

# THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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National Association of  
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# THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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# NACC Practice Tips

## COUNSEL FOR CHILD VICTIMS OR WITNESSES IN CRIMINAL PROSECUTIONS

John E.B. Myers\*

Attorneys who represent children in juvenile and family court are accustomed to playing a pivotal role. The child's attorney investigates the case, interviews the child and others, examines and cross-examines witnesses, and, in some jurisdictions, submits written recommendations to the court. In the relatively rare case where an attorney is retained or appointed to represent a child victim or witness in a criminal prosecution, however, the attorney's role is dramatically different. Among the few cases to address the issue, the Utah Supreme Court's decision in *State v. Harrison*, 24 P.3d 936 (Utah 2001) is among the most instructive. The Court reversed the defendant's rape conviction because the minor victim's appointed counsel took an active role in the trial. The Court stated that "[t]he role of the guardian *ad litem* in the criminal context involving a child victim is as limited as that enjoyed by the child's parent or other legal guardian." *Id.* at 945-946. The court wrote:

"[B]ecause the victim was not an interested party, her court-appointed representative, the guardian *ad litem*, should not have been permitted to sit at counsel table, either with the State or with defendant. It was error to allow it. Permitting the guardian *ad litem* to question witnesses and make objections was also error. Because a guardian *ad litem* does not represent an interested party in a criminal trial, the guardian *ad litem* is not permitted to further the interests of either the State or the defendant in a criminal case. . . . [T]he guardian *ad litem*'s participation may not include objecting to questions and questioning witnesses in a criminal trial. . . ." *Id.* at 945.

The Court went on to hold that the child's guardian *ad litem* may not make an opening statement or a closing argument. What then is the role of a child victim's court-appointed guardian *ad litem* in a criminal case? The *Harrison* Court wrote that a guardian *ad litem*'s role "would be peripheral, and strictly limited to matters relating specifically to the treatment of the child victim, such as assuring that the victim received notice and opportunity to be present and heard as mandated by the victims' rights statutes." *Id.*

Another instructive case is *People v. Pitts*, 223 Cal. App. 3d 606, 273 Cal. Rptr. 757 (1990). The *Pitts* Court concluded that "upon a proper showing and with proper limitations, a trial court may permissibly appoint counsel for alleged child victim. . . ." 273 Cal. Rptr. at 907. Although the Court declined to articulate the necessary showing, it ruled that a hearing was necessary to address whether counsel should be appointed for a child victim or witness. If the hearing resulted in appointment of counsel, "the attorney's role should be carefully spelled out. . . ." *Id.* at 909. The child's attorney would not have the same "ability to control the proceedings, as the prosecutor or defense counsel." Regarding pretrial matters, the Court wrote that a trial court:

"[C]annot appoint counsel for the minors who will in essence act as the prosecution's agent, interfering arbitrarily with defense access to those children. While counsel will have ethical obligations toward the children as clients, counsel's role under the statute will be more advisory in nature: for example, he or she may coordinate prosecution and defense contact with the children; advise the children and their guardians on whether they are required to submit to physical examinations, interviews, etc., and the consequences at trial (such as impeachment) that are likely to occur if they do not; transmit their wishes to the court in appropriate circumstances, for example, in determining whether to order the children to submit to physical examinations, the trial court may properly consider the potential for psychological harm to the victim [citation omitted]; and be present, upon the children's/guardians' request, during any interviews of the children to ensure that neither party becomes abusive or overbearing toward the children. The attorney could also have input in fashioning any of the court's orders, regarding discovery and other such matters, so as to minimize harm to the children. Depending on the circumstances of the case, counsel might also properly be involved in other aspects. He or she could not, however have the power to veto defense access to the children, requests for discovery, or the like, except as that power is vested in the children/their guardians and conveyed to the court through the attorney." *Id.* at 909.

North Dakota law allows appointment of a guardian *ad litem* for a child who is a material or prosecuting witness in a sex offense prosecution. North Dakota Century Code § 12.1-20-16 (1997). "The guardian *ad litem* must receive notice of and may attend all depositions, hearings, and trial proceedings to support the minor. . . and advocate for the protection of the minor. . . but may not separately introduce evidence or directly examine or cross-examine witnesses." *Id.* See also Florida Statutes Annotated § 914.17 (2002).

The role of a child victim's counsel is dramatically different in criminal than in civil litigation. Yet, the much-diminished role of the child's attorney in criminal cases is understandable. Although crime victims are important, they simply are not parties. A criminal prosecution is and should be about the defendant, whose reputation and freedom are at stake. Moreover, courts are concerned that the child's attorney will align with the prosecution, essentially ganging up on the defendant. That is what happened in the *Harrison* case.

Many communities have excellent victim/witness advocacy programs employing trained professionals to help crime victims through the twists and turns of the criminal justice system.

Except in unusual cases posing vexing legal issues, it is likely that an experienced victim/witness advocate will do a better job for a child victim in a criminal case than an attorney. When it comes to criminal cases, those of us who are lawyers representing children in civil litigation should defer to our more knowledgeable and capable colleagues – professional victim/witness advocates.

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**Note to Members: The NACC periodically runs a practice tips article in The Guardian. If you are interested in submitting practice tips or serving on the NACC Practice Tips Workgroup, please contact the NACC.**



## Cases

### FOSTER CHILDREN / CLASS ACTION

*Tenth Circuit Affirms In Part, Vacates In Part, And Remands New Mexico Foster Children Class Action Suit Reported In Fall 2001 Issue Of The Guardian. Joseph A. v. Ingram, 2002 U.S. App. LEXIS 247 (10th Cir. 2002). 14 Pages.*

In an opinion filed August 22, 2001, the Tenth Circuit Court of Appeals ruled that the Eleventh Amendment and the Younger abstention doctrine precluded foster children from pursuing claims against the New Mexico Children, Youth and Families Department. The foster children filed a petition for a rehearing, which was granted in part. On rehearing, the Tenth Circuit found that the Eleventh Amendment does not bar the claims of the foster children, but that the Younger abstention doctrine does bar some of the claims. The court remanded the case, ordering the district court to determine which claims pose problems under the Younger abstention doctrine.

### DEPENDENCY / CONCURRENT PLANNING

*Supreme Court Of North Dakota Holds That Concurrent Planning By A Social Service Agency Does Not Violate A Parent's Due Process Rights. In the Interest of N.H. and B.H., 2001 N.D. 143, 632 N.W.2d 451, 2001 N.D. LEXIS 158 (2001). 5 Pages.*

In September of 2000, after a seven-year history with social services, a North Dakota trial court terminated the parental rights of S.D. (Mother) and R.H. (Father) to their two children. Mother appealed claiming, among other things, that the concurrent planning procedure used by the Cass County Department of Social Services (Department) was unconstitutional because it violated her right to procedural and substantive due process. Mother argued that reasonable efforts to reunify the child with the parents are unrealistic when the department is concurrently planning for permanent placement of the children with someone other than the parents.

Mother based her claim on a statement of a Department social worker who testified that once the permanency plan recommends termination of parental rights and adoption, termination becomes the agency's top priority. The social worker also testified that reasonable efforts to reunify the children with their parents continue at the same time, because state law requires concurrent planning.

Mother contended that this practice deprived her of due process because the same social worker, whose duty it is to make a reasonable effort to reunify the family, was also working to terminate the parental rights. Therefore, Mother

maintained that the Department did not make reasonable efforts to reunify her with her children once the decision was made to pursue termination of parental rights.

The court rejected Mother's argument. The court stated that reasonable efforts require the Department to exercise due diligence to use appropriate and available services to meet the needs of the child and the family, and that in doing so, the child's health and safety must be of paramount concern. The court also noted that the natural rights of parents to their children are fundamental and are constitutionally protected, however, these rights are not absolute or unconditional. The court stated that due process provides certain procedural protections before the parent-child relationship may be terminated.

The court held that the Department continued to make reasonable efforts to reunify the family, concurrent with proceeding in a timely manner to finalize the permanent placement of the child. Recognizing that the child's health and safety are the paramount concern, the court held that Mother failed to establish how concurrent planning as applied by the Department violated her due process rights. The court, therefore, affirmed the lower court's termination of parental rights.

## DEPENDENCY / EMOTIONAL HARM

*First Circuit Court of Appeals Holds That The Legal Definition Of "Torture" Can Include Pure Emotional Harm And Remands For Trial On This Issue Despite Fact That Mother's Parental Rights Had Already Been Terminated. In Re A.G., L.G., and B.G.*, 575 N.E.2d 524, 2001 Ill. App. LEXIS 699 (1st Circuit 2001). 3 Pages.

On March 29, 1999, the state of Illinois took 11 year-old L.G. into protective custody after allegations of abuse and neglect were made against her mother, Leslie G. (Mother). The state found L.G. and her three siblings (N.G., B.G. and A.G.) had been struck by their mother resulting in various welts, cuts and bruises on the children. Facts also supported allegations of excessive corporal punishment and substantial risk of physical injury to the children that was likely to cause death, disfigurement, emotional impairment or loss of bodily function. After a hearing, the trial court ordered the children into protective custody.

The petitions were amended to add torture as a basis for a finding of abuse. At trial, evidence was presented that on February 23, 1999, Mother forced A.G., L.G., and B.G. to restrain the oldest child, N.G. while Mother beat N.G. into unconsciousness. N.G. was unconscious for more than an hour. The petition further alleged that Mother threatened the children with physical harm if they did not assist in restraining their siblings during beatings. A Catholic Charities supervisor who interviewed the children testified that the children admitted they were fearful the same thing would happen to them if they did not help Mother during the incident.

The trial court issued a finding of abuse and neglect on the basis of an injurious environment, physical abuse, substantial risk for injury and excessive corporal punishment. The trial court also found that the children had been made to assist in the beating of N.G. by holding her down, but that N.G. was the only child who was tortured. Mother's parental rights to all four children were later terminated.

On December 22, 1999, L.G., A.G. and B.G. filed a notice of appeal on the lack

of a finding that they too had been tortured. Mother filed a brief arguing that the appeal was moot because her parental rights to the children had been terminated. The children argued that the adjudicatory findings were important because they are guideposts for provision of services to children.

The Court of Appeals agreed, stating it could decide the issue because it fit the public interest exception to the mootness doctrine. The court stated that the exception applies when 1.) the issue is of a public nature, 2.) if there is a desirability of an authoritative determination for public officers, and 3.) if there is a great likelihood the issue will reoccur. Finding that these factors had been met, the court proceeded.

Absent case law defining "torture" in Illinois, and no clear definition as to the scope of "torture" in the Illinois Juvenile Court Act of 1987, the appeals court turned to dictionary definitions of "torture" for guidance. The court cited two such definitions in their opinion. Random House College Dictionary Revised Edition 1387 (1988) defines "torture" as "1. The act of inflicting excruciating pain, especially as a means of punishment or coercion... 4. Extreme anguish of the body or mind." American Heritage Dictionary Second College edition 1280 (1985) also includes in its definition "(to) afflict great physical or mental pain." The appeals court found that it is reasonable to conclude the legislature would have anticipated the duality of this term, and intended to include both physical and emotional harm in its definition.

Finding that the trial court did not consider emotional anguish in its interpretation of torture, the appeals court remanded the case for trial on the issue of mental torture as an additional finding of abuse.

## ADOPTION

*Supreme Court Of Mississippi Upholds Lower Court's Entry Of An Adoption Decree Granting Adoption To Two Opposing And Non-Related Parties. Adoption of P.B.H.*, 787 So.2d 1268, 2001 Miss. LEXIS 161 (2001). 6 Pages.

In September of 1992, S.M. (Mother) gave birth to P.B.H. (Child). During her

pregnancy, Mother stated that she was unsure whether J.H. (Jeff) or J.P. (Jason) was the father. A few months after giving birth, Mother and Jeff moved in together and began raising Child. During this time, Jeff had a paternity test performed. The test revealed that Jason was Child's father; however, Mother altered the results to read that Jeff was Child's father. The couple raised Child together until they separated in July of 1995.

In November of 1995, Jeff filed for custody of Child. He and Mother subsequently entered into an agreed temporary order for joint legal and physical custody with equal periods of physical custody every forty-eight hours. Shortly after that order was entered, Mother was killed in an automobile accident.

After Mother's death, Child's maternal grandmother (Lori) and her husband filed a notice of intervention in Jeff's custody action alleging that Jeff was not the biological father of Child.

In June of 1996, Jeff filed a petition for termination of the parental rights of the biological father, and for the adoption of Child. Jeff attached a consent and relinquishment of rights signed by Jason, the now uncontested biological father. Lori and her husband filed a notice of intervention and cross petition for termination of parental rights and for adoption.

After a hearing, the lower court ruled that it was in the best interests of the child to terminate Jason's rights, and grant both Jeff and Lori's adoption petitions, giving primary physical custody to Lori and visitation rights to Jeff.

Lori appealed claiming, among other things, that the lower court erred in granting the petitions of both parties. The Supreme Court disagreed. The court stated that it is undisputed that all parties seeking to adopt Child qualify under the technical aspects of the state's principal adoption code and thus the primary focus of the proceeding would be the evaluation of the best interests of the child. The court reviewed the lower court's findings regarding the child's best interests.

The court stated that in determining what would be in the best interests of

the child, the lower court considered stability of environment, ties between prospective adopting parents and the child, moral fitness of parents, home, school and community record of the child. The lower court also relied upon the testimony of experts. The court noted that the lower court did not award primary custody to Jeff, rather he was given little more than the visitation rights that would be exercised by a typical divorced father. The court reviewed the record and was satisfied that the lower court did not err in determining that the best interests of the child was a joint adoption with primary custody awarded to Lori and visitation rights awarded to Jeff. The court cited the lower court's opinion which relied upon a 1998 Mississippi Supreme Court case which stated "Not all adoptions are 'traditional.' The [lower court] is in the best position to assess this question with respect to each adoption on a case by case basis." The court found that the lower court had aptly applied this standard when it stated:

"The court is deeply concerned and feels most strongly that this young child does not need to experience any more loss in her life any time soon. As a natural grandparent, Lori would enjoy certain statutory rights should the court award the adoption to Jeff, however; and most unfortunately, the present state of the law in the area renders the court powerless to enforce a course of conduct clearly in this young child's best interest, that is, continued contact with the man she regards as her father should Lori's adoption petition be granted." Therefore, the Supreme Court affirmed the lower court's order.

## CRIMINAL PROSECUTION / EXPERTS

*Colorado Court Of Appeals Holds That Expert Testimony In Shaken Baby Syndrome Case Regarding The Amount Of Force Generally Exerted To Cause A Subdural Hematoma In A Child Is Unfairly Prejudicial And Thus Irrelevant. People v. Martinez, 2001 Colo. App. Lexis 2161 (2001). 5 Pages.*

On October 17, 1998, Stephen Martinez (Martinez) was baby-sitting his

girlfriend's four-month-old daughter. Martinez reported to a 911 operator that the child had begun choking after he fed her and that the child was pale and cold. Paramedics arrived and took the child to the hospital, where she died later that day.

When police arrived on the scene, they noticed that the baby's crib sheet was missing. Martinez told the officers that he had put the sheet in the washing machine because it was stained with the baby's blood. The police took statements from both Martinez and his girlfriend. Martinez repeated the statement he made to the 911 operator:

Later, in a videotaped interview, Martinez stated that the baby's death may have been due to an incident that had occurred two and a half weeks earlier, in which he had tripped while feeding the baby and caused her to incur a minor head wound. The investigating officer told Martinez that the doctors said the baby's injury occurred that day, and encouraged Martinez to confess. Martinez then stated that he had gotten frustrated with the baby's crying and shook her, and while he was shaking her, her head accidentally hit the crib. Martinez stated, "I shook her hard" and also provided a demonstration of his actions that day. Martinez was charged with first degree murder:

At trial, the coroner testified that the child had suffered a skull fracture, localized subdural and subarachnoid hemorrhages, optical nerve and retinal hemorrhages, a "reported history of acceleration/deceleration" and scalp bruises.

The primary issue at trial was Martinez's mental state when the incident occurred. Martinez argued that he did not mean to fatally injure the child, but that he wanted the child to stop crying. He argued that he shook the baby with minimal force, and that he accidentally hit her head on the crib. The prosecution presented evidence that Martinez acted "knowingly" by presenting expert testimony that the injuries sustained by the child resulted from a force so great that the defendant had to know his actions were practically certain to cause death. Specifically, the prosecutor attempted to elicit testimony from physicians that a subdural hematoma

can be caused by the forces present when a child is involved in a high-speed automobile accident or a fall from a multistory building.

At trial, two physicians testified that it would take considerable force to cause the child's injuries. The coroner was permitted to demonstrate, using a doll, the level of violence necessary to cause the injury, and both physicians testified that the necessary force was considerably in excess of that testified to by Martinez and demonstrated by him on his videotaped interview. One physician testified that doctors do not know exactly how much force is necessary to inflict a subdural hematoma, but that they see this type of injury in infants involved in high-speed automobile accidents or falls from multistory buildings.

Martinez was convicted of first degree murder and appealed. On appeal, Martinez argued that the lower court erred by allowing testimony equating the child's injuries with injuries sustained by children involved in high-speed automobile accidents and long falls. The court agreed.

The court stated that the purported purpose of the expert testimony was to establish that the force necessary to cause a subdural hematoma was such that Martinez acted "knowingly" rather than "negligently" or "recklessly" but that the testimony failed to achieve that purpose. The court reasoned that as presented and argued, the evidence was not probative of the force necessary to cause a subdural hematoma. The court stated that to determine how much force Martinez must have inflicted on the child, it is the minimum force, necessary to inflict a subdural hematoma that is relevant, not the maximum force, and that the evidence presented confused this fact.

The court illustrated the error in the prosecution's logic with the following analysis:

Some children who have been subjected to trauma or force such as that sustained by a fall from a multistory building or being unrestrained in a high-speed automobile accident suffer subdural hematomas.

This child suffered a subdural hematoma. Therefore, this child was subjected to trauma or force equal to or exceeding that caused by a fall from a multistory building or being unrestrained in a high-speed automobile accident.

The court stated that the reasoning is flawed in that it applies the conclusion to all members of a class when it is premised on limited members of that class. Thus, the court concluded that the testimony was unfairly prejudicial and remanded the case for a new trial.

## DEPENDENCY / SEX OFFENDER REGISTRATION

*Supreme Court Of New Jersey Rules That The Lifetime Sex Offender Registration Requirement Of Megan's Law Should Not Apply To Offenders Under The Age Of 14. In the Matter of Registrant J.G., 777 A.2d 891, 2001 N.J. LEXIS 805 (N.J. Super. 2001). 18 pages*

In October 1995, ten year old J.G. was charged with two counts of juvenile delinquency. The charges were equivalent to first-degree aggravated sexual assault, had he been an adult, based on alleged acts of sexual penetration with victims under the age of thirteen. The alleged victims were J.G.'s eight-year-old cousin, P.D., and J.G.'s five-year-old sister, B.G.

In May 1996, under a plea bargain arrangement, charges involving J.G.'s sister were dismissed, and the charge involving J.G.'s cousin was amended to allege conduct that, if committed by an adult, would constitute second-degree sexual assault. Under New Jersey law (N.J.S.A. 2C:14-2a (1)), second-degree assault is defined as "an act of sexual penetration with another person... using physical force or coercion, but the victim does not sustain severe personal injury." As part of this agreement, J.G. admitted in court that he had willfully penetrated P.D. in a sexual manner; he knew what he was doing and that his actions were wrong. J.G. was ordered to complete two years probation, provided he comply with the treatment program he was attending, as well as any recommendations made by the program. J.G. was also to avoid any unnecessary contact with the victims and not be alone with any young children.

Approximately 16 months after his sentencing, a Mercer County Prosecutor served J.G. with notice that, pursuant to Megan's Law, he was classified as Tier Two Moderate risk offender with a Registrant Risk Assessment Scale (RRAS) score of 55. The Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws categorizes offenders in risk categories based on RRAS scores. A score of 0 to 36 denotes a low risk of re-offense and is categorized as a Tier 1 offender; a score of 37 to 73 denotes a moderate risk offender and classifies a Tier 2 offender; a score of 74 or higher denotes a high risk, Tier 3 offender. These scores determine at what depth public notification is required of the Registrant's whereabouts. Based on his score of 55, prosecutors sought to notify local police departments, several schools, preschools and childcare programs in the area of J.G.'s residence. J.G. requested a Megan's Law hearing to challenge the validity of his score and to contest the lifetime registration required by Megan's Law.

Ultimately, the Appellate court found that actual penetration could not be determined by J.G.'s testimony. J.G. was undergoing therapy at the time the plea was entered into, but the therapist was not called to testify. The therapist had determined at the time of the plea that J.G., because Spanish was his primary language, had no capacity to understand the meaning of the word "Penetration," and believed that actual penetration did not occur. Pursuant to the court's finding, J.G.'s RRAS score was recalculated to show a score of 27, a low-risk Tier 1 offender. Notification was limited to the school in which J.G. was or would be attending.

The court next turned to the lifetime registration requirement under Megan's Law which applies to all convicted sexual offenders. Under this provision J.G. would be required to register as an offender with the local police department for the rest of his life, only to be released from this obligation when he could provide clear and convincing evidence that he had not re-offended for fifteen years following conviction, or release from prison, which ever occurs later.

Lacking case law in this specific instance, the Appellate court compared the lifetime registration requirement provided for in Megan's Law with New Jersey's Juvenile code. Under New Jersey Law, persons under the age of 14 are deemed too immature to be treated as adults who commit the same offense. The court stated that young children who display sexually inappropriate behavior are often reflecting lack of adult supervision, immaturity, inappropriate media exposure or a prior history of emotional abuse- not displaying inclinations toward becoming a sexual predator. The court also expressed concern that the Attorney General Guidelines and the RRAS do not adequately distinguish adult and juvenile offenders. For example, in the RRAS scale, a score is substantially increased if the victim is under the age of 13. However, if the victim is a ten-year old offender, like J.G., this increased penalty would be universally applied because it would be highly unlikely that young offenders would pursue victims significantly older than themselves. The court found that this oversight unjustly inflated J.G.'s RRAS score. The court reasoned that imposing the lifetime registration requirement to children in this category would be unreasonable.

The court thus ruled that juveniles under the age of 14 should be released from the potential lifetime registration requirements of Megan's law, and that registration orders should terminate after the registrant reaches the age of 18 and a hearing concludes the offender is unlikely to offend again.

## MANDATORY REPORTING

*Supreme Court Of Ohio Holds That Sovereign Immunity Does Not Shield Superintendent, Board Of Education And Teacher / Peer Mediation Counselor From Liability For Failing To Perform Their Duty To Report Known Or Suspected Child Abuse. Campbell v. Burton, 92 Ohio St. 3d 336, 750 N.E.2d 539, 2001 Ohio LEXIS 1890 (2001). 7 Pages.*

During the 1995-1996 school year, Amber Campbell was an eighth-grade student at Baker Junior High in the Fairborn City School District (Fairborn). During the same time period, Fairborn

conducted a peer mediation program which involved students as mediators and was designed to resolve disputes between students. A teacher from the school, Debra Mallonee (Mallonee) was the peer mediation coordinator.

In March of 1996, Amber participated in two mediations as a disputant with another student regarding a disagreement over a male classmate. During the mediation sessions, Amber claims she told Mallonee that a male friend of her family, David Burton, often tried to touch and kiss her and that this made her uncomfortable. At the close of the mediation, Mallonee told Amber to tell her mother about Burton and to stay away from him if he made her uncomfortable. Mallonee did not report Amber's disclosure to anyone. Amber alleged that Burton continued to touch and kiss her after she had her conversation with Mallonee.

In March of 1997, Amber filed an action against the Superintendent, Board of Education, Mallonee and Burton. Amber claimed that the defendants failed to report the alleged abuse pursuant to the state mandatory reporting statute. Amber's complaint alleged that as a result of Mallonee's failure to report Amber's disclosure, Amber suffered from psychological and other permanent injury.

In January of 1999, a trial court granted summary judgment in favor of the Superintendent, Mallonee and the Board of Education holding that they were immune from liability under the doctrine of sovereign immunity. Amber appealed. The Court of Appeals affirmed. Amber moved the Court of Appeals to certify the question of whether the defendants were entitled to immunity under state law to the Ohio Supreme Court.

The Ohio Supreme Court looked to the question of whether the Board of Education, the Superintendent and Mallonee were entitled to immunity. The defendants argued that they were entitled to sovereign immunity under the Political Subdivision Tort Liability Act (PSTLA) which provides that a political subdivision (and its employees) are entitled to immunity unless liability is expressly imposed upon it by another section of the Revised Code. Therefore,

the court turned to the code section which mandates reporting of child abuse to determine whether it expressly imposes liability within the meaning of the PSTLA. The mandatory reporting statute states:

"No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows or suspects that a child... has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer...." Section (A)(1)(b) lists "school teacher; school employee; school authority" and other professionals as persons required to report any known or suspected abuse or neglect. The penalty provision of the statute states: "Whoever violates [the mandatory reporting statute]... is guilty of a misdemeanor of the fourth degree."

The defendants argued that this section of the code did not expressly impose liability because a criminal sanction should not be interpreted as an express imposition of liability within the meaning of the PSTLA. The court turned to the dictionary definition of "liability" for clarification. The court noted that Black's Law Dictionary defines "liability" as: "the quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment." The court pointed out that the PSTLA does not modify the term liability with the words "civil" or "criminal." The court also noted that other code sections do modify by expressly stating "civil liability" or "criminal liability." Therefore, the court found that since the legislature chose not to specify whether the statute applied only to civil liability or only to criminal liability the court must find that the legislature intended for the exception to apply to both types of liability. Therefore the court found that the exception to immunity under the PSTLA was satisfied. The Court reversed the Court of Appeals decision upholding summary judgment and remanded the case to the trial court.

## GUARDIANS AD LITEM / BIAS

*Montana Supreme Court Holds That Guardian Ad Litem Is Not Biased Merely Because She Disagrees With Mother's Parenting Style And Her Supervisor Is Married To Father's Attorney. In the Matter of B.P. and A.P., 2001 MT 219; 306 Mont. 430; 35 P.3d 291; 2001 Mont. LEXIS 473. 5 Pages.*

R.P. (Mother) was named primary legal custodian of her children B. P. and A.P. (Children) after she and T.P. (Father) divorced. Father moved to California. Sometime later, the Department of Public Health and Human Services (Department) received reports that Mother was emotionally and medically harming Children. The Department petitioned the Court for temporary investigative and protective services for Children. The Department's specific concern was that Mother's personal mental health issues had prevented Children from receiving adequate parenting and proper psychological and medical attention. The District Court appointed a Guardian *ad Litem* (GAL) and ordered the children removed from Mother's home and placed in foster care. The court also ordered the family to undergo psychological evaluations.

The Department subsequently requested a modification of its petition from one for temporary legal custody to a petition for permanent placement of Children with Father in California. The court adjudicated Children Youths in Need of Care and placed Children in Father's custody. The court prohibited Mother from having any contact with Children until she addressed her personal psychological problems.

Mother appealed the order and filed a motion to have the GAL removed. Mother claimed that the GAL should be removed because the GAL was biased and did not have a good relationship with Children. Mother alleged that the GAL had moved to another city in Montana, and that during her term as GAL for the children, she was unable to report on two injuries the children suffered while playing with friends. The court rejected this argument holding that the children themselves no longer lived in Montana, and that the GAL could not be held responsible for



ordinary childhood mishaps. The court thus denied Mother's motion for removal and replacement of the GAL.

Mother appealed to the Montana Supreme Court, claiming, among other things, that the lower court erred in refusing to remove the GAL. Mother alleged that the GAL was biased in favor of Father because the GAL's supervisor was married to Father's attorney and that the GAL's recommendations were adverse to her because Mother and GAL have different attitudes about parenting and home-schooling.

The Montana Supreme Court held that Mother failed to prove the GAL was biased. The court reviewed the GAL appointment statute which requires the GAL to conduct investigations; interview or observe children; access court, medical, psychological, law enforcement, social service, and school records pertaining to the child and parents; make written reports to the court; appear and participate in all proceedings; and to make recommendations to the court regarding the child's welfare. The court found that Mother failed to produce any evidence that the GAL failed to meet her statutory duties. Rather, the court held that Mother's assertions that the GAL is biased because of her difference of opinion about home-schooling and her testimony that it is not in the children's best interests to place them with Mother reflect that the GAL was discharging her duties under the statute. Finally, the court held that Mother failed to produce evidence in support of her contention that the GAL was biased because her supervisor is married to Father's attorney.

The court, therefore, concluded that since the mother had not produced evidence to substantiate this claim or evidence that the GAL was not performing the statutory duties required of her, that the lower court did not err in refusing to remove the GAL.

## INEFFECTIVE ASSISTANCE OF COUNSEL

*Michigan Court Of Appeals Holds That Lower Court Order Allowing Hospital To Discontinue Life Support Was Laden With Errors. In re AMB, 2001 Mich. App. LEXIS 217 (2001). 36 Pages.*

AMB (Allison) was born on February 9, 1999. Allison was conceived after JB raped his mentally disabled 17-year-old daughter KB. Allison was born five weeks prematurely and was severely ill, with a poor prognosis for long-term survival. After her birth, she was immediately transferred to the neonatal intensive care unit and placed on ventilator support. Local authorities instituted criminal proceedings against JB and also instituted a protective proceeding against JB to terminate his parental rights to KB and her younger brother.

On February 11, 1999, the Family Independent Agency (FIA), the local social service agency, filed a petition requesting that the family court take temporary custody of Allison, based on KB's inability to care for Allison and the sexual abuse that had occurred in JB's home.

The family court held a hearing on the petition the same day. Neither KB nor JB attended the hearing and neither was represented by counsel. No one, including the caseworker, testified under oath. The attorney for the FIA asked the referee to authorize the petition and a placement order and to "authorize all necessary medical treatment for the child." Without hearing any additional argument, the referee found probable cause to authorize the petition. After a discussion off the record, Allison's attorney, William Ladd, objected to an order authorizing anything other than routine medical care, arguing that a blanket order would impermissibly give the FIA and the hospital the discretion to determine what defines necessary medical care. The court ordered the child to receive all necessary medical treatment and any and all necessary medical treatment to sustain her life.

On Monday, February 15, the social worker filed an amended petition alleging that Allison was being kept alive on life support and had no hope of surviving independent of life support. The petition alleged that doctors had advised the social worker that it was not in the infant's best interests to be maintained on life support. The petition further alleged that KB was not capable of making an informed decision on the matter, and that because Allison was a pending ward of the court, that the court render a decision regarding Allison's best interests.

A referee held a hearing regarding the amended petition on Wednesday, February 17. Neither KB nor JB appeared at the second hearing, and neither was represented by counsel. Ladd did not appear at the second hearing because he had not been notified that it was scheduled. In his stead, the court appointed "emergency house counsel" to represent Allison.

The emergency house counsel did not indicate what, if any steps she had taken to prepare to represent Allison. The referee did not ask whether KB or JB received notice of the hearing. Neither the FIA attorney nor emergency house counsel indicated whether KB or JB were aware that the second hearing was scheduled. The referee did not inquire whether Allison or KB had a guardian *ad litem*. At the hearing, Allison's neonatologist testified under oath by telephone and recommended that Allison be removed from life support. The social worker testified under oath by telephone and explained that she had not had contact with KB despite her representation at the first hearing that she had had the opportunity to inform the mother of the proceedings. The social worker testified that she filed the amended petition because she talked to KB's teacher and learned that KB was mentally impaired. KB's teacher neither testified nor furnished any evidence concerning KB. Emergency house counsel did not cross-examine the social worker.

At the conclusion of the social worker's testimony, the attorney for FIA requested that the court allow the hospital to make the appropriate decision based on Allison's best interests. Emergency house counsel concurred. The referee entered an order authorizing the hospital to remove Allison from life support, effective seven days after the hearing date unless a petition for review was filed. The order was stamped with a family court judge's signature.

For reasons that are unclear, the hospital staff did not wait seven days for the order to become effective or for a party to request judicial review. Rather, on February 19, 1999, hospital staff removed the life support and Allison died.

On February 25, Ladd filed a petition for judicial review of the referee's findings and recommendation. In pertinent

part, the petition stated that review was critical because the emergency house counsel had represented Allison at the second hearing and was not given an opportunity to observe the child or consult with caretakers and expert witnesses. Ladd also argued that he was not apprised of the early hearing date, nor was any attorney from his office asked to be present. He also argued that the decision was erroneous because neither parent was notified or served. The family court reviewed his petition and upheld the referee's finding. The court then dismissed the review petition as moot.

In April of 1999, another attorney, joined by Ladd, appealed to the Michigan Court of Appeals on behalf of Allison. The Court of Appeals dismissed the appeal finding that the attorney lacked authority to file the appeal on behalf of Allison's estate. Having failed to obtain substantive review at the Court of Appeals, Ladd applied for leave to appeal to the Michigan Supreme Court. In lieu of granting leave, the Supreme Court reversed the Court of Appeals order dismissing the appeal and remanded the case to the Court of Appeals for consideration on the merits of the issues raised by Ladd.

On review the Court of Appeals appeared dismayed at the number and seriousness of the errors perpetrated by the lower court. Thus the court reversed the lower court's decision to discontinue life support.

The court first noted that the lower court's decision to withdraw life support was made without holding an adjudicatory hearing, by proceeding straight from the preliminary hearing to a dispositional hearing. The court held that failing to conduct an adjudicatory hearing was erroneous.

The court next addressed the fact that the lower court did not appoint a GAL to represent Allison's best interests at the hearing. The court noted that although a family court in Michigan is not required to appoint a GAL to represent an incompetent child in cases involving medical decisions, the need to appoint a GAL becomes urgent when the medical decision is serious and there is little time to make the decision. The court noted that in this case, it was unclear whether the attorney appointed

to represent Allison was expected to function as both a lawyer and GAL. Additionally, the court stated that inconsistencies and lack of continuity in Allison's representation prevented the attorney from effectively representing the baby's interests. Therefore, the court held that the lower court's failure to appoint a GAL to protect Allison's interests was an error.

The court next turned to the fact that Allison's parents had not participated in the hearing. The court stated that denying a parent the right to make a major medical decision, including the decision to end a child's life, requires clear and convincing evidence of incompetence. The court stated that allegations that the parents are mentally incompetent of making this decision is not enough. The court noted that no evidence of mother's alleged incompetence were made on the record, no one who participated in the proceedings had ever personally met the mother and the mother herself was not present at the hearings. The court found that this error alone was sufficient to warrant reversal. Additionally, the mother and putative father were denied procedural due process since neither was notified of or given a chance to be heard at the hearing that decided their child's fate. The court held that denying the parents their due process rights based on mother's alleged incompetence and father's criminal involvement was an unconstitutional denial of due process.

The court next reviewed the evidentiary standard employed by the lower court. The court held that the proper standard for best interests determinations to withdraw life support is clear and convincing evidence. The court reviewed the lower court record and noted that the family court referee's decision to withdraw life support was based on the testimony of one physician. No second opinion was sought and the court did not have a copy of Allison's medical records. Therefore the court found that failure to apply a clear and convincing standard to a life-ending decision was a clear error.

The court also found that a family court referee does not have authority to enter a life-ending order. The court stated that while a referee may recommend actions for a judge to take, the judge must make the ultimate

decision and that this duty may not be delegated to a referee. The court held that a literal rubber stamp by a judge was insufficient.

Finally, the court reviewed Ladd's arguments that Allison's representation was inadequate. Ladd argued that he was not notified of the second hearing, and that although emergency counsel appeared in his place, this representation was inadequate because the substitute attorney had not had time to prepare. Ladd also argued that the substitute counsel was improper without a determination on the record that there was good cause for the substitution. Ladd argued that his appearance at the preliminary hearing constituted an "appearance" that entitled him to notice of other proceedings. The court agreed. The court observed that the referee presiding over the best interests hearing should have asked about the attorney's whereabouts and made sure the circumstances warranted his absence. The court held that while consistent legal representation of children in child protection proceedings is desirable, attorney substitutions are permitted when good cause exists. However, the court stated that when substitutions occur, the attorney substitute must become familiar with the case by reviewing relevant documents and speaking with relevant parties and witnesses before proceeding. To enforce this requirement, the court found that courts must make findings on the record regarding the attorney's preparation. In this case the referee did not inquire and the substitute counsel did not offer any information on her preparation for the case. The court found this oversight denied a key protection to the child and required reversal. Further, the court found that the substitute attorney's representation at the best interests hearing was ineffective. She did not challenge the request to withdraw the baby's life support and agreed to the decision without convincing evidence. She also failed to question the case-worker involved in the case, investigate the reliability of the doctor's testimony, or try to secure a second opinion. The court held that these actions denied Allison her right to competent legal representation. Reversing the decision of the lower court, the court of appeals stated:

"In the accelerating rush to judgment that occurred here, the series of legal errors and missteps following the preliminary hearing compounded what was already an excruciatingly difficult and complex situation. The record strongly suggests that no one involved in the protective proceeding had ever

communicated directly with baby Allison's parents and that only [the doctor] had ever seen baby Allison. Thus, a statutory process designed to protect individual rights, to allow the intelligent exercise of these rights, and to assure balanced and considered

decision making became, instead, the opposite. This indicates such a relentless disregard for basic principles that in this opinion we have attempted to assure that this tragedy – and a tragedy it was, in every sense of the word – is never repeated in our state."

#### 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

### FUNDING FOR CHILD WELFARE AND JUVENILE JUSTICE PROGRAMS

President Bush released his proposed FY2003 federal budget (for the coming fiscal year, which begins on October 1, 2002) on February 4. The budget proposed continued funding at current levels for most federal child welfare and juvenile justice programs. There were two significant exceptions:

1. The President proposed **fully funding** the newly-reauthorized Promoting Safe and Stable Families child welfare program (formerly known as "Family Preservation and Support") at \$505 million in FY03 (the FY02 funding level was \$375 million), and also proposed fully funding the newly-authorized program of education vouchers for youth aging out of foster care at \$60 million in FY03 (there was no funding provided in FY02).
2. The President proposed a **significant decrease** in the Part C grants program under the federal Juvenile Justice and Delinquency Prevention Act (JJDP), reducing the program (which supports research, evaluation, statistics,

demonstration, training and technical assistance) from \$58.5 million in FY02 to \$10 million in FY03 (the justification provided for the cut was that the Administration was cutting funds that had been earmarked by Congress in FY02; while earmarks are not desirable Congressional policy, that doesn't mean that the funds are not needed!).

**ACTION NEEDED:** Calls to your Representative and Senators, urging them to ensure full funding of Promoting Safe and Stable Families and education vouchers for foster kids (as proposed by the President), and to ensure no cuts in funding for the Juvenile Justice and Delinquency Prevention Act programs, including Part C research, evaluation, and demonstration grants (despite the President's proposed cut).

**NOTE:** On Friday, February 8, 2002, Senators Lieberman, Santorum and a widely-diverse, bi-partisan group of cosponsors (Bayh, Brownback, Nelson, Cochran, Carnahan, Lugar, Clinton and Hatch) introduced S. 1924, a bill to implement the President's faith-based initiative (with language that is much less controversial than the House-

passed faith-based initiative bill). Among its provisions is a section which increases mandatory funding for the Social Services Block Grant (Title XX) from \$1.7 billion in FY02 to \$1.975 billion in FY03, and \$2.8 billion in FY04. The SSBG program supports a significant proportion of child welfare services around the country; the SSBG has been decreased substantially over the past few years. S. 1924 would also ensure the continued flexibility for states to transfer up to 10% of their TANF funding to SSBG. S. 1924 has been endorsed by the White House.

### CHILD WELFARE REAUTHORIZATION LEGISLATION

The Child Abuse Prevention and Treatment Act (CAPTA) programs were due to have been reauthorized by October 1, 2001, when their prior reauthorization expired. While both House and Senate Committee staff have done some preliminary work on reauthorization, no legislation has been introduced or marked-up in Committee (the Senate committee with jurisdiction is the Health, Education, Labor and Pensions Committee; the House

committee with jurisdiction is the Education and Workforce Committee).

The Promoting Safe and Stable Families program (originally called the Family Preservation and Support program) was reauthorized through Public Law # 107-133 on 1/17/02, which included continued mandatory funding of PSSF (at \$305 million per year), as well as discretionary authorizations for:

1. A \$200 million per year increase in the Promoting Safe and Stable Families (PSSF) program (from \$305 million to \$505 million); and
2. A \$60 million per year increase in the Chafee Independent Living program to support educational vouchers for youth aging out of foster care.

While the President had originally proposed that the increases be "mandatory funding" (not subject to annual appropriations decisions), the final bill included only discretionary authorization increases.

## JUVENILE JUSTICE REAUTHORIZATION LEGISLATION

H.R. 1900, legislation to reauthorize the Juvenile Justice and Delinquency Prevention Act (JJJPA), passed the House in September 2001. The bill is a vast improvement over prior years' JJJPA reauthorization bills:

- it has a requirement that juveniles be separated from adult inmates when they are in adult jails, although the requirement is somewhat weaker

than the current law "sight and sound separation" standard;

- the bill also has a requirement that juveniles be removed from adult jails, although it changes the current 24-hour allowance to a 48-hour allowance, and includes a narrow parental consent exception.
- The requirement for states to address racial disparities in the juvenile justice system is actually improved slightly from current law – it encompasses disproportionality throughout the system, not only disproportionate minority confinement.
- The current law requirement for deinstitutionalization of status offenders is maintained with very minor modification.
- The prevention block grant in H.R. 1900 replaces the Title V prevention program and several smaller programs, although the prevention block grant mixes a number of intervention uses of funds with prevention (causing concern re: prevention getting the funding).

The Senate Judiciary Committee has not yet marked-up JJJPA legislation, although there is a bill to simply extend current law for a few more years (S. 1174), that was introduced by both Senators Leahy and Hatch (the Chair and Ranking Minority Member of the Committee). That bill also, for the first time, provides funding to improve the conditions of confinement of juveniles tried as adults (current JJJPA protec-

tions only apply to juveniles tried as juveniles). Legislation similar to H.R. 1900 (except with an improved Prevention Grant) and H.R. 863 (see below) was introduced by Sen. Biden et al. as S. 1165.

H.R. 863, to authorize (for the first time) and improve the Juvenile Accountability Block Grant program – which has been funded for several years – was passed on the floor of the House in October 2001; no action has occurred in the Senate.

## OTHER RELEVANT LEGISLATION

Several other relevant bills have been introduced (addressing unaccompanied alien children, Indian and Alaska Native foster care and adoption services, Indian Child Welfare Act amendments, promoting partnerships between child welfare agencies and drug and alcohol abuse prevention and treatment agencies, providing funding for youth development activities, etc.) – see Spring and Summer 2001 issues of *The Guardian*. None of these has moved forward in Congress.

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](http://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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**Return to:** NACC, 1825 Marion Street, Suite 340, Denver, CO 80218 or Fax to: 303-864-5351

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## *Children's Law News*

### **CONFERENCES & TRAINING**

#### **March 24–27, 2002**

**29th National Conference on Juvenile Justice, Houston, TX.** National Counsel of Juvenile and Family Court Judges/ National District Attorneys Association. 703-549-9222. [www.ndaa-apri.org](http://www.ndaa-apri.org).

#### **April 28–30, 2002**

**National Adolescent Perpetration Network Annual Conference: *By Leaps and Bounds - Integrating New Knowledge in Best Practices for Sexually Abusive Youth*, Toledo, OH.** Sponsored by Kempe Children's Center. 303-864-5192

#### **May 5–8, 2002**

**NCJFCJ Custody and Visitation Symposium, Charleston, SC.** 775-784-6012.

#### **May 14–18, 2002**

**Seventh Annual Rocky Mountain Child Advocacy Training Institute: *Presenting Evidence in Cases Involving Children*, Denver, Co.** Hands on trial skills training cosponsored by the NACC. Please see notice on page 11 of this issue.

#### **May 29–June 1, 2002**

**10th Annual APSAC Colloquium, New Orleans, LA.** 405-271-8202.

#### **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](http://www.abanet.org/child/2002conference.html).

#### **June 11–13, 2002**

**OJJDP National Youth Gang Symposium, Orlando, FL.** [www.gangsymposium.org/](http://www.gangsymposium.org/)

#### **July 7–10, 2002**

**ISPCAN 14th International Congress on Child Abuse and Neglect: *Charting our Progress Toward Protection of Children***



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: \_\_\_\_\_

EMAIL: \_\_\_\_\_

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: \_\_\_\_\_

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Worldwide, Adams Mark Hotel,  
Denver, CO. 303-996-9997.  
www.kempe.org.

### 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. Brochures  
will be mailed in May. For more  
information, contact the NACC at  
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site at [www.NACCchildlaw.org](http://www.NACCchildlaw.org).

## PUBLICATIONS

### NEW *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  
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tact 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  
[guide.html](http://www.NACCchildlaw.org/policy/policy_), or call the NACC at  
1-888-828-NACC.

*The Miami Model Court Family Decision-  
Making Conference Program: Evaluation  
Results*. NCJFCJ Permanency Planning  
for Children Department Technical  
Assistance Bulletin. For ordering and  
cost information: 775-327-5300.  
[www.pppncjfcj.org](http://www.pppncjfcj.org).

*The Essex County Child Welfare  
Mediation Program: Evaluation Results  
and Recommendations*. NCJFCJ  
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## NEWS

**Law Student Scholars.** The NACC is  
pleased to announce the selection of  
two law student Fellows for summer  
2002. **Jacob Smiles** is a Webster Society  
Scholar at Washington University  
School of Law. **Jessi Tamayo** is a Stein  
Scholar in Public Interest Law and Ethics  
at Fordham University Law School.  
Students interested in applying for  
fellowship positions at the NACC  
should contact us for more information.

### **NACC Launches New Web Site.**

Visit the NACC's new and improved  
web site at [www.NACCchildlaw.org](http://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 which  
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](http://www.NACCchildlaw.org), by phone  
toll-free 1-888-828-NACC,  
fax 303-864-5351, and e-mail  
[advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org).

**The NACC 2002 Outstanding Legal  
Advocacy Award.** Nominations for the  
2002 award are being accepted now.  
Please see the award notice on  
page 12 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 advanc-  
ing 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 informa-  
tion, 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 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.

**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.

**AMICUS CURIAE ACTIVITY**

There is no new *amicus curiae* activity. To request NACC amicus participation, contact the NACC or go to [www.NACCchildlaw.org/training/amicus.html](http://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 2 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](mailto:ventrell.marvin@tchden.org). For more information on these NACC positions, visit the NACC jobs website at [www.NACCchildlaw.org/childrenlaw/jobs.html](http://www.NACCchildlaw.org/childrenlaw/jobs.html), or contact the NACC Executive Director:

**Executive Director, Juvenile Rights Project, Inc., Portland, OR.** JRP is accepting applications for its ED position. \$50,000-\$60,000 plus excellent benefits. BA required. JD, MPA, MSW or equivalent preferred. Contact JRP at 503-232-2540; [tessa@jrplaw.org](mailto:tessa@jrplaw.org)

**Executive Director, Children's Law Center, Charlotte, NC.** Competitive salary and benefits commensurate with experience. Fax resume to Ashley Smith at 704-343-0211 or e-mail to [asmith@carolinalegal.com](mailto:asmith@carolinalegal.com).

**Visit the NACC Child Law and Advocacy National Job Web Site.** You can access the information on line at [www.NACCchildlaw.org/childrenlaw/job.s.html](http://www.NACCchildlaw.org/childrenlaw/job.s.html). If you wish to post a job on the web site, follow the on line directions or call the NACC at 1-888-828-NACC.

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

**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](mailto:advocate@NACCchildlaw.org).**

**NACC – Members Get Members Program!**

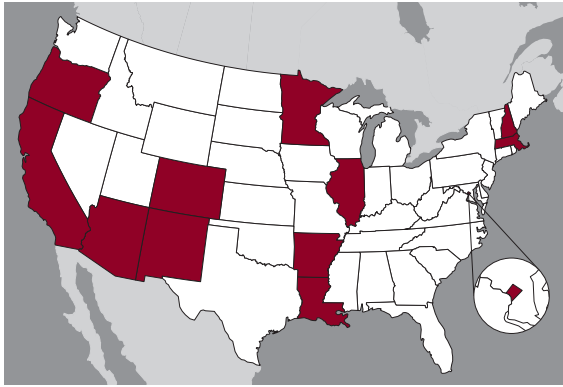
**EARN "NACC BUCKS" BY NOMINATING YOUR COLLEAGUES FOR MEMBERSHIP!**

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

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1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____

**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](http://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](mailto:acacnacc@aol.com)  
Home Page: [members.aol.com/naccaz](http://members.aol.com/naccaz)

#### ARKANSAS

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

#### CALIFORNIA

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

Los Angeles Affiliate of the National Association of Counsel for Children (LANACC)\*  
Recipient of the NACC Outstanding Affiliate Award (2001)  
Shahrzad Talieh, President  
Los Angeles CASA Program  
201 Centre Plaza Drive  
Monterey Park, CA 91754

Phone: 323-526-6666  
Email: [stalieh@asc.co.la.ca.us](mailto:stalieh@asc.co.la.ca.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  
Email: [John@coloradofamilylaw.net](mailto:John@coloradofamilylaw.net)

#### ILLINOIS

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

#### 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](mailto:DKatner@clinic.law.tulane.edu)

#### MASSACHUSETTS

Central & Western Massachusetts Association of Counsel for Children (CWMACC)\*  
Larri Tonelli Parker  
490 Shrewsbury St, Suite C  
Worcester, MA 01604  
Phone: 508-795-0200 FAX: 508-791-0325  
E-mail: [lamparker@aol.com](mailto: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  
Email: [ekjones@spiritone.com](mailto: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  
Email: [aeschild@aol.com](mailto: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.

## NACC – Application for Membership

I wish to become a member. Enclosed is my check for \$ \_\_\_\_\_

INDIVIDUAL MEMBERSHIPS:

Regular \$75     Supporting \$100\*     Patron \$250\*  
 Student \$35     Sustaining \$150\*     \*Includes special thank you listing in *The Guardian*  
 I would like \$10 of my membership dues to support my local NACC affiliate.

GROUP MEMBERSHIPS:

Agency 1 \$375 = 10 individual memberships (50% savings)  
 Agency 2 \$750 = 20 individual memberships (50% savings)

Please send additional information on the NACC.

Please send information on establishing an affiliate.

Make Check Payable to: NACC

Mail to: National Association of Counsel for Children  
 1825 Marion Street, Suite 340  
 Denver, CO 80218  
 Office: 303-864-5320 • Fax: 303-864-5351  
 Federal Tax ID#84-0743810

Please Charge my:  Visa  MasterCard

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# National Association of Counsel for Children Development Fund

**Support your profession and America's children by contributing to the NACC's future.**

The NACC – Protecting children through excellence in legal advocacy.

Enclosed is my charitable contribution to the NACC (make checks payable to NACC Development Fund)

\$25  \$50  \$75  \$100  OTHER \$ \_\_\_\_\_

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Return to: NACC, 1825 Marion Street Denver, CO. 80218. The NACC is an IRS 501(c) 3 tax exempt organization Tax ID 84-0743810.  
 Contributions are tax deductible.

NACC coffee mug  
with your contribution  
of \$25 or more



# Thank You

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

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### Children's Law Manuals:

	Member	Non-Member
<input type="checkbox"/> Moving from Sympathy to Empathy (2001)	\$29	\$35
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<input type="checkbox"/> Kids, Courts and Community (1999)	\$20	\$25
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<input type="checkbox"/> Current Issues in Pediatric Law (1993)	\$20	\$25

### Other Publications:

<input type="checkbox"/> The Child's Attorney, by Haralambie Pub. ABA (1993)	\$39	\$49
<input type="checkbox"/> Children's Legal Rights Journal (Contact William S. Hein & Co. at 1-800-828-7571 and ask for NACC Member discount.)	\$47	\$67

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Denver, CO 80218  
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# NACC – Referral Network

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

### AREAS OF PRACTICE:

- |   |  |
|---|--|
| <input type="checkbox"/> abuse, neglect, dependency   | <input type="checkbox"/> guardianship, conservatorship |
| <input type="checkbox"/> delinquency, status offenses | <input type="checkbox"/> civil litigation              |
| <input type="checkbox"/> custody, visitation          | <input type="checkbox"/> mental health                 |
| <input type="checkbox"/> child support                | <input type="checkbox"/> health care                   |
| <input type="checkbox"/> adoption                     | <input type="checkbox"/> jurisdiction                  |
| <input type="checkbox"/> Other:                       |  |

\_\_\_\_\_

I will consider *pro bono* referrals.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY / STATE / ZIP \_\_\_\_\_

AREA CODE / PHONE NUMBER \_\_\_\_\_

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Denver, Colorado 80218

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