THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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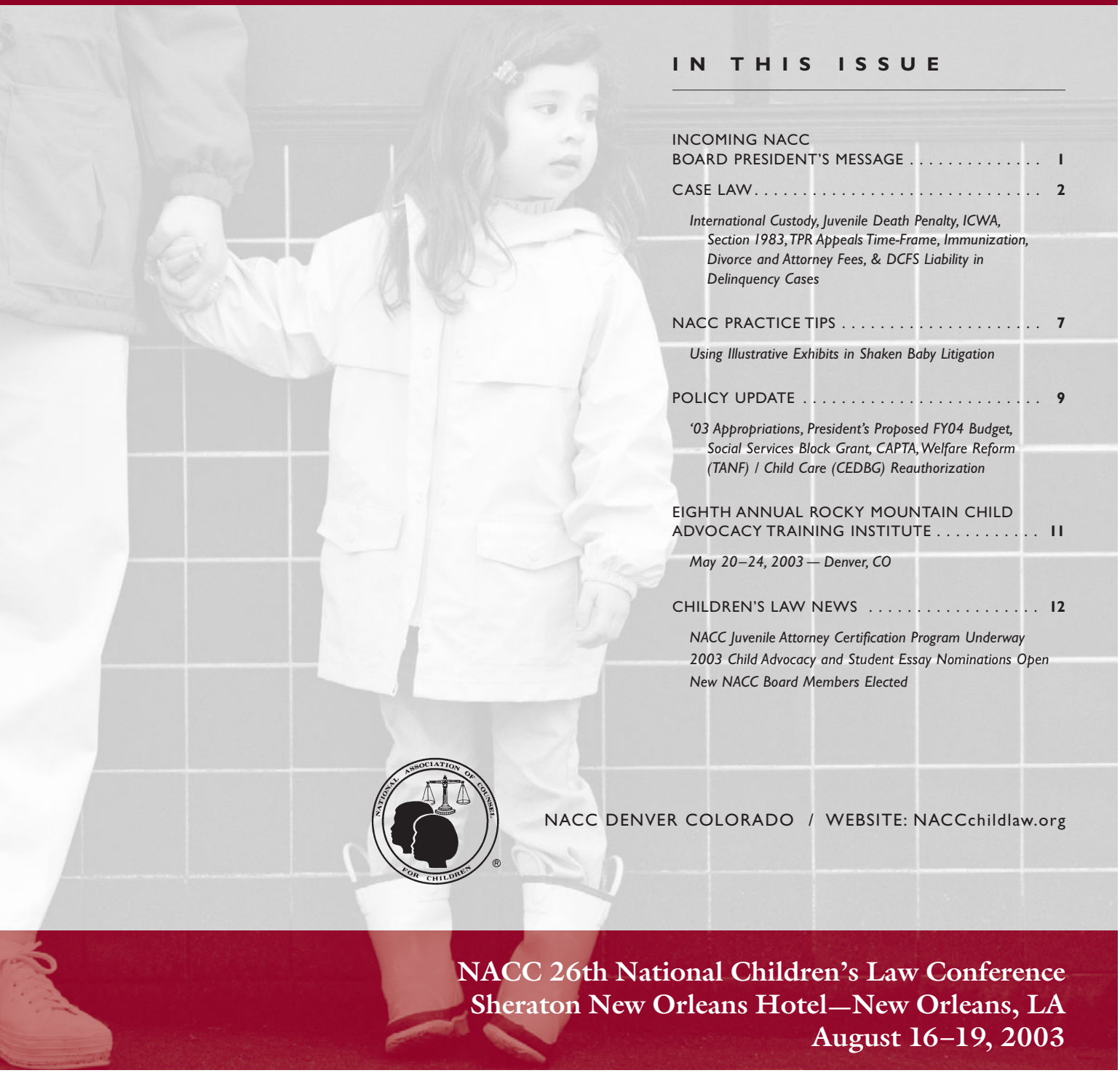

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National Association of Counsel for Children

MISSION

To achieve the well-being of children by promoting multidisciplinary excellence in children's law, establishing the legal interests of children and enhancing children's legal remedies

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Incoming Board President's Message

CANDACE J. BARR

NACC Board President

I was nine years old when I first learned about child abuse. Having been required by my parents to read the newspaper, I read a front-page article in the Chicago Tribune describing how three small children were locked in a basement and given crumbs of bread and small amounts of water. If they requested more, they were force-fed tobasco sauce. A small drop from the bottle in our household refrigerator was all I needed to understand. I was shocked and confused by this cruelty, and the story has always stayed with me. The development of that initial awareness of child maltreatment eventually led to a career progression from teaching school to practicing law for children.

It is with great pride that I assume the presidency of the NACC Board of Directors in its 26th year. From my initial election to the Board years ago, I have watched the organization grow in stature and purpose. Our mission is to improve the lives of children and families through legal advocacy, and I am proud that we are doing it more effectively each year through growth in our training, technical assistance, and policy advocacy programs.

It is a rich time to have the opportunity to serve as NACC Board President with a number of important new programs on the horizon. Most notably, the NACC has now begun making a reality something that had been only a dream of so many of us for years — Juvenile Attorney Certification. We have come from the days when we fought for standing to appear in court in the first place, to this point where our attorneys will be recognized by the court system as certified specialists in children's law. It is no small accomplishment, and I am proud to be a part of the organization that is bringing it about.

The project has been a team effort that started when the Board included attorney certification in the NACC strategic plan in 1999. The program ultimately took shape when Board member Don Duquette and our Director Marvin Ventrell developed a three-year pilot program that has been funded by the U.S. Department of Health and Human Services Children's Bureau. The program, supported by the ABA, the National Council of Juvenile and Family Court Judges, the Child Welfare League of America, and others is still in the very early stages, and you can check the NACC web site for updates in the next few months. Ultimately, we believe the program will achieve what the NACC exists to achieve: better outcomes for children through improved legal advocacy. As a lawyer who has been doing this work for some time, I look forward to the level of professionalism and status this program could bring.

Consistent with the certification program is another new NACC program called the Children's Law Office Project. Through this program, the NACC hopes first to gain a better understanding of the needs of children's law offices throughout the country, and then develop a plan to service those needs, turning these offices into the best programs we have to offer.

Additionally, the NACC is increasing its activity in the area of youth empowerment which includes, beginning in 2003, the addition of the first NACC "Youth Board Member" Jennifer Rodriguez. Including individuals who have been part of the system as children, in the process of improving the system, is long overdue and we look forward to the powerful impact Ms. Rodriguez and other young people will have.

With these new programs, in addition to continuing our long-standing work in standards and models of practice, training and education programs, technical assistance, amicus curiae activity, and policy advocacy, we will continue to carry out our mission.

2002 was the NACC's 25th Anniversary. I look forward to working with the board, staff, and membership as we begin the next 25 years. We are off to a great start.

Candace J. Barr is a partner in the Minneapolis law firm Niemi, Barr & Jerabek. She will serve as President of the NACC Board of Directors during 2003 and 2004.

Cases

INTERPRETATION OF HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

U.S. Court Of Appeals For The Ninth Circuit Orders Dismissal of Father's Petition For Custody After Mother Left Mexico With Two Children In Violation Of Divorce Order. Gonzalez v. Gutierrez, 311 F.3d 942 (9th Cir. 2002).

Rosa Gutierrez separated from Eduardo Arce Gonzalez (Arce), both Mexican citizens, in December 1999 after 7 years of marriage. She received a divorce in Mexico in August 2000. The couple has two children, Maria, born in 1993, and Eduardo, born in 1997. The entire family lived in Mexico.

Arce physically and verbally abused Rosa throughout their marriage, and even following their divorce. This abuse often happened in front of the children. Rosa sought help from the Human Rights Office and the Red Cross, but received inadequate assistance. Finally, on February 28, 2001, Rosa informed Arce that she was taking the children on a one-week vacation. When Arce was unable to find them after their intended return date, he eventually determined that they had traveled to the United States, to Rosa's sister's home in San Diego. Rosa's request for asylum in the United States based on her status as a domestic violence victim was granted.

In October 2001, the District Attorney's office in San Diego filed a petition for the return of the children to Mexico, pursuant to the International Child Abduction Remedies Act. After an evidentiary hearing, the district court concluded that Rosa had violated Arce's custody rights under the Convention by removing the children from Mexico, and ordered that they be returned to Mexico. Because Arce's exact legal rights were difficult to determine, and presented a de novo question of law, the district court granted Rosa's request for a stay. She then appealed.

The court of appeals was charged with deciding whether Rosa's actions constituted a wrongful removal under the Convention, breaching Arce's custody rights. The divorce decree had granted full custody to Rosa, and provided Arce with visitation rights. The decree also, however, stated that he "must grant full authorization according to law, until they reach adult age, on every occasion that his minor children . . . seek to leave the country accompanied by their mother or any other person." A United States Court has never addressed this ne exeat clause.

The court determined that this 'authorization' language did not amount to a right of custody, because Arce could not direct whether his children lived in Mexico or any other country. While acknowledging that Rosa had violated the terms of the divorce by removing the children from Mexico without Arce's permission, the court concluded the ne exeat clause "is merely a condition designed to protect Arce's access rights, and no more." The court then outlined the consistency of this interpretation with the purpose, history and other judicial interpretations from signatory states of the Convention. Accordingly, the court reversed the order to return the children to Mexico, and ordered the dismissal of the father's petition.

JUVENILE DEATH PENALTY

The Florida Supreme Court Reduced Juvenile Defendant's Death Penalty Sentence To Life Imprisonment Because Trial Court Did Not Give Sufficient Weight To Statutory Mitigating Factor Of Defendant's Age At The Time Of The Offense. Bell v State, 2002 Fla. LEXIS 2381 (10th Cir. 2002).

Ronald Bell, Jr. received a sentence of death for murdering Cordell Richards (Richards) in 1999. Bell was seventeen years and ten months old at the time of the offense. Bell's girlfriend, sixteen year old Kimberly Maestas, began renting a room from Richards after she was kicked out of her parent's house. Maestas reported to Bell that Richards made inappropriate sexual advances toward her. When she refused his propositions he shoved her into a wall, leaving bruises on her back. In February 1999, Maestas invited a friend, Renee Lincks, to spend the night with her at Richards' home. Richards asked the girls to sleep in his bed; they refused and called a friend to take them to Bell's home. Bell returned the girls to Richards' home and left them with a baseball bat in case anything happened again. Maestas later paged Bell to report Richards was calling them from the telephone in his room, making offensive statements.

When Bell arrived at Maestas' apartment, he and Richards confronted each other and began shoving one another. Bell put Richards in a headlock and he lost consciousness. Bell directed Lincks to retrieve the bat and Meastas hit Richards with it. The teenagers then tied Richards up with a rope and rolled him up in a blanket. Bell drove them to a wooded area where they killed him. Police discovered Richards' body in March.

All three defendants were tried as adults. Maestas and Lincks struck deals with the prosecution and testified against Bell. Maestas received a sentence of life impris-

onment. Florida law legally precluded the State from seeking the death penalty for her because she was under the age of seventeen. Lincks, who was fifteen years old at the time of the crime, pled guilty to manslaughter and false imprisonment with a deadly weapon. She received a maximum sentence of fifteen years.

Bell did not present evidence or testify at trial. At sentencing, Bell's father and grandfather both testified on his behalf. His family members testified Bell was a high school senior who actively participated in church activities, and kept part time jobs to aid his family. He planned on joining the Air Force after graduating from high school. The jury unanimously recommended the death penalty for Bell. The trial court reviewed the aggravating and mitigating factors and sentenced Bell to death, giving little weight to Bell's age, a statutory mitigator.

Bell appealed his sentence on five grounds, including the consideration and weight given to his age at the time of the crime. Florida case law provides the trial court with the discretion of determining the weight given to mitigating factors. In Florida, imposing the death penalty on a minor who is under the age of seventeen is considered cruel or unusual punishment. Therefore, when a juvenile commits murder the age mitigator becomes more important the closer the defendant is to seventeen years old, when the death penalty is constitutionally prohibited.

When determining whether the death penalty is appropriate, the sentencing court must weigh the aggravating and mitigating factors. The weight given to the defendant's age can be diminished if there is evidence that the defendant is unusually mature. Evidence about Bell's childhood gave the court no reason to believe he was unusually mature for his age, or "old in the ways of the world." Regardless, the trial court gave little weight to the fact Bell was only 10 months over the statutory age. The Florida Supreme Court concluded that the trial court abused its discretion in assigning little weight to the mitigating factor of Bell's age.

Next, the Florida Supreme Court reviewed the proportionality of Bell's sentence, applying a totality of the circumstance test, and comparing Bell's case to other juveniles sentenced to the death penalty. The court found that in other cases where Florida juveniles had been sentenced to death were considerably more egregious than Bell's case. The death penalty is reserved for only the most aggravated and least mitigated cases of first degree murder. In the Bonifay case, where the court upheld a death sentence, the juvenile defendant was hired to commit the murder and he callously killed the wrong person. Bonifay committed a brutal robbery and stabbing several months prior to the murder. In contrast, Bell had no previous record, and committed the crime while attempting to confront a decidedly adult situation. The court found that the statutory mitigator of Bell's age was an "extremely significant factor" which the trial court failed to recognize. When combined with the disparate treatment of Bell's co-defendants, and the numerous other mitigating factors, the court concluded that the death penalty was a disproportionate sentence for Bell's crime, and reduced his sentence to life imprisonment without the possibility of parole.

INDIAN CHILD WELFARE ACT

California Court of Appeals From Four Appellate Districts Outline Requirements For Strict Compliance With The Indian Child Welfare Act. In re Jeffrey A., 103 Cal. App.4th 1103 (2002), Dwayne P., 103 Cal.App.4th 247 (2002), Suzanna L., 104 Cal. App 4th 223 (2002), Jennifer A., 103 Cal.App.4th 692 (2002).

The court of appeals in each of these cases reversed the trial court's findings for failure to provide adequate notice to the requisite Indian tribes in cases involving Indian children, regardless of how long the children had been in placement or whether they had been adopted.

The Indian Child Welfare Act (ICWA) governs all child custody matters involving an Indian child. ICWA defines an Indian child as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4). One of the primary purposes of providing notice to tribes is to allow the tribe time to determine whether the child is an Indian child pursuant to their eligibility requirements, which differ greatly from tribe to tribe. Courts do not make the determination of whether a child is an Indian child; tribes do.

ICWA's notice provision is quite explicit: "Where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." 25 U.S.C. Section 1912(a). Notice must be given to the Secretary of the Interior through the Bureau of Indian Affairs (Bureau) if the child's tribe is unknown. "No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the… tribe or the Bureau of Indian Affairs." *Id.* The court's order is voidable when proper notice is not given under ICWA. 25 U.S.C. section 1914.

State statutes and the Bureau of Indian Affairs' guidelines favor broadly construing the notice provision to include all children who may possibly be eligible for enrollment. Because a central purpose of ICWA is to promote tribal involvement in child custody matters whenever an Indian child may be involved, it does not matter whether the parents have enrolled, nor are the parties required to show that ICWA applies. In Suzanna L., the father stated that his grandparents were Indians, but he did not know to which tribe they belonged. In Dwayne P., the father stated he might have some Cherokee Indian heritage. These statements were enough to trigger the ICWA notice requirements. The purpose of ICWA is fostered by providing notice whenever a minimal showing has been made that the mere possibility of Indian heritage exists. Furthermore, the parties cannot waive the notice requirements.

In all of these cases, the various parties provided some form of written notice to the requisite tribes, but the notice failed

to conform exactly to the federal requirements. Accordingly, in two cases, the terminations of parental rights were overturned, and in a third, the order terminating reunification services and granting a plan of adoption was overturned. Recognizing that delay harms the interests of the children involved, and counters the goals of expedient permanency, the parties inaction cannot circumvent the goals of the ICWA, namely to promote the stability and security of Indian tribes and families.

SECTION 1983 ACTION SURVIVES MOTION TO DISMISS

U.S. Court Of Appeals Finds Police Failure To Enforce Restraining Order Can Lead To Valid Procedural Due Process Claim. Gonzales v. City of Castle Rock, 307 F.3d 1258 (2002).

While in the middle of a divorce, Simon Gonzales kidnapped his three daughters at approximately 5 p.m. while they were playing outside their house on June 22, 1999. The girls were seven, nine, and ten. Previously, on May 21st, his wife, Jessica Gonzales, had obtained a restraining order against Simon in connection with their divorce proceedings. The restraining order had been served on Mr. Gonzales and entered into a computerized database available to all state and local law enforcement agencies. Pursuant to the order, Mr. Gonzales was excluded from the home and was prohibited from molesting or disturbing the peace of Ms. Gonzales or the girls. Visitation was scheduled for every other weekend.

Ms. Gonzales called the police around 7:30 and officers Brink and Ruisi came to her home. She showed them her copy of the restraining order, asking them to enforce it and return her daughters to her. The officers refused, telling Ms. Gonzales there was "nothing they could do about the TRO," and advised her to call again if the children had not returned at 10 p.m. Ms. Gonzales talked to Simon on his cell phone at 8:30 p.m., and learned that he and the girls were at an amusement park in Denver. She immediately called the Castle Rock police, told Officer Brink where Simon was, and asked that the police attempt to find him. Officer Brink refused to do so, and told her again to wait until 10 p.m.. Ms. Gonzales called the police again at 10 p.m., and the dispatcher told her to wait until midnight to see if Simon returned with the kids. She called again at midnight, reporting that the children were still missing. Ms. Gonzales then went to Simon's home, and called the police from the apartment complex to report they had not returned there. The dispatcher told her to wait there until the police arrived. Ms. Gonzales waited there until 12:50 a.m., then drove to the precinct. She met with Officer Ahlfinger, who took an incident report but failed to attempt to enforce the TRO or look for the children.

Simon arrived at the Castle Rock Police Station at about 3:20 a.m., where he opened fire with a semi-automatic handgun he had purchased after abducting the girls. The police shot and killed him. The police then discovered the three girls in the cab of Simon's truck. Simon had killed them sometime earlier in the evening.

Ms. Gonzales brought a 42 U.S.C. §1983 claim against the city and several police officers on behalf of her children, claiming the defendants violated the plaintiffs' rights to substantive and procedural due process for failing to enforce the restraining order. The U.S. District Court for the District of Colorado granted the defendants' motion to dismiss for failure to state a claim under the Fourteenth Amendment.

On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed in part and reversed in part. Tracking the U.S. Supreme Court decision in DeShaney v. Winnebago, which found that state actors are not liable for acts of private violence, the court concluded that the defendants' failure to act did not increase or enhance the danger posed by Simon Gonzalez. Accordingly, the substantive due process claim must fail.

The court reached a different result, however, with Ms. Gonzales' procedural due process claim. "The governing statute provides that an officer shall use every reasonable means to enforce an order and shall arrest a restrained person when the officer has information amounting to probable cause that the person has violated the order… The complaint in this case… indicates that defendant police officers used no means, reasonable or otherwise, to enforce the restraining order. Under these circumstances, we conclude that Ms. Gonzales has effectively alleged procedural due process claim with respect to her entitlement to enforcement of the order by every reasonable means." The court reversed the district court decision and remanded for further proceedings.

REDUCED TIME-FRAME FOR TPR APPEALS CONSTITUTIONAL

Supreme Court Of Iowa Finds Expedited Time Frame For TPR Appeals Constitutional. In the Interest of L.M. and D.M, No. 158/02-0301

The respondent mother, S.M., appealed the termination of her parental rights on several grounds. She disputed that: (1) the evidence met the burden of proof; (2) the State had made reasonable efforts to provide her with services, or that the services accommodated her mental disability; (3) the expedited time-frame for filing notices of appeal in termination cases violates equal protection; and (4) the time-frame causes per se ineffective assistance of counsel.

The supreme court declined to address either the services provided or the clear and convincing findings of the trial court. Rather, the court looked at the equal protection and the ineffective assistance of counsel claims, both of which attacked the new statutory scheme for filing appeals in termination of parental rights cases.

First, the mother argued that because the subject matter of the appeals, termination of parental rights, involves the fundamental right of her liberty interest in the care and custody of her children, the statute must survive the highest level of scrutiny — strict scrutiny. Only statutes affecting fundamental rights or a suspect class must be narrowly tailored to address a state's compelling interest. Other statutes need only pass the rational basis test.

While noting TPRs may well invoke fundamental rights, the court noted that the right to appeal may not be a fundamental right, and would thus only warrant the rational basis test. The court declined to determine which test must be applied,

because the statute survives both the strict scrutiny and rational basis tests.

The court previously determined that the state's interest in finding a permanent home for children in its care as soon as possible constitutes a compelling government interest. The Iowa Rule of Appellate Procedure requires appellants in TPR cases to file a notice of appeal in 15 days, as opposed to 30 days for all other civil appellants. The court found that the reduction of time is narrowly tailored to accomplish the state's objective — finding a permanent home as quickly as possible.

Next, the mother argued that the requirement that attorneys file a petition on appeal 15 days after the notice does not allow attorneys enough time to receive the trial transcript and prepare a petition which can point to the specific parts of the record where the trial court erred. All other civil litigants have 50 days from the notice of appeal to file. The attorneys' inability to file an adequate petition is per se ineffective assistance of counsel.

The court decided that the short time does not automatically result in a deficient performance by appellate counsel. Appellate counsel is most often trial counsel, and was present during the proceedings and has knowledge of the appealable issues. Moreover, the formulaic, simplistic petition form, designed to be completed quickly, significantly expedites the process, and factual contentions are stated generally, without a need for citations. If the trial counsel does not prepare the appeal, appellate counsel still has the opportunity to confer with the client, the previous counsel, and the court file. Counsel's performance is not automatically ineffective by having to file within 15 days. Accordingly, the Court affirmed the decisions of the lower courts.

DEPENDENCY ADJUDICATION DEPRIVES PARENTS OF RIGHT TO CONSENT TO MEDICAL CARE

Court Of Appeals Of North Carolina Finds That Parents Adjudicated Neglectful Lose The Authority To Object To Immunizations. In re S.S., I.S., S.S., T.S., R.S., S.S., M.S., M.S., S.S., L.S., minor children, 571 S.E.2d 234, 2002 N.C. App. LEXIS 1183 (2002). (The actual case name includes the names of the children. The NACC has chosen to redact their names. Please find this case by searching the citation, or by calling the NACC).

In December 2000, Mecklenburg County Department of Social Services (DSS) investigated a hotline report of inadequate heat and food by visiting the family's home. The DSS workers discovered ten children living with their mother (C.S.) and father (J.S.) in squalid conditions, with inadequate heat, food, or clothing. Additionally, the respondent father reported that the respondent mother home-schooled the children, aged 16 to 1½, although the DSS workers found no educational materials or records to support that claim.

The following day the DSS workers attempted a second home visit, and discovered the family home deserted. J.S. had moved the family to avoid the Mecklenburg County DSS workers. DSS eventually found the family in Gaston County.

DSS took custody of the children in January 2001. The court made findings that the children had been neglected. Subsequently, DSS learned that the children had never attended public school, nor been immunized. DSS made provisions for the children to be immunized.

In February 2001, the parents wrote a letter detailing their medical and religious objections to vaccinating their children. The reasons included many general quotations from scriptures, but cited no particular tenets of their religion prohibiting vaccination. After hearing testimony, the trial court noted the parents' objections, but found as a matter of fact that while state statutes allow religious exemptions for the immunization requirement, the agency with legal custody of the children had not requested an exemption. The court's neglect finding divested the parents of legal custody and the right to make parenting decisions because of their demonstrated poor judgment and lack of ability to care for the children responsibly. Concomitantly, the parents no longer had the authority to make decisions regarding their medical care, and the court found that it was in the children's best interests to receive the required immunizations. The trial court's order was stayed pending the parents' appeal of that decision.

The appellate court acknowledged North Carolina's strong public policy encouraging immunization, as evidenced by the detailed statutory provisions outlining the mandatory immunizations. The religious exemption statute provides: "If the bona fide religious beliefs of… the parent, guardian, or person in loco parentis of a child are contrary to the immunization requirements… the child shall be exempt from the requirements." This statutory section has not previously been judicially applied or interpreted.

The appellate court noted that the United States Supreme Court, in Prince v. Massachusetts, 321 U.S. 158 (1944), one of the first cases to analyze parents' constitutional rights to raise their children, ordered compliance with child immunization requirements over the parents' religious objections. In the case at bar, the North Carolina court agreed with the trial court, upholding the finding that the parents' demonstrated inability to provide a minimum of care, resulting in the children's placement in foster care, necessarily divested them of the authority to make health decisions consistent with their children's best interests.

ATTORNEY FEES INAPPROPRIATE IN DIVORCE CASE

Florida Supreme Court Finds Award of Attorney Fees Inappropriate In A Dissolution Of Marriage Case Where The Trial Court's Record Did Not Support A Finding Of Specific Acts of Bad Faith Conduct For Former Husband's Attorney. Diaz v. Diaz, 826 So. 2d 229 (2002).

In this dissolution of marriage case the trial court imposed attorneys' fees against the husband and his attorney. The court determined that the wife had made reasonable and generous settlement offers prior to court proceedings. Furthermore, there was no realistic possibility that the husband would fair better by going to court and he was likely to do worse. Accordingly, the court assessed attorneys' fees and held the husband and his attorney responsible for $40,000 of the wife's attorney fees and court costs based on the trial court judge's opinion that the

litigation was uncalled for and unnecessary. The husband's attorney then moved for a rehearing.

Although the trial court has the authority to impose monetary sanctions against counsel, there must be an appropriate balance between deterring unethical litigation tactics and not discouraging attorneys from litigating legitimate claims. A trial court's decision to assess attorneys' fees for bad faith conduct must be based on an express finding of specific acts by the attorney resulting in excessive litigation costs for the opposing party.

The trial court did not make any specific findings of bad faith conduct to support imposing attorneys' fees. The Florida Supreme Court recognized the trial court's authority to assess attorneys' fees. However, the court emphasized that sanctions for attorneys' fees against an attorney must be supported by detailed findings of fact describing specific acts of bad faith conduct. The attorney's actions must result in the opposing party incurring unnecessary attorney fees. At the rehearing in this case, the trial judge expressed her belief that any attorney with knowledge of family law would know litigation would not benefit this client. This reasoning was the trial court's basis for holding the husband and his attorney responsible for attorneys' fees.

The supreme court concluded that although the trial court felt this case should have been settled, that alone was not sufficient grounds to find bad faith conduct by the attorney. The court recognized the lower court's interest in settling dissolution of marriage cases because of the emotional and financial affects of litigation on clients. Despite the difficulties involved in litigation, proceeding with a case in court does not constitute bad faith conduct. The court concluded that because the record does not support a finding of specific acts of bad faith conduct by the attorney, the award for attorneys' fees against the attorney is quashed.

DCFS LIABLE FOR COSTS OF PSYCHOLOGICAL EVALUATION

Illinois Court of Appeals Upheld Juvenile Court Order Requiring DCFS To Pay For Psychological Evaluations Of Minor And His Mother Conducted By A Doctor Not Approved By DCFS. In re Brandon E.H., 780 N.E. 2d 736 (2002).

In November 2000, while in the custody of the Illinois Department of Children and Family Services (DCFS) for a dependency and neglect matter in Woodford County, Brandon admitted to allegations of domestic battery. The juvenile court in McClean County found him to be a delinquent, and ordered psychological evaluations for Brandon and his mother as part of the social investigation report to aid the judge in sentencing. The sentencing hearing was scheduled for December 22, 2000. Brandon was placed in temporary custody of the detention center. The court ordered the preparation and filing of a presentencing report, and DCFS volunteered to arrange the psychological evaluations. By statute, all psychological evaluations must be completed three days prior to the sentencing hearing.

DCFS had contracts with twenty-four DCFS approved psychologists in the area. DCFS contacted one doctor, who could not do the evaluation until January 2001. Absent further efforts from DCFS, Brandon's social worker from Catholic Social Service's scheduled an appointment for the psychological evaluations with a psychologist who was not approved by DCFS. McLean County paid for the evaluations used in the Juvenile Court Services social investigation report. At the sentencing hearing Brandon was placed on probation and guardianship remained with DCFS. DCFS was added as a respondent and ordered to reimburse McLean County $700 for the psychological evaluations.

DCFS appealed the order for reimbursement, claiming that sovereign immunity prohibited the juvenile court from ordering DCFS to pay for the evaluations. The Illinois Supreme Court previously addressed this issue finding, "A suit against state officials which seeks to compel them to perform their duty is not held to be a suit against the state even though the duty to be performed arises under a certain statute, and the payment of state funds may be compelled." In re Lawrence M., 172 Ill. 2d. 523. The court of appeals found that the juvenile court was requiring DCFS, a state agency, to pay for the services it is statutorily obligated to provide. This is not barred by sovereign immunity, and the court did not exceed its authority in ordering DCFS to pay for the psychological evaluations. Accordingly, the court found that DCFS was obligated to pay for the services.

The court's decision rested on the fact that DCFS had guardianship of Brandon and they volunteered to arrange the evaluations. The court reasoned that as Brandon's guardian DCFS was responsible for his safety, health, and well being. It was within the juvenile court's authority to order the psychological evaluations to assist the judge in making a decision at sentencing. DCFS was then responsible, as Brandon's guardian, to arrange the evaluations.

DCFS also argued that since JCS has statutory authority to arrange mental health evaluations, it is responsible for making the arrangements. The court disagreed with this reasoning and concluded that JCS does not have the exclusive responsibility for arranging mental health evaluations and should not be utilized when another agency has the primary, paid responsibility to take care of a child. The court stated that the juvenile court is not bound by DCFS regulations pertaining to using only approved service providers. DCFS had the opportunity to use their own doctors; their failure to so does not relieve them from the duty to pay. Requiring DCFS to reimburse the county did not exceed the juvenile court's authority.

NACC Practice Tips

ILLUSTRATIVE EXHIBITS IN SHAKEN BABY LITIGATION

by John E.B. Myers, JD

Babies are injured and killed by violent shaking. Expert medical testimony is generally required in such cases. The expert can explain the injury-inducing mechanics of shaking verbally. With shaking, however, a demonstration is often worth a thousand words. Judges allow physicians to illustrate their testimony with medical illustrations that accurately represent shaking, hematoma, etc.

An attorney may offer a computer-generated animation of shaking. Computer-generated animations or exhibits (CGE's) are of three types: (1) Static CGE's incapable of manipulation (This is essentially a computer-generated picture that cannot be manipulated via the computer); (2) Static CGE's capable of manipulation (Computer software allows the user to "zoom in," change colors, highlight, change the viewing angle, and otherwise manipulate the computer-generated image); (3) Full motion CGE's (A full motion CGE is a moving picture). The National Center on Shaken Baby Syndrome in Ogden, Utah produced an excellent full motion CGE on shaken baby syndrome.

An expert may use a doll, stuffed animal, or mannequin to illustrate shaking. When this is done, concerns about accuracy loom large. Suppose, for example, that a doctor shakes a stuffed teddy bear. Is the bear's neck similar to a human baby's neck? Does the bear's flopping head resemble what we would expect from a human baby? Judges should require a showing of accuracy before allowing experts to use dolls, stuffed animals, or mannequins as illustrative exhibits. If the doll, stuffed animal, or mannequin is *not* similar to a real baby, the judge may nevertheless permit the illustration so long as the *dis*similarities are clearly pointed out.

A number of cases address the use of dolls, mannequins, and CGE's to demonstrate shaking. In *Andrews v. State*, 811 A.2d 282 (Md. 2002), the defendant was accused of shaking his infant daughter, causing fatal Shaken Baby Syndrome. The defendant asserted that the baby, who had multiple serious medical problems, vomited, choked, and stopped breathing. The defendant admitted shaking her gently in an effort to start her breathing. The parties hotly contested the amount of force defendant used to shake the baby. Over defense counsel's objection, a doctor testifying for the prosecution shook a doll designed for infant CPR training to illustrate the amount of force the doctor believed was necessary to cause the injuries suffered by defendant's baby. Defendant was convicted. On appeal, the Maryland Court of Appeals reversed, ruling that the trial judge should not have permitted the doll demonstration. The CPR doll was different in important respects from defendant's infant daughter. In particular, the doll's neck was stiff, requiring the doctor to shake the doll vigorously to move the head. The Court of Appeals ruled that illustrative exhibits must be substantially similar to the events they illustrate.

In *United States v. Gaskell*, 985 F.2d 1056 (11th Cir. 1993), defendant was charged with killing his infant daughter by shaking her. Defendant admitted shaking the baby, but claimed he did so to revive her after she stopped breathing. The principle issue at trial was defendant's intent, and his intent was closely tied to how forcefully he shook the baby. A physician testifying for the prosecution demonstrated shaking with a rubber infant doll used to teach CPR. The doctor "forcefully shook the doll before the jury so that the head repeatedly swung back against the doll's back and then forward onto the doll's chest." (*Gaskell* at 1059). Defendant was convicted of involuntary manslaughter. On appeal, the Eleventh Circuit reversed because of the doll demonstration. The Court wrote that "The burden is on the party offering a courtroom demonstration or experiment to lay a proper foundation establishing a similarity of circumstances and conditions. Although the conditions of the demonstration need not be identical to the event at issue, they must be so nearly the same in substantial particulars as to afford a fair comparison in respect to the particular issue to which the test is directed…. In the presence of the jury, the government proposed that Dr. Mittleman should use the doll to demonstrate the amount of force that would be necessary to cause Kristen's injuries. Moreover, the demonstration was conducted during a segment of Dr. Mittleman's testimony concerning the degree of

force required to produce the fatal injuries. The conditions of the demonstration, offered for this purpose, were not sufficiently similar to the alleged actions of the defendant to allow a fair comparison." (*Id.* at 1060).

Unlike *Andrews* and *Gaskell*, a number of appellate courts have approved demonstrations of shaking. In *State v. Candela*, 929 S.W.2d 852 (Mo. Ct. App. 1996), the Court approved a trial judge's decision allowing a physician to shake a rag doll to illustrate the type of shaking required to cause Shaken Impact Syndrome. The child in *Candela* was four years old when she was shaken and killed. Although the defense attorney objected that "the doll did not accurately represent a child with respect to the force involved, the weight of the child, and the child's musculature" (*Candela* at 867), the appellate court was persuaded that the demonstration helped the jury understand the doctor's testimony. The court noted that the "Defendant was given ample opportunity to prove up the dissimilarity between the rag doll and the real-life Amber and prevent the jury from being misled, and in fact did so by getting Dr. Alexander to concede on cross-examination the doll lacked resistance and musculature. Defendant further rebutted the demonstration and illustrated the difference in weight and musculature by having each juror pick up an actual thirty-five pound child." (*Id.*).

In *Powell v. State*, 487 S.E.2d 424 (Ga. Ct. App. 1997), the Court approved use of a doll to demonstrate shaking: "the doll was approximately the same size and weight as the child…. We do not agree that the state was required to show similarity in head and neck strength, control and movement as part of the foundation. While there should be substantial and reasonable similarity between the facts proved in the case and the facts upon which the demonstration is based, the facts need not be identical; if the facts are sufficiently similar to accomplish the purpose of assisting the jury to intelligently consider the issue of fact presented, the evidence is admissible. Obviously, a demonstration of how Shaken Infant Syndrome occurs would have to be done with a mannequin or doll rather than a real infant. Such an object will differ in many respects from a real child. However, any dissimilarity between the conditions of the demonstration and the actual occurrence affects the weight rather than the admissibility of the evidence. The doll and child were sufficiently similar to assist the jury in considering the issue of how injuries of the type suffered in this case can result from violent shaking." (*Powell* at 426).

Doll demonstrations were approved in *State v. Myers*, 618 N.W.2d 273 (Wis. Ct. App. 2000, unpublished disposition) and *People v. Todd*, 2002 WL 1554378 (Cal. Ct. App. 2002, not officially published). In *Duke v. State*, 2002 WL 1145829 (Ala. Crim. App. 2002), defendant slit the throats of two children, aged six and seven. The Alabama Court of Criminal Appeals ruled it was not error to use child-size mannequins to illustrate how the killings occurred.

In *State v. Carrilo*, 562 S.E.2d 47 (N.C. Ct. App. 2002), defendant was charged with murder for the shaking death of the eight-month-old child of defendant's girlfriend. The mother witnessed defendant shake the baby. At trial, the prosecution presented a CGE titled *The Mechanism of Baby Shaking Syndrome*, "which included (1) a stop-action video demonstration of the shaking of a doll, representing an infant, and (2) animated diagrams of the infant brain." (*Carrilo* at 52-53). The Court of Appeals approved the CGE.

See *People v. Cauley*, 32 P.3d 602 (Colo. Ct. App. 2001), approving use of a CGE to illustrate expert testimony in a shaking case. See also *State v. Stewart*, 643 N.W.2d 281 (Minn. 2002), discussing a full motion CGE depicting a shooting. The Court's analysis is helpful in understanding the uses and limits of CGE's.

In sum, the following factors are relevant to the use of illustrative exhibits regarding shaking: (1) Will the exhibit clarify or illustrate an expert's testimony? (2) Is the exhibit sufficiently accurate to justify its use? (3) What is the degree of similarity/dissimilarity between the doll, stuffed animal, CGE, etc. and an actual baby? (4) Will cautionary instructions be effective in limiting the jury's use of the exhibit to proper bounds? (5) What is the likelihood the jury will misuse the illustrative exhibit as substantive evidence of the degree of force used, the defendant's intent, etc.? (6) Does the exhibit exceed the scope of properly admitted substantive evidence? For example, does the expert witness shake the doll more times and/or with more violence than is warranted by the evidence? (7) Is the demonstration unnecessarily violent? (8) Is the probative value of the illustrative exhibit substantially outweighed by the risk of jury confusion or unfair prejudice to the accused?

John E.B. Myers is Professor of Law at the McGeorge School of Law, University of the Pacific in Sacramento, CA. He serves on the NACC Board of Directors and Practice Tips Workgroup.

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 us.

Federal Policy Update

by Miriam A. Rollin, JD

The 108th Congress has convened, and they — along with the Bush Administration — are already busy trying to finish unfinished business from last year (e.g., '03 appropriations, reauthorization of the Child Abuse Prevention and Treatment Act and welfare reform/child care, as well as proposed faith-based legislation) and start new business ('04 budget and tax decisions). First, the new Congress had to "get organized" (pick leaders, Committee Chairs and membership, etc.). That process is mostly (though not entirely) finished now… *[For the latest House Committee rosters, please check the House of Representatives link on "thomas.loc.gov" — the House Clerk's office updates the rosters as final changes are made. The Senate website hasn't yet posted a complete list, but the organizing resolutions are available through the "bill search" function on "thomas.loc.gov" as well: the Republican Committee appointments are in S.Res. 18, and the Democratic Committee appointments are in S.Res. 20.]*

FINISHING '03 APPROPRIATIONS

The 107th Congress was unable to complete action on the non-defense Fiscal Year 2003 appropriations bills before they adjourned, so the non-defense federal agencies have been operating under a series of Continuing Resolutions since October 1, 2002 when FY03 began. In January, the House passed another continuing resolution, H.J.Res. 2, because they did not have the votes needed to pass a final appropriations bill within the limits demanded by President Bush. The Senate then amended that resolution with a substitute that was an "omnibus" appropriations bill to fund all non-defense federal agencies for the rest of the year.

That Senate bill, as passed, included current level funding for most child abuse/neglect, child welfare and juvenile justice programs, except that it did include the President's proposed full-funding of Promoting Safe and Stable Families ($505 million) and Independent Living (IL) education vouchers ($60 million); however, the bill also included a 2.9 percent across-the-board cut on almost all programs, to bring the bill within the limits being insisted upon by President Bush. That bill was then sent to House/Senate Conference with the House-passed Continuing Resolution — although the House was using, as its Conference position, two bills introduced by the relevant Appropriations Subcommittee Chairs in January (but never acted on, even in Committee): H.R. 246 for Labor/Health and Human Services/Education, and H.R. 247 for Commerce/Justice/State.

The House bill (H.R. 246) included current funding for most of the child abuse/neglect and child welfare programs; the President's proposed increases in Promoting Safe and Stable Families and IL education vouchers were NOT included. Several juvenile justice programs were cut in the House bill (H.R. 247): the Juvenile Accountability Block Grant was cut from $249 million to $215 million, and the Juvenile Delinquency Prevention Grant program (Title V) was cut from $94 million to $60 million, inter alia.

House/Senate Conferees finally concluded their work on the final '03 appropriations bill on February 13, and the bill was passed in the House (by a vote of 338-83) and in the Senate (by a vote of 76-20). The President is expected to sign the bill shortly. The final legislation continued most child abuse/neglect and child welfare programs at current funding levels, except that Promoting Safe and Stable Families was increased to $404 million ($101 million below the authorized level), and the IL education vouchers were funded at $42 million (less than the $60 million authorized). However, all of the discretionary program funding for kids and families (except for Head Start) was hit by an across-the-board cut of 0.65 percent. In the juvenile justice program area, the final numbers included significant cuts: the Juvenile Accountability Block Grant was cut from $249 million to $189 million, and the Title V Delinquency Prevention program was cut from $94 million to $46 million.

PRESIDENT'S PROPOSED FY04 BUDGET

On February 3, President Bush released his proposed FY04 Federal Budget, and related legislative proposals. Most child welfare programs would be kept at current funding levels (Child Welfare Services, Child Abuse Prevention and Treatment Act, and the Social Services Block Grant). The Promoting Safe and Stable Families program would be funded at the authorized level ($505 million); similarly, the IL education voucher program would be funded at the authorized level ($60 million), as was the case for '03.

The most potentially damaging proposal in the child welfare part of the budget is a proposal for "optional" state block grants for foster care under Title IV-E. This would allow states to elect "fewer administrative burdens" and "flexible grants", in exchange for losing the open-ended entitlement — and child protection guarantee — nature of Title IV-E. (Under

current law, states get federal foster care reimbursements for however many children are eligible, and states must abide by certain federal requirements as to how they address the needs of those children.) There is no proposed legislation on this child welfare proposal yet (just some vague descriptions), so we have more questions than answers about it, at this point.

Similar "optional" state block grants are being proposed in Medicaid and SCHIP (State Children's Health Insurance Program), so that states could get more "flexibility in designing their benefit packages" — and even more money in the short-run — in exchange for losing the open-ended entitlement (and, of course, coverage guarantees) of the current programs. Even Head Start (the nation's primary early care and education program for children in poverty) has not escaped the proposed FY04 Budget for HHS's state-block-grant-mania. Taken together, these proposals give cause for great concern regarding the continued existence of any federal safety net for vulnerable children.

The HHS budget also proposes a new $200 million drug treatment voucher program — laudable in its expansion of much-needed drug treatment, but troubling in its use of a financing approach (vouchers) that allow for little, if any, quality controls.

In the Education Department budget, proposals would establish a new $100 million per year Mentoring initiative for at-risk middle school students — an excellent concept — and would also cut after-school investments by 40% (from $1 billion to $600 million) — a less savory prospect for delinquency prevention. In fact, as to delinquency: in the Department of Justice, the proposed budget would eliminate the newly-authorized (and newly-improved) $249 million Juvenile Accountability Block Grant program, and would cut the Title V Delinquency Prevention Grants program from $94 million to $77 million.

It's now Congress' turn to decide what the FY04 Budget will actually include. Many of these proposals are certain to draw close scrutiny on Capitol Hill.

SOCIAL SERVICES BLOCK GRANT

The Social Services Block Grant, despite its generic and unappealing name, is the largest single source of federal support for child welfare services (bigger than "Child Welfare Services", or "Promoting Safe and Stable Families", or CAPTA funds); further, child welfare expenditures are the biggest category of SSBG spending (other categories include child care, youth services, senior services, etc.). Restoration (over two years) of the Social Services Block Grant (SSBG) program from the current level of $1.7 billion to the previously-authorized level of $2.8 billion is included in the latest incarnation of the federal "faith-based initiative" legislation in the Senate (S. 256, a bi-partisan bill), which was approved by the Senate Finance Committee on February 5. That legislation is expected to move to the Senate floor for consideration in the near future. SSBG (Title XX) is also being utilized as a vehicle for state fiscal relief: S. 138, another bi-partisan bill, includes a one-time $10 billion payment to states through SSBG — an appropriate vehicle to (1) help states experiencing sudden, massive deficits, (2) help children, families, and others experiencing greater challenges due to the recession, and (3) help stimulate the economy through payments/benefits/salaries to modest-income individuals who are more likely to spend the funds (as opposed to higher-income individuals more likely to save the funds). No Congressional action on this proposal has been scheduled, yet.

CHILD ABUSE PREVENTION AND TREATMENT ACT (CAPTA)

CAPTA reauthorization legislation (which had gone through the House of Representatives last year, and had gone through Senate Committee but had not been enacted) is back on the Congressional "plate" this year. The Senate Committee on Health, Education, Labor and Pensions completed its "mark-up" a CAPTA reauthorization bill on February 12 (S. 342), and the House Committee on Education and the Workforce completed its "mark-up" a CAPTA reauthorization bill, H.R. 14, on February 13. The bills make only modest changes (including some improvements) in the CAPTA programs; both bills add to the GAL requirement that a GAL "has received training appropriate to the role" — a positive change. The House bill

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also adds (at NACC's urging) that state policies relating to public access to court proceedings to determine child abuse and neglect "shall, at a minimum, ensure the safety and well-being of the child, parents, and family." This legislation is expected to move rapidly towards enactment.

WELFARE REFORM (TANF)/CHILD CARE (CCDBG) REAUTHORIZATION

Legislation to reauthorize the '96 welfare reform (Temporary Assistance to Needy Families) program and the Child Care and Development Block Grant program (like the CAPTA legislation) had passed in the House of Representatives last year, and had gone through Senate Committee, but had not been enacted. The House-passed legislation from last year was reintroduced as H.R. 4 this year, and was adopted on the House floor on February 13 (without any action in Committees). That bill includes substantial additional work requirements, and only modest increases in child care funding for low-income working parents. The Senate has not yet taken any action this year in this area.

OTHER LEGISLATION OF INTEREST

Legislation to amend Title IV-E of the Social Security Act, to provide equitable access for foster care and adoption services for Indian children in tribal areas, has been introduced in the House as H.R. 443 by Rep. Camp (R, MI) and in the Senate as S. 331 by Sen. Daschle (D,SD). No Committee action has been scheduled, yet.

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

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

The Eighth Annual Rocky Mountain Child Advocacy Training Institute 2003

Presenting Evidence in Cases Involving Children

May 20–24, 2003

Denver, Colorado

University of Denver College of Law

The Rocky Mountain Child Advocacy Training Institute is a unique, hands-on, learn-by-doing trial skills training. It is intended for both new and experienced attorneys who work in dependency, delinquency, family and criminal courts. Through the collaboration of the Institute sponsors, the traditional, time honored trial skills training methodology of the National Institute of Trial Advocacy is merged with a children's law case. The case file is used as a source of facts and law for the training. Following lecture, discussion and demonstration, you will learn primarily through participatory exercises. Following your performances, you will be evaluated by experienced instructors. Some performances will also be videotaped and you will receive an additional one-on-one video performance review.

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***Presenting Evidence in Children's Cases* Training Skills:**

- Direct and Cross Examination Techniques
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- Case Analysis and Organization
- Evidentiary Foundations Including Foundations for Exhibits, Refreshing Recollection and Impeachment by Prior Inconsistent Statement
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- Using Exhibits in Witness Examination

Presented by:
University of Denver College of Law
The National Association of Counsel for Children
The Rocky Mountain Children's Law Center

In Cooperation with:
National Institute for Trial Advocacy (NITA)

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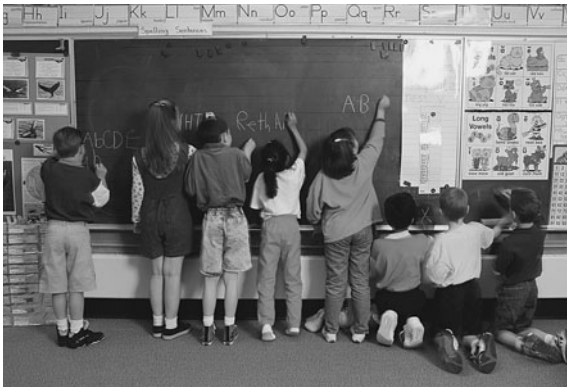

Children's Law News

CONFERENCES & TRAINING

March 16 – 19, 2003
30th National Conference on Juvenile Justice. National Council of Juvenile and Family Court Judges. Pennsylvania Convention Center and Loews Philadelphia Hotel. Register online at www.ndaa-apri.org (events) or call 215-627-1200.

March 30 – April 5, 2003
14th National Conference on Child Abuse and Neglect: Gateways to Prevention. U. S. Dept. of HHS Children's Bureau. St. Louis, MO. Register online at www.calib.com/nccanch/cbconference/index.cfm. Call or email 703-528-0435, 14conf@pal-tech.com.

May 4 – 7, 2003
Custody and Visitation Symposium. National Council of Juvenile and Family Court Judges. San Diego, CA. Hyatt Regency Islandia. 775-784-6012.

July 23 – 26, 2003
APSAC 11th Annual Colloquium. Orlando, FL Hyatt Orlando. 405-271-8202. tricia.williams@ouhsc.edu.

May 20 – 24, 2003
NACC 8th Annual Rocky Mountain Child Advocacy Training Institute, *Presenting Evidence in Children's Cases.* A hands-on trial skills training for juvenile law attorneys produced in conjunction with NITA, University of Denver College of Law, and the Rocky Mountain Children's Law Center. Brochures were mailed to all NACC members in February. Please see notice on page 11 of this issue.

August 16 – 19, 2003
NACC 26th National Children's Law Conference, Sheraton New Orleans Hotel, New Orleans, LA. NACC members receive a 25% registration discount. Brochures will be mailed in April, 2003. For more information contact the NACC at 1-888-828-NACC or visit our web site at www.NACCchildlaw.org.

PUBLICATIONS

The Adoption and Child Welfare Law Reporter is published monthly by i-net Publishing Solutions LLC. The Reporter is available in Adobe PDF and is distributed by e-mail 12 times per year. Subscriptions include online access to cases and supplementary materials on adoption and child welfare. NACC members can subscribe at the special rate of $249 per year. New individual subscribers who are not currently members of the NACC receive a complementary one-year membership in the NACC. For more information, contact Stacey Lightman Cohen, 888-447-1432 or staceycohen@i-lawpublishing.net. NACC members can subscribe online at www.i-lawpublishing.net/naccbookstore.htm.

California Juvenile Dependency Practice published by CEB. This comprehensive two-volume set also includes a forms disk. 800-232-3444 or www.ceb.com. Thanks to Jan Sherwood and the NACC Northern California Affiliate for donating this valuable resource to the NACC Resource Center.

Questions Every Judge and Lawyer Should Ask About Infants and Toddlers in the Child Welfare System, by Osofsky, Maze, Lederman, Grace & Dicker. NCJFCJ Technical Assistance Brief December 2002. Call or email 775-327-5300, ppp@pppncjfcj.org.

Right on Course: How Trauma and Maltreatment Impact Children in the Classroom, and How You Can Help. CIVITAS 2002. Call or email 312-226-6700, contactus@civitas.org.

NEW by NACC Board Member Robert Fellmeth — *Child Rights and Remedies: How the U.S. Legal System Affects Children*, Clarity Press, Inc. 2002. Provides a comprehensive rights-based analysis of how the U.S. legal system, in both its legal and political dimensions, is affecting American children. 1-800-729-6423. Also available at www.amazon.com.

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

NEW — *25 Years of Child Advocacy* — the 2002 Edition of the NACC Children's Law Manual Series. The manual is 307 pages and includes 24 articles covering a wide range of children's legal issues including reflections on the practice of law for children, same sex adoption, social worker witness preparation, appellate advocacy, UCCJEA, children of incarcerated parents, the impact of domestic violence on children, and principles of collaborative law. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC or using the Publications Order Form on the back page of this issue.

National Association of Counsel for Children

2003 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, 2003.

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: _____

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

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

Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children, by Cecilia Fiermonte and Jennifer Renne. Contact ABA Service Center at 800-285-2221, Product code 549-0326. $14.95.

How to Start Your Own School-Based Legal Clinic, produced by the ABA Steering Committee on the Unmet Legal Needs of Children. $12. 800-285-2221 (Product code 5490333).

NEWS

NACC Elects New Officers and Board Members. Congratulations to the following newly elected officers and directors:

Officers 2003 & 2004

Candace Barr, Esq. — President
Niemi, Barr & Jerabek, Minneapolis, MN

Christopher Wu, Esq. — Vice President
Judicial Council Center for Families, Children & the Courts, San Francisco, CA

John Stuemky, MD — Treasurer
Children's Hospital of Oklahoma, Oklahoma City, OK

Donald Duquette, Esq. — Secretary
University of Michigan School of Law, Ann Arbor, MI

Board of Directors 2003 – 2009

Gerard Glynn, Esq.,
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David Katner, Esq.,
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Kathleen McCaffrey, Esq.,
CPCS Children and Family Law Program, Salem, MA

Henry Plum, Esq.,
Attorney and Consultant, Milwaukee, WI

Jennifer Rodriguez,
California Youth Connection, San Francisco, CA

Janet Sherwood, Esq.,
Attorney at Law, Corte Madera, CA

The NACC 2003 Outstanding Legal Advocacy Award. Nominations for the 2003 award are being accepted now. Please see the award notice on page 13 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, 2003.

NACC 2003 Law Student Essay Competition The NACC is accepting essays for the 2003 Law Student Essay Competition. The winning essay will be published in the 2003 Children's Law Manual, and the winner will be given $100, a one-year NACC membership and a scholarship to the 2003 conference in New Orleans. 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, 2003. 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.

2003 NACC Outstanding Affiliate Award Nominations are being accepted for the NACC 2003 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

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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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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, 2003.

NACC Launches Juvenile Attorney Certification Program. The NACC launched its juvenile attorney certification program in January with the first meeting of the NACC Juvenile Attorney Certification National Advisory Board in Washington, DC. The program is funded by a 3-year grant from the U.S. Department of Health and Human Services Children's Bureau. Under the grant, the NACC will conduct a pilot program concluding with the certification of attorneys in selected pilot jurisdictions as Certified Child Welfare Law Specialists. While specialty certification has existed for a number of years in other areas of law, this is the first such program to certify children's lawyers, and the first such program supported by the federal government. Watch The Guardian and our web site for updates.

NACC Children's Law Office Project. The NACC is developing a new project to address the ongoing, institutional needs of children's law offices. The objective is to form a national umbrella group capable of addressing the operational and representation needs of these offices. Surveys are currently being completed to assess project parameters. Contact NACC Staff Attorney Colene Flynn Robinson for more information at 303-864-5323, or robinson.colene@tchden.org.

Join the NACC Children's Law Listserv Information Exchange. All NACC members are encouraged to become part of the NACC Listserv which provides a question, answer and discussion format for a variety of children's law issues. It is an excellent way to improve your advocacy skills and share your expertise with your NACC colleagues. To join, simply send an e-mail to advocate@NACCchildlaw.org and say "Please add me to the NACC Listserv."

NACC Web Site. Visit the NACC's member services web site at www.NACCchildlaw.org. The site is comprised of four sections: About the NACC; Technical Assistance and Training; Children and the Law; and Policy Advocacy. The site includes members-only sections that allow you special access to resources including the online membership directory. Passwords are mailed to all NACC members with their welcome packets. Contact the NACC if you don't know your password.

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 by phone at 1-888-828-NACC; via fax at 303-864-5351; and e-mail to advocate@NACCchildlaw.org.

NACC Members Get Members Program. Earn "NACC Bucks" by nominating your colleagues for membership. Participate in the NACC "Members Get Members" program and earn valuable NACC Bucks redeemable on your NACC member dues, publications, and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children's Law Conference (a $300 value). Complete and return the form on page 14 of this issue and start earning now.

AMICUS CURIAE ACTIVITY

Strogner v. California, U.S. Supreme Court #01-1757. The NACC will be filing an amicus brief before the United States Supreme Court with several other groups, including the American Professional Society on the Abuse of Children, the Section on Child Maltreatment of Division 37 of the American Psychological Association, the California Professional Society on the Abuse of Children, and Arnold & Porter. This case involves the application of California's extended statute of limitations in child sexual abuse criminal cases retroactively to the defendant, Strogner. The statute of limitations allows charges for certain child sexual abuse crimes to be brought within one year from the time the victim reported the crime to the police. Our brief will review the research justifying an extended statute of limitations, demonstrating that a large percentage of child victims don't report their abuse until adulthood, the long-term effects of sexual abuse, and the likelihood of molesters to continue to offend.

In re Terrell R., 2002 Cal.App.Lexis 4719, 125 Cal. Rptr.2d 637. The NACC and the Children's Advocacy Institute filed a letter in the California Supreme Court seeking review of the plaintiff child's appeal. The Second District Court of Appeals in California held that the county is not liable for damages when a foster child is raped in a foster home setting. In the Terrell R. court's opinion, *DeShaney v. Winnebago County Dep't of Social Services,* (1989) 489 U.S. 189, "lack of duty" reasoning should be extended to include children in the state's custody. Deshaney limited government accountability where the child was harmed after being returned home, reasoning that there is no affirmative duty of protection for children not within the state's custody. Shielding the government from accountability for gross negligence for children in its care prevents children from receiving the care and protection that the county is legislated to provide. The NACC's brief urges the Supreme Court to reverse the disavowal of duty to protect children under the jurisdiction of the court. Unfortunately, the California Supreme Court denied the request to hear the plaintiff child's appeal.

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

JOBS

Child Protective Services Social Worker, Charlotte, North Carolina, Investigates allegations of abuse, neglect, and dependency. Conducts comprehensive assessments, implements protection plans, and provides on-going protective services. Qualifications include: MSW and one year social work experience; BSW and two years social work experience; Master's degree in related field and two years social work experience; or Bachelor's degree in related field with 15 hours of social work/counseling experience and three years of social work experience. Please contact Mecklenburg County Department of Social Services, 704-432-0291, email burripa@co.mecklenburg.nc.us

Children's Court Attorney, Child Protective Services. CYFD is accepting applications for "Lawyer-O" (PERM) in Roswell, NM. Attorney will represent the department in abuse/neglect and termination proceedings and matters relating thereto. Looking for applicants with at least four years experience in practicing law and NM licensure (but will consider applicant with out of state license per rule 15-301-1). Salary: $36-50k yearly, DOE. Applications available from the New Mexico Department of Labor, 108 E. Bland, Roswell, NM 88203, telephone 505-624-6040. For more information contact Nick Kennedy 505-763-0014 (Clovis). The State of New Mexico is an EOE.

Staff Attorney, Center for Public Interest Law/Children's Advocacy Institute, Sacramento CA. CPIL is seeking temporary (2 Year) full time, benefit-based position of Staff Attorney. For more information visit www.admin.is.sandiego.edu/hr/jobdetail.asp?jid=487

Director of Planning, The Vera Institute of Justice, New York, NY. $60,000 plus benefits. Senior Planner to develop and implement innovations in the juvenile justice system. Send resume to: Vera Institute of Justice, Director of Planning, 233 Broadway, 12th Floor, NY, NY 10279.

Staff Attorney/Supervisor, St. Louis City CASA, St. Louis, MO. Responsible for supervision of lay guardians ad litem and legal representation of children in foster care. For more information contact Mary Taylor, 920 N. Vandeventer, St. Louis, MO 63108, 314-552-2352, email: mztaylor@stlcitycasa.org.

Senior Program Associate, The Casey Center, Chicago, IL. Salary will be $65,000-$68,000. Reporting to The Casey Center Director, the Senior Program Associate will assist in the review and assessment of all requests for technical assistance and training, and subsequent participation in the determination of how The Casey Center will respond. For more information contact Alicia Hirai, Kittleman & Associates, 300 South Wacker Drive, Suite 1710, Chicago, IL 60606, 312-986-1166, email: ahirai@kittleman.net.

Special Assistant Attorney General, Cheyenne, WY. Seeking an attorney to represent the Department of Family Services in litigation and contested matters pertaining to ASFA, termination of parental rights, adoptions, guardianships and advise the Department on legal matters on a day-to-day basis. Minimum five years experience and must be able to obtain Wyoming Bar membership. For more information contact: Dan Wilde 307-777-7838.

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

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