P., 2002 Ala. LEXIS 61 (2002). 11 Pages.

Child was born on July 6, 1999. Child's parents were high school students in a small town in Alabama and were both 17 years old when Child was born. Mother and Father had different ethnic backgrounds and were unwilling to date openly in their small town because of the racial difference. After Mother became pregnant, she and Father stopped having contact with one another; however, Mother did keep contact with Father's mother (Grandmother). Mother voluntarily relinquished child for adoption, and Child was placed in an adoptive home immediately after birth.

On July 1, 1999, Father petitioned the juvenile court for a determination of a "father and child relationship." He stated in his petition that he thought Mother had given birth to a child on June 29, 1999 who he believed might be his biological child, that he had registered with the putative-father registry and that he thought an adoption proceeding as to the child was pending in probate court. Father requested a blood test to determine paternity and a stay of any pending adoption proceedings.

On July 12, 1999, the adoptive parents petitioned the probate court for adoption. Their petition alleged that the child was in the mother's custody and that "no other person or agencies had any interest" in Child and that the mother was the only person known to them from whom consent was required. On July 13, the probate court entered an interlocutory order awarding custody of the child to the adoptive parents.

In December 1999, Father moved for a judicial determination adjudicating him the father, arguing that the results of a paternity test indicated a 99.99% probability that he was the child's father. On January 5, 2000, the court entered an order finding that Father was the father of the child, but on

January 19, the court withdrew that order. On April 10, Father moved to dismiss the adoption proceedings in the probate court and to set aside the probate court's interlocutory order. Also, on April 10, Father amended his petition for custody so as to seek joint custody of the child with Grandmother. On April 14, the adoptive parents moved to terminate the father's parental rights.

On April 20, the probate court transferred the adoption case to the circuit court. After conducting a hearing, the trial court entered an order finding that the father had "impliedly consented" to the adoption or had "relinquished" his claim to custody, terminating the father's parental rights, and granting the adoptive parents' adoption petition.

Father appealed. The court of appeals affirmed the lower court order, finding "[father's] conduct amounted to an abandonment of the child and that his conduct toward the child, both before and after its birth, contradicts the position he has taken in this legal proceeding.

The record also demonstrates that [father] had failed to offer any form of support for the child, and that he had failed to maintain any contact, or to seek visitation with, the child." Presiding Judge Yates dissented, concluding that the evidence did not support findings that Father gave implied consent to the adoption of the child, that his actions amounted to an abandonment of the child, or that the statutory criteria for terminating his parental rights were met.

Father appealed to the Alabama Supreme Court. The Supreme Court adopted Judge Yates' dissent, and quoted her dissent in full. The court found that the evidence presented not only did not support a finding that Father gave implied consent to the adoption or that his actions amounted to an abandonment of the child, but that the evidence actually supported a find that the father had vigilantly pursued his legal rights to establish a relationship with the child and had sought legal and physical custody of the child.

The court held that although there may be instances in which a parent's actions prior to the birth of a child may be considered as evidence of his or her consent to an adoption, in this case, the father's conduct beginning immediately after the child's birth overwhelmingly negated any

finding of an intent to abandon the child or to give implied consent to the adoption. The court stated that while the father's pre-birth conduct towards the birth mother and his alleged lack of financial support of the birth mother could be relevant to his fitness as a parent, the father's pre-birth conduct toward the birth mother was not relevant to whether the father abandoned the child. The court reversed the judgment of the court of appeals and remanded the case.

DELINQUENCY / RIGHT TO PRIVACY

Supreme Court Of Georgia Holds That Juvenile Is Not Entitled To A Right Of Privacy In A School Bathroom Stall When The Stall Is Being Used For Something Other Than Its Intended Purpose. In re C.P., 555 S.E. 2d 426, 2001 Ga. Lexis 867 (2001). 2 Pages.

Fourteen year old C.P. was the subject of a delinquency petition after being caught in the act of sexual intercourse in a restroom stall at his high school. C.P. sought to quash the petition, alleging that the fornication statute underlying the petition is an unconstitutional violation of his privacy rights.

The juvenile court denied C.P.'s motion to quash and issued a certificate of immediate review. C.P. filed an application for interlocutory review to the Georgia Supreme Court.

C.P. argued that the fornication statute is facially invalid because it manifestly infringes upon his constitutionally guaranteed right to privacy. The court found that in order to grant C.P.'s motion to quash, the juvenile court would have had to conclude as a matter of law that a stall in a high school's public restroom afforded its occupants a right of privacy regardless of the activity taking place within the stall, and would have to ignore the State's "role in shielding the public from inadvertent exposure to the intimacies of others." The court found that a stall in a public restroom is not a private place when it is used for other than its intended purpose.

The court found that the juvenile court did not err in denying C.P.'s motion to quash.

CUSTODY / HAGUE CONVENTION

United States District Court Of Appeals Holds That Lower Court Erred Under The

Hague Convention By Failing To Determine Whether Sexual Abuse Had Occurred Prior To Ordering Return Of The Children To Their Country Of Habitual Residence. The Court Further Found That The Lower Court Overstepped Its Authority In Issuing Conditions Under Which It Thought The Children Should Be Returned To Their Home Country. Danaipour v. McLarey, 2002 U.S. App. LEXIS 5942.

Kristina McLarey is a dual citizen of Sweden and the United States; Iraj Danaipour is a Swedish citizen and an Iranian national. The couple married in 1994 and had two daughters together. Both children were born in Sweden and lived there for most of their lives. In the summer of 1999, during a visit to Massachusetts, Danaipour announced to McLarey's parents that the two would be divorcing.

During the first half of 2000, McLarey and Danaipour's relationship deteriorated further. McLarey alleged that Danaipour was abusive and controlling, and that she began to suspect that he was having inappropriate sexual contact with their daughters. McLarey observed Danaipour pinching the girls' nipples and squeezing the older girl's buttocks. McLarey also reported that her older daughter began to exhibit sexualized behavior, such as attempting to kiss her mother hard on the mouth.

In June of 2000, McLarey visited the U.S. with the girls. The following month, Danaipour also came to the U.S. McLarey alleged that on two occasions following the girls' visits with their father, she observed unusual redness in the younger child's vaginal area.

When Danaipour returned to Sweden, he petitioned for and received full custody of the girls from a Swedish court. When McLarey returned to Sweden, she petitioned the court for joint custody. The petition was granted in October 2000 and physical custody was ordered to alternate between the two parents on a weekly basis. McLarey promised the Swedish courts she would not remove the children from Sweden again, and she surrendered her passport and those of her children to her Swedish attorney.

McLarey continued to notice vaginal redness after the girls returned from visits with their father. McLarey consulted a pediatric nurse and a child psychologist.

When McLarey asked the younger child about the redness, the child stated "Baba do like this" and made a masturbatory motion. In November of 2000, the psychologist issued a report of suspected child abuse and referred the case to the Swedish social service agency that referred the case to the local police.

The police conducted an interview with the girls. However, the girls did not disclose the alleged abuse. The girls were also examined medically, and nothing out of the ordinary was found. The police terminated their investigation.

McLarey continued to seek assistance from the Swedish social service agency, requesting a full professional sexual abuse investigation. The agency informed McLarey that it could not investigate whether sexual abuse had occurred without consent from Danaipour, which was not forthcoming. McLarey then turned to the US embassy and the members of the Swedish parliament for assistance, but to no avail. McLarey alleged that during this time, the younger daughter repeatedly stated that "Baba" had hurt her "pee pee" and that she exhibited symptoms of abuse, including recurrent nightmares, avoiding bowel movements, and sexually inappropriate behavior.

In March of 2001, McLarey filed a motion with the Stockholm District Court requesting a full sexual abuse investigation, which Danaipour opposed. The court denied the motion for a full investigation.

Also during this time, the Swedish authorities concluded the custody evaluation conducted as part of the divorce proceedings. In May of 2001, the authorities issued a report that found that "nothing has been established... that suggests that either of the girls have been subjected to sexual molestation.... Both parents are very competent as parents and have a fine, close and natural contact with the daughters." There was never a full investigation done in Sweden into the specific question of whether either girl had been sexually abused.

On June 25, 2001, McLarey left Sweden with the girls and returned to the US in violation of the Swedish court order. Upon arrival, she attempted to arrange a sexual abuse evaluation. On August 22, 2001, Danaipour filed a petition in the Family Court division of the Massachusetts state court seeking return of the

children under the Hague Convention. In September of 2001, the action was removed to the federal district court.

Also in September of 2001, McLarey began taking the girls to therapy sessions with a clinical psychologist. Over the course of several months of weekly sessions, the younger girl made various statements that could be taken as indicating that her father had her masturbate him and that he had masturbated himself in her presence. She also told the doctor that she did not ever want to go to Sweden to see her father. The older girl did not make any statements indicating that she had been sexually abused, but she did say that her sister had told her about the abuse, that she thought her father did it, and that she was worried and frightened that she would have to go back to Sweden.

In November of 2001, the court appointed a Guardian *Ad Litem* (GAL). In her preliminary report, the GAL emphasized the need for a "prompt resolution" preferably before the Swedish school term began in January. Danaipour requested that the court order an independent sexual abuse evaluation. On December 3, 2001, McLarey filed a motion requesting a forensic sexual abuse evaluation prior to trial. McLarey stated that she believed that the evidence in the record was sufficient to meet her burden of proof under the Hague Convention, but that the judge should order an evaluation if he thought it would be helpful or necessary for him to make a finding on whether sexual abuse had occurred. McLarey's motion argued that a finding of sexual abuse would constitute a *per se* "intolerable situation" under Hague, that any evaluations performed in Sweden would not be effective, and that the results of an evaluation in the US could inform the court's consideration of the possibility of using undertakings in the event of a return order.

Along with her motion, McLarey submitted expert affidavits from two medical doctors indicating that the children's willingness and ability to disclose information relating to any sexual abuse would be markedly diminished if they were returned to Sweden. Thus, as of December 2, both parties agreed to the need for a full evaluation and contemplated it would be done in the US under the court's supervision.

On December 4, 2001, the court held a preliminary hearing, at which it expressed a preference to conclude the trial in December; in accordance with the GAL's recommendation, and inquired whether a full evaluation could be done in Sweden. At that point, Danaipour's counsel expressed an absolute opposition to the possibility of any examination taking place in the US. The GAL stated that she did believe that an evaluation needed to be done, but she expressed no opinion as to whether it should be done in the US or Sweden.

On December 7, Danaipour filed a written objection to an evaluation taking place in the US. However, he submitted no expert affidavits, and thus did not speak to the expert testimony submitted by McLarey that an evaluation in Sweden was unlikely to succeed.

The court denied McLarey's motion for a court ordered sexual abuse evaluation. The court stated: "Contrary to what the respondent is contending, I'm not persuaded that evaluations of the children in Sweden will not be effective, given the additional information that's been generated in this case, and I think it's neither feasible nor appropriate, given the mandate of the Hague Convention to decide these matters promptly, and given the fact with the agreement of all the parties I've set a December 19 trial date."

On December 14, 2001, the Stockholm County Court entered an order specifying that McLarey and Danaipour would continue to have joint custody, the children would have supervised visitation rights with their father every Saturday, and that the court would *consider* the question of a child psychiatric evaluation.

At trial, three doctors testified for McLarey. Two of the experts testified that the girls suffered from Post Traumatic Stress Disorder (PTSD). Dr. Carol Jenny, a professor of pediatrics at Brown University and an expert in sexual abuse, testified that she could state to a reasonable degree of medical certainty that the younger child had been sexually abused. Dr. Jenny also testified that she did not believe an effective investigation could be conducted in Sweden, because the children would be unlikely to talk if returned.

Danaipour's expert, a Ph.D. in social work, testified that in his opinion neither girl

suffered from PTSD and that a sexual abuse evaluation would be more effective if it took place in Sweden.

On January 2, 2002, the District Court found McLarey's experts credible; however, the court also found that "a forensic evaluation is necessary to determine with a reasonable degree of reliability whether any form of sexual abuse has occurred and, if so, who the abuser was." The court further found that there was no evidence that the older daughter had been sexually abused and that neither child suffered from PTSD. It concluded that "McLarey [has not] proven by clear and convincing evidence that the children's return to Sweden on the conditions being ordered in...this Memorandum will create a grave risk of psychological harm to them that would permit the court to deny Danaipour's petition."

The court ordered McLarey to return the children to Sweden by January 16, 2002, with a list of 12 conditions including: that the children reside with McLarey unless ordered otherwise by a Swedish court; that a forensic evaluation be conducted in Sweden and that both parents participate fully in the evaluation; that a Swedish court decide the implications of the forensic evaluation for the custody of the children; that Danaipour have no contact with the younger daughter unless ordered otherwise by a Swedish court; that Danaipour have only telephone contact three times a week with the older daughter unless the Swedish courts order otherwise; and that Danaipour request that a court of Sweden enter the terms of the order as a "mirror order" enforceable in Sweden. The court stated that "this court expects that [the Swedish court] will enter a virtually verbatim Swedish counterpart of [this order]."

McLarey filed an appeal with the US District Court of Appeals, requesting a stay pending appeal. The appellate court began by reviewing the requirements of the Hague Convention. The court held that under Hague, children who have been wrongfully removed from their country of habitual residence must be returned unless the abductor can prove one of the defenses allowed by the Convention. McLarey argued that Article 13(b) of the Convention applied. Article 13(b) states that children do not have to be returned to their country of habitual

residence if the abductor can prove that "there is a grave risk that...return would expose the children to physical or psychological harm or otherwise place the children in an intolerable situation."

The court noted that the Convention establishes a strong presumption favoring return of a wrongfully removed child, and that exceptions to the general rule should be narrowly construed. The court also noted that Article 13(b) defenses may not be used "as a vehicle to litigate (or relitigate) the child's best interests."

The court found that the district court's ruling was erroneous. The district court held that it required a full independent sexual abuse evaluation in order to make a finding on whether sexual abuse had occurred, and thus whether grave risk of harm would preclude return. It declined to order such an evaluation, however, believing that the determination could be made in Sweden without putting the children at grave risk, so long as certain conditions were met. The district court concluded the evaluation could be done as well in Sweden as here. The appeals court stated that implicit in the district

court's conclusion is a determination that, even if the children had been sexually abused, they could be returned, and the onus would fall upon the Swedish authorities to protect them. The appeals court held that this decision violated the Hague Convention.

The court stated that the Hague Convention assigns the task of making the "grave risk" determination to the court of the receiving country. The court noted that this task includes the obligation to make any factual findings needed to determine the nature and extent of any risk asserted as a defense to returning a child. The court held that the district court's implicit determination that, in the circumstances of this case, the children could be returned without first determining whether they had been sexually abused is inconsistent with the US policy with regard to the Convention, which holds that sexual abuse by a parent constitutes an intolerable situation and subjects the child to grave risk. Thus, the court determined that the district court erred in determining that the Convention did not require it to determine the issue of sexual abuse.

The court further found that the district court erred by failing to consider whether a sexual abuse evaluation in Sweden would have been viable given the circumstances of this case. The court held that the evaluation should have been performed under the supervision of the court charged with making the grave risk determination.

Finally, the court held that the district court's use of conditions went beyond its authority by essentially imposing requirements on a foreign court. The court further noted that the district court made the incorrect assumption that its own order could and would be enforced by a foreign court.

The court concluded that the district court must adjudicate the issue of whether sexual abuse occurred, ordering further evaluations if necessary in order to determine whether the children are at a grave risk of physical or psychological harm, or otherwise being placed in an intolerable situation if returned. The court reversed and remanded the case.

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.



Federal Policy Update by Miriam A. Rollin, JD

FY 2003 BUDGET/ APPROPRIATIONS

In March, the House passed their version of the Budget, and the Senate Budget Committee approved their version of the Budget. Nobody expects a final FY2003 House/Senate Conference budget (actually, even full Senate passage appears in great doubt). FY2003 appropriations are expected to start moving forward in June.

The House is expected to utilize their budget numbers as the guidelines for their appropriations bills, and the Senate will likely use theirs.

CAPTA REAUTHORIZATION

H.R. 3839, the "Keeping Children and Families Safe Act of 2002" (reauthorizing the Child Abuse Prevention and

Treatment Act for FY 2003-2007), passed the House April 23 by a vote of 411-5 (under suspension of rules, a process which requires a 2/3 vote for passage, and does not permit amendments). The bill keeps the structure and almost all of the provisions of current law, with some new provisions and a little additional funding authorized, as well. There is no Senate bill or timeline, yet.

JJDPA REAUTHORIZATION AND JABG AUTHORIZATION

Last year, H.R. 1900 (Juvenile Justice and Delinquency Prevention Act reauthorization) and H.R. 863 (Juvenile Accountability Block Grant authorization) passed the House. There has been no Senate mark-up or floor action, and none is scheduled (although the JABG authorization may move forward as part of another bill – the DoJ authorization bill, H.R. 2215, which is now in the midst of House/Senate Conference). Senate JJDPA bills have been introduced: (1) S. 1174 (Leahy/Hatch) – a version with a “straight” [unchanged from current law] reauthorization, along with a new grant program to improve conditions of confinement for juveniles in adult jails, and (2) S. 1165 (Biden/Kohl), which is similar to H.R. 1900 and H.R. 863.

SOCIAL SERVICES BLOCK GRANT RESTORATION

There has been no action, yet, on H.R. 1470 or S. 501, the bills to restore the Social Services Block Grant. (SSBG is the largest federal funding source for child welfare services in the states.) However, there are two other possible avenues for action:

1. as part of the CARE Act (S. 1924, the Senate bi-partisan – Lieberman/Santorum – faith-based-initiative bill, endorsed by the White House, which is expected to move forward in the Senate shortly), and/or

2. as part of Senate welfare reform (TANF) reauthorization legislation (Senate Finance Committee action and TANF reauthorization is expected 5/22/02; on May 2, the House Education and Workforce Committee adopted their welfare/child care bill, H.R. 4092, and the House Ways and Means Committee adopted their welfare/child care bill, H.R. 4090, but these bills did not include SSBG restoration).

WELFARE REFORM REAUTHORIZATION AND KINSHIP CARE

As mentioned above, on May 2, the House Education and Workforce Committee adopted their welfare/child care reauthorization bill, H.R. 4092, and the House Ways and Means Committee adopted their welfare/child care reauthorization bill, H.R. 4090; Senate Finance Committee action on TANF reauthorization is expected 5/22/02. Another child abuse and neglect-related issue in welfare reform is kinship care. About 420,000 children who are raised by relatives receive TANF support from child-only grants, and another 80,000 children receive support because the relatives who care for them are on TANF. Those relatives who receive child-only grants are not subject to time limits and work requirements, but those relatives who are on TANF themselves are currently subject to time limits and work requirements. It is critical that these relatives be able to care for these children. Congress must ensure that these children are not returned to dangerous settings or placed in expensive foster care because their

relative caregivers – many of whom are grandparents and are unable to work – have lost their TANF support due to time-limits or work requirements. The House bills have not addressed this problem, but a Senate bill could.

MISCELLANEOUS BILLS ON WHICH NO ACTION HAS OCCURRED

- A bill to promote partnerships between child welfare agencies and drug and alcohol abuse prevention and treatment agencies (S. 484, Senators Snowe and Rockefeller; also, H.R. 1909);
- Legislation to strengthen the child welfare workforce (H.R. 1371, Rep. Stark);
- Legislation to provide equitable access to foster care and adoption services for Indian children in tribal areas (H.R. 2335; S. 550); The Indian Child Welfare Act amendments bill (H.R. 2644);
- Bills to amend the Immigration and Nationality Act to re: temporary protected status for certain unaccompanied alien children (H.R. 720, H.R. 1904, S. 121); and Younger Americans Act (H.R. 17, S. 1005).

Don't Forget: You can access all bills (including the text of legislation and public laws), committee reports, and budget/appropriations funding charts via the Internet at thomas.loc.gov.

* **Miriam Rollin is the NACC Policy Representative in Washington D.C.**

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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E-MAIL _____

Return to: NACC, 1825 Marion Street, Suite 340, Denver, CO 80218 or Fax to: 303-864-5351



National Association of Counsel for Children



2002 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.

Nominations Must Be Received By July 15, 2002.

Send Nominations to:

Awards Committee
 National Association of Counsel for Children
 1825 Marion Street, Suite 340
 Denver, Colorado 80218

NOMINEE:

NAME: _____

DATE OF BIRTH: _____

DEGREE: _____

TITLE / POSITION: _____

FIRM / ORGANIZATION: _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE: _____ FAX: _____

E-MAIL: _____

MEMBER OF THE NACC? YES NO

NUMBER OF YEARS NOMINEE HAS BEEN INVOLVED IN CHILD ADVOCACY: _____

NOMINATOR:

NAME: _____

TITLE/POSITION: _____

FIRM/ORGANIZATION: _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE: _____ FAX: _____

E-MAIL: _____



Children's Law News

CONFERENCES & TRAINING

June 6–8, 2002

ABA Center on Children and the Law
10th National Conference on Children and the Law, Capitol Hilton Hotel, Washington, DC. 202-662-1740.

Register online at www.abanet.org/child/2002conference.html.

June 11–13, 2002

OJJDP National Youth Gang Symposium, Orlando, FL. www.gangsymposium.org/.

July 7–10, 2002

ISPCAN 14th International Congress on Child Abuse and Neglect: *Charting our Progress Toward Protection of Children Worldwide*, Adams Mark Hotel, Denver, CO. 303-996-9997. www.kempe.org.

July 10–14, 2002

Training Institute, National Technical Assistance Center for Children's Mental Health at Georgetown University, Washington, D.C. *Developing Local Systems of Care for Children and Adolescents with Emotional Disturbances and Their Families: Family Involvement and Cultural Competence*. For more information: 3307 M Street, NW, Suite 401, Washington, DC 20007, 202-687-5000, or institutes2002@mindspring.com.

August 1–4, 2002

North American Council on Adoptable Children 29th Annual Conference: *Winds of Change – New Directions for Families and Children*, Hyatt Regency O'Hare, Chicago, IL. 651-644-3036. www.nacac.org.

September 26–29, 2002

NACC 25th National Children's Law Conference, Sheraton World Resort, Orlando, FL. NACC members receive a 25% registration discount. See page 13 of this issue. Brochures will be mailed in June. For more information, contact the NACC at 1-888-828-NACC or visit our website at www.NACCchildlaw.org.

PUBLICATIONS

NEW *Legal Representation of Children:*

Recommendations and Standards of Practice for the Legal Representation of Children in Abuse and Neglect Cases by the NACC. The publication includes two documents. The first document, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, designed to assist court systems in the selection and implementation of a model of child representation in child abuse and neglect cases. The document reviews the pros and cons of various models of child representation and provides a checklist of children's needs that we believe must be satisfied by whichever model of representation jurisdictions choose. The second document is the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version)*. This document provides comprehensive guidance to children's attorneys including descriptions of the attorney's role and duties. Taken together, these documents provide state-of-the-art thinking on the legal representation of children. Many jurisdictions lack comprehensive guidelines or standards of practice for attorneys representing children, and this has frequently been cited as a major cause of substandard representation. The NACC encourages jurisdictions and courts to use this publication to create guidelines that will improve the quality of legal representation in your jurisdiction. Such guidelines may take the form of statute, Supreme Court or local court rule, or agency standards. We believe this publication will be useful in reviewing the adequacy of current systems and implementing new systems. To obtain a copy, contact the NACC. The two documents contained in this publication are also available online at www.naccchildlaw.org/training/standards.html.

Too High a Price: The Case Against Restricting Gay Parenting. ACLU Lesbian

and Gay Rights Project, 212-549-2627, lgbtiv@aclu.org.

Moving from Sympathy to Empathy, the 2001 Edition of the NACC Children's Law Manual Series. The manual is 435 pages and includes 30 articles covering a wide range of children's legal issues including Attachment, Bonding and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court by Arredondo and Edwards; ASFA's Compelling Reasons Requirement by Cecilia Fiermonte; NACC Recommendations for Representation of Children in Abuse and Neglect Cases; Powerhouse: Empowering Young Adults as They Transition from Foster Care by O'Dell, Alba, Lehman, Mayer, and Hein; Helping Separating and Divorcing Parents Remain Child Focused by Eugene White; and The Status of Sibling Rights: A View into the New Millennium by William Patton. Copies may be ordered from the NACC by calling toll-free 1-888-828-NACC or using the Publications Order Form on the back cover of this issue.

The Children's Legal Rights Journal Is Published In Association With The NACC And Available To NACC Members At A Discount.



Children's Legal Rights Journal (CLRJ) is a quarterly professional practice journal for child welfare, juvenile justice, and family law professionals. Now in its 20th year, CLRJ is published by William S. Hein & Co., Inc., under the editorial direction of the ABA Center on Children and the Law, the CIVITAS Child Law Center at Loyola University of Chicago School of Law and now, the National Association of Counsel for Children. CLRJ is indexed in the *Current Law Index* and *Index to Legal Periodicals* and runs approximately 60 pages per issue. The annual subscription rate is \$67 but is available to NACC

members at a 30% discount (\$47 annually). To subscribe, contact Hein toll-free at 1-800-828-7571, ISSN 0278-7210 or contact the NACC for more information.

NACC's Better Public Policy for Children, Youth and Families – An Advocacy Guide, by NACC Policy Representative Miriam Rollin. A comprehensive guide to policy advocacy for children and families. Available on line at www.NACCchildlaw.org/policy/policy_guide.html, or call the NACC at 1-888-828-NACC.

NEWS

NACC Director Wins ABA Child Advocacy Award. NACC Executive Director **Marvin Ventrell** was named the recipient of the ABA 2002 Child Advocacy Award. The award, sponsored by the ABA Young Lawyers Division, ABA Children and the Law Committee, and the ABA Center on Children and the Law, begun in 1990, recognizes lawyers and judges for their achievements in the field of children's law. Receiving the 2002 award in the young lawyer category was **Kimberly A. Shellman** of the Fulton County Children's Advocacy Center in Roswell, Georgia.

NACC Thanks Outgoing Staff Attorney. The NACC thanks Staff Attorney **Laoise King** for her exemplary service to the organization. Ms. King has taken the position of Assistant City Attorney with the Denver Department of Human Services, Child Protection Division. She will be missed. Attorneys interested in serving on the staff of the NACC should respond to the announcement in the jobs section below.

NACC Launches New Website.

Visit the NACC's new and improved website at www.NACCchildlaw.org. The new site is comprised of four sections: About the NACC; Technical Assistance and Training; Children and the Law; and Policy Advocacy. The site includes members-only sections that allow you special access to resources including the online membership directory. Passwords have been mailed to all NACC members.

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 at www.NACCchildlaw.org, toll-free 1-888-828-NACC, fax 303-864-5351, and e-mail advocate@NACCchildlaw.org.

The NACC 2002 Outstanding Legal Advocacy Award.

Nominations for the 2002 award are being accepted now. Please see the award notice on page 11 and send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 340, Denver, CO 80218. Contact the NACC for more information. The deadline is July 15, 2002.

NACC 2002 Law Student Essay Competition.

The NACC is accepting essays for the 2002 Law Student Essay Competition. The winning essay will be published in the 2002 Children's Law Manual, and the winner will be given \$100, a one-year NACC membership and a scholarship to the 2002 conference in Orlando. 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 and a \$10 application fee to: NACC Student Essay Competition, 1825 Marion Street, Suite 340, Denver, CO 80218 by July 15, 2002. Essays should be submitted on disk together with a hard copy, not to exceed 15 pages single-spaced. For more information, please call the NACC toll free at 1-888-828-NACC.

2002 NACC Outstanding Affiliate Award.

Nominations are being accepted for the NACC 2002 Outstanding Affiliate Award. The award will be presented to the affiliate that best fulfills the mission of the NACC on the local level. The mission of the NACC is to achieve the well being of children by promoting multi-disciplinary excellence in children's law, establishing the legal interests of children and enhancing children's legal remedies. Affiliates should submit an application in letter form together with supporting documentation to NACC Affiliate Award, 1825 Marion St., Suite 340, Denver, CO 80218. Submission Deadline is July 15, 2002.

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.



NACC 25TH NATIONAL CHILDREN'S LAW CONFERENCE

September 26 – 29, 2002

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AMICUS CURIAE ACTIVITY

Arnold v. Arnold, Georgia Supreme Court, 502D0172. The NACC joined the Lambda Legal Defense Fund in this custody and visitation case. Amici argue that the trial court erred by awarding custody to the mother conditioned on a restriction that custody rights not be exercised in the presence of the mother's friend, who is lesbian. The court did so, despite the fact that there had been no finding or evidence of harm to the children from their long-standing contact with the family friend. Amici argue that imposition of this restriction runs afoul of the Georgia Supreme Court's unanimous ruling last year that visitation restrictions must be supported by a showing of harm to the children. The case is pending.

State Ex. Rel. W.A. v. E.A., Supreme Court of Utah, No. 20010081-SC. The NACC is drafting an amicus brief in this UCCJA case. The issue is whether the due process clause prevents an abandoned boy from pursuing judicial action that could free him from his unfit parents in the state where he resides, but where his parents lack minimum contacts. The amicus brief supports jurisdiction in Utah where the boy resides. The case is pending.

To request NACC amicus participation, contact the NACC or go to www.NACCchildlaw.org/training/amicus.html.

Parties interested in NACC Amicus Curiae participation in a case should contact the NACC Executive Director.

JOBS

NACC Staff Job Openings. The NACC is accepting applications for the following positions:

- **NACC Staff Attorney.** Serves as legal consultant to NACC members. Manages the NACC National Child Advocacy Resource Center and *Amicus Curiae* Programs. Serves as an NACC trial skills and conference trainer. Works on NACC policy and legislative matters. Must be a licensed attorney with at least two years experience in children's law. Salary and benefits are competitive, commensurate with expertise and experience.
- **NACC Administrator / Meeting Planner.** Responsible for the day-to-day management of the NACC office. Primary tasks include conference and meeting planning, bookkeeping, budgeting, and management of member services. BA or BS required. Salary and benefits are competitive, commensurate with expertise and experience.
- **NACC Assistant Director for Association Development.** Responsible for overall development of the association including membership, visibility, and fundraising. Experience in association development and knowledge base in child welfare and juvenile justice preferred. BA or BS required. Salary and benefits are competitive, commensurate with expertise and experience.

For all positions, send cover letter, resume/cv, writing sample, and

references to Marvin Ventrell, NACC Director, 1825 Marion St., Suite 340, Denver, CO 80218; Fax 303-864-5351; e-mail ventrell.marvin@tchden.org. For more information on these NACC positions, visit the NACC jobs website at www.NACCchildlaw.org/childrenlaw/jobs.html, or contact the NACC Executive Director.

President, Children Now, Oakland / Los Angeles, CA. Children Now is a research and action organization dedicated to assuring that children grow up in economically secure families. Inquire with Morris & Berger Consultants, 626-795-0522; www.morrisberger.com.

Zubrow Fellowship in Children's Law. Juvenile Law Center continues the Sol and Helen Zubrow Fellowship, open to new law school graduates and lawyers completing their judicial clerkships. Fellows will work at the Juvenile Law Center in Philadelphia for up to two years. Applications for the first year must be received by October 1, 2002. Contact the JLC at 215-625-0551 or www.jlc.org.

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

Please Send (mail/e-mail/fax) Children's Law and Advocacy Job Openings to the NACC.

If you have "Children's Law News," please send it to: **The Guardian, 1825 Marion Street, Suite 340, Denver, CO 80218**
You can e-mail information to advocate@NACCchildlaw.org.

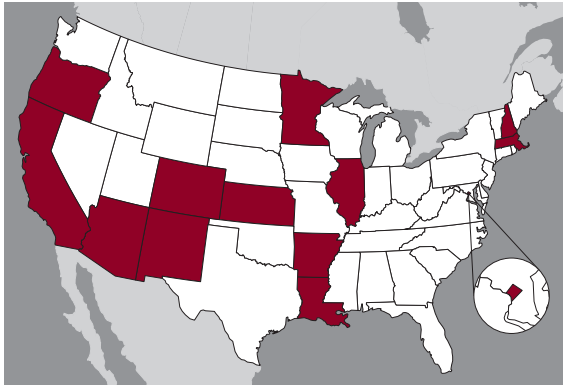
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Participate in the NACC "Members Get Members" program and earn valuable NACC Bucks redeemable on your NACC member dues, publications and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children's Law Conference (a \$300 value).

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Mail to: NACC Membership, 1825 Marion Street, Suite 340, Denver, CO 80218



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 organization 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.

THE 2002 NACC OUTSTANDING AFFILIATE AWARD

The NACC is accepting nominations for the 2002 NACC Outstanding Affiliate Award which will be presented to the affiliate that best fulfills the mission of the NACC on the local level. The mission of the NACC is to achieve the well being of children by promoting multidisciplinary excellence in children's law, establishing the legal interests of children and enhancing children's legal remedies. Affiliates should submit an application in letter form together with supporting documentation to NACC Affiliate Award, 1825 Marion St., Suite 340, Denver, CO 80218. Submission Deadline is July 15, 2002.

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
E-mail: 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
E-mail: Christopher.Wu@jud.ca.gov
NCACC recently hosted the NACC Board of Directors 2002 Mid-Year Meeting where a joint NACC / NCACC training was also held.

Los Angeles Affiliate of the National Association of Counsel for Children (LANACC)*

Recipient of the NACC Outstanding Affiliate Award (2001)

Shahrazad Talieh, President
Los Angeles CASA Program
201 Centre Plaza Drive
Monterey Park, CA 91754
Phone: 323-526-6666
E-mail: stalieh@lasc.co.la.us

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
E-mail: John@coloradofamilylaw.net

ILLINOIS

Illinois Association of Counsel for Children (IACC)*
(INACTIVE)
Contact the NACC for Information

KANSAS

Kansas Association of Counsel for Children (KACC)***
Larry R. Rute
Associates in Dispute Resolution, LLC
712 South Kansas Avenue, Suite 400
Topeka, KA 66603
Phone: 785-232-5348 FAX: 785-233-5932
E-mail: lrutheadr@aol.com
Contact Larry Rute if you are interested in becoming part of the new Kansas affiliate.

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
E-mail: 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
E-mail: lamparker@aol.com

MINNESOTA

Minnesota Association of Counsel for Children*
Gail Chang Bohr, President
Children's Law Center of Minnesota
1463 Minnehaha Avenue West
St. Paul, MN 55104
Phone: 612-644-4438

NEW HAMPSHIRE

New Hampshire Chapter of the National Association of Counsel for Children (NHNACC)*
Mary Ann Callanan, President
1361 Elm Street
Manchester, NH 03101
Phone: 603-622-2224 FAX: 603-623-2471

NEW MEXICO

New Mexico Association of Counsel for Children (NMACC)*
Nancy Colella, President
1717 Louisiana, Suite 216
Albuquerque, NM 87110
Phone: 505-232-9332 FAX: 505-232-9490

OREGON

Oregon Association of Counsel for Children (OACC)*
Ellen Jones, President
Willamette University College of Law
245 Winter Street, SE
Salem, OR 97301
Phone: 503-370-6057 FAX: 503-370-6824
E-mail: ekjones@spiritone.com

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
E-mail: 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.

Thank You

The National Association of Counsel for Children Thanks the Following Donors and Members for Their Generosity

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The NACC office receives many requests for legal services. Because the NACC does not provide direct legal services, we need to refer these people to counsel. Please fill out the following form and return it to the NACC so that we can include you in our referral network. Non-attorneys are also asked to participate.

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